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Judiciary Committee
January 28, 2015

[LB38 LB120 LB167 LB189 LB215]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 28, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB38, LB120, LB215, LB167, and LB189. Senators present: Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: Les Seiler, Chairperson.

SENATOR COASH: Okay, we're going to go ahead and get started. My name is Senator Coash. I'm the Vice Chair of the committee. Senator Seiler is not going to be joining us today, so I'll be running the committee today. So welcome to the Judiciary Committee hearing. We have five bills today. Let me start by introducing my colleagues, and I'll start over on the far right. We have Senator Williams from Gothenburg; Senator Morfeld from Lincoln. Senator Krist will be joining us soon. Senator Chambers from Omaha is here. To my far left is Senator Ebke from Crete. Senator Pansing Brooks will join us later. Ollie is our committee clerk, and Diane is our legal counsel. The agenda is posted, and that's the order we'll go in. We're going to start with LB38, go to LB120, LB215, LB189, and then LB167. We're going to hear them in that order. If you are planning on testifying, we ask that you make sure you pick up a testifier sign-in form which is on the table out...or there's a table with those on them. If you want to register your support or opposition to a bill but you do not want to testify, you can sign in as a proponent or an opponent and that will become part of the permanent record for the hearing. When you come up to testify, hand the sheet to our pages and we'll get that submitted to the clerk. We'd ask that you silence your cell phones so that we can get a clear record. If you have copies, you can hand those to the clerk. We'll get those made as part of the record. Each hearing we have received several letters, and we will make sure that any correspondence we got is also read into the record. And I think that covers all of our housekeeping. So with that, we're going to start with LB38. Senator Kolowski, you are recognized to open on your bill. [LB38]

SENATOR KOLOWSKI: Thank you. And good afternoon, Senator Coash and members of the committee. My name is Rick Kolowski, R-i-c-k K-o-l-o-w-s-k-i, and I represent District 31. This bill, LB38, is not a perfect bill, but it's the start of a discussion and we are willing to work with the committee to make something work. Ten months ago, a driver hit and killed a longtime Millard schoolteacher and friend of mine while he was riding his bicycle in western Douglas County. Jim Johnston had recently retired and was enjoying more time for his passion of riding his bicycle. I hired Jim in 1995 to teach human physiology and to be one of our two athletic trainers at Millard West High School. Jim was an outstanding teacher and adviser for hundreds of students over his full career. His quality teaching and caring led countless students to move on to medical-related careers. Also, his outstanding work as an athletic trainer assisted our programs to reach high levels in a very short time. The tragic loss of Jim Johnston had an impact on Jim's entire family and to the entire Millard community. His family is here to testify today, as well, and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

I'd ask them to raise their hand: his wife, Patty, and brothers Jef and Jay (phonetic). Thank you. You'll be hearing more about them...from them shortly. LB38 would increase penalties for motor vehicle homicide, provide penalties for causing serious bodily injury to vulnerable road users, and defines vulnerable road users. Our hope is that LB38 sheds light on a daily challenge that vulnerable road users go through when sharing the road with motor vehicles. I recognize that increased penalties are not usually deterrents to a crime, but that's what this bill does. Vulnerable road users means a pedestrian, a person engaged in work upon a highway, an emergency services worker, a person riding an animal, or a person lawfully operating any of the following, such as a bicycle, a farm tractor or a similar vehicle designed primarily for farm use, a moped, a motorcycle, a horse-drawn carriage, an electrical personal assistive mobility device, or a wheelchair. Public knowledge, public safety, and public action are the direct concepts behind LB39 (sic). Our society will face increased...LB38, excuse me. Our society will face increased vehicular traffic and an equal increase in the number of bicycle riders. The centerpiece of this bill is the safety and security of all road users throughout all Nebraska. If I may, I'll take questions in my closing comments if that would be fine. [LB38]

SENATOR COASH: Okay. [LB38]

SENATOR KOLOWSKI: Thank you, sir. [LB38]

SENATOR COASH: Thank you, Senator Kolowski. Take the next testifier...we're going to start with the proponents. We'll take the first testifier in support of LB38. [LB38]

DAVID ROWE: My name is David Rowe. Thank you for giving me this opportunity to testify in support of this bill. I live in Lincoln, Nebraska. [LB38]

SENATOR COASH: Could you... [LB38]

DAVID ROWE: I am a board member... [LB38]

SENATOR COASH: Could you...excuse me, Mr. Rowe. Could you spell your name for the record, please? Thank you. [LB38]

DAVID ROWE: Yes. Thank you. R-o-w-e. I live in Lincoln, Nebraska. I am a board member of the Nebraska Bicycling Association, and I'm here to express my support for LB38. My interest in LB38 stems from knowing a number of people who have been injured in accidents riding their bikes, a friend who was a pedestrian and was hit and killed. So over a period of time, I've known people who have been injured by cars. And I've long had a concern that too little was done as a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

consequence for those who were not careful in their operation of a motor vehicle. This past fall, there were numerous serious accidents in and around the Lincoln and Omaha areas. That really has heightened concern to a point of alarm. I believe that in a civilized society we strive to provide certain protections to citizens who are vulnerable to harm from others. Under that principle, for example, we have laws designed to protect certain adults who are vulnerable to economic or physical abuse from others. And I believe that principle of protecting the vulnerable should also apply to our roadways. In particular, vulnerable individuals on our roadways are individuals that, in particular, aren't contained inside something that's steel and metal. So they're just right out there, exposed, if and when they get hit. I think LB38 is an important piece of legislation because it applies this concept of protecting the vulnerable from those who aren't. Specifically, LB38 identifies various road users who are of heightened risk of harm in the event of an accident with a motor vehicle, and it seeks to make motorists more aware of those users and to cause them to exercise more caution around such users. It does this by enhancing the penalty for driving carelessly and causing either death or a serious bodily injury to a vulnerable road user. Pursuant to LB38, an individual who drives carelessly and causes a death may be sentenced to zero to five years' imprisonment, a \$10,000 fine, or both. Currently, the penalty would be zero to one year in prison or a \$1,000 fine or both. With respect to a serious bodily injury case, it enhances the sentence so that it could be anything from nothing to five years, a fine of nothing to \$10,000. And right now, the...if there's just a serious bodily injury, not a death, there really are limited options unless the individual could be charged with a DUI or driving on a suspended license or leaving the scene of the accident, all which can be used to enhance. When it's a matter of careless driving, without one of those enhancing features, really, the only option for the prosecutors is a careless driving charge and the maximum penalty is a \$100 fine. I have attached to the written testimony a summary I've done. I also happen to be a lawyer, so I had access to court files. And so I looked at recent cases and gathered together that information so you could see what the judges are currently doing and how things are being treated. [LB38]

SENATOR COASH: Okay. [LB38]

DAVID ROWE: Thank you. [LB38]

SENATOR COASH: All right. Thank you, Mr. Rowe. Before you get up, we'll see if we have any questions. I've got a question. It seems like under this bill that the penalty for causing someone's death and for causing serious injury here are the same. [LB38]

DAVID ROWE: It is. [LB38]

SENATOR COASH: You think we ought to have a separation between penalties for somebody who dies and somebody who gets injured? [LB38]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

DAVID ROWE: Well, let me say this, because if you look at the analysis I did you're going to see that the judges have been treating death cases very differently from serious injury cases and you're going to see that things are going to fall within a range. And the range of the penalty for both is nothing--under LB38 and under the things that people are currently being charged with--on up under LB38 to five years, as opposed to one year. And what you're seeing is the judges aren't actually sentencing to a year, generally, anyway. The death case that the senator mentioned earlier, the penalty for that ended up being one day even though a much more significant penalty could have been used. [LB38]

SENATOR COASH: Okay. All right. Thank you, Mr. Rowe. We'll see if...any other questions from other members of the committee. Senator Chambers. [LB38]

SENATOR CHAMBERS: Is a motorcycle deemed to be a motor vehicle? [LB38]

DAVID ROWE: I believe it probably is. [LB38]

SENATOR CHAMBERS: So the motorcyclist could cause the death, but in here a person on a motorcycle receives the protection when that might be the motor vehicle that would cause the death. Isn't that true? [LB38]

DAVID ROWE: I believe that would be accurate. [LB38]

SENATOR CHAMBERS: Okay. Now a farm tractor is not considered a motor vehicle, is it? Or is it? I don't know that it is... [LB38]

DAVID ROWE: I'm not sure on that, whether it's considered to be motor vehicle. [LB38]

SENATOR CHAMBERS: ...because some are not licensed to be on certain highways. [LB38]

DAVID ROWE: I think, since its means of propulsion is a motor, that it would be treated as a motor vehicle. [LB38]

SENATOR CHAMBERS: We need to check the definition. And I don't mean you right now... [LB38]

DAVID ROWE: Right. [LB38]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: ...but to be sure. But tractors, I've been on highways, like 370, for example, and they...people on those machines, they don't drive them carefully. Sometimes they come right off the shoulder, onto the road, or they're in one of the lanes and then they bleed right over to the other one. But if they're not a motor vehicle under the statute, then they're not punished this way if they cause the death. If they run over somebody on a bicycle or on...in any of these other conveyances, they don't face the same penalty because this limits it to one driving a motor vehicle who does it, if I read it correctly. [LB38]

DAVID ROWE: I believe that's accurate. [LB38]

SENATOR CHAMBERS: Okay. And I'm not looking for you to answer those things. [LB38]

DAVID ROWE: Yeah. [LB38]

SENATOR CHAMBERS: But I'm raising the issue so people know what it is we're having to look at. It's not quite as clear cut as it might seem to those who'd like to see something done. So I don't really have any question other than whether you knew if those were motor vehicles. [LB38]

DAVID ROWE: I think the definition of a motor vehicle is something that's on our roadways and is propelled by something other than human... [LB38]

SENATOR CHAMBERS: We can check that. I can check that even. Okay. [LB38]

DAVID ROWE: ...human power or animal power. [LB38]

SENATOR COASH: Okay. [LB38]

SENATOR CHAMBERS: But that's all that I would have. [LB38]

SENATOR COASH: Thank you, Senator Chambers. Any other questions for Mr. Rowe? Senator Williams. [LB38]

SENATOR WILLIAMS: Thank you, Senator Coash, one quick question. As a cyclist yourself and a lawyer and here in Lincoln, I'm sure you're acquainted with the bike trails and how they kind of go all over this community. How would your interpretation be of...we have many situations, at least in Lincoln, that I'm aware of where the bike trail crosses a pretty busy street and there are not stop lights at all of those; however, there might be a stop sign on the bike trail

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

or something. Can you describe a circumstance that you could think of that would help me understand how this legislation will help at that kind of an intersection? The bicyclist doesn't stop at the stop sign. [LB38]

DAVID ROWE: If the bicyclist...if there is a stop sign and the bicyclist doesn't stop at the stop sign, the bicyclist isn't going to have the right of way. And the bicyclist will have...if they had the stop sign and there was a car approaching and they didn't stop at the stop sign, they wouldn't have the right of way in the intersection, they'd be at fault for the injury, and they probably wouldn't...there wouldn't...probably wouldn't be a ticket to the motorist unless the motorist had the ability to stop in time and then just didn't because of carelessness. Then the motorist might get charged, as well as the bicyclist being charged, in which case, if they were charged with careless driving, this statute would apply. [LB38]

SENATOR WILLIAMS: Okay. Thank you. [LB38]

SENATOR COASH: Thank you, Senator Williams. Any other questions for Mr. Rowe? Thanks for your testimony. [LB38]

DAVID ROWE: Yeah. Thanks. [LB38]

SENATOR COASH: We'll take the next testifier in support. Come on up, Mr. Blue. [LB38]

JAMES BLUE: (Exhibit 1) My name is James R. Blue, B-l-u-e, just like the color. Senators, thank you for your time this afternoon. I'll try to make this brief. My day job is as president of CEDARS Youth Services, one of our state's largest child-caring organizations, and our job is to do everything we possibly can to protect the vulnerable children and families of our state. But today I testify in a personal capacity. On Labor Day morning a little over three months ago, I was nearly killed when I was riding my bike on a little stretch Saltillo Road--blue skies, no cars around, except for the late-model Silverado which I believe was traveling so close to me that he or she must have intentionally been having fun trying to scare a vulnerable cyclist. Now I don't know anything else about that driver because, after losing its whole side-view mirror, it sped off over the next hill and the Lancaster County Sheriff's Department, despite the best efforts, was never able to find that driver. Concussion, broken ribs, a variety of other issues and now, every time I go riding, my wife says, be careful or I'll kill you. I will keep this for the rest of my life. Last week, late on Martin Luther King Day, I took a little ride on that 60-degree afternoon. Some drivers who passed me were fabulous, waved as I went...as they went by, as they passed in the lane next to me. I waved back. Two drivers left me with their exhaust as they sped up not more than a few feet from me, and one even managed to flip me off, for some reason, on Dr. Martin Luther King Day. Some things I can't figure out. Nearly every time I ride my bike, I'm threatened

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

by what I believe are meanspirited, self-centered people who use their vehicles to show their power over someone that they perceive as vulnerable nearly every time I ride my bike. It's often blatant and it's always dangerous. I hope we can do better as a state to protect our many recreational and competitive cyclists. Thank you. I'd like to try to answer any questions you might have. [LB38]

SENATOR COASH: Thank you, Mr. Blue. We'll see if the committee has any questions. Senator Chambers. [LB38]

JAMES BLUE: Yes, sir. [LB38]

SENATOR CHAMBERS: Now when I ask this question, it's somewhat rhetorical, because nobody would know for sure. But if there are...so I'll make it as a hypothetical. If there would be a large number of people who could relate a similar experience to yours but they couldn't catch the driver, it wouldn't matter if we had the death penalty. So merely upping the penalty is not going to impress people who do what you're talking about, at all. First of all, they don't expect to be caught. But secondly, they don't have any idea what the penalty is. [LB38]

JAMES BLUE: May I? [LB38]

SENATOR CHAMBERS: Oh, yes. [LB38]

JAMES BLUE: I testified last week on a bill which would require drivers to pass a cyclist as if they would be passing another car, LB39. As I tried to articulate last week, there is no panacea that will protect all cyclists. That's not realistic. But it's building blocks, every piece. It's not going to cover every circumstance, but I believe that we have a whole lot of room ahead of us to do better by the people who are trying to do this recreational activity. [LB38]

SENATOR CHAMBERS: That's all that I would have. Thank you. [LB38]

JAMES BLUE: Thank you. [LB38]

SENATOR COASH: Thank you. Any other questions for Mr. Blue? [LB38]

SENATOR PANSING BROOKS: I just have one. [LB38]

SENATOR COASH: Senator Pansing Brooks. [LB38]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR PANSING BROOKS: I'm just...I'm interested...thank you for coming, Mr. Blue. [LB38]

JAMES BLUE: Thank you, Senator. [LB38]

SENATOR PANSING BROOKS: What I was interested in...I presume you...I don't want to presume anything. Could there be instances where the bicyclist was negligent in a way? I mean, could you see that there might be instances where they were driving...I'm not really great on a bike, so I might swerve or something. So I guess I'm trying to figure out, how do you handle that situation? What do you think about that? Maybe I need to ask Mr. Kolowski--Senator Kolowski--instead, but... [LB38]

JAMES BLUE: If I may take a quick stab at that though? [LB38]

SENATOR PANSING BROOKS: Yeah. [LB38]

JAMES BLUE: I think the answer is, yes, there are inexperienced riders that expose themselves to real dangerous situations. Again, I don't think there's one panacea. I would think that if law enforcement had enough evidence to be able to suggest to the prosecutor filing charges, they would know enough about the behavior of the cyclist. Just as a side note, I was right over on the edge. [LB38]

SENATOR PANSING BROOKS: I'm sure you were. [LB38]

JAMES BLUE: And thankfully, I landed on the hard-packed dirt--my head landed on the hard-packed dirt--as opposed to the asphalt and, again, no other cars around and I had bright yellow, high-visibility stuff on, so. [LB38]

SENATOR PANSING BROOKS: I was aware when that happened to you, and I'm glad you're here to tell about it today. [LB38]

JAMES BLUE: Yeah. Thank you, Senator. [LB38]

SENATOR PANSING BROOKS: So... [LB38]

JAMES BLUE: So, yeah, there are irresponsible riders, and I get very irritated sometimes when I'm driving my vehicle in the city of Lincoln and I see people in black or brown camouflage

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

outfits speeding across the middle of the street. I get irritated with that, too, but there's a whole lot more folks that are riding responsibly. [LB38]

SENATOR PANSING BROOKS: Right. I guess I'm interested then how you...how do you...do you know of instances, since you are...I consider you a professional, really, a professional rider, in a way. [LB38]

JAMES BLUE: That's funny. I'll share that with my wife. Thank you, Senator. [LB38]

SENATOR PANSING BROOKS: And so I'm...yeah. So I guess what I'm interested in is, how does law enforcement determine whether or not the bicyclist was weaving or...I mean I guess that's just some of my concern about...if I'm crossing somebody, you know, if there's an issue, how do they determine that, really? Maybe look at brakes. [LB38]

JAMES BLUE: I am not sure. I know that all responsible riders will be as far over to the right as possible... [LB38]

SENATOR PANSING BROOKS: Yeah. [LB38]

JAMES BLUE: ...and holding a straight line. [LB38]

SENATOR PANSING BROOKS: Yeah. [LB38]

JAMES BLUE: I don't ride with earphones when I'm out on the roads. By the way, this vehicle must have been going so fast, because I didn't hear them whatsoever, so. [LB38]

SENATOR PANSING BROOKS: I'm glad you're fine. [LB38]

JAMES BLUE: Thank you. [LB38]

SENATOR PANSING BROOKS: Thank you. Thank you for testifying today,... [LB38]

JAMES BLUE: Thank you, appreciate it. [LB38]

SENATOR PANSING BROOKS: ...appreciate it. [LB38]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: Hold on one second. Senator Chambers. [LB38]

JAMES BLUE: Yes, sir. [LB38]

SENATOR CHAMBERS: I would like to read a definition that was provided, from Section 60-123, of motor vehicles. Somebody on that side of the room was very alert, very quick. And you're partly right. Motor vehicles, as...a motor vehicle is defined as anything propelled by any power other than muscular power except for mopeds, tractors, self-propelled ag vehicles, hay grinders, trains, off-road vehicles, construction vehicles not intended for transportation of people or equipment, self-propelled chairs, electric personal assistance mobility devices. So some of these could be very dangerous if they got off onto the road and knocked a bicyclist off into the path of a car or ran over the bicyclist. This law wouldn't apply because they're not defined as motor vehicles. [LB38]

JAMES BLUE: Right. [LB38]

SENATOR CHAMBERS: You could...a tractor, I don't know what all kind of self-propelled ag vehicles there are, but I think these could be as dangerous as vehicles. And if they wind up on the road, they could be even more dangerous because I don't know if the steering mechanism, the stabilization, and those things would make it possible for them to swerve quickly to avoid. So to make it clear, the way I look at creating new crimes, the policymaker, no matter how sympathetic, has to always be removed some distance to try to have a degree of objectivity, because even people who want a change in the law did not see the need for it until it happened to somebody they--and I'm not criticizing people--until it happened to somebody who meant something to them. So there might be a greater urgency. But maybe the public at large, just as they weren't concerned before it happened to that person's special one, it hasn't happened to one of theirs, so they might not see a need to change the law, period. But before I will change a law, I would want to be sure that we're looking at the type of conduct that can be engaged in not just by one particularly defined method of moving if there are others equally or more dangerous. But because of the definition in the statute of what kind of vehicle can cause this problem, others that might cause a greater problem are excluded. So it's not as cut and dried, for me, as it might seem on its face. [LB38]

JAMES BLUE: If I may, please? [LB38]

SENATOR CHAMBERS: Sure. [LB38]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

JAMES BLUE: I understand and appreciate your perspective on that. The only thought that went through my mind is, I was in a very vulnerable situation and this pickup had all the opportunity in the world to avoid nearly killing me. It was largely an intentional act, at least, to scare me. My thought is, the operator of a large farm implement, if you will, if that's the right word for it, that would be negligent operating, not an intentional act, which I feel I was a victim of. [LB38]

SENATOR CHAMBERS: But you can't... [LB38]

JAMES BLUE: So I'm not, you know, I'm not...one thing or another. [LB38]

SENATOR CHAMBERS: You can't read anybody's mind. [LB38]

JAMES BLUE: No, I know. But... [LB38]

SENATOR CHAMBERS: That's your feeling. [LB38]

JAMES BLUE: Yeah. [LB38]

SENATOR CHAMBERS: Suppose the driver was inattentive and not paying attention. To be honest--well, I should say, frank--I've driven in areas of the city of Omaha where they have bicycle trails, and the bicyclers, they don't stay in those... [LB38]

JAMES BLUE: Right. [LB38]

SENATOR CHAMBERS: ...in that...in those lanes. They come out in the driving lane of the vehicle. But I'm one of those people who will let anybody have the right of way, whether they would have it or not. But bicyclists are not all innocent. [LB38]

JAMES BLUE: Right. [LB38]

SENATOR CHAMBERS: And I've seen bicyclists turn around and holler things at people in cars. And I'm not saying that that would justify anybody in a car in doing anything, but this is a complicated issue, just like road rage. We could say that road rage shall be a crime if, as a result of road rage, this or that happens. You're going to have to deal with the fact situation to determine if what preceded the actual problem constituted road rage. In the minds of some, it would; in the minds of others, it wouldn't. So with all these other vehicles excluded, I'm not

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

prepared to create a crime, a new category of offense. But that doesn't mean that the people on this committee will not outvote me and send it on out there anyway. [LB38]

JAMES BLUE: I do think the dialogue is important though, so I appreciate the opportunity to talk with you about it today. [LB38]

SENATOR CHAMBERS: And that's all I would have. [LB38]

JAMES BLUE: Thank you. [LB38]

SENATOR COASH: Okay. Seeing no other questions, thanks for your testimony. [LB38]

JAMES BLUE: Very good. Thank you. [LB38]

SENATOR COASH: We'll take the next testifier in support. [LB38]

CATHARINE CARNE: Hi. My name is Catharine Carne, C-a-r-n-e. I grew up in Omaha and lived here until I went off to college and have moved back four or five years ago. I'm a graduate of Omaha North High School. My parents have five children. Mr. Hanes (phonetic) really loved my youngest brother, John (phonetic). John went off to college in California after graduating from the top of his class at North and, after his freshman year, he was killed by a motor vehicle. He was on a motorcycle because he was trying to save some money as a college student and gas prices were high at the time. This woman simply turned left across two double yellow lines, crossing what was designated as a median, like this, across three lanes of traffic. He tried to stop. He took his motorcycle down. He did everything right. And she ran over him and his aortic valve was crushed and he died almost instantly. The firefighters tried to save his life. They were there within minutes. Less than five minutes they were there. And there was a video camera that recorded all of this. But when I talked to the investigating officer, he told me, the only legal way to kill someone in our country is using your car, I'm sorry, there's nothing we can do about this. This was so painful for my entire family, for the community of...that my brother lived in, for everyone that he knew and impacted in his short life of 19 years. The only legal way to kill someone is with your car? That's what they're going to tell me. Well, to answer one of your questions, Senator, if a law like this is applied, there will be an investigation. A prosecutor will decide whether or not to make a charge. There will be evidence; there will be tire marks; there will be witnesses. The same thing that would happen in an investigation of another type of homicide would happen. This incident occurred in California. This went...the prosecutor, the district prosecutor, prosecuted this woman. It wasn't a DUI, but it was all on video. And she broke the traffic law; she broke many traffic laws. It went to a trial. A trial of peers prosecuted

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

and found this woman guilty of my brother's death. Now this law is not going to bring him back, but it's going to indicate to people that you can't kill people with your car and that it's not okay to do. [LB38]

SENATOR COASH: Okay. Thank you, Ms. Carne, appreciate your testimony. We'll see if we have any questions from the committee. Senator Chambers. [LB38]

SENATOR CHAMBERS: Not a question, but sometimes police officers, if they say that, they give the public wrong impressions. You can kill somebody with a gun legally; you can kill somebody with anything legally. The circumstances are what determine how that homicide is going to be viewed. So the pain that you feel would be the same if she hadn't violated a law, any kind of law. [LB38]

CATHARINE CARNE: I... [LB38]

SENATOR CHAMBERS: The death of somebody who means something to you is what causes the pain. [LB38]

CATHARINE CARNE: I agree with you. [LB38]

SENATOR CHAMBERS: But if you feel that a person was in a situation where the death could have been avoided, then that makes it even more difficult, because you're always thinking, anyway, how could this have happened/not happened if he or she had left a minute earlier, a minute later? Those are things you'll naturally go through in your mind. But if there's somebody involved, also, and they could have acted differently, then a feeling of guilt toward that person, a feeling that that person should share some guilt, would be automatic. I don't disagree with any of that. But I have to look not only at what the law says but how laws are administered. And there are DUIs. Some people have had a half dozen. One lawyer, in particular, she's still driving. One lawyer has several pending and hasn't even gone to trial on them because he has a lawyer in Omaha who is a specialist in handling DUIs, so he can have them delayed and delayed. Even while these are delayed, the guy gets additional DUIs. So just having something on the books is not going to necessarily solve the problem. How a law is administered is more important, in a lot of cases, than what the law says. So if anything I say sounds insensitive, it's not my intent. But I have to say what it is that guides me as a policymaker in creating new crimes. As you said, it won't bring your brother back. It's not going to deal with anything that has already happened. [LB38]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

CATHARINE CARNE: It was so interesting though, on 30th and Craig, this year, another young man, I believe his name was John (phonetic), just like my brother, was killed by a woman turning left off of 30th Street. Do you remember that? Did you... [LB38]

SENATOR CHAMBERS: There are so many, no, that particular one didn't stand out. [LB38]

CATHARINE CARNE: Yeah, well, it stood out to me because of the name and because the same situation. I just think people need to be more responsible driving their motor vehicles. And I don't think this law would hurt. Again, it's a prosecutor's decision on whether the law is going to be enforced. [LB38]

