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Judiciary Committee
March 22, 2017

[LB366 LB446 LB560 LB593 LR26]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 22, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB366, LB593, LB560, LB446, and LR26. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: None.

SENATOR EBKE: Good afternoon, ladies and gentlemen. Welcome to the Judiciary Committee. My name is Laura Ebke. I'm from Crete, representing Legislative District 32, and I chair this committee. I'd like to start off by having my colleagues who are present go ahead and introduce themselves, starting with Senator Baker.

SENATOR BAKER: Senator Roy Baker, District 30, little bit of Lincoln, southern Lancaster County, and all of Gage County.

SENATOR KRIST: Bob Krist, District 10.

SENATOR HALLORAN: Steve Halloran, everything west of Lincoln and Omaha.

SENATOR EBKE: Oh.

SENATOR HALLORAN: District 33. I'm sorry. District 33: Adams County, southern Hall County, western Hall County.

SENATOR EBKE: Okay. The tardy ones are showing up here.

SENATOR PANSING BROOKS: What?

SENATOR EBKE: You can introduce yourself.

SENATOR PANSING BROOKS: Oh. Patty Pansing Brooks, Legislative District 28, right where we're sitting.

SENATOR CHAMBERS: Ernie Chambers, District 11, Omaha, Nebraska.

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SENATOR EBKE: Adam.

SENATOR MORFELD: Senator Adam Morfeld, District 46, northeast Lincoln.

SENATOR EBKE: Do we see Senator Hansen anywhere? I'm sure he'll be here.

SENATOR MORFELD: He's on his way.

SENATOR EBKE: Okay, he's on his way. So assisting the committee today are Laurie Vollertsen, our committee clerk; Brent Smoyer, who is one of our two legal counsels. The committee pages today are Claire and Kaylee, who are students at the University of Nebraska. And they have somebody who is shadowing, and your name, first name?

SOPHIA CRUZ: Sophia Cruz.

SENATOR EBKE: Sophia, okay. And then on the table over there you will find some yellow testifier sheets. If you are planning on testifying today, please fill out and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There's also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. We'll begin testimony today with the introducer's opening statement. Following the opening we'll hear from proponents of the bill, then opponents, followed by those speaking in a neutral capacity. We'll finish with a closing statement by the introducer if he or she wishes to give one. We ask that when you begin your testimony you give us your first and last name and spell them for the record. If you're going to testify, I ask that you keep the on-deck chairs--we've got two on-deck chairs with the yellow...with the yellow markers there--filled so that we know how many left. If you have any handouts, please bring up at least 12 copies and give them to the page. If you don't have enough copies, the page can help make you some more. We will be using a light system today. We will be using a three-minute light system today because we have a number of very busy bills. When you begin your testimony, the light on the table in front of you will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. If senators have questions of you, they will ask. As a matter of committee policy, I'd like to remind everybody to turn off or silence your cell phones and other electronic devices. If you need to take a phone call, please step out in the hallway to do so. Senators and staff may be using their phones or computers here at the table in order to look things up or keep in contact with their staff. I also ask that verbal outbursts and applause are avoided. In other words, please don't. Such behavior slows things down and could also be cause for asking you to leave the room. One other thing: You may see people coming and going. There aren't too many committees still going on. We're bringing up the tail end here. But there are sometimes other meetings that senators have to go to for some period of time. So if people are

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coming and going, don't take it personally. Has nothing to do with what we are hearing but, rather, with other obligations. And with that, we will begin with LB366. Senator Halloran. [LB366]

SENATOR HALLORAN: Good afternoon, Chairperson Laura Ebke and members of the Judiciary Committee. For the record, my name is Steve Halloran, S-t-e-v-e H-a-l-l-o-r-a-n, and I represent the 33rd Legislative District. I'm here today to introduce LB366 to the committee for your consideration. As always, I intend to keep my remarks brief this afternoon, allowing for more time for individuals that follow me who are wholly more capable of answering your questions. I bring LB366 on the behalf of the Nebraska Board of Parole. LB366 will do...will primarily do five things: one, create Division of Parole Supervision; two, revise offender review schedule; three, create a statutory cash fund for receipt of grant funds; four, provide for confidentiality of parole records; and five, create consistency and uniformity in parole provisions specifically as it relates to leaving the state without permission from the Parole Board. Want to thank you for your time. And while I'm certainly willing to attempt to answer questions, they are more likely to be answered by those that are following me. [LB366]

SENATOR EBKE: Thank you, Senator Halloran. Senator Chambers. [LB366]

SENATOR CHAMBERS: And, Senator Halloran, if I have any questions, we're right next-door so I won't take up any time here. [LB366]

SENATOR HALLORAN: That would be great. You're welcome to stop in anytime. [LB366]

SENATOR EBKE: Any questions? Okay. First proponent. [LB366]