SENATOR COASH: Okay. Thank you, Ms. Carne. We'll see if we have any other questions or comments from the committee. Senator... [LB38]

SENATOR PANSING BROOKS: I just want to say, thank you for your passionate testimony and for coming forward and speaking to us today, Ms. Carne. [LB38]

CATHARINE CARNE: Of course. I think this law is on the books in 23 other states. Does anyone...this is not an uncommon law. Thank you for hearing my testimony. [LB38]

SENATOR COASH: Thank you, Ms. Carne. We will take the next testifier in support of LB38. [LB38]

SENATOR CHAMBERS: And this is for my colleagues over there: Could you all speak a little louder when you say something so I can hear what you're saying or asking? [LB38]

SENATOR PANSING BROOKS: Okay, sorry. Thank you. [LB38]

SENATOR CHAMBERS: It's so I can hear it. [LB38]

SENATOR PANSING BROOKS: Thank you. [LB38]

SENATOR COASH: Welcome. [LB38]

JEF JOHNSTON: (Exhibit 2) My name is Jef Johnston, J-e-f J-o-h-n-s-t-o-n, and I am testifying in support of LB38. The events leading to my brother's death last March 13 are clear. Jim Johnston was an avid and experienced cyclist. He was riding his bicycle westbound on Center

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Transcriber's Office

Judiciary Committee
January 28, 2015

Street (sic--Road), which is a popular route for cyclists. He was on the shoulder, he was wearing bright-red clothing, and he was riding safely, as was his practice. An eastbound driver motored through a yellow warning light at 264th and Center. She went past highway posted warning signs, down a highway with double yellow lines. In front of her, about a quarter of a mile, was an SUV. It was stopped. Its brake lights were on. Its left blinker was flashing. She ignored all of it: the flashing yellow light, the double yellow warning signs, a car quite visible in front of her. There are no skid marks where she even tried to brake. And just before she ran into the back of the vehicle, she turned violently to the left. She went into the oncoming traffic lane. She went over to the shoulder. My brother had a split second. He didn't have time to react. And she killed him. She didn't have the skill to control that car. She went off the road on the left. She fishtailed, careened across the highway, went back to the other side, and that's where she stopped. She didn't get out of her car. She didn't walk across the highway to check on him. She didn't even offer to help. I've often wondered if she was just in shock, she didn't know what to do. After seeing in court, I'm quite sure she couldn't walk across the highway to help. She could barely walk across the courtroom, yet she was driving a vehicle on a major highway. Rescue squad Life Flight came to get Jim. He was already gone. What was left was his exploded bicycle, his body, and a \$31,000 Life Flight bill for my sister-in-law. And in current Nebraska law, we call that misdemeanor motor vehicle homicide, and I just don't understand that. I'm not a legal scholar, but the dictionary tells me misdemeanor is an instance of misbehavior. I'm an educator. It doesn't sound like misbehavior to me. Homicide, the killing of one another, those two things don't go together, but that's the kind of law we have put together and that's the way it's carried out. I don't think it's carried out seriously. In Nebraska, those who kill or injure others face a minimal consequence. I don't think that's a reflection of a society that cares about its citizens. That same driver, prior to killing Jim, three years ago veered right into a car on her left. Shouldn't that have been a message to her, to her friends, to her family, to authorities that she had no business driving, particularly on a busy highway so far from her home? Yet she continued to drive. I believe that drivers who out of incompetence or neglect kill other people, who commit homicide with their car shouldn't be back on the road at all. I'm not even talking about prison time. I'm talking about, should they be allowed to drive at all, much less after their crime? [LB38]

SENATOR COASH: Thank you, Mr. Johnston, appreciate your testimony. We'll see if we have any questions from the committee. I don't...oh, excuse me, Senator Williams. [LB38]

SENATOR WILLIAMS: Senator Coash. Yes, Mr. Johnston, I'd like to ask you the question, if there was additional testimony you'd like to give before you step away? [LB38]

JEF JOHNSTON: I had a concluding statement. I think you understand where I'm coming from. [LB38]

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Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR WILLIAMS: Okay. Thank you. [LB38]

JEF JOHNSTON: Thank you. [LB38]

SENATOR COASH: Thank you, Senator Williams. I don't see any other questions from the committee. We appreciate you coming down and giving testimony. We'll take the next testifier in support. Welcome. [LB38]

BRENT DAVIS: Good afternoon, Senators. Thank you. My name is Brent Davis, B-r-e-n-t D-a-v-i-s. I'm here on behalf of Nebraska Bicycling Alliance, here in support of LB38. Again, I myself, as much you've heard today, I'm also an avid cyclist, spend a lot of time out on the roads, see a lot of different things happen. I ride, you know, 6,000 miles a year on my bike commuting, touring, racing, and just in general. You know, we started Nebraska Bicycling Alliance for situations like this, for Nebraska to be a better state, to embrace bicycling and the mode of transportation that we see growing. And it's from transportation for work and school, for recreation, tourism. This is just continuing to grow in every generation that we see out there. It's a health and wellness advantage. You know, we are not enticing people to get out and be active, and this is one way to do that. You know, to kind of talk about...we can debate whether...what's a vehicle, and maybe we can clear some of those things up before the bill is finalized. But, you know, doing nothing is not the right answer either, so I want to make sure that we're clear on that. We got to see change. I wanted to also mention, and this is not a handout that you have, but last Thursday, January 22, U.S. Transportation Secretary Anthony Foxx launched a...the department's Safer People, Safer Streets initiative, and it's very timely to the fact that we've got a couple bills that you're going to hear. The one last week was mentioned, LB39, and this one, LB38. Nebraska is playing catchup. You do have a stat there in front of you that talks about vulnerable road users and how many states there are out there today that have enacted laws, and they're continuing to be proactive with this. Again, this is not going away. This is just going to continue to grow. So you have a copy of that. You've also got a summary there we gave you as kind of a breakdown of what LB38 does and what changes and exactly what you've heard today. It needs to move from a misdemeanor to a felony. That's an important fact. The article from U.S. Transportation Secretary talks about the demographics, too, of everybody that's riding. And just like I mentioned, one thing that's interesting is we get...we're continuing to see the millennial generation, which is our youngest upcoming generation, they're not necessarily getting a license. They're riding a bike. So we're talking two-thirds of all 16- to 24-year-olds are not getting a license. They're riding a bike for transportation. We're also seeing our baby boomers, our other generations continue to ride more bikes because they're still healthy, they're active, they want to get out. So we're continuing to see that rise, so that's why encouraging this by having the right legislation in place to make it safer and make it a deterrent is important. So I ask you today that you support LB38. The penalty for causing death or serious bodily injury to the newly defined vulnerable road user is no longer simply a Class I misdemeanor. It moves to a stiffer penalty:

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

Class IV felony. The cars are getting safer; the drivers are not. The intent is to draw attention to the serious responsibility in nature of operating a motor vehicle with regard to the lethal and deadly force it can inflict on a vulnerable road user. As these various modes of transportation increase, as our population increases, so, too, should the expected penalties for careless operation of a motor vehicle. Thank you. [LB38]

SENATOR COASH: Thank you, Mr. Davis. Appreciate your testimony. We'll see if we have any questions from the committee. Senator Chambers. [LB38]

SENATOR CHAMBERS: More of a comment: A Class I misdemeanor has no minimum; a Class IV felony has no minimum. If it's called a felony but the judge feels that there should be no jail time, the person doesn't go to jail. The main thing it does is bring legal disabilities that occur when you're charged with having committed a felony. But thinking that putting a heavy punishment on the books, even if you had a minimum, you're assuming that people know what the penalty is, which they don't. There might be people right now who think that you can go to jail for ten years if you hit somebody on a bicycle. And it's been found when they make studies that people, unless they're professional criminals and take all those things into consideration like any other business person, don't know what the punishment is for anything. They don't even know what the punishment is for a traffic ticket. But we're asked to put punishments and penalties on the books so people will feel that it's going to somehow influence people who don't even know what the penalty is. But once that penalty is there, it's like ripples in a pool. They have a lot of repercussions that are not seen or paid attention to by the senators. We right now are trying to recover from some knee-jerk reactions to certain drug offenses where people were given long mandatory minimum sentences. Jails are overcrowded, prisons at the federal level. The penalties were so heavy that they have to have what are called, in effect, geriatric wards because people are old but, under the sentencing structure, they couldn't be let out at any earlier time. So what the federal government is doing now, since they don't have parole, is having what they call supervised release. It in effect is parole because you let people out earlier. But you say, we're going to keep you under some kind of surveillance, which is what parole is. So other politicians may pander to the public--and that's what I call it, because we know better--and say, we're going to put these heavy penalties here and let some Legislature down the road deal with the overcrowding, deal with people getting old, people whom judges will say should not have this...so that it's clear, let's say you have a sentence of one to five years, no mandatory minimum. What that means is that a person can be considered for parole after a certain amount of that minimum of the regular sentence is. But when you put a mandatory minimum, that means they've got to serve all of that time before they can be considered even for parole. And there are judges who have said there shouldn't be the mandatory minimum because, although the crime might be considered a felony, it doesn't rise to the level of what that mandatory minimum is, but I've got to impose a sentence that I believe is unjust. That's on the Legislature. So I ask these questions. And even if they seem insensitive, I'm going to ask them, just as some doctors might

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

say, this particular surgical procedure has worked on some people in other countries but I'm not going to say it ought to be authorized here until there have been the kind of studies/documentation that I as a surgeon am convinced will demonstrate that it is effective because in other places where you don't have that stringent a standard maybe people have died, maybe things have gone astray, but there's no record of them because the aim is to get this thing in use. I understand what everybody has said, but you're not going to make people less boorish if they're boorish. The punishment should fit the crime, but it should be a punishment that's likely to be imposed. And it should not be overly harsh because there might be somebody you know who is driving a car and a bicyclist swerves in front of the car but everybody says, because the person may have been well-known and liked, that that person should get a felony. And you say, but I was in the car, it wasn't like what you say. Well, that's tough. What I'm saying is that it can cut both ways. [LB38]

BRENT DAVIS: Right. [LB38]

SENATOR CHAMBERS: And I have to look at what might happen if it cuts both ways. I've had people, and I won't say it's always because they see me as a black man, they're about to go past me, because I don't race on the highway. They'll go by and then they slow down and they'll ride beside me. And if I happen to look at them, then they give me the finger. Well, it's obvious that I wasn't impeding them because they were on their way past me. I don't experience road rage. The only road I'm entitled to is the piece of road that my vehicle is over at that time. But I know how angry people get because I've been in a car with people who would have somebody cut them off and they'd use profanity. I say, wait a minute, that person doesn't hear what you're saying, you're not going to run up the back of that car, or you certainly shouldn't do it. But it seems that people in vehicles, their temper becomes more volatile. Things occur. And now, having said all of that, suppose somebody driving a tractor drives it in a way that's actually careless and runs over somebody, then this law doesn't apply to that person... [LB38]

BRENT DAVIS: Yeah, and that's why... [LB38]

SENATOR CHAMBERS: ...because it's not a vehicle, motor vehicle. [LB38]

BRENT DAVIS: And that's why I say maybe we need to look at that piece. That's a good point that, you know, we think about that. But again, back to...I think doing nothing is not the answer. I mean, we have stiffer penalties and fines in school zones, in construction zones, for the exact same reason: It's a deterrent. I was also going to add, we do have, as we talked about last week with LB39, our plan is, as we've worked with law enforcement, is to educate the public. Again, that's why our nonprofit was formed last year, was to work towards educating not just motorists and law enforcement but cyclists alike. I mean, you can ask all the questions and have all the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

what-ifs of, did they do this, were they dressed right, where were they at on the road, but there's always going to be that situation. And like Jim mentioned, you know, we're...we always try to put ourselves in the best, safest position on the road as possible. Not everybody does that. I get that. Not everybody behind a car drives safely either. But again, I go back to it has to be some kind of a deterrent, and that's where...why would we not move it to be a felony when we've got 23 other states already ahead of us that have already decided that's the action that they need to take as well? So again, we're looking at this as a great bill to support. [LB38]

SENATOR CHAMBERS: Well, then what other states do often do it because they don't have anybody like me who will be sensible and say we have to look at that. Just because they do it this way in Iowa doesn't mean it should be done here. And when you have certain zones where things are done, people know at that location, in that location, this is the way it's going to be. When you have an entire highway, an entire road, it's not the same as a school zone, which is identifiable, which is clearly marked. And if somebody has something happen there, that is well enough known to draw certain conclusions and even attribute knowledge where it may not be there in terms of the person actually knowing. But anyway, I don't want to argue with you. [LB38]

BRENT DAVIS: All right. [LB38]

SENATOR CHAMBERS: Because of the work you were doing and your familiarity with the issue, I went into a little more depth with you than I would others... [LB38]

BRENT DAVIS: Sure. [LB38]

SENATOR CHAMBERS: ...because I don't want anybody to think I'm... [LB38]

BRENT DAVIS: Right. [LB38]

SENATOR CHAMBERS: ...minimizing a loss that they feel they suffered because of something that happened to a person. [LB38]

BRENT DAVIS: Sure. Thank you. [LB38]

SENATOR COASH: Thank you, Mr. Davis. Thank you, Senator Chambers. I don't see any other questions, appreciate your testimony. [LB38]

BRENT DAVIS: Thank you. [LB38]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: We'll take the next testifier in support. Welcome. [LB38]

JERRY STILMOCK: Good afternoon, Senators. My name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, testifying on behalf of my client, the Nebraska State Volunteer Firefighters Association, in support of LB38. The over 7,000 men and ladies that I represent, members of the association, yes, they're volunteers; yes, they choose to do what they do. But they also put themselves in difficult positions: 4:00 in the morning, 4:00 in the afternoon, not well-traveled roadways, and well-traveled roadways. And because of the incidents that have happened and because of the emergency services being singled out in the legislation, we chose to come in and support this. There was other legislation previous to Senator Sara Howard, Senator Gwen Howard, about the move-over legislation and whether or not that's made any impact. Two-thousand nine, that was the year it passed, but that wasn't the first time it was introduced, meaning that there were a few years that it had to be worked upon, that the temperament of the legislators had to grip it and receive it, and eventually that happened. And it's our hope that that will happen with this legislation, as well. The questions, the issues that have been brought up, we'd be happy to work with the committee and, of course, Senator Kolowski, the introducer. Thank you. [LB38]

SENATOR COASH: Thank you, Mr. Stilmock. Senator Pansing Brooks. [LB38]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Stilmock. [LB38]

JERRY STILMOCK: Senator. [LB38]

SENATOR PANSING BROOKS: Could you tell me about the move-over legislation? I'm sorry, I don't know what that was. [LB38]

JERRY STILMOCK: The Senator Gwen Howard, after traveling throughout other places, other than Nebraska, noticed that several of the roadways had big signs. If you have an emergency vehicle or a highway construction vehicle off on the side, you are to, if you're able, slow down, move over to the adjacent lane if it's a two-lane, same-directional roadway, and pass cautiously. That legislation was introduced two or three years prior to 2009. And, Senator, the comment that...the comments that were typically made were...from your side of the table was, why would we legislate common sense, it's common sense, everybody knows if you have an incident on the side of the roadway you're going to slow down, you're going to move over, and you're going to proceed cautiously. And there was the group of your then colleagues that believed that, no, it was time to do something because of incidence. So now we have postings of the signs to complement the legislation that states just that: to move over and cautiously pass. [LB38]

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Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR PANSING BROOKS: Sorry. I thought it had something to do with bicycles, so, sorry. [LB38]

JERRY STILMOCK: Yeah. Oh, no, huh-uh. [LB38]

SENATOR PANSING BROOKS: Okay. Thank you, Mr. Stilmock. [LB38]

JERRY STILMOCK: Yeah. Yes, ma'am. [LB38]

SENATOR COASH: Okay. I don't see any other... [LB38]

JERRY STILMOCK: All right. [LB38]

SENATOR COASH: Oh, excuse me, Senator Chambers has a... [LB38]

SENATOR CHAMBERS: Since the issue was brought up, I was on this side of the table and I didn't want the legislation and the very thing that I said would happen did. I was drive...they've got it on the books now. I was coming to Lincoln. There was a police car sitting on the shoulder, no lights flashing, just sitting there. So I stayed in my lane. First of all, there was a truck in front of me and a car behind the truck. So if I wanted to go over, I would have hit the car. So I just kept driving. Then, after about 50 yards, his lights come on and he comes behind me. I think he saw I'm a black guy. You can say I'm sensitive if you want to. So he came up, no hat on. So I said, what did you stop me for? He said, you weren't speeding. I said, I know it. He said, well, you didn't move over. I said, did you see that truck in front of me? He said, well, you didn't slow down. I said, why should I slow down? He said, my car was there. I said, your lights weren't flashing, you weren't doing anything, you were parked just like another vehicle. Well, it's a police car. He said, well...I said, well, give me a ticket then, because he had a little microphone. I said, I want the ticket if I violated the law, I don't have time to talk to you about this, this is silly, give me a ticket. He said, well, I don't want to give you a ticket, I'm just telling you so it won't happen. I said, you're not even in uniform--I want that in his microphone--you're not even in uniform, you don't have your hat on; now if you're on duty and you're functioning as an officer, you should at least be in uniform, shouldn't you? He said, well, I'm not going to give you a ticket this time. I said, I want a ticket. And he wouldn't give it to me. And that's the exact thing I said when we were talking about that bill. They'll pick people that they want to stop, and all that has to happen is he's, or she, sitting beside the road. And I don't make these things up, because when the...I talked to the head of the State Patrol in...about some other matter. And I said, let me tell you something that your officers do. And I told him. He said, well, are you filing a formal complaint? I said, no, I just want you to know and you can tell them don't do that. So then he

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

contacted me later. He said, well, we didn't have any troopers in that area, so it probably wasn't one of ours. So he's also out of his area, in addition, because I recognize the various jurisdictions of the police vehicles. On the highway, they're usually State Patrol. If you're within the...a certain area of a city, it might be the sheriff, and sometimes they have even a city police car. But I'm very keenly aware of police cars. So police lie, also, and I'm not going to put anything on the books to give them an additional something to lie about. And I believe...not only do I believe it, I know they lie. So when you all come in here and want niche--that's what I call it--legislation to say, give somebody else more protection than an ordinary citizen, I fight it off. And I have reason to. But I understand what you're saying. I understand why you're saying it. But I have a reason for everything I say. And nobody is going to speak for the people that I speak for. And my speaking for us doesn't even do any good, but at least I make a record of it. Then, when something happens, I say, that's what I was talking about, but you all don't listen, you don't pay attention, and you don't care. And they don't care. But I thought I'd put that in there because I was one of those who stopped it from being enacted into law. And when 2009 came, I was no longer in the Legislature and they got a lot of things into the law books after I was gone that they couldn't while I was there. So if blame is due, I'm accepting the blame. If credit is due, I'm accepting the credit. But I think it was me using my best judgment from having driven on those highways for over three decades. [LB38]

JERRY STILMOCK: Yes, sir. [LB38]

SENATOR COASH: All right. Thank you, Senator Chambers. Thank you, Mr. Stilmock, appreciate your testimony. [LB38]

JERRY STILMOCK: Thank you, Senators. [LB38]

SENATOR COASH: Take the next testimony in support of LB38. I don't see any. We'll take any... [LB38]

_____: Neutral? [LB38]

SENATOR COASH: Okay, we're going to go to opposition first. Is anybody here to testify in opposition? Welcome. [LB38]

THOMAS STRIGENZ: Good afternoon, Senators. Thomas P. Strigenz, S-t-r-i-g-e-n-z, here on behalf of the Nebraska Criminal Defense Attorneys Association. We are in opposition to LB38 mainly because we feel legislation needs to deter conduct and not necessarily outcomes. And I think this legislation, we feel this legislation, the outcomes are horrible in these types of cases.

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

But this, you know, LB38 changes 28-306, which is the motor vehicle homicide statute. It basically makes careless driving a felony, and that's what it does, based on the outcome. (Section) 28-306 already allows for felonies for reckless driving and willful reckless driving, and we just don't feel careless driving is the type of conduct that that...because of the outcome. And again, you know, I listened to the testimony, and prosecutors have discretion on all the examples I heard with whether that was reckless or willful reckless driving, all those outcomes. And accidents happen and bad outcomes occur because of accidents. And this legislation makes a felony charge for accidents. The bottom line, ladies and gentlemen, is this is not a good piece of legislation. The homicide statute, motor vehicle homicide statute, already prescribes for conduct that is reckless and willfully reckless. To add careless in there would open up floodgates to a lot of criminal activity, and we would ask that the committee not support this legislation. [LB38]

SENATOR COASH: Thank you, Mr. Strigenz. Senator Krist has a question. [LB38]

THOMAS STRIGENZ: Yes, sir. [LB38]

SENATOR KRIST: Thank you. Talk me through, if you will. In the current statute, if a young lady or a young gentleman happens to be on the cell phone... [LB38]

THOMAS STRIGENZ: Absolutely. [LB38]

SENATOR KRIST: ...and it causes an accident and there is death or injury, currently, what...given those circumstances, what would be charged and what would be a defense? [LB38]

THOMAS STRIGENZ: County attorneys have lots of discretion, and the question is whether or not inattentive texting and driving, talking and driving, would be reckless, indifferent, or wanton disregard for the safety of persons or people. And we all know the laws are fluid. I would think, in this day and age, I think a lot of juries might find that reckless conduct, and especially in light of maybe the circumstances of the roads, the situations, the, you know, the traffic patterns, that kind of stuff. You know, that would be up to the prosecutor. I would tell you, I would think that people would think that's a reckless conduct and that texting and driving I think would probably come under motor vehicle homicide felony outcome if that happened. [LB38]

SENATOR KRIST: And you're saying that the change that's being proposed would do what to that scenario? [LB38]

THOMAS STRIGENZ: Well, you know, I mean,... [LB38]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR KRIST: And I use the term "young" meaning... [LB38]

THOMAS STRIGENZ: I understand, absolutely. [LB38]

SENATOR KRIST: ...because the age...right. [LB38]

THOMAS STRIGENZ: I think texting and driving is absolutely careless. It is, you know, it is. And it absolutely would allow a young person 17, 18, 19 years of age to have a felony on their record, something that affects them for the rest of their lives. We had a client, worked a double shift and was driving home at 5:00 a.m., 6:00 a.m., in the morning and was tired and caused an accident and killed somebody. It's probably careless driving--I don't know if it's willful indifferent--and it's not a felony. I mean, the outcome is horrible and we get all that. But the course of conduct, the type of conduct that this legislation is trying to amend should not be a felony charge. [LB38]

SENATOR KRIST: Thank you. [LB38]

SENATOR COASH: Thank you. Any other questions? Seeing none, appreciate your testimony. [LB38]

THOMAS STRIGENZ: Thank you. [LB38]

SENATOR COASH: We'll take the next testifier in opposition. Seeing none, we'll take any neutral testimony. Come on up. Welcome. [LB38]

WILLIAM ACHORD: I'm William Achord, W-i-l-l-i-a-m A-c-h-o-r-d. And I put neutral but I want to make it clear that I support any law that will make our neighborhoods or our roadways safer. I just want to talk about the efficacy of punishment versus consequences. I think that as lawmakers you have a unique responsibility and opportunity to help the rest of society begin to understand the difference between punishment and consequences. The research is pretty clear: Punishment does not deter. That was even mentioned by the sponsor of the bill when he sat here. It just doesn't. So if you really want to make our roads safer, don't think about more punishment. Think about some consequences. I'm going to be a little facetious. Maybe it's some kind of brand on the forehead that lets everybody know this is a careless driver. But I'm talking about that would be a consequence, not a punishment. The hot brand might be a little punishment but, again, I'm being facetious. But you're the ones we depend on. You're the ones we need to help us as a society. And I'll...and I feel like many years I've been one out in the wilderness, crying in the wilderness, talking about punishment versus consequence. Everybody wants punishment and, I

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Transcriber's Office

Judiciary Committee
January 28, 2015

guarantee you, most of the people that vote you in here want punishment. But I think you've taken on...well, I almost said sacred, but I'm not much of a...I'm sort of an anarchist so I don't want to use that word. But you've taken on an important responsibility: to represent the people and to represent what's best for the people, perhaps in spite of themselves. I think you understand that, hope you do. So think about it seriously. [LB38]

SENATOR COASH: Thank you, Mr... [LB38]

WILLIAM ACHORD: And think about some consequences that will make the roads safer. [LB38]

SENATOR COASH: All right. Thank you, Mr. Achord. Senator Chambers. [LB38]

SENATOR CHAMBERS: You were very philosophical in your approach, so I will offer a philosophical-type statement the courts have said: Not every wrong allows of a remedy. The law cannot punish everything that somebody wants to see punished or even that society may not like. [LB38]

WILLIAM ACHORD: Yes. [LB38]

SENATOR CHAMBERS: So I'm aware of what you're saying, but the public at large, as you pointed out, don't really care about that. They say, a person did this and, if the law says cut off the hand, you should cut off the hand; if the law says punch out the eye, you should punch out the eye. The funny thing among Jewish people, where those principles supposedly originated: The rabbis didn't think that that should be taken literally. So they would say, when you want an eye taken out, if a person took the eye of somebody else, does the eye that you take have more or less acuity than the eye that was lost; and if the one you're going to take has more, are you able to damage it only to the extent that the eye was damaged that was taken? And they took people through this to show that there...you cannot equate harming somebody over here the same way they may have harmed somebody over there. The Nebraska Supreme Court when it struck down electrocution said that even as we punish, as a society and as a court, we cannot do the thing that the one we're punishing did; if that one committed a crime involving torture, we cannot punish by means of inflicting torture. Civilization requires more than that; the law is better than that. But the public doesn't accept that, so you need people in lawmaking positions who will say, despite how you feel, that is not what's going to be written into the law as the way these things should be handled. So what the rabbis came up with was a system. It's called damages now. We will see how much a person was harmed or hindered in terms of his or her being able to function based on the harm you caused, and you are going to have to compensate a person to the extent of overcoming, to the point that compensation can, the way you damaged that person. And that's