NICOLE MILLER: (Exhibit 1) Good afternoon, Chairman Ebke, committee members and staff. My name is Nicole Miller, N-i-c-o-l-e, Miller, M-i-l-l-e-r, and I am legal counsel for the Nebraska Board of Parole. You may recall that this is a new position that was created by 2015, LB598, and I have officially been in this position for one year. One of the first tasks I undertook was to examine the current statutes governing the Board of Parole. LB366 is the product of that examination and also discussions with the Board of Parole and Julie Micek, the director of supervision and services. I will not dissect the entire bill for you, as the section outline has been provided. I do want to highlight the more noteworthy aspects and then try to answer any questions you might have. And I'm not sure if you have the outline that I handed out yet, but I'm going to skip one, two, and three, because those are very self-explanatory. I'm going to, in light of the three-minute time limit, I'm going to skip to number four. This is: Address a current inconsistency in the law with respect to parole clients who leave the state without permission of the board. Currently, leaving the state without permission from the board is a technical violation

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under 83-1,119 and then also is a felony under 83-1,124. To resolve this inconsistency, a majority of the board felt that because the Council of State Governments recommended that such violations be considered technical, absent an absconding violation, the best way to resolve this inconsistency would be to follow the sanctions and incentive matrix for these types of violations, basically, having it not be a felony any longer. Under number five, there are three paragraphs. I'm going to skip paragraph one under subsection five because that's a historical context for what I'm bringing. And number five talks about changing the offender board review schedule to create efficiency needed as a result of the increased duties seen consequent to LB598 and also to seek creative ways for the board to assist in successful parole supervision. So right now, 20 years after 1986, LB1241 and LB1242, we're at a point where recordkeeping has (laugh) recordkeeping has come a long way. And originally, the offender review schedule was so that we could keep track of everyone who had a parole eligibility date and make sure that they were seen by the board. Because of the modern recordkeeping practices, the offender review schedule is now outdated. And we're trying to be more efficient with the board's time, so we're looking at trying to have parole-eligible people seen within three years of their parole eligibility and every year thereafter. The last point I wanted to quickly make is that the current statutes aren't very clear about what an indeterminate sentence...the distinction between an indeterminate sentence and a determinate sentence. And the Parole Board has historically seen those with determinate sentences, even though it's a one to one, where there's no real parole eligibility. We would like to clarify in the statute that parole...the Parole Board will see offenders who have parole eligibility with an indeterminate sentence. That lends itself to a parole supervision term. [LB366]

SENATOR EBKE: Have anything else you wanted to add? Go ahead. [LB366]

NICOLE MILLER: (Laugh) Well, I mean I could...since it's provided verbatim for you,... [LB366]

SENATOR EBKE: You've got lots. That's right. Okay. [LB366]

NICOLE MILLER: ...I don't need to add anything else as long as you guys will read it. (Laugh) [LB366]

SENATOR EBKE: Okay. Any...? Senator Krist. [LB366]

SENATOR KRIST: So define...basically this is a name change for the Parole Board. What in essence does changing Office of Parole Administration to Division of Parole Supervision, what is the intent and what is it a division of? [LB366]

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NICOLE MILLER: Sure. Well, I know Julie is going to speak to that a little bit more in depth. [LB366]

SENATOR KRIST: Okay. [LB366]

NICOLE MILLER: But just to sort of summarize it, it's basically so that we're in a new agency. We're a new entity, even though we were coming from Department of Corrections. So we want to kind of realign what we do with the name or our agency. And it's not changing the Board of Parole. It's just if it...changing the entity underneath the Board of Parole. [LB366]

SENATOR KRIST: Okay. So we still have the Board of Parole... [LB366]

NICOLE MILLER: Yes. [LB366]

SENATOR KRIST: ...as a separate agency and (inaudible) division... [LB366]

NICOLE MILLER: Yes, and underneath it would be the Division of Parole Supervision. [LB366]

SENATOR KRIST: Okay. [LB366]

NICOLE MILLER: Yes. [LB366]

SENATOR KRIST: All right. Great. Thanks. [LB366]

NICOLE MILLER: Uh-huh. [LB366]

SENATOR EBKE: Other questions? Senator Pansing Brooks, go ahead. [LB366]

SENATOR PANSING BROOKS: Could you explain a little bit more about the indeterminate sentence and determinate sentence and what it...you're just saying basically that if it's a determinate sentence you don't really have to do anything or what are you saying? [LB366]

NICOLE MILLER: Well, so you know under 2015 LB605, and then 2016 LB1094, those III, IIAs, and IV felonies, they are to be sentenced with a determinate sentence structure, meaning that there's no minimum and no maximum. It's just, you know, I don't like to use the word "flat,"

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but it's a specified number of years. Parole eligibility is determined based on the minimum/maximum structure, and currently it's somewhat unclear in the statutes whether the Parole Board needs to see those folks who have determinate sentence, maybe outside of the III, IIIAs, and IVs. We're talking IIs and I's. And sometimes judges will sentence someone, let's say, to a ten to ten. And technically the Parole Board should see those people but there's no parole supervision term unless they lose a lot of good time and in that moment then we would trigger that, a review schedule. [LB366]

SENATOR PANSING BROOKS: If what? When would trigger? [LB366]

NICOLE MILLER: If they lose a certain amount of good time, that would allow for a parole supervision term of more than a month, let's say, so that basically you extend out the minimum...I'm sorry, the maximum. The minimum stays the same. [LB366]