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Judiciary Committee
January 28, 2015

where the law of damages came in, when they had not an eye for an eye and a tooth for a tooth but blood feuds where if you kill my brother, then I kill your brother. The king stepped in and said, when you kill a man for any reason, you're taking a potential soldier from me, you're not going to have any more of these blood feuds. At first, they were all right. But they got out of hand; they became organized. So the king said, there will be no more of this; if a person kills another person, that is a crime not against your family, that's a crime against the realm, against the king, so any charge that's going to be brought is brought in the name of the king. And even now that's the way it is: State v. Chambers, not Johnson, whose relative was killed...well, I shouldn't have said...I'm not referring to anybody specifically. It's not Chambers against Smith or whatever. It's against the state and the state will set the punishment. And it's not going to be where you as a family member go out and do this because, if you do it, then you have committed a crime against the king because you now have deprived the king of a potential soldier. It took years to change the way people looked at it, but eventually they had to accept it because the king had the coercive power to enforce what the king said the law would be. So there were still vendettas, still vengeance, as happens in my community among gang members. But that's not what the law allows. So even if my brother was killed in the most hideous fashion, that will not make me immune to punishment if I go out and do to the one what was done to my brother. You opened the way for me to say this, just to get it on the record, because I'm always going to stand against creating special niches in the law and say, because this person has a certain job or this person does a certain thing, society is going to place a greater worth on this person than anybody else. We should criminalize conduct, and whoever commits that conduct is going to be punished the same way and not somebody more harshly because the one against them that was committed at that time had a certain job or was doing a certain thing. Others don't agree with me. The Nebraska law is riddled, like Swiss cheese. Many years ago, we took a lot of time and effort and had consultants to totally rewrite the criminal code because, the way they would set punishments, they'd say, you did this, three to five--no relationship to anything. It depended on how the senator felt who was bringing the bill. So we created certain classifications of felonies. You laid out what the elements of this felony are. And if those elements were there, the person was convicted of this particular class of felony and not with a mandatory minimum or anything, then you knew you had certainty. [LB38]

WILLIAM ACHORD: Right. [LB38]

SENATOR CHAMBERS: Now you have, if somebody is a first responder, a mandatory minimum of this; if somebody is doing something over here, a mandatory minimum for that; if somebody is cutting grass on the premises of the correctional facility, a mandatory minimum. I'm trying to undo a lot that was done that shouldn't be done. [LB38]

WILLIAM ACHORD: Yeah. [LB38]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: And I'm not going to add to that with these kind of laws and changes that people want. I can have all the sympathy in the world. But I'm not acting on sympathy. I'm trying to help us create a criminal code, laws that can be, at least on their face, applied the same way to everybody. And we know judges will be biased in favor of, prejudiced against, but at least the structure, the system itself is designed to be fair. And if a judge takes seriously his or her responsibilities, it can be fair. But when you have judges telling you that you put this mandatory minimum in, the person indeed committed a felony but you're compelling me to impose a sentence that I believe is unjust...and that's why the Attorney General of the United States, that Democratic and Republican senators, liberal and conservative are saying we have to undo all this damage with these mandatory minimums, with these long sentences, with these stacks up on top of each other; we're going to have to give the judges the wherewithal to deviate from this sentencing. Prevention is better than cure. And I'll tell you why I took the time to say it like this. I get transcripts. And sometimes my colleagues need to hear some of this, too, because they will, in a knee-jerk fashion, say that I sympathize. Look, I have a nephew...I had a nephew. He was murdered. He was shot in the face several times, head destroyed. And people, in glee, gleeful, would come to me and say, how do you feel about the death penalty now? I said, the same way I've felt before: The state shouldn't kill anybody. You know what happened to your nephew? I said, yeah, and the state is not going to duplicate that if I have anything to do with it. So that's the way that I am. I have had family members murdered. So if those...if there are people out there who think they can beat me with that stick, they can't do it, because it won't work. [LB38]

SENATOR COASH: Thank you, Senator Chambers. [LB38]

WILLIAM ACHORD: Thank you. And I...you've been working on consequences for many years, and I respect that. And I just think we have to ask this question: What is punishment? We have to define it. Is it...you know, what does it accomplish? Is it of any value anymore in this society? And so I think those are important questions. Thank you. [LB38]

SENATOR COASH: Thank you, Mr. Achord. I don't see any other questions, appreciate your testimony. [LB38]

WILLIAM ACHORD: Thank you. [LB38]

SENATOR COASH: Is there anybody else here to testify in a neutral capacity? I don't see any. Senator Kolowski, if you'd like to close. [LB38]

SENATOR KOLOWSKI: Thank you, Chairman Coash. Senators, thank you for your questions and for your patience in listening to the testimony today. I appreciate the time and all of the effort that went into this. I appreciate the comments and will certainly look at all these within the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

context of our bill and what we hope to accomplish with this over time. Senator Chambers' comment, prevention is better than the cure, is something I think we need to look at. And I think it's part of what we're trying to do, is to have more knowledge of the issue, of the change--possible change--in penalties and all the rest that heightens the awareness of everyone's knowledge of the rules of the road both for the bike users, bicycle users, and for the vehicles on the road. So the public knowledge, public safety, as I have said before, and public action are the direct concepts behind LB38. We hope it'll raise the awareness and by raising the awareness...and I do agree with Senator Chambers. Very few of us could quote, this is a felony or this is a misdemeanor and all the rest. But when it hits the papers as far as final results on a particular case, that will stick in someone's mind that there was a raised bar as far as what would happen if you were careless and had some of these terrible situations happen in your own life. So I hope we can build on that and raise the awareness within our society and make it safer for all users. And this is in spite of some of The Public Pulse letters that I've see in the last couple of weeks or contacts in my own office. This is not giving bicyclists the right to do anything they want on the road. There was a misinterpretation by some riders that it's just like they don't have to follow anything but now vehicle drivers have to be more aware and be aware of the bikers and all the rest. No, that's not what we're talking about. Any bike rider that doesn't stop at a stop sign or doesn't follow the rules of the road, they're equally at fault. And so we just want to have a safe environment for all people who want to ride or drive will have the opportunity to be safe and secure on our roads. And I thank you for your time today. [LB38]

SENATOR COASH: Thank you, Senator Kolowski. [LB38]

SENATOR CHAMBERS: I want to make a comment to Senator Kolowski. [LB38]

SENATOR KOLOWSKI: Yes, sir. [LB38]

SENATOR COASH: Senator Chambers. [LB38]

SENATOR CHAMBERS: I understand why you brought the bill thoroughly, and I can understand the feeling of the people who want something like this. But if any community would be for the death penalty, it would be my community because of all the killings,... [LB38]

SENATOR KOLOWSKI: Sure. [LB38]

SENATOR CHAMBERS: ...little babies, old people, people on their porch, walking down the street. But when they talk to the families of those who have lost somebody, you don't hear them say, I want the death penalty, kill them, they killed mine, kill them. That's from the white

community. We know, something like the gentleman was saying, that is not the nature of our problem. And until we can get to the root cause of it, you can take everybody who has committed one of these murders and put them on death row and they'll stay there 30 years and even if you execute them it's not going to have any impact because the ones who do the killings don't know about the sentence and they don't think they're going to get caught. So when we say we're going to solve a problem like this with punishment, we don't look at any of the underlying causes--inadequate education, kids being pushed out of school, no employment, no recreation, discriminated against when you go into a store, accused of stealing just because of your race. Black women have had that happen to them and nothing is done to the cops when they file a complaint or I file a complaint because the cop had reason to believe that, but not if it's a white woman. So these people can come and push for what they want because they think that's the way it should be. But I'm going to be a bulwark against allowing the law, if I can stop it, from taking twists and turns every time the public sees a particular thing and they think there ought to be a new punishment and a harsher punishment for it. But let somebody close to them do that crime and the first thing they'll say is, well, I got to stick by my son, I got to stick by my, whatever their relative is, and I don't want to see them die. Well, I think I live in a different universe from every white person in this country and certainly in this state. And they live according to the laws of their universe; I live according to the laws of mine. And I happen to be in a position to say something about the laws that are going to apply in both universes, although unequally. So I don't want you to get the impression from anything I've said here that I condemn you for bringing a bill that you thought should have been brought. You acknowledged that there were difficulties with it, which let me know you're aware that we're dealing with a complex area, a complicated situation. And everybody who comes to speak on these bills are in a position where it's not going to help them. It can't change what has happened, and I don't believe it'll prevent it from happening again. But when it comes to the death penalty, I will always, unshakably, unwaveringly oppose the death penalty for anybody, no matter what the crime, no matter who the victim, no matter what the circumstances, even when the victim is a member of my family. So let people exult and be gleeful because it came into my house, but I don't even think about that. What they think and what they feel is not what made it happen. They can't make it any better. They can't make it any worse. But if taking joy in what they feel is a misfortune that befell me and my family, well, then it's...it did some good because it gave them something to make their life more bearable. They feel like they did something which, if I knew about, would be hurtful to me. And if they can direct all those hostile things toward me and, by extension, my family, then they may not do something to a member of their family or somebody they happen to encounter who hasn't done anything to them. So they think the bad thoughts, they wish the calamities upon me and my family, but in the meantime they haven't actually done anything that hurt anybody. So I serve a good function even when I'm being cursed and condemned. And maybe I'm even saving somebody's life because, by that person cursing me, they won't commit domestic violence at home. [LB38]

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Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: Thank you, Senator Chambers. [LB38]

SENATOR KOLOWSKI: Thank you, Senator. [LB38]

SENATOR COASH: Thank you, Senator Kolowski, appreciate you bringing the bill. [LB38]

SENATOR KOLOWSKI: Thank you very much. [LB38]

SENATOR COASH: Okay, that will close the hearing on LB38. (See also Exhibits 3-15.) We're going to move on to LB120. Senator Schumacher, come on up. [LB38]

SENATOR SCHUMACHER: Thank you, Senator Coash, members of the committee. My name is Paul Schumacher. I am representing District 22 in the Legislature. And I bring to you today LB120. As is the case with the vast majority of the bills I bring, it isn't written at the behest of any association or interest group but a result of observations from the real world and what people have to deal with. And this is an observation that over the years of practicing law and prosecuting the law, back 20-30 years ago, that I've seen over and over again. And it deals with a very frustrating situation of people who have been involved in an accident with somebody who doesn't have motor vehicle insurance and as a result, as often is the case, the people who don't have insurance also don't have any money to pay for damages. This particular bill was precipitated by a woman. I would guess she's probably 67 years old, in that category. Her husband passed away ten years ago or so and left her a 1998, I think it was, car. And she liked the car, and it was one of these big old bombs that probably got three miles to the gallon. And she was driving and, lo and behold, she was hit by a person, clearly not this elderly lady's fault, and the estimate she got on the car was that it would take \$3,000 to fix it. And she didn't have \$3,000 and, as you might guess, the driver of the other car didn't have insurance. And she ended up getting somebody to pound out the fender, doesn't look the best now, but for I think it was \$1,800. So what this bill tries to do is deal with the very frustrating situation that law enforcement and everyone has. They pull over a vehicle, do the registration check, ask for the insurance card and, lo and behold, no insurance card. And they write a citation. And if the person does have insurance, they can produce the insurance card and get out of the citation; otherwise, they're subject to a fine they probably can go up to the courthouse and waiver out of. And the car remains on the road the whole time and with no indication for the next person or the next law enforcement officer that there's anything wrong with it. So until the car is pulled over for running a red light or speeding or for some other reason, it's operated on the road--again, for no insurance--and exposing the motoring public to being in a situation where, if they're hit, there's nobody to collect against. What this does...and I started out with the idea, well, let's just tow the car, no insurance out there, tow it in and, when they come up with an insurance policy, pull it out of the impound pound and let them have it back for paying the impound fees. Well, as a practical

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

matter, that idea doesn't work because you don't want an officer spending his time waiting for a tow truck. Probably, there wouldn't be any money to pay the impound fees to begin with and you'd have a car sitting there in the impound lot that you then have to worry about how you're going to dispose of it and how you're going to care for it, and it has had practicality problems. But the state of Oklahoma does a little bit more than what's proposed in this bill, but basically it deals with the license plates. If you are pulled over under this bill and you do not have proof of insurance and if the...it can be done safely and the weather is not inclement, the officer can take the screws out of the plates, two screws that hold the plate on, and take the plate down to the county treasurer's office for redemption. And unless you show up with proper insurance, you do not have plates for your car and that's kind of a red flag for the next time that car is being operated on the streets. If you show up with insurance, a payment of \$50 fee, you get your plates back and you're back on the road and at least you have insurance for a short period of time before you..in some cases, people just cancel their insurance again down the road if they can't make the payments. If you happen to have had insurance, you get your plates back for no cost and no fee, just for coming up with the insurance card. It's an effort to try to get uninsured vehicles off the road, try to alert officers to a vehicle that may be uninsured. A lot of these vehicles, it's hard to tell even who the owner is, just different people drive them. And this is an effort to get those things off the road and encourage people to have insurance on their car that comports with the law. And hopefully, next time someone like this woman gets hit by a car, she'll have somebody to pay the \$3,000 to make her car look whole again. And it's a pretty simple bill, pretty simple argument. It's not a solution in all...to all cases, but it does address the issue a little bit. [LB120]

SENATOR COASH: All right. Thank you, Senator Schumacher. Senator Chambers. [LB120]

SENATOR CHAMBERS: Not with...you...he knew what I was going to do. He did like this. But I was going to say, it doesn't pass the smell test. This is a punishment before a person has gone to court and had anything established because... [LB120]

SENATOR SCHUMACHER: Senator... [LB120]

SENATOR CHAMBERS: ...when you are put at a disadvantage, deprived of a privilege, it should be according to due process of law. And taking somebody's license plates under these circumstances doesn't meet the standard that I would put in place. [LB120]

SENATOR SCHUMACHER: Senator, you're not deprived of anything. You can continue to drive that car right off the site, just like you can now. But what you do need to do is you do need to have the proper...meet proper criteria for driving that car, and that is having insurance. [LB120]

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Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: The ticket works for ten days. [LB120]

SENATOR SCHUMACHER: Yes. [LB120]

SENATOR CHAMBERS: And after that, it's no good. [LB120]

SENATOR SCHUMACHER: You have plenty of time to get insurance. [LB120]

SENATOR CHAMBERS: But you haven't been to court to have anything established judicially, and punishments should not be imposed prior to a judicial determination. And I don't want to leave it into...in the hands of an officer, but you and I can battle this out. But that alerts the people who might speak on behalf of the bill and they can be prepared to answer or counteract what I've said. But I just wanted to make that comment to you because, even though I consider you the professor and myself to be the student, there was one point where--I read the "Bibble" a lot--David wrote in the "Bibble," I am wiser than my professor--well, he said "instructors"--so that occurs on occasion and I think this is one of those. [LB120]

SENATOR SCHUMACHER: So I'm demoted now to instructor. (Laughter) [LB120]

SENATOR COASH: Thank you, Senator Chambers. Senator Morfeld has a question. [LB120]

SENATOR MORFELD: Senator Schumacher, one of my questions here is...so I get pulled over. I don't have proper proof of insurance. I get this citation. They take my license plates. I then have the citation. Well, I'm driving down the road the next day. I haven't taken care of this yet, because I have ten days, and I get pulled over pretty much any time because now I don't have driver's...I don't have license plates. And that's an infraction in and of itself, so I could get pulled over and be completely within my rights and lawfully driving around with this citation. Correct? Or am I missing something here? [LB120]

SENATOR SCHUMACHER: You're missing something,... [LB120]

SENATOR MORFELD: Okay. [LB120]

SENATOR SCHUMACHER: ...because you're not lawfully driving the next day because you're violating the law because you don't have insurance on the car that you're driving. But... [LB120]

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Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR MORFELD: But, Senator, this still provides the opportunity for me to get pulled over every day and every time I get in my car... [LB120]

SENATOR SCHUMACHER: Which... [LB120]

SENATOR MORFELD: ...because I no longer have my license plates on. [LB120]

SENATOR SCHUMACHER: Which is the case today if you don't...if you drive today and tomorrow and the next day without insurance and you get picked up each day, you have a separate violation each time that you're picked up because you shouldn't be driving that car on the street. All this does, that the possession of the citation does, is substitute for the license plate, and it makes you stick out like a sore thumb when you're doing something illegal, like driving without insurance. [LB120]

SENATOR MORFELD: I see your purpose. I don't necessarily agree with the remedy, I guess, but we can talk about that later. [LB120]

SENATOR SCHUMACHER: Thank you. [LB120]

SENATOR MORFELD: Thank you, sir. [LB120]

SENATOR COASH: Thank you, Senator Morfeld. Senator Williams. Nope, no questions there. I don't see any other questions from the committee. [LB120]

SENATOR SCHUMACHER: Thank you. [LB120]

SENATOR COASH: Stick around, we'll see what we've got for testifiers. [LB120]

SENATOR SCHUMACHER: Okay. [LB120]

SENATOR COASH: We'll start with proponents of LB120. Okay, we'll go to opponents of LB120. [LB120]

GREG GONZALEZ: Good afternoon, members of Judiciary Committee. My name is Greg Gonzalez. Last name is spelled G-o-n-z-a-l-e-z. I'm assistant police chief of the Omaha Police Department, and I'll keep this short. While we certainly agree there should be consequences for uninsured drivers, there already are. We issue thousands of citations every year for motorists who

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Transcriber's Office

Judiciary Committee
January 28, 2015

don't have insurance and liability, and we also tow thousands of vehicles a year. So under this bill, it's problematic for a couple reasons. One, there is a stipulation in the bill that requires an officer or somebody from the law enforcement agency to actually grab those plates and within five, I believe, working days take those plates down to the county assessor's office, which for us is not practical when we actually have over 45,000 traffic stops a year, especially on the night shift. It's just problematic for us. In theory, certainly, we support drivers that don't have insurance and that they definitely need to be ticketed, and they are. I will say that our district officers and our officers that work those communities, regardless of where you live, in fact know, if you got a citation the night before and they see that same vehicle on the street, they have an obligation to, one, stop that car again and up to and including tow that vehicle and impound that vehicle. So I think that's certainly an option we already have at our disposal and pretty confident our officers do a pretty good job of that. So based on that, the other interesting piece I hear is the profit sharing where the State Patrol and, I believe, the county assessor's office get that fee for work done by the agency. So I would imagine we would be doing a lot of the hefty living...lifting on that legislation and it's just not practical. So thank you for your time. If you have any questions... [LB120]

SENATOR COASH: Thank you, Mr. Gonzalez. Senator Krist. [LB120]

SENATOR KRIST: Side note: Several years ago, we had a rash in Omaha of people stealing license plates. What was the bottom line to that? I mean, was there ever an investigation that said, this is the reason why? [LB120]

GREG GONZALEZ: Well, it's an interesting...that's an interesting point, because we're assuming in the legislation that the vehicles that we stop on the car belong on the car. And frankly, a lot of people, especially during strife, financial strife, they steal plates so they can drive around in hopes that the police don't stop them, as opposed to a vehicle with "in transits" or no plates at all. So it could be theft; it could be a lot of different reasons; could be commit crimes with someone else's plates. There is a myriad of reasons why someone would steal your plates. [LB120]

SENATOR KRIST: Seems to me like an unintended consequence of this kind of... [LB120]

GREG GONZALEZ: Absolutely. [LB120]

SENATOR KRIST: ...action proposed would be that we would get back into that. Thank you. Thanks. [LB120]

GREG GONZALEZ: Yeah, you're welcome. [LB120]

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Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: Thank you, Senator Krist. Hold on. Senator Chambers. [LB120]

SENATOR CHAMBERS: I thought all the law enforcement people were for it, so I was going to raise some issues, like the number of plates that might be taken, the time out of service taking the plates, the storing of the plates, the paperwork in connection with the plates, then taking them to whatever office they have to be taken to. They have to be inventoried, you know, and all of that paperwork. And if you all were for it, I was going to ask you, why do you keep coming and asking for more police officers when you're in favor of this, which I don't think goes to the kind of issue...see, we're not talking about somebody who ran over somebody or committed a harmful act. We're talking about what you might call a technical violation in the sense that it's required that you do this but you're not doing it so you're going to get the ticket. But as you pointed out, if you find somebody who has had one of those tickets, there is a course of action taken that doesn't require the removal of plates. And if you say that this is the law that will apply if you have Nebraska plates but not if you're out of state, it'd be like saying, if you violate the speed law in Nebraska and you're from another state, you don't get a ticket. So there are other issues that I saw but I was going to drop them as criticisms of the law enforcement... [LB120]

GREG GONZALEZ: I'll bet you were. [LB120]

SENATOR CHAMBERS: ...people who are going to support a bill like this. And that wasn't even all of them. And I'm not in favor of people not having insurance. [LB120]

GREG GONZALEZ: Right. [LB120]

SENATOR CHAMBERS: I understand what Senator Schumacher is trying to do, but not every effort that we put forth is practical, I'll say, or feasible. [LB120]

SENATOR COASH: Thank you, Senator... [LB120]

GREG GONZALEZ: We understand the intent, too, but appreciate it. Thank you for your time. [LB120]

SENATOR COASH: Hold on one second. We've got a question here from Senator... [LB120]

GREG GONZALEZ: Sorry. [LB120]

SENATOR EBKE: Can I ask you a question? [LB120]

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Transcriber's Office

Judiciary Committee
January 28, 2015

GREG GONZALEZ: Yep. [LB120]

SENATOR EBKE: Do police officers have the capability of actually running the VIN or the plate number and finding out if somebody has insurance on the spot? [LB120]

GREG GONZALEZ: That's a great question. We do, but I will tell you that there is a margin of error there in our in-car cameras where you can check to see if the owner of the vehicle or that vehicle actually has insurance, yes. But there is a margin of error. [LB120]

SENATOR EBKE: I mean, I don't want to incriminate myself, but there are times, you know, when our insurance is paid up but I haven't switched...you know, it's a six-month cycle. [LB120]

GREG GONZALEZ: Sure. [LB120]

SENATOR EBKE: And you sometimes don't have the newest version in the car. And we renew our license plate on-line and nobody asks to see my...so I assume that somewhere along the line it was possible to actually check on-line. [LB120]

GREG GONZALEZ: You're required by law to be able to show it, but as a backup plan, typically, we can check it. [LB120]

SENATOR EBKE: Okay. [LB120]

SENATOR COASH: Thank you. [LB120]

SENATOR KRIST: Chair, just one follow-up. [LB120]

SENATOR COASH: Senator Krist. [LB120]

SENATOR KRIST: Four years ago there was a bill brought forward that insurance companies would have to report back to the department the vehicle registrations. It never made it out of committee. The point there was that the technology now with a driver's license would follow the individual and that the police when they pull them over would be able to enter the number and one of those things that would pop up would be they're insured currently or they're expired. I think technically we're getting to a point, particularly with the lady we confirmed today, that we should be looking at that as a remedy, as opposed to having you have a screwdriver in your pocket. But thanks. [LB120]

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Transcriber's Office

Judiciary Committee
January 28, 2015

GREG GONZALEZ: Yep. Thank you. [LB120]

SENATOR COASH: All right. Thank you. Any other, further testimony in opposition of the bill? Is there any neutral testimony? Seeing none, Senator Schumacher, would you like to close? [LB120]

SENATOR SCHUMACHER: Thank you, Senator Coash, members of the committee. I believe the Insurance Committee heard some issues, like you just suggested, and surprisingly, resistance is from the insurance companies because their information is not necessarily in real time, up to date. And they do batch dumps to this file that the officers can look at and they're afraid that they may be held liable or...for inconvenience if their computer guru didn't dump the right batch in the right spot. You know, we could save officers a lot of time by eliminating a lot of tickets and just not having them have to go to court, just reducing their workload that way. But part of the reason we have officers is to enforce the law, and this particular mechanism would contribute to the enforcement of the law. We can talk all we want about this being a technical violation, but that doesn't fix the situation in the case that I mentioned where now she has no way to fix her car, nor does it...and she was fortunate because she wasn't personally injured in the accident. And so we have a problem. This is a suggestion as to how we might remedy that problem by seizing the plates at the time. There are perhaps other alternatives within the purview of this general thought, one of which would be that they have to have a sticker in their window during that time so they would stick out. But as it is in most cases, they can get right back in that vehicle and drive away and drive the next day and the next day after that without any consequence until there is an accident, and then somebody is hurt. I don't...that's my comments on it. [LB120]

SENATOR COASH: Okay. Thank you, Senator Schumacher, appreciate you bringing the bill to us. [LB120]

SENATOR SCHUMACHER: Thank you. [LB120]

SENATOR COASH: All right, we'll close the hearing on LB120 and open up on LB215. Senator Craighead, welcome to the Judiciary Committee. [LB215]

SENATOR CRAIGHEAD: Thank you. [LB215]

SENATOR COASH: Have you heard about us before? [LB215]

SENATOR CRAIGHEAD: Have I what? [LB215]

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Judiciary Committee
January 28, 2015

SENATOR COASH: Have you heard about this committee before? [LB215]

SENATOR CRAIGHEAD: What am I supposed to know? [LB215]

SENATOR COASH: You'll see. Go ahead. You're welcome to open on LB215. [LB215]

SENATOR CRAIGHEAD: Is this the firing squad? (Laugh) [LB215]

SENATOR KRIST: You don't even get a blindfold. [LB215]