SENATOR PANSING BROOKS: Okay. So basically clearly you are saying that by issuing determinate sentences you guys don't have to...they won't come before the Parole Board. [LB366]

NICOLE MILLER: Right, the III, III... [LB366]

SENATOR PANSING BROOKS: That's a huge thing for people to understand. [LB366]

NICOLE MILLER: Right. [LB366]

SENATOR PANSING BROOKS: That's huge. [LB366]

NICOLE MILLER: Right. [LB366]

SENATOR PANSING BROOKS: And... [LB366]

NICOLE MILLER: For the IIIs, IIIAs, and IVs that are sentenced under LB605 and LB1094, they do not come before the board. In fact, statute provides there's no jurisdiction. [LB366]

SENATOR PANSING BROOKS: Okay. And that's why my first year here I brought the one-third rule back again to try to initiate Parole Board. Either you see the value of the Parole Board or you don't. And I thank you for coming,... [LB366]

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NICOLE MILLER: Yes. [LB366]

SENATOR PANSING BROOKS: ...because that really clarifies some things we need to do. [LB366]

NICOLE MILLER: Thank you. [LB366]

SENATOR EBKE: One other thing in terms of kind of clarification under your bullet point four, it's not a bullet point, number four,... [LB366]

NICOLE MILLER: Yeah, number four, yeah. [LB366]

SENATOR EBKE: ...yeah, and you talk about the majority of the board felt that because the Council of State Governments recommended, that you're referring back to the Justice Reinvestment process,... [LB366]

NICOLE MILLER: Yes. [LB366]

SENATOR EBKE: ...correct? [LB366]

NICOLE MILLER: Yes, ma'am. [LB366]

SENATOR EBKE: Okay. Okay. [LB366]

SENATOR PANSING BROOKS: Okay, I have one more question. Sorry. [LB366]

SENATOR EBKE: Okay, Senator. [LB366]

SENATOR PANSING BROOKS: Dr. Miller, could you please explain, I think I understand it, but the chart on the last page? [LB366]

NICOLE MILLER: Sure. And that was actually compiled by our data analyst, Jennifer Miller, and I'm Nicole, so it's kind of... [LB366]

SENATOR PANSING BROOKS: Oh, sorry. [LB366]

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NICOLE MILLER: No, that's okay. That happens within our own office on a daily basis. [LB366]

SENATOR PANSING BROOKS: You're both Miller. [LB366]

NICOLE MILLER: But in any event, what this chart represents is the number of reviews that the board conducts on people who are outside that three-year window before parole eligibility. And as you can see, it kind of fluctuates around that 10 to 14 percent. So that's 10 to 14 percent time spent on reviews that basically have no consequence. And I say that in that you know a lot of times these are waived but they still have to be recorded under the...in formal record. Other times it's an opportunity for an inmate or an offender to come before the board but the board has real...no real power to do anything at that point because they're well in advance of their parole eligibility date. So there's nothing really to be done other than, hi, how are you, it's nice to see you. And so what I'm saying is that that time could be better spent on other things like setting more parole hearings and working with our parole clients to see successful outcomes. [LB366]

SENATOR PANSING BROOKS: I see. Thank you. [LB366]

SENATOR EBKE: Any other questions? Okay. Thank you for being here. [LB366]

NICOLE MILLER: Thank you. [LB366]

SENATOR EBKE: Next proponent. [LB366]

JULIE MICEK: (Exhibit 2) Good afternoon, Chairman Ebke, committee members, members and staff. My name is Julie Micek, J-u-l-i-e M-i-c-e-k, and I'm the Parole Administrator for the Board of Parole. I'm here today to testify in support of LB366. I'd like to discuss a little specifically a few pieces of the proposed legislation that would impact Parole Administration. One piece of the proposed legislation would be to change the name designation from the Office of Parole Administration to the Division of Parole Supervision. This change in titles would allow us to align our current working title with our mission, and our mission is from...with the Board of Parole is to continue its research, understanding, and implementation of evidence-based approaches as it pertains to the release of clients who have been appropriately prepared for community supervision. The board is dedicated to maintaining public safety, reducing recidivism, and addressing the needs of victims, while integrating clients into society through a balance of best practice supervision and treatment strategies. By redesigning the Office of Parole Administration to the Division of Parole Supervision and retitling the Parole Administrator to the Director of Supervision, the board seeks to reinforce and better reflect the work being done to

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accomplish our mission. Since July 1, 2016, when the transition of Parole Administration from the Nebraska Department of Corrections occurred to the Board of Parole, the agency has been working strategically and with commitment to ensure that evidence-based practice is present in all layers of our organization. From our protocols to our trainings to our supervision strategies, we're committed to protecting the public while assisting clients with behavior change. We are currently seeing some positive trends by making a shift in supervision and case management strategies. Currently 88 percent of our parolees are employed, and services and programs have now become a cornerstone of our work. Thank you to Senator Halloran for introducing LB366 on behalf of the Parole Board, and thank you to the Judiciary Committee for giving this consideration. I appreciate the opportunity to testify and I'm happy to answer any questions you may have. [LB366]

SENATOR EBKE: Okay. Senator Krist. [LB366]

SENATOR KRIST: Hey, Julie, thanks for coming. [LB366]

JULIE MICEK: Yeah. [LB366]

SENATOR KRIST: Did you analyze that this was a necessary statutory change that had to...for the name change and the reorganization? [LB366]

JULIE MICEK: So not necessarily a statutory...I mean we'd like to see a change in statutory. After working to create a new vision and mission for the board and working with our staff in Parole Administration, our officers and our supervisors, and coming up with a new mission, kind of reidentify ourselves, we thought that this would be a good move for us. [LB366]

SENATOR KRIST: Good. Thank you. [LB366]

JULIE MICEK: Uh-huh. [LB366]

SENATOR EBKE: Any other questions? See none. Thank you for being here. [LB366]

JULIE MICEK: Thank you. [LB366]

SENATOR EBKE: Next proponent. [LB366]

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SCOTT FRAKES: (Exhibit 3) Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department of Correctional Services and I'm here today to provide testimony in support of LB366. LB366 is legislation requested by the Parole Board as follow-up to LB598 passed in 2015 which separated Adult Parole Administration from NDCS and placed it under the supervision of the Nebraska Board of Parole. Moving Adult Parole Administration from NDCS to the Board of Parole was not a simple process and I commend the staff from both agencies for their commitment to making the process work. I have an excellent relationship with Chairperson Cotton, the members of the Board of Parole, and I applaud their decisions to hire experienced staff such as Julie Micek and Jennifer Miller to help in the transition. The Board of Parole, Adult Parole Administration, perhaps soon to be renamed, and NDCS will always be closely tied due to the interdependent nature of our work. LB366 strikes the correct balance between collaboration and independence and will serve both agencies well. I look forward to a continued partnership with the Board of Parole to create a seamless continuum of services from incarceration to reentry to the community through parole supervision that engages individuals in meaningful opportunities to change their lives. I'll answer any questions if I can. [LB366]

SENATOR EBKE: Senator Krist. [LB366]

SENATOR KRIST: Just a quick comment: When we came up with those definitions and separations and deadlines and, you know, in the past four or five years, particularly in the last couple years with the reorganization structure, I commend both Corrections and Parole and Probation in terms of the JRI structure and coming back and identifying those goals that we set by statute that were realistic and unrealistic and making it happen. And your praise does not go unnoticed for me because it was very clear that we, both you and Ms. Cotton, came forward and said these are the things we can do, these are the things we can't do, and leeway was given on both sides. But you know if it's going to be done, we needed to do it right and you did that. So I thank you for that. [LB366]

SCOTT FRAKES: Thank you, Senator. [LB366]

SENATOR EBKE: Any...? Senator Pansing Brooks. [LB366]

SENATOR PANSING BROOKS: Thank you for coming, Director Frakes. I was wondering, do you have an opinion on the determinate sentencing that we currently have in...I mean do you have a feel that that is helping or hindering the situation? [LB366]

SCOTT FRAKES: Well, the part that's helping is the piece that came under LB605 that includes both determinate sentencing and postrelease supervision. [LB366]

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SENATOR PANSING BROOKS: Yes. [LB366]

SCOTT FRAKES: So that is a structure that I believe works well and is effective for that piece of the felony continuum. Those cases where individuals are given what's commonly referred to as a flat sentence, I see that as problematic. I do believe in the value of community supervision whenever possible and so we need sentence structure that gives us some opportunity for that. [LB366]

SENATOR PANSING BROOKS: So that we avoid the jamming out situation? Is that more what you're... [LB366]

SCOTT FRAKES: You know, it's more if there's no opportunity for supervision presented by the sentence itself... [LB366]

SENATOR PANSING BROOKS: Yes. [LB366]

SCOTT FRAKES: ...there's little we can do except, you know, we'll give them every tool that we can while we have them. [LB366]

SENATOR PANSING BROOKS: Yes. [LB366]

SCOTT FRAKES: But there's...I think...I know very good science around the value of transition from prison to community with the safety net that comes with community supervision. [LB366]

SENATOR PANSING BROOKS: Yes. Well, thank you so much for coming today. It's nice of you to take the time. [LB366]

SCOTT FRAKES: Thank you. [LB366]

SENATOR EBKE: Any other questions? Thank you, Director. [LB366]

SCOTT FRAKES: Thank you. [LB366]

SENATOR EBKE: Are there any other proponents? Do we have any opponents to LB366? Do we have anybody speaking in a neutral capacity? Any letters? We have no letters. Senator Halloran. Senator Halloran waives. That... [LB366]

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SENATOR KRIST: Oh, wait, wait, wait. [LB366]

SENATOR EBKE: Oh, I'm sorry. [LB366]

SENATOR KRIST: I just want to recognize the humor, the little humor. (Laughter) Thank you. [LB366]

SENATOR HALLORAN: It was an elevating moment. [LB366]

SENATOR EBKE: Okay. That closes the hearing on LB366 and we will move to LB593. [LB366 LB593]