SENATOR CRAIGHEAD: Good afternoon, Vice Chairman Coash and members of the Judiciary Committee. My name is Joni Craighead, J-o-n-i C-r-a-i-g-h-e-a-d. I represent Legislative District 6 in Omaha, in Douglas County. I am here today to introduce LB215, which is aimed at providing victims of theft the use and enjoyment of their property once stolen during the pendency of the prosecution. Under current law, a photo may be offered in lieu of actual evidence in theft-by-shoplifting cases only. In all other types of theft cases, the actual property is often secured and maintained by police, made available to the defendant or his or her attorney for pretrial inspection, and then provided to the prosecutor upon request to be used as evidence at trial. At a minimum, such proceedings could take six months. For example, if a thief steals a carpenter's tools from a job site which are later recovered at the thief's house, those tools must be taken as evidence, stored at the police department as evidence of the theft, and preserved until needed at trial. In the meantime, the carpenter can't work because his tools are stored as evidence to successfully prosecute a thief. Key components of this bill include: A photograph may be taken and preserved to identify the stolen items. A written statement must accompany the photograph and describe the property, identify the owner or owners of the property, provide details where the theft occurred, name the photographer, and contain a verification of the officer. The photo and written statement must be retained by the law enforcement agency. Property may be returned to the owner upon sufficient proof of ownership or declaration of ownership signed under penalty of perjury. The law enforcement agency obtains a receipt for the property once it is delivered to the owner. The owner is required to retain property valued over \$200 for 14 days, to give the defendant or his attorney time to file a motion to inspect the actual property. I would like to ask that you support LB215 and welcome any questions you may have. We also have representatives here today, including Sarpy County Attorney Lee Polikov and possibly some victims. [LB215]

SENATOR COASH: Okay. Thank you, Senator Craighead. We'll see if the committee has any questions. Senator Chambers. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: I was in the Legislature many years ago when they first came in with this nonsense of having photographs. Senator John DeCamp brought the bill. It was for Sartor Hamann or whatever they're called, because I called them "Sodom and Gomorrah" because, I said, they're committing an offense. And what they said is, if somebody has stolen a ring, we don't want that ring or whatever the piece of jewelry is to be taken from us so we can't sell it, so let us take a photograph of the ring or the other piece of jewelry and that will then serve in place of the actual item being taken as evidence. And I was not able to stop it. I think it was bad law then. I think this will make it worse law and I will oppose it, as I opposed the other one. And that's one of the problems of term limits. People think that there was a lot of discussion and rationale behind what currently is in the law. But it was nonsensical, and Sartor Hamann had the political clout to get senators to go along with what John DeCamp wanted. And he was laughing about it all the time, even when we debated it on the floor. And the only time he got offended was when I said, you're working for "Sodom and Gomorrah." He said, well you don't have a right to call them that because of this. I said, well, that's...they're in that category, as far as I'm concerned. So I'm letting you know this. You're a new senator. They gave it to you. But I was opposed to it then. I remain opposed now. I've dealt with Mr. Polikov, and he is a very honorable, distinguished gentleman. He believes in enforcing the law. The gentleman with the walrus mustache, I won't call his name because you didn't call his name. But he and I worked together on some law enforcement issues, and he even publicly gave me credit for it. So I'm not anti-law enforcement. But I have my philosophy of how the law ought to be administered, and I said all that to let you know that I'm not attacking this just because you're bringing it. I think it will make a bad situation even worse, so I have to fight it twice as hard. But I'll listen to what these fine representatives of the constabulary have to say, and maybe they can change my opinion. [LB215]

SENATOR CRAIGHEAD: Thank you for your input, Senator Chambers. [LB215]

SENATOR COASH: Thank you, Senator Chambers. I don't see any other questions of the committee. Hang out. [LB215]

SENATOR CRAIGHEAD: Thank you. [LB215]

SENATOR COASH: We'll see what testimony looks like. We'll start with the proponents. Welcome. [LB215]

STEVE GRABOWSKI: (Exhibit 1) Thank you. I'm assuming, since I was the only one with the walrus mustache, is that's who you were referring to, Senator. Thank you. (Laughter) Good afternoon, Vice Chairman Coash and members of Judiciary Committee. My name is Steve Grabowski, and I'm a lieutenant with the Sarpy County Sheriff's Department. I'm appearing here

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

on behalf of the Nebraska Sheriffs' Association and the Sarpy County Sheriff's Office, and I'm here to speak in favor of LB215. Senators, I'm currently assigned to the investigative division of the Sarpy County Sheriff's Office. One of my responsibilities is managing the property and evidence unit. Senators, two of the concerns with property and evidence across Nebraska is secure evidence and property storage and the space needed to secure and house this property and evidence. The provisions of LB215 will allow the PEU technicians an avenue to release found property and evidentiary property to their owners in a more expeditious manner than currently exists. LB215 would also drastically reduce the amount of room needed for the storage of evidence and property in law enforcement property rooms across Nebraska. The goal of most property and evidence units is to keep current on destruction and lawful disposition of property in their custody. Ideally, each year the PEU should dispose of as much property and evidence as it receives every year. Sarpy County Sheriff's Office currently has 18,188 pieces of property and evidence in their custody and control. A random sampling of 150 pieces, about 20 percent of that property and evidence could be photographed, documented, and released to a properly identified owner. If LB215 were enacted, Sarpy County PEU could potentially release 3,600 pieces of property and evidence, making the total stored at Sarpy County 14,500 pieces. Senators, this is a substantial reduction in space needed for property and evidence storage. Copper theft from construction sites is a growing problem in Nebraska. Now, if a person is caught with copper wire, copper pipe, or other nonferrous metals, the property is taken into evidence, stored until the case against that person charged has reached a legal disposition. The judicial process would take at time over two years. In the meantime, the contractor is out thousands of dollars in building supplies and is left with two choices: either purchase more supplies or indefinitely postpone the project. Both of these options cost the small-business owner time and money and a strain on their already overstretched budget. I see the yellow light has come on, so I'll...you have the copy of most of it. At the end, Senators: Nebraska law enforcement officers understand that if LB215 is passed into law, it would entail more paperwork and more exacting details and reports. But we also realize in the grand scheme of things that this process will enhance and streamline portions of the Nebraska criminal justice system. So again, we speak in favor of LB215. Thank you, Senators. [LB215]

SENATOR COASH: Okay, thank you, Mr. Grabowski. Senator Chambers. [LB215]

SENATOR CHAMBERS: Lieutenant Grabowski, I made a statement that I had worked with you on a law...at least one law enforcement item that was an improvement for law enforcement. Do you verify that? [LB215]

STEVE GRABOWSKI: Absolutely, sir. Yes, sir. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: Okay, just so they know we're not enemies, (laughter) as far as I know. [LB215]

STEVE GRABOWSKI: Right. [LB215]

SENATOR CHAMBERS: But look, suppose something happened to the photograph, to the repository where the photographs are being stored, and I'm a defendant. And they say, well, we're going to have to have you accept our testimony about the stolen items because we don't have the items and we don't have the photographs. If that occurred, what would the outcome be? [LB215]

STEVE GRABOWSKI: The outcome, more than likely, would be that there was no evidence presented. But conversely, evidence that, say, if we had...let's go with the ring that you spoke about earlier. If that ring were taken into property and if that ring were lost, they would follow the same process as that. You would also have to have someone come in and testify, yes, I took the ring. But the subsequent result would be I lost the ring someplace. And that's happened in property and evidence rooms across the country. [LB215]

SENATOR CHAMBERS: And because some of the questions I'm going to ask are of a legal nature, I'll ask Mr. Polikov. [LB215]

STEVE GRABOWSKI: That would be a lot better. Yes, sir. [LB215]

SENATOR CHAMBERS: And by asking it to you, he can probably prepare for what I will ask him. But I don't have any other questions of you. [LB215]

STEVE GRABOWSKI: And if I could, the other part is that where we store our...most of them store the pictures that we have now are in a self-contained computer. The old storing the pictures and the negatives, we don't do that anymore, and the storage places have backups for photographs, too, so. [LB215]

SENATOR CHAMBERS: And it can't be hacked. [LB215]

STEVE GRABOWSKI: Well, the vendor that sold it to us assured us, no, it couldn't be hacked, but I'm not that silly to... [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: But if it happens, who would be liable? In other words, if I'm a defendant and you don't have the evidence and you don't have photographs, I don't want an officer to testify to the best of his or her recollection what this was, or the person who says, I lost this and this is what it was, and then we're convicting me on the basis of what people said because we displaced a system that would have retained the evidence itself. Some of the large items you're talking about, I can understand you saying that you want to deal with it in the way you did. So maybe I'd be willing to consider certain types of evidence as being amenable to this kind of handling. But if it's...well, I'll talk to Mr. Polikov about that. [LB215]

STEVE GRABOWSKI: Okay. All right. Thank you, Senator. [LB215]

SENATOR CHAMBERS: Okay. [LB215]

SENATOR COASH: Senator Krist and then Senator Williams. [LB215]

SENATOR KRIST: In the time when Senator Chambers talked about trying not to have this happen, I would venture to guess that we were taking Polaroids; we had black and white pictures, potentially; we had negatives that we were keeping; or we had pictures of pictures or whatever it might have been. I think about this in terms of my profession. I used to use an approach plate to fly an instrument approach. I've never seen one in the last few years because I have a database on board the airplane, as do most airplanes technically today. And the FAA requires me to carry a redundant system on the airplane. So my question is this: If the issue was protecting the evidence in a more efficient way or having redundancies in protecting the system--that is, disk, another database, whatever it might be--do you think that would be an undue burden on the control of property? [LB215]

STEVE GRABOWSKI: I don't believe so. We currently do that in Sarpy County now. We have a system that backs up our...we call it a Lynx system that stores our photographs, and we have a system that backs that up. Again, could they be corrupted? Absolutely, they can. There's a really...we found out that anything could be corrupted, but we have a redundancy system too. And the deputy that takes the pictures at that time, they also keep that on a specific file or disk that they contain or that they keep in their file. [LB215]

SENATOR KRIST: Well, the two independent systems on the airplane allow me to have as a redundant system that if one is corrupted, the other one would not be. And that would be a far dangerous...more dangerous situation for me not to have an approach plate. I trust that technology, that we can work out this kind of an issue if we need to. Thank you. [LB215]

STEVE GRABOWSKI: Yes, Senator. Thank you. [LB215]

SENATOR COASH: Senator Williams. [LB215]

SENATOR WILLIAMS: That was my question. [LB215]

SENATOR COASH: Okay. Senator Pansing Brooks has a question. [LB215]

SENATOR PANSING BROOKS: Yes. Mr. Grabowski, I was just wondering, how many...can you tell me what percent of the time it really matters to the jury to see the evidence? Of course, we can all think of the case with Mr. Simpson and trying on the glove and all that that happened. And I can think of instances where somebody says something small is stolen, yet it was grabbed out of a place that could not...I mean you'd have to prove that...so there are instances that size and being able to see and understand the specific product stolen would matter. So, I guess, what about those instances? A picture certainly wouldn't do justice to understanding size and relation to the property and relation to the crime, how it happened, so. [LB215]

STEVE GRABOWSKI: Well, again, having the exact item, and you mentioned the Simpson trial, having that item there, yes, that was dramatic presentation of that. As far as how many jury trials are...what effect it has on a jury--a jury is a, you know, different jury every time--but it certainly is more dramatic to have the item, as opposed to the picture, again, to see what size or the...I could show you a picture of four hot tubs that I have, as opposed to bringing the four hot tubs in here or, like I mentioned, the 15 kegs of beer in here that we would look at, too, and it would be better if the jury saw the entire 15 kegs of beer. But I think that's left up to the prosecutor to decide whether they need that type of evidence at the trial and then we go along with whatever it is that they decide. But definitely, the evidence itself, the pure evidence itself, is...has more of an impact on a jury, I would say, yes. [LB215]

SENATOR PANSING BROOKS: I also think that for the type of case, if it were a criminal case, it would be much more necessary, I think, to...I wouldn't...if I were the defendant, I wouldn't want the material gone or...if...I would want to be able to use every single avenue to defend myself. And I just...I don't know. We have issues with DNA evidence; we have issues with trying to get every type of evidence looked at. We have issues of people, obviously, that have been wrongly convicted. So I'm trying to figure out what that balance is in your mind between making sure that every single possibility is given...the burden of proof is that the victim...the defendant is innocent until proven guilty. I think we've forgotten that sometimes, but... [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

STEVE GRABOWSKI: Again, in my mind, as a police officer what we do is we go and we'll gather the information, gather the evidence, and present it to the county attorney. We have as much as we believe we have to prosecute the case. And if it takes the physical evidence to be there, again, the prosecutor will tell us that we need to have that there, so. And I believe, yes, it is, absolutely, best to have the actual item there. But practically speaking, at times you can't necessarily have all the evidence. [LB215]

SENATOR PANSING BROOKS: Were you involved in drafting this or do we...? [LB215]

STEVE GRABOWSKI: No, ma'am, I was not. [LB215]

SENATOR PANSING BROOKS: No. Okay. So I can ask somebody else, but I just...I'm interested in whether there was a discussion about felonies to just making sure that the evidence is there for a felony that would really affect somebody's entire life, so. [LB215]

STEVE GRABOWSKI: Sure. [LB215]

SENATOR PANSING BROOKS: Thank you. [LB215]

STEVE GRABOWSKI: Thank you, Senator. [LB215]

SENATOR COASH: I don't see any other questions, appreciate your testimony. [LB215]

STEVE GRABOWSKI: Thank you, Senator Coash. [LB215]

SENATOR COASH: Take the next testifier in support. Welcome. [LB215]

LEE POLIKOV: (Exhibit 2) Thank you. Vice Chair Coash, members of the Judiciary Committee, I'm Lee Polikov and I'm the Sarpy County Attorney. I've just completed my 15th year as county attorney, and before I served 26 years with the Sarpy County Sheriff as chief deputy and counsel. I'm the past president of the Nebraska County Attorneys Association and in my second year as vice president...as a vice president of the National District Attorneys Association. And I'm here today to testify on behalf of the Nebraska County Attorneys Association. LB...this really should be the simplest bill you'll face this year, I believe, in the Legislature. LB215 is a smart bill that answers frustrations and inequities for the victims of crime that date back as long as I do. In our modern and technological world, we can easily describe, photograph, and value property to preserve the likeness for evidence and to be introduced at trial. Workmen's tools, construction

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

materials, and family heirlooms could and should be retained...returned, I'm sorry, to the proper owner without the delay of waiting for a court disposition, which is often 6 months and sometimes as much as 12 or 18 months, depending on the complexity of the case. Occasionally, we return property in...if hardships, speaking for the Sarpy County Attorney's Office, if hardship or fairness demands it, but we believe we take a calculated risk. And passage of LB215 would establish statutory authority and standardize a process for the return of such property. No harm to the rights of the defendant would result. Questions of the existence, value, and function would be addressed through photographs, probably, and an affidavit. I expect a plea in a case tomorrow where the defendant was arrested driving a stolen 2013 Corvette which was...which he claimed to have purchased for \$1,600. The pristine car was returned to the owner so that the storage fees would not accumulate and the county would not take the risks associated with outdoor storage for long periods of time. The car would never be brought to court, in any event. In another case we will bring to a close soon, the victim was shot and his truck stolen with his work tools in the back. And even before we could negotiate with the defendant or the defendant's attorney in attempt to reach an agreement for release, the victim was forced to make a substantial investment in replacement tools. This happens all the time. It is further victimization by the system. You have heard or will hear testimony about the positive impact from the efficiencies inherent in this legislation. Storage space and safety issues of preserving evidence are a major consideration for every law enforcement administrator. The fiscal notes report no fiscal impact but should describe the true cost savings to cities and counties. This is simple, straightforward, and commonsense approach to handling of evidence, and I would ask you to move the proposal out of committee and support the passage on the floor. And I'm available for questions. [LB215]

SENATOR KRIST: Thank you, sir, for coming, and what we're...I think in Senator Coash's absence I'm filling in for a little bit. [LB215]

LEE POLIKOV: Oh, he got away without me seeing. I'm sorry. [LB215]

SENATOR KRIST: Yeah. Thanks for your testimony. We're really talking here about prosecutorial discretion in terms of releasing it or not releasing it, are we not? [LB215]

LEE POLIKOV: Right, decisions, prosecutorial decisions and use of discretion, absolutely. [LB215]

SENATOR KRIST: Okay. Thank you very much. Any other questions? Senator Chambers. [LB215]

SENATOR CHAMBERS: Mr...I almost called you "Senator." Mr. Polikov, nationally, they give a statistic for the number of criminal cases that end in pleas, and it's over 90 percent. What would

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Transcriber's Office

Judiciary Committee
January 28, 2015

you say, roughly, would be the percentage of cases resolved by pleas in your jurisdiction?
[LB215]

LEE POLIKOV: I would be comfortable with 85 percent. That's not a studied opinion. But it's a majority. [LB215]

SENATOR CHAMBERS: Eighty-five percent? You've got work to do then. No, I'm just kidding. (Laughter) [LB215]

LEE POLIKOV: (Laugh) Yes. [LB215]

SENATOR CHAMBERS: But at any rate... [LB215]

LEE POLIKOV: It's the 15 percent that's left that takes the work. [LB215]

SENATOR CHAMBERS: I know. I just want to indicate that we're not talking about the vast majority of charges brought resulting in the taking of property and storing it. It's a relatively small percentage. But Lieutenant Grabowski mentioned some large items. [LB215]

LEE POLIKOV: Yeah. [LB215]

SENATOR CHAMBERS: What is the purpose of requiring that the stolen item, when it's recovered, be put in the property room currently? What is the rationale for doing that? [LB215]

LEE POLIKOV: Well, first, let me say, even those pleas take time. Oftentimes, the plea is effectuated at day of trial or close to trial. So the way our system works is...and nothing happens very quickly. So even those where we negotiate a plea, there could be months of the property sitting in the evidence room. The purpose, I would assume, and maybe I'm too focused, is that you can bring the evidence into court and show the jury or show the judge and say, this is the diamond ring that was stolen, this is the car that was taken. And so we've probably worked around, we've had some "workarounds" not getting...actually bring that evidence into court unless both sides like dramatic appeal. So, you know, we'd probably want to bring a gun into court against a criminal because it's real and looks real and that's a little more dramatic than showing a picture of it. But that's more trial strategy, I think. The actual purpose is to protect the evidence for trial. And since trials could take a year, and especially in big cases, 18 months' resolution, that's keeping it away...it's a victim consideration. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: Since the state is bringing the charge, the state must prove every element of its case... [LB215]

LEE POLIKOV: Yes. [LB215]

SENATOR CHAMBERS: ...beyond a reasonable doubt. [LB215]

LEE POLIKOV: Right. [LB215]

SENATOR CHAMBERS: The defendant is not required to do anything or say anything that would in any way assist in convicting him or her, so the total burden is on the state to prove its case. As a defendant, why should I be interested in making anything convenient for the state? And if I'm a defender of a defendant...I don't mean saying somebody who did something wrong is right. I meant, why should I want to make it easy for the state? And then I have a follow-up question. [LB215]

LEE POLIKOV: Yeah, I...Senator, I don't know if it's making it easier, but, you know, I have problems. I had a Rolex watch that was held hostage for two years because we wouldn't give the defense attorney a plea to a misdemeanor. I think that's unfortunate for the victim. He was without his Rolex watch and that gave the defendant a negotiating position to say, you should treat me well because I'm going to give the watch back. I don't think it's the defendant's decision whether to give the property back or not. I think it's the state. But the decision, the prosecutorial discretion, is about how the case is going to be...go forward. And if the evidence isn't good enough, if the representative evidence, the facsimile evidence isn't good enough, then I won't be able to win a case. So I have to make that consideration based on the facts and the particular evidence. [LB215]

SENATOR CHAMBERS: But in Nebraska, there are cases that have been won against people charged with murder which they didn't commit, and the cases were won by prosecutors making threats... [LB215]

LEE POLIKOV: Yeah. [LB215]

SENATOR CHAMBERS: ...about the death penalty and got people to plead guilty. [LB215]

LEE POLIKOV: Sure. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: So I know...and I'm not blaming you, but I know prosecutors and those who represent the state do some bad things too. North Carolina became so concerned about it that they established what amounts to a state-run innocence project. And just the other day, a man who had been locked up 40 years, 40, for a crime he didn't commit was released. The blood evidence wasn't his. The hair evidence wasn't his. No fingerprints were his. Nothing connected him with the crime. But they kept him locked up for 40 years. There is a new prosecutor and he apologized, but that doesn't give you 40 years back. So the state is in a much better position to misuse the law than the defendant is to manipulate it. But here is what I'm trying to get at: There is a reason for maintaining evidence, and it's not just to give it back to the one who supposedly lost it. If I'm a defendant and I say, there was not even any ring involved, and then they say, well, here's a picture, and I say, that's a picture of a ring, where is the ring, well, the Nebraska Legislature said we don't have to have it so this picture of this ring is sufficient. [LB215]

LEE POLIKOV: Well, it wouldn't be sufficient evidence for me. The picture would need an appraisal from an accepted expert witness on what the ring was. You would have the evidence of the testimony of the victim and the testimony of the investigating officers. And if that wasn't sufficient, I wouldn't substitute it for evidence. [LB215]

SENATOR CHAMBERS: Then how do we know that there wouldn't be some manipulation of the photographs, however that representation is made? [LB215]

LEE POLIKOV: I guess I'm...it's all...that's all credibility. That's for the jury or the judge to decide. [LB215]

SENATOR CHAMBERS: Are you familiar with the name of a guy named Kofoed? [LB215]

LEE POLIKOV: Sure. [LB215]

SENATOR CHAMBERS: And he found actual what he called blood evidence, not... [LB215]

LEE POLIKOV: Yeah. [LB215]

SENATOR CHAMBERS: He found the blood. [LB215]

LEE POLIKOV: Yeah. I won't accept responsibility for that though, and I wouldn't...you know, I would hope that I would have actions taken. I mean I don't think that applies to every case. It... [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: But this isn't about you. This isn't about you. [LB215]

LEE POLIKOV: No, I...well, it sounds, you know,... [LB215]

SENATOR CHAMBERS: That why I said in the first place I had dealings with you, not as a defendant exactly. [LB215]

LEE POLIKOV: True. [LB215]

SENATOR CHAMBERS: But I'm not questioning your integrity or the way you would operate at all. [LB215]

LEE POLIKOV: We go back a long way. [LB215]

SENATOR CHAMBERS: But if you were the standard, it would be the equivalent of a society of prosecutors who are angels and we wouldn't have to put any requirements in the law because they would just do it right because it's the right thing to do. [LB215]

LEE POLIKOV: I appreciate that. [LB215]

SENATOR CHAMBERS: But knowing that things can happen that shouldn't happen, has there been a situation, even if, as Lieutenant Grabowski said, additional space is rented and so forth, do you know of any system in this state that has broken down and couldn't function because they didn't have room to store the evidence that they accumulated? [LB215]

LEE POLIKOV: No. But the bottom line is the additional cost that the sheriff goes through for evidence is taken from the same piece of the pie that I'd like to get at. So our ability to work and fund my operations, I kind of resent the idea that they have to rent storage for three or four hot tubs that were never going to be brought to court. [LB215]

SENATOR CHAMBERS: Here is what sheriffs have been allowed to do in other local enforcement agencies, which I fought for years: They've been able to work with the federal government on these forfeiture cases. And by laundering the drug money and whatever else they took through the federal government, the federal government gave them 80 percent. And the schools did not get the 50 percent that the constitution... [LB215]

LEE POLIKOV: Right. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: ...of the state says. So these law enforcement people were laundering drug money to defeat the constitution,... [LB215]

LEE POLIKOV: Yeah. [LB215]

SENATOR CHAMBERS: ...to take money that was to go to the school children, and they used it in their own departments... [LB215]

LEE POLIKOV: But in... [LB215]

SENATOR CHAMBERS: ...to purchase things that were not contemplated when that provision was put in the constitution to allow 50 percent of that which was forfeited to go to law enforcement. [LB215]

LEE POLIKOV: I agree and I know you'd be a fair man. But you have to be fair and also understand...people need to understand that the way that law is written today, the forfeiture laws, as a prosecutor I have to elect to prosecute or forfeit the funds, because the forfeiture funds are in the criminal code. And if the Legislature chooses not to change that, then my choice is I prosecute the crime, not go after the money. [LB215]

SENATOR CHAMBERS: And if something winds up... [LB215]

LEE POLIKOV: I can't do both. [LB215]

SENATOR CHAMBERS: And if something is taken, then half of it goes to the school fund. Isn't that true? [LB215]

LEE POLIKOV: If we forfeit the cash, then half of it goes to the schools. But I think the... [LB215]

SENATOR CHAMBERS: But they're...you're... [LB215]

LEE POLIKOV: But from my position, the more fair position is, is that I have to elect. The Supreme Court has told me I have to elect, and so I choose to prosecute, not just to go for the money. [LB215]

SENATOR CHAMBERS: And what happens to... [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

LEE POLIKOV: I'd like to go for the money but I don't. [LB215]

SENATOR CHAMBERS: And what happens to the money then? [LB215]

LEE POLIKOV: The...what they...because of that, because I don't forfeit, then law enforcement can petition, or could before a recent decision of the U.S. Attorney, to forfeit the funds. [LB215]

SENATOR CHAMBERS: And then what happens to... [LB215]

LEE POLIKOV: And 80 percent comes to the... [LB215]

SENATOR CHAMBERS: Then what happens to the money? [LB215]

LEE POLIKOV: Eighty percent comes to law enforcement. And the sheriff will tell you, I've been fighting for a piece of that, too, but we don't...prosecutors across the country... [LB215]

SENATOR CHAMBERS: But I think it ought...I... [LB215]

LEE POLIKOV: ...get a piece of it. [LB215]

SENATOR CHAMBERS: I think it should go to the schools. But anyway, the point I'm making: Law enforcement is known to cut corners to fill their coffers. So until I can be shown that the way things are done now are going to make it impossible to enforce the law because the system is falling under its own weight, then I will do what I can to prevent something like this. But the arguing is not over yet. That's where I sit now. When you talk about huge items, maybe something could be done there. I'm not sure. I hadn't even thought about that. But just as a general rule, we're going to say that you can have some people testify to such and such, and then you use affidavits and pictures and I don't get to cross-examine anybody. [LB215]

LEE POLIKOV: Oh, no, you get to cross-examine the...question the qualifications of the photographer, the affidavit, the officer, the victim. [LB215]