SENATOR HUGHES: Good afternoon, Chairman Ebke, members of the Judiciary Committee. For the record, my name is Dan Hughes, D-a-n H-u-g-h-e-s. I represent the 44th Legislative District. I'm here today to introduce LB593. LB593 creates criminal...the crime of criminal trespass to a vehicle if a person enters or remains in any vehicle if they know they're not licensed or privileged to do so. It would be a Class III misdemeanor for a first or second conviction, and a Class I misdemeanor for a third or subsequent conviction. Vehicles include any vehicle, aircraft, watercraft, or farm implement. Under current statutes, officers cannot intervene to protect the property of our citizens until they observe a theft because there is no criminal violation. Even if an officer observes items in the possession of persons going through vehicles, the items have not yet been reported stolen or discovered as missing so, therefore, cannot be identified as stolen items or seized as evidence by officers. As a result of the current statutes, this ultimately allows criminals the freedom to rifle through vehicles, steal personal property, and damage vehicles with impunity. I'd be happy to try and answer any questions that you may have, but I do have people following me that may be better suited to answer those questions. Thank you very much. [LB593]

SENATOR EBKE: Thank you, Senator Hughes. Do we have any questions at this time? I have a question. [LB593]

SENATOR HUGHES: Okay. [LB593]

SENATOR EBKE: Give me an example... [LB593]

SENATOR HUGHES: Of a...? [LB593]

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SENATOR EBKE: ...of somebody being in a vehicle but they know that...I mean so somebody just gets into somebody's car and sits there or...? [LB593]

SENATOR HUGHES: Well, getting...in my neck of the woods,... [LB593]

SENATOR EBKE: Okay. [LB593]

SENATOR HUGHES: ...we have our pickups, semis, things like that, that we leave parked in the field and they're old and aren't locked, so if someone gets in them and takes our toolbox, I mean you have a guy that's got \$50 or \$100 worth of tools in a John Deere toolbox that officers observe that they know they're not farmers, they're not from the area, have a pretty good suspicion that, you know, that has been taken. But until they know that I report that, yes, someone broke into my semi or my pickup or my tractor or any vehicle in town, they have no reason to stop and ask that individual, you know, why do you have a toolbox full of wrenches. [LB593]

SENATOR EBKE: Okay. Okay. Any other questions? Okay. Thanks. [LB593]

SENATOR HUGHES: Thank you. [LB593]

SENATOR EBKE: First proponent. [LB593]

ISAAC BROWN: (Exhibit 2) Good afternoon, Chairman Ebke, members of the Judiciary Committee. My name is Isaac Brown, I-s-a-a-c B-r-o-w-n. I am the police chief for the city of McCook, Nebraska, and current president of the Police Officers' Association of Nebraska. I am representing both the organizations today and, of course, am here to seek your support for LB593. Thefts from unoccupied vehicles occur nearly every day in every city and rural areas in the state of Nebraska. Most often numerous vehicles are entered in one event in search of items to steal. Most entries into unoccupied vehicles are undocumented by law enforcement since the act itself is not currently a criminal violation. Often vehicles are damaged by perpetrators during these thefts or attempted thefts. The crimes occur thousands of times each year and result in thousands of dollars in loss in thefts and damages. Under current statutes, when a police officer or deputy observes a person entering a vehicle or a farm implement in our cities and rural areas, they do not have the necessary authority to effectively intervene and protect the property of our citizens. Unless the officers observe a theft, there is no actual violation of the law. Even in instances when officers have contacted suspected perpetrators going through vehicles and observed them in possession of what they suspect to be stolen items, the items cannot be seized or identified as stolen since they have not been reported stolen by any owner. It's problematic to

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locate owners of thefts from vehicles because most of these occur in the middle of the night under cover of darkness. As a result, criminals are virtually free to rifle through vehicles, steal property, and damage them with impunity. The passage of LB593 would allow officers and deputies to proactively intercede when they observe suspects entering vehicles or going through toolboxes and compartments in farm implements. It would allow officers to contact these individuals and because it is...would be a crime, it would allow them to search the individuals, incident to arrest, to locate stolen items, and it would allow them in some instances also to check vehicles for stolen items as well. The proposed legislation I think would grant officers the authority they need to effectively intervene on behalf of our citizens and protect the property of our citizens. And because of that, I do urge your support for LB593. And I would be happy to answer questions if you have some. [LB593]

SENATOR EBKE: Thank you. Senator Halloran. [LB593]

SENATOR HALLORAN: Chief Brown, thanks for testifying. Can you give us...quantify some number of frequency of this kind of occurrence that you're talking about? [LB593]

ISAAC BROWN: To some degree I can. I know it happens every day, several hundred times a day throughout Nebraska. In our area and in talking to other police chiefs, the documented cases of theft from vehicles accounts for approximately 10 to 20 percent of the actual attempts. We call it car hopping. People will go out in the evening or in the night and they'll just go through often a dozen, two dozen cars looking for things to steal and stealing whatever is there that is of value. The only time these things get reported are when the value of the items are large enough that it requires a report for insurance or it is something that's important to the individuals. If it's a smaller item, they simply often don't report it or they report people going through cars but there's no reportable theft. I know in Lincoln in 2016, Lincoln Police Department responded to 2,362 incidents of larceny from autos. And if you look at that's approximately seven per day, and they are spread almost evenly over every day of the week, which is kind of...I find kind of interesting. They...if you look at that, looking at what we found talking to folks across the state and in keeping track in our own area, even at 20 percent, you know, that would constitute probably in excess of 10,000 people...or, excuse me, 20,000 times people going through vehicles. So it is a significant problem across the state of Nebraska and we need the tools to be able to intervene and protect our citizens. [LB593]

SENATOR EBKE: Other questions? Senator Chambers. [LB593]

SENATOR CHAMBERS: You're not talking about breaking into vehicles, are you? [LB593]

ISAAC BROWN: In some cases they do. [LB593]

SENATOR CHAMBERS: That would be a crime now, wouldn't it? [LB593]

ISAAC BROWN: Yes, sir, it is. [LB593]

SENATOR CHAMBERS: So this is if somebody...well, why don't people lock their doors? [LB593]

ISAAC BROWN: I have been asking that question for the last 20 years as police chief and I don't have a good answer for that. They simply do not. And in rural areas I know people tend to be very much more trusting and it's rare that you find people that do lock doors. [LB593]

SENATOR CHAMBERS: Well, perhaps instead of asking us to create a new category of crimes, they ought to undertake an educating-type approach, emphasizing that people should keep their vehicles locked, which they constantly do in the cities. Don't leave your car running with your keys in it. Don't leave your car unlocked. And then if people are careless, the state should not make a crime because people are too careless to protect their own goods. If I leave my wallet lying on the sidewalk, it remains mine even if it's there. Maybe I lost it, didn't abandon it. If somebody picks it up, they didn't steal it. It was unattended. It wasn't on anybody's property. It was something of value inviting somebody to take it, and somebody took it and that's not theft. If people want to leave their vehicles open then I don't think the state should be asked to commit a...create a crime because people won't take the precautions they can, just so it gives you an opportunity to discuss that aspect of it. [LB593]

ISAAC BROWN: Yeah. And I can certainly appreciate your point, Senator. I really do. But I kind of see the reverse side of that. And because people are trusting or because they forget to lock their doors does not justify somebody getting into their vehicles and stealing their items. It's still wrong and it's still a crime, too, for people to get in and steal. And you know we certainly try to educate people and...but the fact that that in and of itself is not as successful as we'd like certainly doesn't justify theft. And I think, given the society we live in, we need the tools to protect our citizens' property and I believe this will give us one of those tools. [LB593]

SENATOR CHAMBERS: Suppose somebody gets into a vehicle, not to steal it but it's cold outside and they get in the vehicle. They've committed a crime, haven't they? [LB593]

ISAAC BROWN: There are exceptions. [LB593]

SENATOR CHAMBERS: And what...would you read me an exception? [LB593]

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ISAAC BROWN: And hopefully there would also be good judgment on the part of the individuals doing the...if the... [LB593]

SENATOR CHAMBERS: What page are you on? [LB593]

ISAAC BROWN: I'm sorry. I'm on page 3. [LB593]

SENATOR CHAMBERS: And which line? [LB593]

ISAAC BROWN: I am looking for that this minute. In...really, beginning in line 12 and going down to line 15: if the vehicle at the time were open to members of the public and the actor complied with all the conditions imposed for access or remaining in the premises or on the vehicle; if the actor reasonably believed that the owner of the premises or vehicle or other person empowered to license access would have licensed him to do so, to remain. [LB593]

SENATOR PANSING BROOKS: That's on page 3? [LB593]

SENATOR EBKE: Uh-huh. [LB593]

ISAAC BROWN: I believe so. That's...in the copy that I have it is. It is under affirmative defense. [LB593]

SENATOR CHAMBERS: That says if the person has reason to believe that it was abandoned. Is that what you're talking about? This says you'd have to believe that it was abandoned. I'm talking about vehicles sitting. You mentioned the field. Okay, a truck is sitting beside the road, a pickup. Snow is deep. Wind is howling and not a fit night for man, beast, or woman or child. And a person is freezing and enters the vehicle. This says, on page 2, line 31, "A person commits criminal trespass to a vehicle if he or she enters or remains in any vehicle or part thereof, knowing that he or she is not licensed or privileged to do so." Nobody told you, you could get in it. If you get in the bed of a pickup truck, that's a criminal offense too. [LB593]

ISAAC BROWN: I see your point and that's not specifically addressed in there. I would certainly think in that case I would rely both on the good judgment and intelligence of the officers and the prosecutors who would not prosecute anyone under those conditions. [LB593]

SENATOR CHAMBERS: I don't trust judgment of police or prosecutors. If they act in accord with what the law says, it's our responsibility as policymakers to write the law the way we mean

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it. If we pass this, we're telling an officer if this person was not licensed or privileged to be in the bed of that pickup truck that is a crime. And your job is to arrest criminals. And that person in that pickup truck is a criminal. If it's a kid coming from grade school, if it's a kid coming from high school, if kids are playing and one jumps in the bed of a pickup truck to hide, that's a crime. We would have said that's a crime. Your judgment means nothing. What you would feel would mean nothing. There those words are in the statute and that's just for the record. I'm not going to grill you because... [LB593]