SENATOR CHAMBERS: So I'll have the photographer there? [LB215]

LEE POLIKOV: You can, yeah. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: And if the photographer... [LB215]

LEE POLIKOV: You should. That's why the law... [LB215]

SENATOR CHAMBERS: And if the photographer is dead, then what? I can't cross-examine, can I? [LB215]

LEE POLIKOV: Well, you know, we...I could imagine a case where the evidence isn't even recovered, you know? The evidence might be stolen and dumped at the bottom of a lake. We still have a prosecution because it's based on testimony by the victim, testimony/investigations by the officer, witnesses who might have seen that happen. [LB215]

SENATOR CHAMBERS: But you would have to admit... [LB215]

LEE POLIKOV: We may not be able to bring that evidence because it doesn't exist anymore. [LB215]

SENATOR CHAMBERS: And so I could tell the jury they cannot really prove that this evidence even existed. Everything is based on what somebody is saying, but here... [LB215]

LEE POLIKOV: And their job is to test the credibility of the people that are testifying. [LB215]

SENATOR CHAMBERS: Right, and that's too shaky for me. [LB215]

LEE POLIKOV: (Inaudible.) [LB215]

SENATOR CHAMBERS: But I'm not going to keep you here all afternoon because I might... [LB215]

LEE POLIKOV: No, that's all right. I... [LB215]

SENATOR CHAMBERS: I might even talk to you at another time. [LB215]

LEE POLIKOV: Yes. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: But I wanted to get some of the issues in the record that are of concern to me. [LB215]

LEE POLIKOV: This has been a big issue for me, my experience over the years, both as a police administrator and as a prosecutor. And for the bulk of the evidence we are talking about, I think the minority part of the evidence which, I agree, if I had difficulty thinking that my substitute evidence was...lacked credibility or lacked effect, then I would choose not to do that. But... [LB215]

SENATOR CHAMBERS: That's you. [LB215]

LEE POLIKOV: Well, I... [LB215]

SENATOR CHAMBERS: Sheriff Dunning... [LB215]

LEE POLIKOV: I knew a lot of prosecutors and... [LB215]

SENATOR CHAMBERS: Sheriff Dunning swore on his mother that David Kofoed was as clean as he was, and that in itself would have condemned both of them. [LB215]

LEE POLIKOV: I... [LB215]

SENATOR CHAMBERS: But here's the point I'm getting to: I have to presume that law enforcement is not going to behave properly. They have to convince me that they will. If I give them a leg up like this, I just don't trust them. The Vatican Bank, because of what it was and connected with the Pope and the Vatican, was deemed to be honest in matters of money. The comptroller of Italy said, you...we're going to do something different here because you guys have been laundering drug and other racket money, there are people who have been making off with money, bribes were paid, money was taken that's not accounted for. And this new Pope said, we've got to clean house. But it started with a criminal investigation of the Vatican. So if the Vatican can do wrong, money corrupts; a lot of money corrupts absolutely. They have stated that a lot of drug agents and border agents...where drugs are coming into this country they have found agents corrupted because they'll get a barrel of money that contains more than they'll make in their whole career. Money will corrupt. And I think that forfeiture scheme showed that law enforcement has been corrupted by it, and it happens to be drug money. I'm not...if I thought you were dirty, I would say it. [LB215]

LEE POLIKOV: I hope so. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: I don't and I'm not trying to stroke you. But they picked the one that they probably thought I had the most respect for and sent you here thinking it would pull my fangs. [LB215]

LEE POLIKOV: (Laugh) I don't think so. [LB215]

SENATOR CHAMBERS: You almost did. [LB215]

LEE POLIKOV: I don't think so. [LB215]

SENATOR CHAMBERS: But then I recovered myself and remembered what I'm here for. [LB215]

LEE POLIKOV: I understand what you're saying and, as I said earlier, there is a lot of times people would be surprised on how much we agree on. However, I can't do that. I've got to assume people are going to do their jobs. And if they don't do their jobs, I hold them accountable. They're accountable to me. And so I can't paint that broad brush stroke over every prosecutor. In my association with the National District Attorneys Association, I know men and women who are even more committed, if possible, than I am to doing the right job and making their people do the right job, so. [LB215]

SENATOR CHAMBERS: If we find a prosecutor who committed a crime, would you serve time in his place? [LB215]

LEE POLIKOV: No. [LB215]

SENATOR CHAMBERS: Oh, okay, so then you're not giving carte blanche that they're all... [LB215]

LEE POLIKOV: No, I.. [LB215]

SENATOR CHAMBERS: I understand that too. [LB215]

SENATOR KRIST: Next. Senator Pansing Brooks. [LB215]

SENATOR PANSING BROOKS: Okay, even though it's going to drive people crazy that I don't just let it go, the fact that it says the photograph can...may be accepted as prima facie evidence to

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

me means...I mean, in this world of digital photography, we all know every single photograph can be changed to do anything, so...and it's saying prima facie, which in my understanding--and it may not be correct--it's on the face of the picture. We don't get to take it apart; we don't get to decide whether or not it's been tweaked or digitally altered or... [LB215]

LEE POLIKOV: But they can... [LB215]

SENATOR PANSING BROOKS: It's on the face. [LB215]

LEE POLIKOV: They can be. They can be analyzed. There's what they call a digital DNA and experts can take it apart. [LB215]

SENATOR PANSING BROOKS: I know, but it's saying that we're supposed to accept it on the face. It can be presented and accepted as prima facie evidence. To me, that means you don't get to go figure out what's wrong. Here's the picture. It's the prima facie evidence, so it's...that's it. So that's one problem. And it also seems, by giving the property, we have assumed that that person is guilty because there could be an instance where the...I think that there could be an instance where there had been a contract or something underlying that. Is that correct? [LB215]

LEE POLIKOV: Or a divorce case that's... [LB215]

SENATOR PANSING BROOKS: Pardon me? [LB215]

LEE POLIKOV: Or a divorce case. We have disputes. [LB215]

SENATOR PANSING BROOKS: Yes. [LB215]

LEE POLIKOV: We face that all the time, a dispute on what the property is, but there are other court processes, including civil, to get declaration of ownership. Again, it's just me. I wouldn't return evidence that its ownership was in doubt. [LB215]

SENATOR PANSING BROOKS: Okay. [LB215]

LEE POLIKOV: Most property in our cases though, I think it's not in doubt, and so... [LB215]

SENATOR PANSING BROOKS: Aha, that doubt, okay. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

LEE POLIKOV: Yeah, but...well, the doubt of ownership. [LB215]

SENATOR PANSING BROOKS: Right. I know. [LB215]

LEE POLIKOV: But we've talked about that, what happens when there is a dispute of partners, who owns what property. And we get those disputes anyway and oftentimes the answer is that's a civil claim, it's not a criminal case. We have to have...meet the elements of the crime before we can, as you know, file a complaint. [LB215]

SENATOR PANSING BROOKS: Thank you, Mr. Polikov. [LB215]

LEE POLIKOV: And I think, Senator, and for both, the genesis of this might be the--I'm sorry, I lost the thought--shoplifting. As property...what the statutes have addressed for a long time is our ability to make quick action on usually often disposable items and items that don't need to get into the property system. They're pretty identifiable, descriptive, commercial items. Value is pretty well established. And so we did use--and we helped craft this, by this way--we did use that as a starting point for how we would handle evidence but even with more scrutiny, more security, and the idea that it was going to go into the chain of custody, not just return to the wholesale...I'm sorry, the retailer for either disposal or put back on the shelf. [LB215]

SENATOR CHAMBERS: You mean you helped John DeCamp craft that bill he brought? [LB215]

SENATOR KRIST: Oh, here we go. [LB215]

LEE POLIKOV: That would...no, no, no, no, no, no. [LB215]

SENATOR CHAMBERS: Oh, I thought you said you helped craft... [LB215]

LEE POLIKOV: No, this bill... [LB215]

SENATOR CHAMBERS: Oh, this one. Oh. [LB215]

LEE POLIKOV: The genesis of this bill was a starting point with... [LB215]

SENATOR CHAMBERS: Okay, okay. But here's one thing, because that case where Kofoed did what he did, let's say that the car supposedly was stolen, so that I can make my point, and he

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

supposedly found this blood evidence in the car, but the car had been returned, photographed, everything photographed. The car was returned to whoever supposedly it belonged to and was no longer available. We cannot determine that he in fact recovered that evidence from that car even though he had photographs and said that's what it was. Should they then throw out all of that, that is purportedly evidence, since you cannot really show that it'd been lifted from this car in the way that he said? The car is gone. Should we then throw out all this evidence whatever it was that he says was derived from that car? [LB215]

LEE POLIKOV: That sounds like a judicial decision. [LB215]

SENATOR CHAMBERS: Hmm? [LB215]

LEE POLIKOV: That's a judicial decision that has to come before a judge. I...I'm not... [LB215]

SENATOR CHAMBERS: But right now it's a policy decision for us to determine whether we're going to let that car go back to the owner when evidence may have been derived from it which was photographed and will be used. And even though it's prima facie, that means it shifts the burden to me, the defendant, now. It's a burden shifter, and that's what it does. [LB215]

LEE POLIKOV: Yeah, but I'm still not sure what the value of the car was after the... [LB215]

SENATOR CHAMBERS: We could have an independent... [LB215]

LEE POLIKOV: And then we're talking about the facts of a particular case. [LB215]

SENATOR CHAMBERS: We could have an independent examination of it by objective forensic specialists to see, if he said that he scraped this blood, are there places where he scraped it from there? Would it be reachable in the way he said it would be from looking at this car itself? And the best way to determine those issues would be to have the car and just look at it and have people examine it but it's gone. [LB215]

LEE POLIKOV: I guess...and we know that every case is its own, every case is different. If I were...if I can't rule on my own mind of the validity of the evidence, then I would not return it. [LB215]

SENATOR CHAMBERS: But that's you. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

LEE POLIKOV: It would not be...well, but that's how we're...you're laying out plans for how people are supposed to operate. And to force me to take a calculated risk of losing a case, what might be considered a minor case, I shouldn't have to do that. [LB215]

SENATOR CHAMBERS: But I cannot use you as the paradigm to tell me how prosecutors throughout this state are going to operate. [LB215]

LEE POLIKOV: But you can provide a checklist of how to do it properly,... [LB215]

SENATOR CHAMBERS: Right, and that's the evidence itself, no photographs. [LB215]

LEE POLIKOV: ...yeah, instead of not doing it, because it's common sense. We talk about the puppy who's stolen from a pet shop. You know, when there was a run on Chihuahuas, we had somebody steal a Chihuahua from the pet shop in Bellevue. We weren't going to take that dog into evidence and keep it and keep it from the retailer. [LB215]

SENATOR CHAMBERS: We look at circumstances, but there are other situations we're talking about. [LB215]

LEE POLIKOV: Absolutely. [LB215]

SENATOR CHAMBERS: Now let me ask you this, because I watch Perry Mason and I've watched Matlock and a couple of other programs where lawyers were there. And they always say, is the defendant in the room? And they'll say, yes, he is, right there. And the judge or somebody would say, let it be noted that the defendant was identified. Would they allow a photograph of the defendant to be used as an identification of the defendant in the courtroom? [LB215]

LEE POLIKOV: No, but they allow photographs often of the victim or the witness identification of the defendant. [LB215]

SENATOR CHAMBERS: Would they allow the photograph? And I know they wouldn't. [LB215]

LEE POLIKOV: No, they wouldn't. [LB215]

SENATOR CHAMBERS: They have to produce the body in court. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

LEE POLIKOV: No, they can't even tie him up and gag him in another room, so. [LB215]

SENATOR CHAMBERS: Well, there are judges who have done that,... [LB215]

LEE POLIKOV: I know. [LB215]

SENATOR CHAMBERS: ...Judge Hoffman, notorious for it. But here's...which did you say could be photographed now? [LB215]

LEE POLIKOV: Which? [LB215]

SENATOR CHAMBERS: Yeah. You said somebody. You said the witness... [LB215]

LEE POLIKOV: Oh, sure, a lineup. If you're using a photo lineup, that might be introduced as evidence to question the decision, the identification. [LB215]

SENATOR CHAMBERS: But that can't be used in a courtroom to say which one of the people... [LB215]

LEE POLIKOV: In substitute? No. [LB215]

SENATOR CHAMBERS: Right, that's what I mean. I'm just skeptical. I'll keep my mind as open as I can. [LB215]

LEE POLIKOV: I'm as skeptical as you are. [LB215]

SENATOR CHAMBERS: Oh, then we're going to kill this bill. [LB215]

LEE POLIKOV: And you have to be in this business. [LB215]

SENATOR CHAMBERS: (Laugh) Okay. That's all that I...oh, who's in charge? [LB215]

SENATOR COASH: I'm in charge. [LB215]

SENATOR CHAMBERS: Oh, I'm through now. (Laughter) I'm through. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: Thank you, Senator Chambers. Senator Williams. [LB215]

SENATOR WILLIAMS: One quick question, because we spent a lot of time discussing the defendant's rights and being skeptical about how that would all work and also saving the police department storage and all of that and we tend to have forgotten the person that was damaged in this case, the victim. Would you talk just a little bit more about how damaging it is to somebody to lose their item for six months, one year, two years? And also, would you address the question about the safety of the items being stored as compared to storing digital photos? [LB215]

LEE POLIKOV: For this...for me, this is a victims' bill. This is taking into consideration the victims. Secondly, as a police administrator, I had to answer a lot of questions of why grandmother's ring or watch was being held even though it's clearly their property, it was taken from them in a burglary, they've already been victimized, they've been...their space has been invaded, and all that goes along with it. And it's fortunate that it was recovered, but now I've got to tell them, because it might be a string of burglaries, might be a complicated case, that the evidence has to be kept until trial. And when is trial? Well, you know, we...six months but probably a year, and that's a long time to be without an heirloom, a family...it...so it might not even be the value. It might just be the value to the person, and that's...to me, that's...I feel like I'm victimizing that victim again by saying I can't return the property because the law enforcement will tell you that they get a call and say, when do I get grandmother's ring back? And they say, well, not until trial. And who makes that decision? The county attorney, and then they'll call me and I have to tell them I can't return it. I think that's a big issue, plus the complications... [LB215]

SENATOR WILLIAMS: And wouldn't it also be true that in the majority of those cases the photograph would serve as equally qualified evidence as compared to having the ring? [LB215]

LEE POLIKOV: And I don't want to put too much emphasis on the photograph. The photograph is one piece of it. But maybe more important from a legal standpoint would be the having an acceptable expert witness that looked at it, valued it, appraised it, weighed it, did all the things so that they could clearly identify it, and their testimony of what that ring is and what its value is, if value is important. And we're talking about changing values. But like the Corvette that we're dealing with, it's a \$1,500 threshold. So there's going to be an argument of what that Corvette is worth but not below \$1,500. So that's the case by case. I think this is a victims' problem and that's what I think we should try and solve. I think the legislators have a concern about that, as well. And between ourselves, and I'm the ultimate decision maker of what's adequate evidence, then I'm at risk. I take the...I stand up and say this is sufficient. If the court doesn't accept it, if the jury doesn't accept it, then I lose. Right now, if I...if they call for the evidence and I've given it back, I think I lose. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR WILLIAMS: Which would be to the defendant's advantage. [LB215]

LEE POLIKOV: Well, yeah, but I don't...I'm really respectful of defendants' rights. I don't see that as a right, to be able to hold that item that I talked about before, the Rolex watch, hostage to get a better plea. And I don't...I'm not angry with the attorney for doing that. That's their...some attorneys see that as their role. Most attorneys, quite frankly, say, yeah, get that...give that evidence back, because they know that will stand well with me and with the courts and with the victim, as well, if they...if it's not being held hostage, so to speak. [LB215]

SENATOR WILLIAMS: Thank you. [LB215]

SENATOR COASH: Senator Chambers. [LB215]

SENATOR CHAMBERS: Since "Brother" Williams kind of tilted the scale, I've got to bring it back in focus. [LB215]

SENATOR WILLIAMS: I thought I got the last word. [LB215]

SENATOR CHAMBERS: Are you mad? (Laughter) Mr. Polikov, again, this is not on you. [LB215]

LEE POLIKOV: I understand. [LB215]

SENATOR CHAMBERS: But I'm aware of prosecutors who grossly overcharge a defendant to force a plea. There was a bad situation that took place in Norfolk and there was a bank robbery and some people were killed. But charges were brought, offenses that couldn't even occur in the bank, and all of them--and I was going to file a complaint with the Counsel for Discipline--by stacking up charges and alleging that these things occurred when they could not have. Are you aware of prosecutors doing...I know they do it at the federal level. And they even tell the person that if you don't accept this plea expeditiously, we may take a plea, but it's not going to be as favorable as this one; right now if you plead, we'll put you at the bottom end--three--but if you delay you might still get a plea, but it's not going to be three; it might be whatever the other, additional, higher amount is. Are you aware of prosecutors who do that? [LB215]

LEE POLIKOV: Well, I think that's a perception of strategy. If there...if the elements are there and the charges are there--I know there is a discussion on whether it's right to do that or not--the balance I would say is the court is a check and balance against what the prosecutor does, so...and you mentioned earlier in earlier testimony about judges who need discretion, even at the lower

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

end of cases. So the fact...if I charge seven felonies because there are seven separate burglaries, first, I know I'm probably not going to get consecutive sentences on individual convictions, so that's one reason that I don't do it. And also, I don't apologize for plea bargaining. There's several benefits to plea bargaining. One is being... [LB215]

SENATOR CHAMBERS: No, I'm not even challenging the method, the practice. I'm talking about how they put a defendant in a position of feeling that he better plead. And I've been gathering cases where people pleaded guilty to crimes they didn't commit, many of them black people, because they were even told by their lawyers, I know you didn't do it but they're going to get you, if you go for a jury trial, you've got a white jury, they're going to convict you. And there are defendants who later on said that and they wound up being exonerated. And the lawyer was charged with inadequate representation of counsel. I'm talking about actual cases where they were found...what I'm talking about was found to have happened. So prosecutors do it. I'm saying this because "Brother" Williams was talking about the victim. I care about the victims. [LB215]

LEE POLIKOV: Right. [LB215]

SENATOR CHAMBERS: But I also care about people who are accused of crimes who may not have done them. All those young guys--and it was that crime in Central Park that led to a string of harsh sentences in New York--they supposedly attacked this white female jogger and beat her with this rock, did terrible things to her. Every one of them pleaded guilty, and all of them were exonerated because they caught the one who actually did it. They were described in The New York Times of all places as savages, all of the racial stereotypes of black people that were used in Birth of a Nation, the Ku Klux Klan movie. And all those things were said about all of them. Then they were told, this is what can happen to you. The mayor even got into it. And these were youngsters and every one of them pleaded guilty. And then afterward people said, well, why did you plead guilty if you didn't do it? They knew why and they put pressure on them. One of them was so young that they told him, look, I know you like hamburgers and you like a soda so, if you go ahead and say what we want you to say, we'll get you some hamburger, soda, and take you home. And he bought it. He was that naive. And every one of them was innocent and most of them had served the entire sentence... [LB215]

LEE POLIKOV: But... [LB215]

SENATOR CHAMBERS: ...in white prisons presided over by a white prosecutor, white judges, white media, all of it white, white, white. [LB215]

LEE POLIKOV: And they should suffer the consequences, not the victims who we're... [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: But they won't. [LB215]

LEE POLIKOV: ...talking in this case. [LB215]

SENATOR CHAMBERS: Nothing was done to any of them. [LB215]

LEE POLIKOV: We're talking about the balance of taking a majority of the people, I think I would say, that deserve their property back and the use and benefit of their property. And holding them hostage or punishing them for not having that property because someone else did something wrong, that's... [LB215]

SENATOR CHAMBERS: I'm telling you I don't trust the system. [LB215]

LEE POLIKOV: Well, and you have to trust the system. [LB215]

SENATOR CHAMBERS: You know, this prosecutor...I mean this former governor is now in prison. I won't call his name because I went through what he did. He found out that of 13 people on death row, 12 of them had been exonerated, not on what they call a technicality. They were actually innocent. He cleaned out death row, commuted everybody's sentence, then he went to prison on some kind of bribery charge. But he did a right thing on that death penalty because he said, if this many people were innocent and they're facing death, I cannot have confidence in any of the prosecutions. So he...naturally, he couldn't change the conviction, but he took away all of the sentences of death. I follow those kind of cases. And although the Supreme Court is going to look at whether this cocktail that is used to execute people...and there have been horribly botched executions. They allow executions anyway. And Sotomayor wrote a scathing dissent that, I guess, embarrassed those other white men and that "Uncle Tom," and they decided--I don't know how he voted--that they need to look at this. I don't trust the system of justice in America, but it's the best that we've got. It's all that we've got. But I don't trust it at all. [LB215]

LEE POLIKOV: I understand. [LB215]

SENATOR CHAMBERS: I wouldn't want to fall into its clutches. That's why I give you credit. I've dealt with you. [LB215]

LEE POLIKOV: And you should recognize that what's often referred to as prosecutorial misconduct is really prosecutorial error, and there is a big difference in that. And in your references, one case is probably too much. But a lot of the criticisms that befall prosecutors

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

across the country is because someone made a mistake and not intentionally created a harm to or convicted an innocent person. [LB215]

SENATOR CHAMBERS: On these it wasn't a mistake because even the physical evidence didn't match up with the confessions, so called. But even in Nebraska, there's a prosecutor out in the western part of the state who comes down here and he's avidly for the death penalty. There was a guy out there and he waylaid his wife and shot her in the back with a high-powered rifle. And he was allowed to take a plea by this prosecutor, who is for the death penalty, and got a life sentence. But he had committed another murder too. Ten years before, there had been a divorce. He waylaid the lawyer coming out of his office and shot him in the back also. Two murders, cold blooded, calculated, one was committed in Kearney and one in Grand Island, and this prosecutor who is so much for the death penalty gave him another plea in his bailiwick--hypocrite. And I even put that on the Governor because he said execute Nikko Jenkins before there had been a trial or a determination of his sanity. And I asked him, why, when this case was pending where this white guy killed these two people, you didn't say a death penalty there? He had no answer. Race makes a difference, and these prosecutors cannot be trusted. And I want him to come and speak against my bill to abolish the death penalty, and I'm going to have some questions for him. I can't think of his name now or I'd call it, but he's out there in...it's either the county where Grand Island is, or Kearney, so people would know who he is. And then I can't...I got it in an article. I'm waiting for him. That's why I think they sent you. [LB215]

LEE POLIKOV: No, I stepped up. This is...this has been a problem for me my whole career. [LB215]

SENATOR CHAMBERS: Do you know how he stepped up? There was a case... [LB215]

LEE POLIKOV: No. [LB215]

SENATOR CHAMBERS: And I read this. There was a case where these recruits were lined up and one of them's mother had died. And this guy, the sergeant, said, everybody step forward whose mother is alive. And everybody stepped forward. He said, oh, not you. [LB215]

LEE POLIKOV: No. This... [LB215]

SENATOR CHAMBERS: So then he did it again because they told him that was too blunt. So this time he didn't let him step forward. [LB215]

LEE POLIKOV: This has been an issue with me for a long time. [LB215]

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Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: He said, everybody step forward except Private Jones. The kind of situation where I think they know how to boil it down to send somebody who has credibility, and these people around here know that if I think somebody is credible I could be mistaken, but they know I'm not just giving the benefit of the doubt because I like somebody. [LB215]

LEE POLIKOV: Senator, this is a time when I can tell you I know who "they" is, and "they" is me. I said this is a bill that I think is important because of my experience in law enforcement for victims who aren't getting their property back in a timely fashion. And it's simple and there's not room for abuse, I don't believe, from prosecutors, from law enforcement; maybe a little room for abuse in the existing system by defense attorneys, but that doesn't even bother me that much. It really is, how can my constituent get grandmother's ring back before waiting for a conviction when the ring is probably not going to come into court anyway and 85 percent of the time is going to be not at trial? [LB215]

SENATOR CHAMBERS: I believe you believe what you're saying, but I don't believe it the same way you believe. [LB215]

LEE POLIKOV: I understand. [LB215]

SENATOR CHAMBERS: That's all I'm saying. [LB215]

SENATOR COASH: Let's see if we have any other testifiers or any other questions. I don't see any. [LB215]

LEE POLIKOV: I appreciate everybody's courtesy. [LB215]

SENATOR COASH: Thanks for sitting there so long. [LB215]

LEE POLIKOV: Oh, I'm sorry. [LB215]

SENATOR COASH: No, that's good. Thank you. [LB215]

LEE POLIKOV: Oh, I thought you had a question. [LB215]

SENATOR COASH: Nope. [LB215]

LEE POLIKOV: Okay. Thank you. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: We're going to go on to any...to the next testifier as a proponent. Anybody else here to support the bill? Okay, we'll move to opposition. [LB215]

KATHY SIEFKEN: I'm here in support of it. [LB215]

SENATOR COASH: Oh, I'm sorry. Okay. Strike that. We're still on proponents. Welcome. [LB215]

KATHY SIEFKEN: Senators and member of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I'm the executive director of the Nebraska Grocery Industry Association here in support of LB215. And the reason we support it is very simple. We are the victims of shoplifting. We would like to get product back so we can put it on our shelves and resell it to simply reduce the cost of the damage that's been caused by shoplifting. If you have any questions, I'd be happy to try to answer. [LB215]

SENATOR COASH: I don't see any. Thanks, Kathy. [LB215]

KATHY SIEFKEN: Thank you. [LB215]

SENATOR COASH: Anybody else to testify in support? Okay, now we're going to go to opposition. Is anybody here to testify in opposition of LB215? Come on up. [LB215]