ISAAC BROWN: No, and I appreciate that. If you felt that an exception to allow for an extreme circumstance or something of that nature should be included, I certainly have no issue with that. But I think even including that--and, again, I think that's a good idea--we still need the tools to find...to intervene when those people who are simply being criminals and stealing from our citizens are doing so and... [LB593]

SENATOR CHAMBERS: That is a crime already. [LB593]

ISAAC BROWN: It is if you can win and if you can prove it, and right now it's very difficult to do that in these situations. [LB593]

SENATOR CHAMBERS: Would a person be guilty of theft if the person were just sitting in the car and not attempting to move it from where it is? Is that theft, just being in the car? [LB593]

ISAAC BROWN: It is not. [LB593]

SENATOR CHAMBERS: So that wouldn't be a crime. But under this that would be a crime. [LB593]

ISAAC BROWN: It would be if you were in a vehicle you're not licensed to be in, if you're going through somebody else's car. [LB593]

SENATOR CHAMBERS: Would you want your child or friend of your child to be a criminal if he or she is in very bad weather and, to obtain protection from the weather, entered a vehicle? [LB593]

ISAAC BROWN: No, I would not. [LB593]

SENATOR CHAMBERS: This would make it a crime... [LB593]

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ISAAC BROWN: Yeah. [LB593]

SENATOR CHAMBERS: ...just for entering. [LB593]

ISAAC BROWN: Again, if that...you felt an exception there should be included, I have no issue with that. [LB593]

SENATOR CHAMBERS: Then let's put it like this. The person enters and say, oops, this is not my car, and leaves. That person still is a criminal because it says "enters or remains." You don't have to remain in it, just enter it. And what does entering constitute? If you put your leg into the car and then you realize it's not yours, have you entered the car? How much of your body has to be in the vehicle before you've entered it? [LB593]

ISAAC BROWN: I don't know that the statute or the proposed statute defines that. [LB593]

SENATOR CHAMBERS: Well, if you don't know and you're the chief... [LB593]

ISAAC BROWN: But I would... [LB593]

SENATOR CHAMBERS: Go ahead... [LB593]

ISAAC BROWN: I'm sorry. I would think if you're getting into a car with your arms, legs, parts of your body, which is what people do when they steal is they often get clear in but they reach in and grab stuff out, then I think that violates...that would violate this proposed law. [LB593]

SENATOR CHAMBERS: So if you stepped a foot in the car, that would be a crime, right? [LB593]

ISAAC BROWN: Could be. [LB593]

SENATOR CHAMBERS: And you want me to pass some...you want me to put something like that in the law? [LB593]

ISAAC BROWN: Yes, I do. [LB593]

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SENATOR CHAMBERS: Ernie Chambers, who is a thoughtful, intelligent man, put that in the law. That's what you want me to do. [LB593]

ISAAC BROWN: Yes, I do. I believe this would give us the opportunity to do a better job for our citizens. [LB593]

SENATOR CHAMBERS: Then I'm going to say like what a politician said about somebody else: If you think Ernie Chambers would do that, you do not know Ernie Chambers. (Laughter) That's all I have, though. [LB593]

ISAAC BROWN: Thank you, sir. [LB593]

SENATOR EBKE: Senator Halloran. [LB593]

SENATOR HALLORAN: Well, this is a trespass issue, right? It's not theft, capturing someone in the acts of a theft. It's purely a trespassing issue, right? [LB593]

ISAAC BROWN: Yes. [LB593]

SENATOR HALLORAN: Yeah, we can find exceptions to all the laws. I mean we can come up with some clever examples of how a law might be abused one way or the other. But for the sake of...for the sake of stopping or maybe reducing the number of people trespassing inside of people's cars or pickups, I'll tell you what, 20-25 years ago we had some trespass issues on farm equipment. And they weren't searching for tools, per se. They were searching for a tractor or a combine, a large piece of equipment that they could start and drive. Or what they would do is they would start the tractor. They would put it in gear and throttle it up, and they would let the tractor go unoperated across country. Whatever it tore into was just their way of having a good day. That form of trespassing is more than just idle getting in and out of a piece of farm equipment or a truck or a tractor or anything else. That was intentionally attempting to vandalize, and it did. Somebody could have been killed with those instances, but most often the tractor would end up running up against a barn or a building in place with the tires turning and burn the tires off the wheels and rims. But this seems like a very simple trespassing issue, not a theft issue. And if somebody is cold and gets a third-level misdemeanor, have them look me up. I'll pay the fee. If they're getting in for...on a cold night to...for protection, I'll cover them for that. [LB593]

ISAAC BROWN: Yes, sir. [LB593]

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SENATOR EBKE: Any other questions? I do have... [LB593]

SENATOR CHAMBERS: One more. Oh, go ahead. Go ahead. [LB593]

SENATOR EBKE: Well, I was going to have...do you have Uber or Lyft or cabs in McCook? [LB593]

ISAAC BROWN: Yes, we do. [LB593]