TODD WEST: Good afternoon. My name is Todd West and I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association. And we're here in opposition to LB215. The significance, yes, of this bill is to change how stolen property is handled. What I think is important to note is how stolen property is handled during any type of theft charge while it's pending and other...another noteworthy part about this bill is that it only requires the owner to retain this item, the items, once returned for a limited amount of time: 14 days. Here is some context for our position. It's the main context I think needs to be understood here. The severity of theft charges are graded based on the dollar value of the property that's alleged to be stolen. It can be charged as low as a Class II misdemeanor if it's under \$200, as high as a Class III felony if it's over \$1,500, depending on the dollar range in which the property falls. So it could be under \$200, \$200-500, \$500-1,500, or above. Value is an element of the offense and it has to be proved and it's always at issue. And sometimes, for a defense attorney, it's the only defense that we have, what an item is worth, and that's often the difference between a felony conviction and a misdemeanor conviction. Other than shoplifting, theft-by-shoplifting charges at trial, it's assumed that the state at some point may have to bring the tangible item of property in for identification. The current shoplifting statute is the only statute that allows prosecutors to use

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

photographic substitute of the stolen merchandise at trial, and I think we've kind of talked about that at length. The defense bar is generally understanding of this expressed policy in the statute that allows shop owners to put the items back into circulation. Generally, the amount and the value of the item isn't as in much controversy as in other theft cases. The proposed amendments would allow the photograph substitute to be used in all prosecution of all theft offenses--theft by taking, theft by deception, theft by receiving--where the items are not goods or merchandise and the value of the items are less certain. This is a big change considering that the amendment allows the true owner of the property to take possession of it while the case is pending and only requires the owner to retain the property for 14 days. After that, there's no obligation to retain the property. They can give it away; they can throw it away; they can sell it. It's not available for checking out for fingerprints or to do an appraisal with an expert witness, which is often what it comes down to when we're disputing what the value is. Sometimes a picture just isn't good enough to prove that. The best example that I can use is...to illustrate is a felony case that I defended about a little over a year ago. It was a kid or a young adult who was charged with felony theft. He was accused of Class III felony, over \$1,500. He was accused of taking tires and rims from a new car dealership. And the night of the arrest they told him...the dealer I think told police that the value of these items were \$2,000. And sure enough, there was a picture of the car on-line. We saw the picture. But it came out over time that this was a used car, these were used tires, and the value of these, you know, tires and rims were in the \$200-500 range. My client didn't have to get convicted of a felony because of that. The only thing I'd note, since I've obviously run out of time, is that with the 14-day retention provision that's contemplated by this amendment, sometimes in smaller cases, especially the Class I misdemeanors, criminal defendant isn't even appointed to...criminal defendant isn't even appointed an attorney until 30 days after the offense when he's arraigned formally, so. [LB215]

SENATOR COASH: All right. Thank you, Mr. West. Senator Chambers. [LB215]

SENATOR CHAMBERS: And if that time passed and the item no longer was available, what would the outcome be? [LB215]

TODD WEST: Well, if there is a...under this legislation, if there is a picture substitute, it would be the...that would be what would be introduced into evidence at trial, in a courtroom, as prima facie evidence. [LB215]

SENATOR CHAMBERS: And it could have been a situation where there was a misstatement of the value, even if it wasn't intentional. But there could have been a misstatement by all people who have anything to do with the production of that photograph. [LB215]

TODD WEST: Correct, Senator. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: And if the actual tires were there, then they could be examined and you could see that, despite what had been said by those who would maybe even have taken a photograph, that these tires don't have that value. [LB215]

TODD WEST: You could have an expert witness to kick the tires, so to speak, yes. [LB215]

SENATOR CHAMBERS: Have there been cases where people who...where people pass themselves off as experts and it's found out that maybe they aren't and the credentials they gave could not be verified? [LB215]

TODD WEST: Obviously, there have been cases where an expert witness's credibility to...or qualifications of an expert witness to testify to something have been, you know, impeached or proved to be not so qualified, yes. [LB215]

SENATOR CHAMBERS: And something, although it wasn't with a material item, happened in the Nikko Jenkins case with some people who were professing to be psychiatrists, and they had not done the kinds of examining that would be necessary to draw the conclusion they did. So the judge said, from here on I'm not accepting as final word those psychiatrists who work for the state or who are employed by the state, the final word will be taken from independent psychiatrists who have no connection to the state. So there can be reasons for people to be the ones used to give this evidence for the state, just like the state picks psychiatrists. And when the police are allowed...an officer has been fired, they will be allowed to resort to arbitration and in Omaha there is a particular arbitrator that the cops always bring and it always come out in favor of the cops, even when they have photographic evidence and so forth. So I don't trust this kind of substitution for what can be the actual item itself. But then the example you gave of where it was shown that the item was overvalued in stating the original value which could have led to a much more serious offense and, if the person pleaded to it, repercussions for his or her life throughout the rest of their life... [LB215]

TODD WEST: Without question, to that last point. There...a lot of times when you're defending these cases it's...the big issue is not whether the item is taken. It's how much it was worth, and that's how we grade these offenses is the dollar range, so. [LB215]

SENATOR CHAMBERS: Okay, that's all that I have. [LB215]

SENATOR COASH: Thank you, Senator Chambers. Any other questions for Mr. West? Seeing none, appreciate your testimony. [LB215]

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Transcriber's Office

Judiciary Committee
January 28, 2015

TODD WEST: Thank you for your time. [LB215]

SENATOR COASH: We'll take any other, further testimony in opposition. Okay, seeing none, we're going to go to any neutral testimony. [LB215]

GEORGE MERITHEW: (Exhibit 3) Lieutenant George Merithew, Omaha Police Department, Merithew, M-e-r-i-t-h-e-w. The Omaha Police Department is for the citizens' rights. Any time we can return property to a citizen that's rightfully theirs, we feel that's appropriate to do so. However, we do have some issues with the way that this particular bill has been drafted in that it does create a bit more of a burden on law enforcement to make photocopies or pictures, update sworn statements. There's questions as to what this affidavit is. Most of the language was taken directly from the shoplifting section of Nebraska state law, which the burden on that has always been on the merchant. They take the photographs. They keep the photographs. They present them when evidence comes up. Law enforcement does not. The city of Omaha, the police department processes in excess of 800,000 pieces of evidence and property into our evidence and property room every year. This is a significant number of items. We get multiple requests on a daily basis to our Criminal Investigation Bureau requesting the release of property. We always handle those with the cooperation of the prosecutor. The prosecutor must determine whether or not the item can be released before the police department will ever release it. We've never had an issue as far as getting property out or with storage. We've never really had a problem storing items. The issue becomes who is responsible for storing all of these photographs, the digital photographs or hard copy photographs, whether or not it needs to be done. It seems to the police department that this is more of an evidentiary issue, addressable in other areas of the law and not with the statutes, and for that reason we're neutral in that, again, we do support citizens' rights and property owners' rights. However, we feel that this really isn't needed and it's not something that is going to be easily implemented within the city of Omaha through our property unit because of the onerous burden on our department as far as manpower, assets, and resources. [LB215]

SENATOR COASH: Okay. Thank you, Lieutenant. On your testifier sheet, you're a proponent. Did you want to... [LB215]

GEORGE MERITHEW: Oh, I'm sorry. It's supposed to be neutral. I apologize. [LB215]

SENATOR COASH: All right. Any questions? [LB215]

SENATOR CHAMBERS: Just that this is one of the few witnesses who said he was neutral and he really is. [LB215]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: I would agree. Thank you for your testimony. Any other, further neutral testimony? Seeing none, Senator Craighead, would you like to close? [LB215]

SENATOR CRAIGHEAD: Thank you, Mr. Vice Chairman and Chairman, for...and committee for listening to this bill. It sounds to me with listening to the proponents and the opponents that we may not be too far away on this bill, but it sounds like we need to clean up some language. So if you would allow the...allow us to work on that, we would come back to you and the committee. [LB215]

SENATOR COASH: All right. Thank you, Senator Craighead, appreciate it. Okay, that will close the hearing on LB215 and we are going to now go to LB189. Senator Davis, come on up. Welcome back to Judiciary. [LB215 LB189]

SENATOR DAVIS: (Exhibit 1) Thank you. Feels like old home week: Senator Chambers in his same chair, you're in your same chair. Good afternoon, Senator Coash and members of the Judiciary Committee. I am Senator Al Davis, D-a-v-i-s, and I represent Legislative District 43. I am appearing before you today to introduce LB189. Last year I introduced LR520, an interim study to gather information about the problems that Nebraska law enforcement officials are encountering, particularly in the western counties, since the state of Colorado legalized the sale and recreational use of marijuana last year. The Judiciary Committee and I traveled to Ogallala in September and heard testimony from several state and local law enforcement officials, health and substance abuse experts, and others with an interest in examining the practical effects of our neighboring state's recent actions. It was made clear at the hearing that they are seeing more and more cases involving products popularly known as edibles. They come not only in brownie form but cookies, candy, cakes, gummies, soda, and many others, both prepackaged and homemade, and with varying percentages of THC. That's not to mention all the other methods of extracting THC for consumption. One of the biggest issues that came to light at the LR520 hearing was the lack of consistency in prosecuting cases of such a wide array of THC-infused products. At Ogallala we heard two contrasting interpretations of the law. One sheriff stated he could have a five-pound chocolate cake and be unable to arrest for that, while another said a one-ounce brownie with unquantifiable marijuana or hash oil content could be subject to a felony arrest. Surely this committee must recognize that these divergent interpretations need to be standardized. We also heard at Ogallala that severe penalties were not as much of a deterrent to an offender as more frequent police presence and arrests. So a first-offense infraction might be a ticket, but it could act as a deterrent for future use once the offender realized that a second offense might produce a more drastic charge, a third and a fourth, etcetera, etcetera. Arresting and charging felony possession of marijuana, which in Nebraska law is really designed to handle those distributing marijuana, for a one-ounce brownie moves the offender into a class in which more stringent penalties are not available, so the deterring effect is not there. Nebraska law currently prescribes a Class IV felony for both possession of THC and for possession of hashish

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

or concentrated cannabis, which as defined in current statute contains 10 percent or more by weight of THC. For marijuana weighing an ounce or less, the penalty is much lower--an infraction for the first offense up to a Class IIIA misdemeanor for third and subsequent offenses. One practical problem with enforcing Nebraska law is that purity testing for THC--testing the amount of THC in a substance--is so costly and takes such a long time, many law enforcement officials have been enforcing possession of edibles as a possession of marijuana, which prescribe penalties based on weight of the substance at the time of the seizure rather than the weight of THC in the substance, or in other cases as possession of THC, which is a Schedule I controlled substance. Right now in Deuel County, you would be charged with a Class IV felony for possessing the same substance that would get you charged with an infraction in Saunders County. This is a very serious inconsistency problem, because we're dealing with an incident that can put someone behind bars, subject them to fines, and give them a criminal record. I think it's important that we recognize what a felony can do to a young person's life. A felony conviction results in lifelong damage to the offender. He is automatically branded a serious criminal and prohibited from some civil liberties. And of course, his ability to obtain employment is severely limited. Felony convictions may actually force some into a life of crime to support themselves. I believe we should follow what some in rural Nebraska are already doing--issuing tickets for edibles as an infraction for the first offense. Like it or not, many of the offenders being arrested in Nebraska are not Nebraska residents. They do not know our laws and have no interest in Nebraska except to drive through. They have purchased a product in a neighboring state which is legal, and they do not intend to distribute that product to anyone else but are returning home with it. Let's leave these edibles as infractions but retain the increasing penalty structure for these types of arrests so that offenders will be put on notice about how a future arrest might affect their life. In other to do this, we need much more clarity in our definitions of these substances. LB189 clarifies what edibles are by creating a new definition of "marijuana concentrate." This includes all products infused with THC, without reference to a specific percentage or weight of THC which can't realistically be tested in all the cases we are getting. The bill removes the terms "hashish" and "THC" from Schedule I, as these substances are now covered by the marijuana concentrate definition under LB189. Marijuana concentrate is placed with marijuana in Schedule I. This is an important change because all of these substances are now clearly subject to the same penalties as those for possessing one ounce or less of marijuana. Specifically, this is an infraction for first offense, a Class IV misdemeanor for a second offense, and a Class IIIA misdemeanor for third and subsequent offenses. The bill also revises the definition for THC which currently includes synthetic THC. The new definition of THC in LB189 is limited to mean "a cannabinoid naturally occurring in a plant of the genus cannabis, which is primarily responsible for the psychoactive effects of marijuana." I have moved this natural definition for THC to Section 28-401(43), which is significant in that it distinguishes between synthetic and natural THC and eliminates the possibility of prosecution of THC on its own. I believe that possession of synthetic THC is a more serious offense than possession of other forms of marijuana. To address this, LB189 limits the definition for synthetic THC to just the synthetics portion of the current

definition for THC, keeps it in the designer drug section with other synthetics, and prescribes a bit harsher penalties than those for marijuana and marijuana concentrate. These synthetic THC penalties mirror the first-, second-, and third-offense penalties for other marijuana substance possession, except that the second-offense Class IV misdemeanor is removed. This makes first-offense possession subject to an infraction and second and subsequent offenses subject to a Class IIIA misdemeanor. One other aspect of this entire discussion has not been discussed much but it is an important element to consider as we move forward. We know that property taxes are burdensome in Nebraska. The UNO Center for Justice Research study that was distributed to your mailboxes yesterday indicated that, while they don't yet have data to reflect the effects of Colorado's 2014 legalization of recreational marijuana, there has been a distinctive upward trend in marijuana-related criminal justice activities since Colorado's legalization of medical marijuana in 2000. This trend is decidedly more pronounced in the Colorado border counties. According to the report, from 2000 to 2013, marijuana jail admissions in border counties have increased by an average of 11.5 arrests per year, a 300 percent total increase over this 14-year period, while marijuana jail admissions in the control counties, not bordering Colorado or I-80, remain flat and even decreased slightly in some counties. In comparison, non-marijuana-related jail admissions have grown by only 7.8 percent since 2000. As a quick caveat, these statistics compare rural county enforcement with urban county enforcement, and the higher ratio of law enforcement presence per person in the rural areas could be a contributing factor to the higher number of arrests. But I think it is still clear from the chronology and the marked increase of arrests within these border counties that easier access to marijuana across the border is probably contributing to an increasing burden on our local law enforcement and jails. I believe we can expect to see these arrest numbers rise and exponentially, as Colorado's newly legalized recreational marijuana in its varied forms begins finding its way across the border even more frequently. Interstate 76 leaves Colorado and meets Interstate 80 in Deuel County, Nebraska, which has seen significantly higher numbers of offenders since Colorado legalized the product. Testifiers in Ogallala referenced the significant increases in costs of prosecution for the heavier caseloads and the increased use of incarceration. The Keith County Attorney stated in the testimony, "I don't want to clog up my court system with...quite frankly, I'd rather spend my time on methamphetamine and people beating each other up than I would to have 15 people showing up from Colorado who had a party out here and we charged everybody with possession of marijuana less than an ounce." You will probably hear opposition from those concerned that I'm moving to decriminalize marijuana possession. That is certainly not what I have in mind here. Possession of marijuana and its derivatives is still a crime. The bottom line is that current state law is not realistically enforceable in western Nebraska, especially as marijuana possession is skyrocketing in the wake of legalization of recreational marijuana in Colorado. My bill simply seeks to develop definitions for these substances that are easily understandable and straightforward, and to standardize enforcement across the state so that different counties are not handling these drug cases with wildly variable results. I also believe use of the graduated penalty structure for edibles will be a sufficient deterrent for most offenders and that perpetrators will moderate their behavior as a

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Transcriber's Office

Judiciary Committee
January 28, 2015

result, without the use of felony charges which drive up court, attorney, and jails' costs and do not act as deterrents in most cases. Thank you very much. I will be happy to answer any questions. [LB189]

SENATOR COASH: Thank you, Senator Davis, and thank you for bringing the bill. I'll start out. Did you do anything with changes in the penalties with regard to distribution? [LB189]

SENATOR DAVIS: No. [LB189]

SENATOR COASH: So how much...if a person has got enough that they're going to distribute it, you're not changing... [LB189]

SENATOR DAVIS: No. [LB189]

SENATOR COASH: ...any statutes with regard to that. [LB189]

SENATOR DAVIS: And as I understand the statutes, well, you know, we talk about a pound being distribution status. But if there is intent to distribute for lesser amounts than that and law enforcement can prove that, that is still enforceable. [LB189]

SENATOR COASH: Okay. And part of this is for the new members. I went out to...all the way out to Ogallala as well and one of the challenges that you're trying to address here is these products that are not...you don't smoke them, you eat them, all right, and it's got THC in them but it's surrounded by a cookie or a brownie or a can of Coke or, you know, whatever it is. And it's pretty expensive to test that and try to figure out how much is in there, right? [LB189]

SENATOR DAVIS: It's costly and it takes a lot of time. [LB189]

SENATOR COASH: And as a practical matter then it's not happening. They're not testing that. But how are you, through this bill, managing the amounts that we find in those products? I know we're trying to get some consistency here, so how is the bill addressing that part of it? [LB189]

SENATOR DAVIS: So if you go to the bill, the original definition talked about 10 percent, I believe it was 10 percent of THC factor. What we found out in Ogallala was that's just very...such...it's not arbitrary but it's very hard to define in the sense of how much that is. So we had our sheriffs there saying, we can't really charge for that; we really don't know how much is

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

in there, and for us to do that might take six to eight months before the tests come back and it's very expensive. [LB189]

SENATOR COASH: Okay. [LB189]

SENATOR DAVIS: So we're just charging it as a misdemeanor or as an infraction. [LB189]

SENATOR COASH: As an infraction, okay. So then let's say that a driver is pulled over and has a dozen cookies, right? Is it an infraction for that under your bill? [LB189]

SENATOR DAVIS: Yes. [LB189]

SENATOR COASH: Okay. What if the driver is pulled over with ten dozen cookies? Is it still an infraction? [LB189]

SENATOR DAVIS: I suppose it would be considered that way, but it would seem to me there would be some intent to distribute. You know, I think we had either someone testified to this or I had a letter from someone who had gone to Colorado and brought back a bunch of cookies who had MS, so it was medical marijuana. [LB189]

SENATOR COASH: Right. Well,... [LB189]

SENATOR DAVIS: You know, see, these get...these are the gray areas that are hard to fill. [LB189]

SENATOR COASH: And I mentioned this at the interim hearing. I mean it sounds like what's happening in Colorado is it's like...and I grew up in the Sandhills where you're from and we used to have Sam's Club shopping, right, where we'd come to town from how far. We knew we were going to be...we wouldn't be in a city where we could get a lot of things for maybe a month or more, and so, you know, rather than one thing of toilet paper,... [LB189]

SENATOR DAVIS: Load it up. [LB189]

SENATOR COASH: ...we got a pallet of it, right, because you get a savings on the price break. So I understand what you're trying to do. I just want to make sure the bill represents that. I found it amazing in our interim hearing that the same amount, even if it was straight-out pot, could elicit an infraction by one law enforcement county attorney group in one county and a felony in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

another county. And when we questioned the county attorneys and the law enforcement, they pointed to the statutes, saying, you're not giving us much help here, Legislature, because we don't have a lot of consistency in how these things are defined. So you're trying to bring some clarity. [LB189]

SENATOR DAVIS: Right. [LB189]

SENATOR COASH: Right. [LB189]

SENATOR DAVIS: So we redrew the definitions and a large part of this bill is because of the definitions for everything were realphabetized so it will be easier for people to... [LB189]

SENATOR COASH: Right. [LB189]

SENATOR DAVIS: ...pull up what they were looking for, rather than having to sort through the definitions. [LB189]

SENATOR COASH: And finally what I will say is we asked...and I want this to be on the record. I'm also trying to help other members who weren't there. But we asked some...we asked everybody what their ideas were. And I don't remember if it was a county attorney or a sheriff, but somebody said, we ought to have the penalty be about \$5,000 and we ought to raise it that high and then people will get the message. Then after the hearing I said, you know what that's going to do to your jail population, that they had just testified was blowing up. Because if we raise those penalties, it's going to be...and I think he was using that as an extreme example, but raising the penalties or the fines or the potential for fines was going to raise...increase the likelihood that somebody is going to skip out, right, and just never come back, and then they have to waste money tracking that person down. It's going to increase the likelihood that that defendant, if found guilty, is going to sit out their penalty, you know, so many dollars per day, and that in a lot of cases is there. So I think that particular person kind of rethought going the other direction, which... [LB189]

SENATOR DAVIS: That was Senator (sic--Sheriff) Hayward from Deuel County who made that proposal and I remember discussing that at the hearing saying, you know, there's really a great likelihood that if he's got that much skin in the game, he's going to come back and expect to have a full-court-press trial and/or he's not going to be able to make bail, one of the two. And if you remember, Senator Seiler asked, I believe it was Sheriff Hebbert, and we reviewed this testimony this morning, is why I'm fresh with it, but about the process. And Sheriff Hebbert is from Grant County, Nebraska, where I'm from, so he talked about you might have the possible arrest and

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

you've got to haul people to jail in Alliance, and then they might have to sit out their 30 days in Alliance, which costs \$95 per day for the county. Then they come back for the preliminary hearing and then we go back. Then we've got the cost of public defenders, prosecutors, in a lot of those counties who are hired on a salary basis rather than a full...a part-time basis, so the costs are astronomical. And I remember in Deuel County, they had ended up with a \$50,000 bill for a public defender for their 13 felonies, I believe they had, in Deuel County that year of 2014. So it's a problem that we're going to deal with. [LB189]

SENATOR COASH: Right. [LB189]

SENATOR DAVIS: I think this is at least one way to approach it. And I think the infraction is a great deterrent for most people. They're going to say, well, I think I won't do that again and risk a felony down the road. [LB189]

SENATOR COASH: Right. Okay. Senator Davis, thank you for bringing the bill. Thanks for the thorough explanation. We'll see if the committee has any questions for you. Senator Pansing Brooks. [LB189]

SENATOR PANSING BROOKS: There's a part in here about steroids, so I'm just interested what... [LB189]

SENATOR DAVIS: That was moved, we moved all the definitions and alphabetized them. [LB189]

SENATOR PANSING BROOKS: Oh, okay. [LB189]

SENATOR DAVIS: So that's all we did, was move those around. That's not in the bill. [LB189]

SENATOR PANSING BROOKS: Well, it's underlined as if it's new. [LB189]

SENATOR DAVIS: Those were defined...those were defined in another section. [LB189]

SENATOR PANSING BROOKS: I thought it was underlined as if it were new. [LB189]

SENATOR DAVIS: Well, it's new...it's new because it was moved. [LB189]

SENATOR COASH: It was new to that section. It will be crossed out (inaudible). [LB189]

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Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR PANSING BROOKS: Okay. [LB189]

SENATOR DAVIS: I know when I first looked at it I'm like, oh my, what's that doing here? Then I realized what had happened, why we did it that way. We think it... [LB189]

SENATOR PANSING BROOKS: Okay. [LB189]

SENATOR COASH: It's crossed out in a different section... [LB189]

SENATOR DAVIS: Correct. [LB189]

SENATOR COASH: ...and moved to that section. [LB189]

SENATOR DAVIS: Correct. [LB189]

SENATOR COASH: So it's not a new definition. It's just in a different... [LB189]

SENATOR DAVIS: But it will make it easier for anybody in law enforcement to say, okay, well, this is A an we're going down to T, so it must be four or five pages up, rather than thumbing through everything. [LB189]

SENATOR COASH: Very good. Okay. Any other questions for Senator Davis? Senator Williams. [LB189]

SENATOR WILLIAMS: Thank you, Senator Coash. Senator Davis, I know you testified to this in your original, but I want to be sure I understand how your bill would change current law as far as dealing with synthetics. [LB189]

SENATOR DAVIS: So we're not doing anything differently with synthetics except...let me find the language here, Senator Williams. We recognize that synthetics are a little bit more of a serious problem than others. We still have the infraction in place, but instead of three or four times you get two times before it becomes a serious problem. [LB189]

SENATOR WILLIAMS: Okay. But your bill does update the definitions of synthetics to catch the current list of known... [LB189]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR DAVIS: Yes, and we tried to construct... [LB189]

SENATOR WILLIAMS: ...chemicals. [LB189]

SENATOR DAVIS: ...the bill so that it would be able to capture other newer synthetics that came along that fit the THC model. [LB189]

SENATOR WILLIAMS: That was my question. Thank you. [LB189]

SENATOR COASH: Thank you, Senator Williams. One of the things that we're struggling with, with these synthetics, is if we write a bill that is only focused on what goes into that product, that is a moving target. So I believe what your bill is doing is it's not so much focusing on the components that go into the product but the effect that it has on the brain, which is similar to the effect real marijuana has. So I think that's an approach that I think we're starting to see. Hopefully, it will work, but I still have problems in my community with those products still on the shelf. And so that's a little bit outside of your bill but... [LB189]

SENATOR DAVIS: And you're correct, Senator Coash. That's what we're trying to do with it. [LB189]

SENATOR COASH: Okay. Any other questions for Senator Davis? Seeing none, thank you very much for bringing the bill. [LB189]

SENATOR DAVIS: Thank you. [LB189]

SENATOR COASH: Okay. We're going to start the testimony on LB189. We'll start with the proponents, those for the bill. Don't all rush up here at once. Thank you, Mr. Achord. Come on up. Welcome. [LB189]

WILLIAM ACHORD: Thank you. William Achord, A-c-h-o-r-d. I had a little difficulty choosing proponent or opponent. Even on the other one I had that. I don't know what it is today. But I represent the Nebraska Hemp Association and I really am advocating for agricultural hemp and involved in that. But since my time in Vietnam, coming back as a young veteran, I felt that every...all the drugs, because I saw what it did in Vietnam and the guys that were put in the stockade for it and everything, and I was a medic, combat medic, I felt everything should be decriminalized. And so I really support this bill and I really appreciate what Senator Davis is doing because I think it's really important. There's some atrocities being perpetuated on young people in western Nebraska that are uncalled for, and I know that's what you guys saw. But I

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

would just ask you in the future to put it in your mind back there, there's going to come a time when we just decriminalize it all. Let's decriminalize everything. Let's not make criminals out of people who have problems, okay? Let's give them help. And you know, I support the new medical marijuana bill presented in Nebraska. I don't know if it will pass, but let's at least decriminalize. If we do nothing else, at least...and if you don't do it now, think about it in the future. Again, you know, let's teach young people consequences to drug use. Let's teach them how they can live a life. Let's go down deeper--what's causing the usage? You know, what is it about our society that needs to be fixed? What is it about our families? I was a family therapist for 30 years. You know, what is it? There's a lot in our society, and it's your responsibility. Again, you have this opportunity to have responsibility to affect our culture and our families. And seriously, please give serious consideration to at some point in the future decriminalizing especially marijuana. Other...I would advocate for all decriminalization of all drugs because I just don't think criminalizing of them has helped. The war on drugs--abysmal failure. So what does that tell us about decriminalization? It's necessary. It's time. Thank you. [LB189]

SENATOR COASH: Okay. Thank you, Mr. Achord. I don't see any questions from the committee. Appreciate it. [LB189]

WILLIAM ACHORD: Thank you. [LB189]

SENATOR COASH: Take the next testifier in support. Welcome. [LB189]

THOMAS STRIGENZ: Good afternoon again, Senators. Thomas Strigenz, S-t-r-i-g-e-n-z, Sarpy County Public Defender, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. You're...you know, we support this bill just because basically, as I was trying to say before, we try to legislate conduct and, well, you know, we were part of Senator Davis' meetings. And what we heard was just a...and what we hear from our members across the state is just the inconsistency of the edible portion. I think that's really what this is trying to do, the edible side of it. And you know, just listening to the testimony, you know, you...2 pot brownies or 50 pot brownies, however, you know, but that is the discretion of how they're packaged and how they're, you know, the intent to deliver, the intent to distribute comes into play with the county attorneys. But I just think, you know, we were just hearing about the two pot brownies and it was an infraction and a felony. And we just...I think the consistency side of this bill is very important. Again, stupid kids make stupid decisions when they come home, and making them felons for those types of acts is probably not the best. And again, we support this bill and we'd ask the committee to support it. [LB189]

SENATOR COASH: Okay. Thank you, Mr. Strigenz. I want to ask you a question,... [LB189]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

THOMAS STRIGENZ: Yes, sir. [LB189]

SENATOR COASH: ...because you're an attorney and it came to me while you were sitting here. Can you help us understand the implications and the difference in the current law, Senator Davis' bill aside, between an infraction and a misdemeanor, and what that means for the... [LB189]

THOMAS STRIGENZ: Infraction? [LB189]

SENATOR COASH: Yeah, because you're still...infraction, as I understand it, you still broke the law. [LB189]

THOMAS STRIGENZ: You still broke the law and it's a \$100 fine. It's the penalty structure. An infraction is a \$100 fine, so any law that does not prescribe a penalty in the statutes is considered an infraction and it's \$100 fine, or...and the marijuana, it changed a couple years ago to \$300, and in different levels, but then a misdemeanor has a jail possibility attached to it. [LB189]

SENATOR COASH: Okay, I understand that. But let, you know, if I'm going to apply for a job... [LB189]

THOMAS STRIGENZ: Uh-huh. [LB189]

SENATOR COASH: ...you look at the back of that application and it usually says... [LB189]

THOMAS STRIGENZ: Are you convicted. [LB189]

SENATOR COASH: ...have you ever been convicted of any felonies or misdemeanors? [LB189]

THOMAS STRIGENZ: And... [LB189]

SENATOR COASH: How do I answer that if I've got an infraction on my record? [LB189]

THOMAS STRIGENZ: I would tell you that we would say that that is not a criminal offense. And if it asks that question on the misdemeanors and felonies, we get that asked a lot, an infraction is not. You could answer no. [LB189]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: Okay. If it's...if the question on the back of the application said, have you ever been convicted of a crime,... [LB189]

THOMAS STRIGENZ: We would say... [LB189]

SENATOR COASH: ...and I've got an infraction on my record, should I be putting that down? [LB189]

THOMAS STRIGENZ: Yes. [LB189]

SENATOR COASH: You should. [LB189]

THOMAS STRIGENZ: Yes. Traffic offenses are not crimes, but in this an infraction would be. [LB189]

SENATOR COASH: Okay. Okay. Any other? Senator Williams. [LB189]

SENATOR WILLIAMS: Thank you, Senator Coash. In the past several days, those of us that sit in these policy-making positions have had the opportunity to hear people speak passionately about the importance of what we do. Standing as the shore against the ocean, and recognizing that what we do has long-term effects on people, my concern about where we're going with marijuana legislation generally is that we are creating the perception on the part of people that it's okay, that it's just part of society today. And yet I'm aware of the damage that this is doing to young people, in particular, as a gateway drug to the long-term future. And I don't want to make a 17-year-old a felon any more than anybody else sitting here in this room does. In your judgment, as a defense attorney, closest to these people that you are defending, is the direction that we are currently going with legislation on marijuana helping us with this perception or hurting us with the perception? [LB189]

THOMAS STRIGENZ: Is...is...well, I don't want to say helping or hurting, because that makes a decision of whether...how you feel about. I believe... [LB189]

SENATOR WILLIAMS: I chose those words carefully. [LB189]

THOMAS STRIGENZ: And I understand that, Senator. Again, I will tell you that this legislation reduces potential penalties and so the perception probably would be that it's okay. Does that answer the question? You know... [LB189]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR WILLIAMS: I think there's a lot really good about this legislation... [LB189]

THOMAS STRIGENZ: Uh-huh. Absolutely. [LB189]

SENATOR WILLIAMS: ...creating the consistency, being sure that we are addressing synthetics, edibles in a way that is creative and doing a better job there. What I'm concerned about are the kids and what, in particular, what they're going to be thinking. Is an infraction a big deal? [LB189]

THOMAS STRIGENZ: And I'm going to...I figured that's where you were going, Senator. I mean I know prior to the other LB we talked about whether criminals decide on the penalty before they commit the crime, and I know Senator Chambers talked about that. I will tell you my position is young people are very aware of what they think MIPs or infractions and...you know, they know what they're getting into, for lack of a better word, on these types of...on this type of legislation. I will say that. So if they're in...and again, I can't remember which counties out west was the felony possession of a pot brownie versus a non, if...you know, in those felony possession of pot brownies, they might say, not doing it, I'm going to drop it at the border. This might say, well, it's worth it to me, if that makes it that, you know, that answers the question. So I think again the consistency will be good, and how the kids react to that consistency is...I don't know. But, you know... [LB189]

SENATOR WILLIAMS: Twenty years ago I had the opportunity to sit in a county courtroom in Lexington with a group of young people that had been charged with minor in possession. And they were all guilty. There was no question of their guilt. During the sentencing portion of it, when the judge was the grandfather of one of the young people sitting in the audience, he said, do you understand the consequences of what you have done? And of course, all heads shook yes. And then he went over it with them. And as trivial as it sounded at the time that you can't be an astronaut, and the judge went down those kind of things, as a defense attorney, does your profession do that with these young people? [LB189]

THOMAS STRIGENZ: I... [LB189]

SENATOR WILLIAMS: Are we making a difference that matters? [LB189]

THOMAS STRIGENZ: Yes, I mean I think we are making a difference that matters because there's lots of ramifications for every type of conviction that anybody has, speeding and anything. So the question was, does my profession try to enlighten all of our defendants, especially the young ones, of consequences of their actions. I can tell you, yes, and especially the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

members of this organization. And again, you know, part of what we do as defense attorneys is to try and get cases dismissed for those unintended consequences, absolutely, you know? But, yes, we do try to enlighten those people. [LB189]

SENATOR WILLIAMS: Thank you. [LB189]

SENATOR COASH: Thank you, Senator Williams. I don't see any other questions. [LB189]

THOMAS STRIGENZ: Thank you. [LB189]

SENATOR COASH: Thanks for your testimony. We'll take the next testifier in support. Welcome. [LB189]

ALAN PETERSON: (Exhibit 2) Thank you, Mr. Chairman, members of the Judiciary Committee. I am Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n, and I am an attorney for ACLU Nebraska, and its primary lobbyist. Before I go on with what I had thought to talk about, I want to respond a little bit to Senator Williams' extremely thoughtful and penetrating question, with this answer that came through my mind, as Mr. Strigenz was trying to answer it from his much more informed perspective. I'm not primarily a criminal defense attorney, but I was a trial attorney in general for nearly five decades, and it seems to me that it would be nice if the answers to that question were clearer and simpler and either yes or no. What I think this whole country and Nebraska are looking at now is a realization that the question of drug liberalization or even decriminalization is incredibly complicated. Factors such as the financing of gangs by the drug business in Douglas County and other places are involved. The violence that comes out of that is involved. The damage to people's careers by having a felony as opposed to an infraction or a small misdemeanor is extremely important, and these cut in different directions. The simple question of whether someone has enough of a toke, I guess they call it, to be dangerous on our highways is another question. And encouraging drug use is another question. Do these laws do it? I have written testimony. ACLU's national position moves toward decriminalization because of this mix of factors, and their decision, which is not mine personally, but their decision that the cons are much, much higher than the pros in terms of the heavy use of strong antidrug laws that are criminal. In this bill, though, is a moderation and a reasonable moderation of some severe penalties. It makes so much sense and I think is well constructed. I think the answer is this is a good bill. This is thoughtful and moves forward toward consistency and lessening somewhat the severity of the effects of overprosecution or even overincarceration, which this Legislature will be facing for the rest of the session. So I appreciate the question very much, Senator Williams. Thank you very much. [LB189]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: Thank you, Alan. I don't see any questions. Appreciate your testimony. [LB189]

ALAN PETERSON: Yes. [LB189]

SENATOR COASH: We've got letters of...that we'll make sure are all read in the record. Thank you. Okay, we'll take the next testifier in support of LB189. Come on up. [LB189]

BILL HAWKINS: (Exhibit 3) Thank you, Senators of the Judiciary Committee. My name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. I greatly appreciate Senator Davis stepping up and addressing this complicated and important issue that is facing our state and this nation in a modern and common-sense way. Having spent most of my life studying herbal medicines and how it relates to modern pharmaceuticals, I've spent a lot of time reading the Nebraska Controlled Substance Act. It's amazing language that's in it, and anybody who works with it is to be commended. This committee and this body of legislators is commended for working to keep the citizens of this great state of Nebraska safe. Senator Davis' bill really helps to clean up the language in the Controlled Substance Act. In addressing the cannabis issue with the edibles and concentrates, LB189 is the right direction in standardizing the enforcement of these products of the cannabis plant. I had a couple handouts that I don't have with it. One was a government study on the toxicity of cannabis that I've discussed with some of these members but I will get to you. It is approximately ten pounds of concentrated hashish consumed in one instant or one sitting is a approximate toxic dose of this plant. We're dealing with a lot of other issues in this state and so it is important that we look at just where this plant is. The other was a group of polls, national polls that addresses the safety of certain items. It was tobacco, alcohol, cannabis, and then sugar. Cannabis was the last at 8 percent; 15 percent of the people felt that sugar was more harmful to the health of our people. I will get those polls to each of the senators so they can look at that. These concentrates and edibles have been safely used for centuries around the world and in this country. It doesn't make economic or moral sense to continue to waste our resources to keep locking up people and especially young adults for nonviolent crimes. There are a lot more toxic and harmful substances that we need to address as a society than this beneficial plant. And the synthetics and especially methamphetamine is something that I commend you for addressing and trying to straighten out. Again, thank you for addressing this important issue and your willingness to serve the people of Nebraska. I'm here at any time to answer any questions you might have. [LB189]

SENATOR COASH: All right. Thanks, Bill. I don't see any questions. Thanks for... [LB189]

BILL HAWKINS: Thank you. [LB189]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: ...sticking it out all day. Seen you back there. Any other testifiers in support of LB189? All right, seeing none, we'll move to opposition. Come on up. You've been sitting there quite a while. [LB189]

KEVIN STUKENHOLTZ: So have you. [LB189]

SENATOR COASH: (Laugh) Thanks for coming in. [LB189]

KEVIN STUKENHOLTZ: Good afternoon, Chairman Seiler, members of the Judiciary Committee. My name is Kevin Stukenholtz, that's S-t-u-k-e-n-h-o-l-t-z. I'm currently the Saunders County Sheriff and I'm representing the Nebraska Sheriffs' Association here today. The Sheriffs' Association is opposed to LB189 as it's written. We are opposed to decreasing the penalty and changing the definition of hashish. Our state has seen a dramatic increase in the levels of THC in confiscated marijuana and edibles. Reducing the penalty for hashish and concentrated marijuana sends the wrong message and will likely lead to greater usage in our state. We believe this places our younger population at a greater risk who may unknowingly consume high levels of THC in edibles. In Colorado, during the year of 2013, 1,378 patients under the age of 12 were evaluated for unintentionally ingesting high levels of THC. The children were experiencing respiratory problems, extreme sleeping, poor balance, and many underwent a battery of tests to determine the cause. During the year 2009, 709 youth under the age of 12 were evaluated, and this was prior to the mass producing of THC content in the edibles. A recent experienced marijuana user advised me that he had consumed Colorado edibles. He later passed out for four hours and then was high the rest of the day. A number of these edibles are manufactured in the form of candy, cakes, and gummy bears, which leads to the possible ingestion by people who are unwitting of what the content is. And we'd just ask this committee to consider these factors and not move this bill forward. [LB189]

SENATOR COASH: All right. Thank you, Sheriff. Can I ask you, you know, when we went out to Ogallala, a lot of your peers out there had a lot to say about this issue. They're struggling with it. Their jails are full. Their budgets are being stretched. You know, it's kind of a different animal when you get that part of the state territory and how much they have to cover, you know, your peers. And I just want to ask and make it part of the record if you know. You're representing the Sheriffs' Association. But it's a big state, you know, the issues you work with. And you're from Sarpy County? [LB189]

KEVIN STUKENHOLTZ: Saunders County. [LB189]

SENATOR COASH: Saunders County and the Deuel County Sheriff are kind of...have different issues. Do you know, I mean, are...is the Sheriffs' Association...I mean, obviously, you're

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

representing them, but is there a dissenting opinion within your peer group or is this pretty much...would you think that your peers in the western end of the state would see this the same? [LB189]

KEVIN STUKENHOLTZ: Well, we had representatives present when we voted on this and I believe it was a unanimous vote. Not all counties were represented at that time, but had the opportunity to weigh in. [LB189]

SENATOR COASH: Okay. [LB189]

KEVIN STUKENHOLTZ: Each county may approach it a little differently, as a prosecuting attorney may approach it a little differently. But we think the law that we currently have, it is a good law. While there could be some modification there, we don't think this is the bill to do that. [LB189]

SENATOR COASH: If I...I was listening carefully to your testimony because I wanted to be clear on the nature of your opposition. Would it be fair to say that the majority of your opposition is based on taking what is a penalty here and moving it down and the effect that you think that might have on safety? [LB189]

KEVIN STUKENHOLTZ: Senator, that's correct. And the other concern is there's language in here that talks about the concentration and then prosecution based on that. And you've already heard testimony about the expense of that. So when we send in a sample to the State Patrol lab, for example, we get a yes or no, it contains THC or it does not. To have that quantified is going to be a whole nother process, and I'm not sure exactly how we'd go about that. So I think we'd be getting into an area where we maybe couldn't prosecute if we didn't have what the concentration level was. [LB189]

SENATOR COASH: Okay. Well, we appreciate you hanging out today. Senator Williams has a question. [LB189]

SENATOR WILLIAMS: I have a question on that last comment that you made, but I think I will reserve it to Senator Davis. You're going to close on this, aren't you? I'd like him to address the concentration issue and how that is really defined in the bill. Second and last question I would have is my question about, from your perspective as a sheriff across the state in your association, what is happening to the perception of marijuana use in our state? [LB189]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

KEVIN STUKENHOLTZ: Well, the...I don't know if it's the perception, but there's a high percentage of people that are traveling to Colorado because of the dynamics there, consuming and partying there, and then bringing it back. And as they bring it back, it has much higher levels of THC than the normal marijuana that they would normally be exposed to here in the state. [LB189]

SENATOR WILLIAMS: Thank you. [LB189]

SENATOR COASH: Thank you, Sheriff. I don't see any other questions. Thank you for... [LB189]

KEVIN STUKENHOLTZ: Thanks for your time. [LB189]

SENATOR COASH: ...sitting here all day and waiting for your turn. We appreciate your testimony. Is there anybody else here to testify in opposition of LB189? (See also Exhibit 4) Okay, seeing none, is there anybody here to testify in a neutral capacity on LB189? Seeing none, Senator Davis, you are recognized to close. [LB189]

SENATOR DAVIS: Thank you, Chairman Coash. I know you guys have had a long day. And it was long in Revenue, too, so it is the way it goes. I really appreciate the testimony of those who came. I think I understand the sheriff's concern, but I think it's important for me to address the issue that we heard in Ogallala, specifically, and to talk about the definition. So we handed out to you, I believe in your bill book, current definitions and LB189 terms and definitions, and if you would go to that page, if everybody can find that. So there's a table of six boxes, and we'll go to the top one and it talks about current definitions and LB189 definitions. So I actually think one of the things we're doing is giving law enforcement the ability to arrest. I think that the question of the content is...was problematic for sheriffs out in the western part of the state and I was trying to find Sheriff Hebbert's statement, you know, from...about the chocolate cake and I can only find this part of it. It was earlier. But he says, "Under the marijuana laws, and I'll read specifically from the book here, any person knowingly or intentionally possessing marijuana weighing one ounce or less or any substance containing a quantifiable amount of the substance, chemicals, or compounds, for the first offense be guilty of an infraction. So the candies, I don't care how much of it you have, according to state law, it's a first offense, that's an infraction. So I told Ms. McGill, you could have a five-pound chocolate cake here, the entire thing is laced with marijuana, that's an infraction. That's a \$300 fine." So partly as a result of that, we tried to define these definitions, but I don't want to increase the penalties because I don't think that's a good idea. So anyway, if you go to that first box, the current definitions are described there and you can see that it talks about mixture, compound, or other substance which contains 10 percent or more by weight of tetrahydrocannabinols. That seemed to me to be the hang-up that we heard in

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

the west, was, you know, I don't know how much that is, I'm going to have to send it to the lab, it's going to cost us money and it's going to take six months to get that done. So we developed a new definition for marijuana concentrate, which we tried to just incorporate... [LB189]

SENATOR COASH: Uh-huh. [LB189]

SENATOR DAVIS: ...the entire thing. [LB189]

SENATOR COASH: Yeah. I think, Senator Davis, if I can help you out here, I mean what the sheriff was saying, we don't want to test to find out how much is in there. The current definition has a percentage in there. [LB189]

SENATOR DAVIS: Right. [LB189]

SENATOR COASH: The definition you're proposing just says, hey, if it's in there, here it is. [LB189]

SENATOR DAVIS: Right. [LB189]

SENATOR COASH: Okay. So we'll get that clear in the record. I wouldn't have been as versed in this had I not sat through those several hours that we spent with county attorneys and law enforcement and everybody out west who came to talk to us about this. So it looks like you've got a little bit of education to do with maybe the sheriffs a little bit, make sure they understand exactly what we're trying to do. And I certainly respect their opinion that they don't want to decriminalize something but I guess what I'm seeing is we're not going up or down. We're just kind of balancing things out so that there can be some consistent application in the law. [LB189]

SENATOR DAVIS: Right. In some respects, we're helping them by defining what they can arrest for. Because I think if someone were to take an arrest to court and had a good attorney, the case would probably get thrown out because nobody could say whether it was 10 percent or not. [LB189]

SENATOR COASH: Right. [LB189]

SENATOR DAVIS: So we're clarifying that. With regard to the issue of the felony and what's going on in Colorado, let's just remember a lot of these people are going through the state. They don't know what our laws are so they're not going to know that it's a felony. And most of the kids

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

in Gothenburg aren't going to know it's a felony offense until they get arrested. So I think it's helpful to have a step into the process. There is one other thing I wanted to touch on, which was the jail time issue, and that is in the bill on page 47 at the top. So I want you to know the change that we made so that it's here and it's discussed in front of the committee and everybody is aware of it. [LB189]

SENATOR PANSING BROOKS: What page? [LB189]

SENATOR COASH: 42? [LB189]

SENATOR DAVIS: Page 47. [LB189]

SENATOR COASH: 47. [LB189]

SENATOR DAVIS: So we added...we added the term "may." So in the top, "For the third and all subsequent offenses, be guilty of a Class IIIA misdemeanor, receive a citation, and be fined \$500 and may be imprisoned not to exceed seven days," rather than...so we added that word "may," giving the judge discretion to make that call as to whether he wanted incarceration or not. I thought that was a helpful thing to add into the bill in light of what we hear about prison costs and incarceration rates across the state, especially in the western part of the state. But I hadn't touched on that earlier and I wanted to hit it now. Any further questions? [LB189]

SENATOR COASH: Thank you, Senator Davis. I don't see any other questions. Oh, excuse me. Senator Chambers does. [LB189]

SENATOR CHAMBERS: Just so the record will indicate that I did stay for the whole hearing. This problem is with us now no matter what any of us say or want. Something has to be done. I think the approach you're taking is probably the most feasible. We don't know what the best thing would be. The problem has so many ramifications that nothing neat and tidy can be done legislatively at all. We have seen, and the federal government, which led us into harsher sentences and mandatory minimums, is now acknowledging that was a failed system. The worst mistake we could make is having a knee-jerk reaction toward this, as was the case with crack cocaine, where they said it's 100 times worse than powder cocaine. And that took us right down into the rabbit hole and we're not out of it, but we're trying to get out of it. To do the same thing would be, as they say, quoting Einstein, the definition of insanity. You're going to do the same thing over and over and expect a different result. I saw a movie, and I really liked it but I didn't like the outcome, but no matter how many times I watched it, and I watched it several times, it still ends the same way. And I know it's going to end that way, but you hope against hope. In this

situation, we may find out, as time goes on, that there was a different way but that doesn't mean it was a better way. So with the light that we have, with what we have to work with, we can only do what we consider to be the best that we can. We're not going to stop the substances from being used. We're not going to stop them from coming into this state. So I think we have to look at the side effects; what will happen to the young people that we all say that we're concerned about. And if I'm detecting accurately what I'm hearing, people are finally beginning to say that it's not enough to tell people we told you we're going to throw the book at you if you did it, and now, regardless of the ultimate outcome, we're going to throw the book. That's not the approach we're taking. Something will be done to show that this is disapproved. We can try to use as much education approachments as possible to try to persuade people not to do it, but they're going to do it. So I don't want us to put into the law the things that will ruin a person's life. And I've seen where older people in politics, even President Obama, will say there are things that I did as a young person; I'm not young anymore; I'm not that person anymore; in fact, now I'm the President of the United States. Some people don't like him. They think he shouldn't be President. That's not what I'm talking about. I'm saying that we should not brand a child for his or her whole life based on what is done while that person is a child. Children do what children do. And even if they do things that adults do, they don't do it with the same motivation, the same malice, if it's a bad thing. They don't have the experiential background that we have, the understanding we have. So the depth that might be inherent in what we do is never involved in what they do. Everything is shallow. Everything is superficial. Everything is right now for the moment, I want gratification, I want to feel good now. You're going to have a headache tomorrow. Well, I'll deal with that tomorrow but right now, party time, let's "par-tay." And the preacher can say don't do it, everybody, but the young person is going to do what the young person is going to do. We have to acknowledge that we know that. We're not going to make them do everything we want them to do. And sometimes to us they're our conscience. So the approach that you're taking is one that I'm going to support. This session something is going to be done. I don't want harsher punishments. And maybe what I ought to ask these counties, if you are going to throw the book at these people, young or old, every day they serve is going to be in the county jail of the county where they are arrested and prosecuted. And if you've got a prosecutor who wants to throw the book, then they're going to throw the effects of it in your county jail, not in the state penitentiary. They're not going to be state prisoners. The state is not going to take them, the state is not going to pay for them, and the state is not going to reimburse you. So if you're a sheriff, think about your budget. And if your jail is overcrowded, then I'll be one of those who will take action to see that something is done about that jail and the ones who have done it, and the state is not going to bail them out. So while we have an opportunity to start, I think this is the best start and I'm in full support. Now there might be one or two things that I would suggest, but at this point I'm not even going to suggest anything. I want this bill to get out on the floor. I want it to get some momentum. And then, if we get far enough along and we can tweak something here and there without throwing the train off the track, that's one thing. But if it's a matter of all or nothing, I will take all of this bill. And whatever might need to be done in the future, I'll come back and I'll

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Transcriber's Office

Judiciary Committee
January 28, 2015

help do that. But, Senator Davis, you gave me that bill. That thing was so thick, it had words that I can't pronounce, I'm not going to try to pronounce them. (Laughter) So all I did was focused on the underlying material, what you told me your intent is. This is one of those things I'm accepting now to some degree on faith. And where the alphabetization and, you know, changes in definitions occur, that doesn't bother me that much. So I'm on board with you. [LB189]

SENATOR DAVIS: Thank you, Senator Chambers. [LB189]

SENATOR COASH: Thank you, Senator Chambers. I don't see any other questions. [LB189]

SENATOR DAVIS: Thank you. [LB189]

SENATOR COASH: Thank you, Senator Davis. Okay, Senator Mello. [LB189]

SENATOR CHAMBERS: I thought he was still gone. [LB167]

SENATOR WILLIAMS: Five minutes. [LB167]

SENATOR COASH: Here he is. Senator Mello, LB167. [LB167]

SENATOR MELLO: Good evening, Vice Chairman Coash, members of the Judiciary Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o. I represent the 5th Legislative District in south Omaha. [LB167]

SENATOR CHAMBERS: Senator Mello, before you start, does this kind of remind you of LR424 hearings? So get in that mind-set and we'll be okay. [LB167]

SENATOR MELLO: (Exhibits 1-3) (Laugh) Some late-night hearings in the Judiciary Committee is always fun. In 2009, the Nebraska Legislature passed LB63, a comprehensive crime piece of legislation that created the Office of Violence Prevention under the Nebraska Crime Commission. The intent of creating the Office of Violence Prevention was to provide assistance through grant funding for violence prevention and intervention programming and services to communities across the state. LB167, the bill before you today, seeks to make two modifications to the existing statutory operations of the Office of Violence Prevention. The first modification adds youth employment as a specific criteria that entities, both nonprofit and governmental, can apply for through the office's annual grant-funding process. The second modification adds a new reporting requirement for the Office of Violence Prevention to provide

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

an annual report to the Nebraska Legislature on the status of the office and the outcomes from its administered grant programs. Currently, they are not required to submit any documentation or reports to the Legislature. This added measure of oversight will ensure that the Legislature is informed annually as to the outcomes of the grant-funding program. The Crime Commission has estimated there is no fiscal impact with either one of these modifications in LB167. The serious issue of gang and gun violence that's been spotlighted over the last few years with some high-profile cases in the Omaha area is not lost on any of us. While LB167 is far from an all-encompassing approach to addressing the ongoing challenges of violent crime in Omaha and other communities across the state, others behind me will also testify to the proven crime prevention models of subsidized youth employment that has helped reduce violence during those summer months when teenagers are not in school and have little opportunity for gainful employment. The committee should have also received letters of support from members of the Omaha City Council, the Empowerment Network, and Omaha 360. Thank you for your time, and I'd be happy to answer any questions you may have. [LB167]

SENATOR COASH: All right. Thank you, Senator Mello. And I want to start. I'm really glad you brought this bill. We put this Office of Violence Prevention in I think our first year in the Legislature, and I...since then, I have to tell you, I've tried to look for what kind of outcomes we got out of this office and...or even who is running it. I mean, our former colleague, Senator Friend, ran it for awhile. But after that, I lost total track of who was running it and what they were doing. And it seemed to...you know, in hindsight, 20/20, I'm sitting here seven years later and looking back and feeling like we did something good, seven years, and then now saying, well, did we do anything good? And so I have to be honest with you, I brought a...I had a bill drafted to eliminate the Office of Violence Prevention because I thought, if I can't figure out what they're doing, they must not be doing anything. So I figured that would be a way to get them to deliver. But I changed my mind on that. Can you tell me, as Chair of the Appropriations (Committee), what...how much money are we sticking into this office a year? [LB167]

SENATOR MELLO: Roughly, give or take, the...and that's a good question, Senator Coash, on multiple fronts of both your statement and the question you asked...roughly is about 100 and...a little less than \$150,000 in operations for the Office of Violence Prevention. Essentially, it's enough operations for one staff member, the director of the office, to be able to provide, obviously, some office assistance within the Crime Commission, travel, other components of a standard agency budget, and then \$350,000 in aid that's part of their annual grant-funding program that they give out every year. Just to give a little... [LB167]

SENATOR COASH: So--hold on--that \$350,000, is that state funds that they give out? [LB167]

SENATOR MELLO: Yes. [LB167]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: So we're funding the office at about \$150,000, plus we're appropriating \$350,000 that they have discretion over...not...and you're adding some more discretion, the youth employment, I get that,... [LB167]

SENATOR MELLO: Yes. [LB167]

SENATOR COASH: ...to different entities that might curb violence? [LB167]

SENATOR MELLO: Correct. [LB167]

SENATOR COASH: Okay. [LB167]

SENATOR MELLO: And they have, without getting too wonky in the statutes, there is an advisory council that's appointed from all three congressional districts, representatives appointed by the Governor to serve as an advisory council for the Office of Violence Prevention, that actually help administer the grant programs, review grant applications. That council is the one that makes the recommendation to where the grants go, not solely the one director who is employed does not make the sole decision, so to speak, of where grant dollars go. [LB167]

SENATOR COASH: So have you had any luck trying to figure out what kind of outcomes we're getting out of this office? [LB167]

SENATOR MELLO: You know what, I looked through my material and I've got no problem forwarding on material I've received from the office. I became more interested in this issue over the summer just in the sense that primarily, in areas of...well, it's Senator Chambers' portion of Omaha and my portion of Omaha on the eastern part of the city. The Office of Violence Prevention, under its multiple directors, have tried to be fairly engaged with community efforts in regards to violent crime and intervention. And part of it was just trying to find...I don't want to...I take a little, I guess...I take a lot of time over the interim evaluating our programs in the sense of reporting mechanisms back as part of the appropriations process. And this was one that, when we created this office in 2009, for whatever reason the case, we didn't put a reporting requirement, so to speak, back to the Legislature. And so I simply contacted Chris Harris, who is the director now, in the Office of Violence Prevention. They had sent me kind of a...multiple documents, and I'm more than willing to forward to the committee to review also, of where that grant funding has gone over the last six years, different...obviously, there are organizations that receive that grant funding, as well as organizations who applied and didn't receive the grant funding. They also have an annual...Director Harris also gives kind of an...he gives a report to the Crime Commission director as part of their internal operations, so to speak, within the Crime

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

Commission also. And so I've got some other added documentation I can forward on to the committee to evaluate. It was the same material that I was looking for to find out how they're doing and kind of what can be done to maybe improve their outcomes and/or appropriate more money somewhere down the road. [LB167]

SENATOR COASH: Do you think we're getting our bang for our buck for half a million dollars from this? [LB167]

SENATOR MELLO: Well, I think one of the letters from one of the supporters you would see wants us to appropriate a considerable amount more money to violence prevention/intervention, in part because gun violence is a serious crime in east Omaha. It's a serious issue and an epidemic and I don't disagree in the sense that the state needs to consider playing a larger role as a partner in regards to dealing with gun-related crimes in where we know are hot spots in our state as relates to violent crime. But I think to some extent I would be remiss to not say this office has had multiple directors over the six years that I've been in the Legislature. It started off with former Senator Mike Friend, who was the director for about a year, year and a half, and then another gentleman took over, a gentleman named James Wright, who was the director for about a year, a little more than a year. Then, after he left, it sat open for awhile and now Chris Harris... [LB167]

SENATOR COASH: Yeah, I've tried to call and every...I mean, oh, he's not the director anymore. [LB167]

SENATOR MELLO: And I think that's part of...I think part of the challenge a little bit that the office had was, to be perfectly candid, when we created this office in 2009, we didn't fund it with General Fund dollars. In part, we were in the midst of a great recession, but it was a priority for the Legislature at the time to see a designated area of state government focus on violent crime prevention. So we funded it with various cash funds from the Supreme Court and the Crime Commission roughly our...roughly my first four years, our first four years in the Legislature. Governor Heineman two years ago in his budget proposal--and ultimately, the Legislature also included in our budget proposal--transitioned all of the Office of Violence Prevention to be a General Funded department after...in 2013. [LB167]

SENATOR COASH: The Governor appoints the director? Is that true? [LB167]

SENATOR MELLO: The director is actually hired by the director of the Crime Commission. [LB167]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR COASH: Okay. Okay, so the director of the Crime Commission is...I'm just trying to get the hierarchy (inaudible)... [LB167]

SENATOR MELLO: But ultimately, the Governor has...the Governor can ultimately hire that person if that's your mainline question. [LB167]

SENATOR COASH: Okay. All right. I don't have any other questions. Thanks for bringing this. Senator Chambers. [LB167]

SENATOR CHAMBERS: Are we going to get some specific documentation on dollar amounts, where they went, the names of organizations, because there are a lot of groups in my community, everywhere the camera is, that's where they are, nothing is...nothing exists to show for anything they've done. They won't even talk about the need to go after the source of the guns. They don't want to offend the police. They don't want to offend the mayor. They're at everything the mayor is attending. And I'm not saying they're absolutely worthless, because nothing is absolutely anything, but some are close. But before I cast that judgment, I'm going to look at the information you're given. And I think what we have to do, not just so that money is not wasted, so a false impression is not created that something is being done to the address the problem in my community and your community when in reality that may not be the case at all. So I'm holding my judgment in abeyance and your bill kind of helped me do that because it's going to give us what we need more than anything else, if I understand it, and that's information. [LB167]

SENATOR MELLO: Yes. [LB167]

SENATOR CHAMBERS: Then until we get the information, I'm just going to be cool and be quiet as much as I can. [LB167]

SENATOR MELLO: And I do not...and I will make sure my office gets the...all the Judiciary Committee members the material I received from the office in regards to past grantees and those who apply for that funding. [LB167]

SENATOR CHAMBERS: Okay. [LB167]

SENATOR COASH: Very good. Okay. Any other questions for Senator Mello? I have one. Will the director come in front of the Appropriations (Committee) this year? [LB167]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR MELLO: We actually--the Appropriations Committee--did request, because we have so many new members on the Appropriations Committee--we had a little bit of a committee discussion about this for new members who are unaware of the office and why the office was created--we requested Director Harris to come in front of the Appropriations Committee and just give kind of a general overview of what the office does, what...given some outcomes that they've been...they've achieved over the last year, over the last biennial budget, and try to provide some education to new legislators. [LB167]

SENATOR COASH: You might send that director to meet the members of this committee, because in seven years I haven't met the director and I know it's changed over. [LB167]

SENATOR PANSING BROOKS: Good idea. [LB167]

SENATOR COASH: Thank you. [LB167]

SENATOR MELLO: Okay. [LB167]

SENATOR COASH: I don't see any other questions. Thanks. Is anybody here to testify in support of LB167? [LB167]

GREG GONZALEZ: Good evening again. Greg Gonzalez, Omaha Police. I have...I can answer a few of those questions for the Senator Mello. Obviously, the Omaha Police Department certainly supports LB167. I've had some limited exposure to the directors. But I will tell you on the record that we do appreciate the funding that the city of Omaha has received in relation to the office. Over the past four years, it looks like Omaha/Douglas County has benefited from over \$600,000 of the funding. So based on recent accounts, it's probably the majority of where that funding is going. I do know the...like Senator Mello had mentioned, Empowerment Network, Impact One, there's a couple nonprofit organizations in Douglas County that are benefiting from those funds. Firsthand knowledge myself though, I know that our north Omaha and our south Omaha gang prevention specialists are funded out of those monies. And so when we measure success, I can tell you that we've had a lot of great success stories that we can put on paper where those gang prevention specialists have benefited and supported the Omaha Police Department. So as far as the detailed report, I'll let you wait for that on exactly where all those monies are spent. But on behalf of the city of Omaha and the police department, we certainly support LB167 as it relates to improving those relationships and serving those at-risk youth in the city of Omaha, so...answer any questions you have. [LB167]

SENATOR COASH: All right. Thank you. I have a question. [LB167]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: I have...oh, go ahead, go ahead. [LB167]

SENATOR COASH: Thank you. Wait your turn. These two positions you said that were funded,... [LB167]

GREG GONZALEZ: Yep. [LB167]

SENATOR COASH: ...are they civilian positions or are they officers? [LB167]

GREG GONZALEZ: They're actually civilian positions. The north Omaha gang prevention specialists, actually, both of them were former gang members that are now counselors in that arena that have been instrumental in working hand to hand with our gang unit and police officers to actually really facilitate a lot of the outreach, the gang intervention prevention in north and south of Dodge. So they are civilians. [LB167]

SENATOR COASH: Okay, so they're civilians. [LB167]

GREG GONZALEZ: Yep. [LB167]

SENATOR COASH: So the monies are paid for their salary. I mean they...are they full-time employees? Are they on call as you need them? [LB167]

GREG GONZALEZ: They're contracted employees: don't pay for fringe benefits but it pays for their salaries. [LB167]

SENATOR COASH: They're contracted, okay. All right, thank you. Senator Chambers. [LB167]

SENATOR CHAMBERS: I'm going to wait until I get that information. But one thing I can't understand... [LB167]

SENATOR WILLIAMS: You promised. (Laughter) [LB167]

SENATOR CHAMBERS: ...is why the head of the police union went on television with a bullet and held it up and said, Senator Ashford has failed this community, and tied him in with what's happening in my community. And people in my community don't know Senator Ashford. For the police union to do that showed how rotten and lowdown they are. And they're part of that network that put on another routine that showed a picture that they indicate of somebody at ISIS

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

about to behead somebody and tied Senator Ashford in with that, because they and the police were saying, since he's responsible for these crimes here, he can't protect us here, he won't protect us from ISIS. That's the lowdown stuff they did. And it created an uproar in our community and turned some people against the police who had not been against the police. And I didn't even try to take the time to explain that he's the police union, not representing the police department, because what he says represents the attitude of the police department. And I'm not blaming you, but you came up here. And you're talking about success stories. I want to see that information. They don't know these people that they're working with. They think that they're good. They're flunkies for the mayor, flunkies for the city, and they get their payoffs. And I'm not blaming a woman, because you cannot control what your children do. But one of their top operatives' son committed the two murders, huh? And do you think...well, let me put it like...I'm not...you didn't come...I'm not going to put you on the spot. [LB167]

GREG GONZALEZ: No, I know. [LB167]

SENATOR CHAMBERS: I don't even want to do that. Let me tell you this about us and our community. We know what our children are doing. Like any other families and parents, we can't make them do anything. But we know who they're associating with. And to pretend that I'm going to be out there talking all this mess about what our Impact One, our Empowerment Network is doing, and their children are what some of these kids look at and they say, don't tell me anything, your mama knows what we was doing and now she's going to play like you should be thrown under the bus because you did something bad, you didn't just come out of her womb yesterday, you've been living with her, she know what you been doing. That's why when they tell you about these success stories, I assure you that, if they were true, you'd see me at meetings, you'd see me participating. But they don't want me around and I don't want to be around. And there's no way for you to know personally because you're not...you haven't got time to investigate every agency or every group that you help. But before you be too glowing in your endorsement, it'd be best to say--and I'm not trying to tell you how to conduct your affairs--that from the reports that we have and what we can look at, we're prepared to say that there is something of value that can come out of this, instead of naming people and organizations and saying they're doing a great work, because I'm going to tell you this and I can be quoted: There are two of those people who would not be here alive today if it wasn't for me, and the police were not the ones who were going to kill them. Now I don't control gangs in north Omaha. I don't control anybody, anywhere. But sometimes, some of those young guys will listen to me. And if there's something I can say that will keep somebody alive, then I'll do it, even if I can't stand the person, because even if I hated somebody enough to say, kill them, which I don't, then the ones that...I don't turn people loose and tell them, do this or don't do it, and they listen to me. But let's say, if I could, then what am I going to do with the ones who would do something like that and then they get caught? I can't rescue them. I can't say that they ought to be given a break because they did something to somebody that I don't like. So again, I'm in that position where my...I have a foot in

different worlds. I'm protecting people who hate me that the white people love. But I don't dislike them so much that I want to see something bad happen to them, and I've been hoping against hope that they would find their way and start to insist on more than what they're insisting on, instead of photo opportunities, being called on to be the spokesperson for all of us. And you don't see any of them in the midst of the ones who are called the little gangsters having influence with them. But I can go anywhere I want to in Omaha. I'm like Fidel Castro told the President of the United States: I can go anywhere in Cuba in a T-shirt and you cannot ride through Harlem in a bulletproof limousine. I live on 19th and Binney. I drive up and down the street, not just to be driving up and down the street, but I go wherever I need to go and want to go. Something bad could happen to me. When you have young, irresponsible people, and bullets don't have names and addresses, as you well know, just like the cops are the ones who did the killing at the Wendy's operation, I'm sure their intent was not to kill a guy. But they killed him. So something could happen to me. I've been told that I'm trying to rescue mountain lions and if I go out there, a mountain lion might eat me up. And I don't deny that, but I respect them. And all I'm trying to get across here is that if, when I see this factual information and I think the money is going someplace where you're not going to get the results you should, I'm not going to be a snitch even against the "Toms" and the ones we call "Aunt Jemimas." I'm just going to say that, in my opinion, there could be a better expenditure of the money. And if there is someone who you can work with and you think they're doing some good, go ahead and work with them and get from them what you can, because we have to take what we can get where we can get it. And if I had a solution for the problems in my community, I would have put it in operation immediately. But I can tell you this: When young people have no self-respect, that self-image is negative, the only way you can get any notoriety is to do what people say are bad things. And whether you're white, black, Latino, Italian, but you're young and you're male, whatever you think is going to get you the attention of the women and the people who are supposed to be somebody, that's what you do, because that's kind of uppermost in your mind. Grown people forget what it was like when they were young and don't realize that basically the same things that motivated them motivate a lot of these young people. They have a different way of carrying it out. When I was growing up, if you didn't like somebody and you got in a fistfight, well, you might not throw one or two punches because, if you hit him on the head, then that incapacitates you. We didn't even think about going to get a knife to cut somebody. But now everybody is tough because everybody can get a gun. And some of the killings--don't take my word for it--are not the intentional killings in the sense that I want to kill you graveyard dead, but I want to show you who I am, what I am; and if you do something to one of mine, I'm going to do something to you. So it's all this kind of stuff that young people do, and some of the spokespersons are talking up here to you all. They're talking to college professors, they're talking to politicians, they're talking to the mayor, they're talking to the media, and that's why they can't reach any of the young people. The young people don't read the editorials that are in the World-Herald. They don't read the World-Herald. They don't watch television news. They don't...I'm an old man and I've been talking like an old man. But I once was young, and I don't forget what it meant. And I don't say I

know everything that's going on in my community. But get a directory and look at my address and look at the address of all these people that you've named and all those working with the mayor. Now I don't say it's impossible to have a problem on 1st Street--this is just by way of example--and that somebody who lives out on 250th can't understand what's happening on 1st Street, because they might drive on 5th Street and can look out their car window and see 1st Street. But there's a difference between living in a community and saying, I talk to people in the community. There could be things going on right around the corner from me that I don't know about, so I don't want anybody to get the impression that I'm the all-seeing eye, I'm the all-knowing. But why has nobody, if they're all gangsters, killed me or vandalized my car or burned down my house? And if I'm not afraid to live around my own people, why are these so-called leaders afraid and unwilling? This last thing: There was a book written by a man named Wil Haygood. And he worked with the Washington Post and he did a biography on Sugar Ray Robinson, a fighter. I think they were called Fists of Thunder (sic) or something. And he wrote about Jake LaMotta, because there were some epic battles between Jake LaMotta and Sugar Ray Robinson. And Jake LaMotta, you don't get sugar diabetes from eating sugar, but he said in his later years that he fought Sugar Ray Robinson so many times and got so many "whoopings" from him that Sugar Ray gave him sugar diabetes. And they had that kind of respect that old combatants have. But in writing about Jake LaMotta, he did some research, and LaMotta was explaining that his father came from a part of Italy where they were looked down on, even in Italy. And when they came to this country, it was very bad for Italians. And he said, when he went to school, young Jake was bullied by people. And he came home crying one day and his father asked him, Jake, what are you crying about? And Jake told him. He said, if you come home and you let one of those--talking about white people, but I don't use those...that language--send you home crying again, you're going to get a whipping from me worse than that, but I'll tell you what I'm going to do, I'm going to give you something to equalize everything. And he gave him an ice pick. And Jake LaMotta said--and this is what he said as a man, words to this effect--that's the first time I felt like I had power, because it's the first time I ever went anywhere and people were afraid of me, they were afraid of my ice pick. That's what they turned him into. So these other people, the hoity-toity people whose kids might have been bullying him and calling him all those names they called Italians, didn't know that their children helped make Jake LaMotta the ice pick wielder. But nobody bothered him again. They don't use ice picks in my community. They use guns, and the guns are not directed against the ones who did it to them and put them in that frame of mind. It's directed at those who live closest to them. And before you all swallow this stuff about black-on-black crime, crimes are committed by people against those they live around. So Jews commit more crimes against Jews than other people commit against Jews. Italians commit crimes against Italians. White people commit crimes against white people. Black people commit crimes against black people. Native Americans commit crimes against Native Americans. Latinos commit crimes against Latinos. And each race commits more crimes against their own group than they do anybody else. But what do you hear: black-on-black crime. That's why I'm telling you all about it. Everything becomes different when it applies to us. I have

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Transcriber's Office

Judiciary Committee
January 28, 2015

to stay sane. I still have to come down here and try to function as if I am sane. And tomorrow, I'm going to have to do some hard drudge work that my heart is not in. But they're issues that apply more to other people than to my community. What I do down here is not going to help my community. It might help other people and I hope it does. But I can't get the help for my community that we need. It's available, but I can't tap into it because nobody listens. And they can refuse to listen to me by saying that I'm crazy, just like down here in this Legislature. They can refuse to listen to me by saying, he's too radical, he's too this, he's too that, but they've all got a reason not to listen. So I listen to music and there's a song Billy Joel sang. He say, you may be right, I may be crazy, but it just might be a lunatic you're looking for, turn out the light, too late to save me, you may be right, you may be wrong, for all I know, but you may be right. All that stuff is based on certain realities that are distilled and become the lyrics of songs that ordinary people sing and like because of the beat, the melody, and maybe the rhythm. But people who live life listen to the lyrics and alter them somewhat. And this last thing, then I'm going to wrap it up with a comment. He sings another one, and I've talked to you about it: Come on, Virginia, show me a sign, send me a signal, I'll throw you a line. But I have him sing in one place: You can count on me better than you can count on your rosary. That's not what he said, but that's the point. Your rosary is not it, but you can count on me. So you all can discount everything that I'm saying, you can ignore it, and I'm not going to be disheartened and quit. I just know I have a hard job and I'm going to do the best that I can to get it done. And one thing I hate. One day it's going to come and I'm going to be able to say I told you. And you know what that day is going to be? When the guns start bleeding into the white community and the gun violence starts being turned in that direction. If you find young, black guys walking around with their pants hanging down, what do you find with white kids? Doing the same thing, and then they begin to manufacture pants like that. Young black guys wear their hair a certain way. Young white guys do the best they can to become that way in their appearance. Pretty soon, some of your young people are going to start toting guns, and that gun is going to make him feel like that ice pick made Jake LaMotta feel. And then somebody else is going to pick up on it. But when the guns break out in white communities, they're going to find out the source of them. And in the same way they could stop Cuban cigars from coming into America, they'll stop the guns. But I wish you all would understand that we know the police can't do everything. But there are things I believe they can do that they're not. We want to try to focus your attention on the causes of problems, improving the schools, the tokenism, the puffing up of grades so you can say we got kids going to the grade they need to go to, we're graduating them. And they can't read; they can't spell; history is not taught; the kind of subjects that could make your mind be engaged and make you feel good about yourself are not presented. And no teacher will tell a kid who acts up in class, we're going to stop and understand this, all these others will tell you to do it and you like the attention. But I want him to know that when somebody goes to the office, it's him alone and nobody will walk to the office with him and say, I laughed, I encouraged him to do it. Then, when you're out of school or you're standing in front of a judge, the rest of them who egged you on are going to be still sitting in the classroom, behaving, not acting like a fool, are going to graduate, and you're

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Judiciary Committee
January 28, 2015

going to graduate from this youth facility to someplace in Kearney where white people hate you and they're going to misuse you. Then you're going to the penitentiary and they're going to do you just like they did Nikko Jenkins and you're going to come out just like him. They need to hear things from those of us that they know have lived in our community and who understand not everything, but a lot more than some of these people who have forced it on them by the well-intentioned people outside our community. The only reason I'm going into all of this is because we're talking about a program which might be sending money that could do good work. But I want us to follow the first principal of economics now, that you don't send good money after bad. But because I admit that there's a great deal of bitterness that I feel, I want to get that information. And if the information is different from what I think and it carries me down a different road, then I'll walk a different road. But I want you all to be aware of what my attitudes are at the outset. So I'm going to look at the information with a microscopic eye, then I'm going to try to be as objective and fair as I can, because if these people are doing something that's helpful, it doesn't have to be as much as I want. That will never happen. But something beats nothing. And maybe I am so jaundiced in the way I look at them, that I'm overlooking something that is very good that they're doing. But if they are and I can't work with them, I'll get out of their way, at least. And I would try to send something their way from the state if I'm able to do it, but I won't just carte blanche say, give them a lot of money, when I see who is getting it. And this guy, he and I are going to have some conversations. A long time ago, last year, we first met each other and I liked him. He might have liked me as, you know, a grandfatherly kind of guy. But I think he's got some good points. He has some good understanding. And with your orientation as a cop, you know good and well we're not going to see everything eye to eye. But when men respect each other, they can get around all that other stuff. And when there are big issues that might transcend their differences, then there can be a total submerging of those differences and a joining of forces. But if we ever work together, I won't tell on you and don't you tell on me... [LB167]

GREG GONZALEZ: Fair enough. [LB167]

SENATOR CHAMBERS: ...because I'm not a snitch to my community and you're not a traitor to the police. [LB167]

GREG GONZALEZ: That's right. [LB167]

SENATOR CHAMBERS: We're two men trying to do the best we can. [LB167]

GREG GONZALEZ: That's right. [LB167]

SENATOR COASH: Let's... [LB167]

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Transcriber's Office

Judiciary Committee
January 28, 2015

SENATOR CHAMBERS: Okay. [LB167]

SENATOR COASH: Thank you, Senator Chambers. Any other questions? Seeing none, we appreciate it. [LB167]

GREG GONZALEZ: Okay. Thank you. Have a good night. [LB167]

SENATOR COASH: Is there any other testimony in support of LB167? Okay, any testimony... [LB167]

SENATOR CHAMBERS: Now all that's not on the record, is it? [LB167]

SENATOR COASH: Oh, yeah. [LB167]

SENATOR CHAMBERS: You know I know it is (inaudible). [LB167]

SENATOR COASH: LB167, anybody here to testify in opposition? Anybody neutral? Senator Mello. God bless you. [LB167]

SENATOR PANSING BROOKS: Oh, wow. [LB167]

SENATOR COASH: Senator Mello waives. [LB167]

SENATOR CHAMBERS: If I didn't (inaudible) I wouldn't have talked that long. I knew nobody else was going to say anything, so it was okay for me to take the time. [LB167]

SENATOR COASH: LB167 is closed. Thank you. [LB167]