SENATOR EBKE: Okay. [LB593]

ISAAC BROWN: We have both. [LB593]

SENATOR EBKE: What would happen from the perspective of the wording here that we have of somebody who "remains in any vehicle," what happens with the Uber driver who is...has somebody who's had a little bit too much to drink, who sits in the backseat of the car going someplace, and then refuses to get out? Is that person then guilty, become guilty even though they were originally welcomed and paid, you know, and paid their way? If they refuse to get out, would they then become a trespasser if they remain in the car even when they get to their stop? [LB593]

ISAAC BROWN: They could. We've had that very thing happen a number of times in my city and most of them the officers end up going, helping the people, encouraging them to get out of the car and go home, and quite often helping them to get to their house or apartment. Those things have been dealt with traditionally, if they just couldn't reason with them any other way, as disturbing the peace at this point more often than a trespass issue. [LB593]

SENATOR EBKE: Okay. But now you have something else. [LB593]

ISAAC BROWN: But either way, it would work. Most often you'd try and get those folks home,... [LB593]

SENATOR EBKE: Okay. [LB593]

ISAAC BROWN: ...do the best you can. [LB593]

SENATOR EBKE: Okay. Senator Chambers. [LB593]

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SENATOR CHAMBERS: There's nothing in here about what a person's intent is in entering this vehicle, so searching, all that stuff, that's nothing. All this says is once you get in the car, whatever entering means, and we can't apparently determine what that means, that crime has been committed. If you take it, you've committed theft. If you try to commit it, then it can be attempt to steal. This has involved none of that. Simply entering the vehicle and, as Chief, you don't know what entering it means; I don't know what entering it means. Should we put in the statute then, so a person will have warning, a foot or any portion of a person's body crosses the threshold of a vehicle, that person commits a criminal trespass to a vehicle? And it would be a misdemeanor. [LB593]

ISAAC BROWN: I don't know that it...if it should be included or not, but I believe that if a person, with whatever part of their body, whether it's their hand, their arm, whatever, gets in a vehicle they're not privileged or licensed to do so, then, yes, it should be a trespass. [LB593]

SENATOR CHAMBERS: Okay. [LB593]

ISAAC BROWN: That's my opinion. [LB593]

SENATOR CHAMBERS: That's all that I have. Thank you. [LB593]

SENATOR EBKE: Senator Pansing Brooks. [LB593]

SENATOR PANSING BROOKS: Thank you. Thank you for coming, Chief. I'm just interested that there aren't more...that the insurance companies aren't getting involved more and saying, lock your doors or you're going to be...or we're not going to cover you on any damage or any kind of theft. That's happening more and more certainly here in Lincoln. I grew up never locking, never having a door locked, and we raised our kids without locking the door, so. And now the insurance companies are saying lock it or else, and they want proof and they want you to verify that you are locking. So I think that this will not last long that they can do that, really. [LB593]

ISAAC BROWN: Well, with respect, Senator, I mean we're not seeing that around the state. And, you know, I don't know what all is going on in Lincoln. I'm kind of a... [LB593]

SENATOR PANSING BROOKS: Uh-huh. [LB593]

ISAAC BROWN: ...distance away. But I do know that there were over 2,000 documented thefts from cars last year in Lincoln itself and, based on our best estimates around the state, that's the tip of the iceberg from what actually is going on in Lincoln. So... [LB593]

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SENATOR PANSING BROOKS: Yeah, I'm just interested about... [LB593]

ISAAC BROWN: ...I would like to see people...I agree with you, I'd love to see people do a better job of...I'd like to convince my wife to do it most of the time which is a fight, but whether we can or can't, you know, it's still wrong to steal and... [LB593]

SENATOR PANSING BROOKS: Right. [LB593]

ISAAC BROWN: ...to get in other people's car to do it. And while we can't control the one, I think we can intervene to help stop the crime. [LB593]

SENATOR PANSING BROOKS: Thank you for coming and answering so many questions. [LB593]

ISAAC BROWN: It's my pleasure. Thank you. [LB593]

SENATOR EBKE: Thanks, Chief. Okay. Other proponents. Do we have any opponents? [LB593]

SPIKE EICKHOLT: Good afternoon, Madam Chair, members of the committee. Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association. We are testifying in opposition to LB593. We have testified on several bills this year and the point that we want to make on this bill is a point that we've made on other bills, and that is it is our position that there are enough crimes in the statutes now, there are enough penalties available that the Legislature does not need to be adding any more. As some of the people...I did visit with Senator Hughes earlier today and also his office lawyer this week to explain our position. I understand the situation because I do practice criminal defense law, and I think the chief sort of summarized it fairly accurately that many people who do commit this kind of crime do what they call car hopping where they go from car to car looking for unlocked cars, and it happens in the cities. It could easily be resolved, easily be remedied for people to lock their cars. Some people say or think if they lock their cars, well, that means they're going to break into it, but that does not happen and it does not happen because newer cars have alarms. You tamper with a vehicle; you set it off. And a car hopper or someone who is just going for volume doesn't want to be detected. Having said that, if someone is caught in the act, there are a whole series of other crimes that could be charged, even for situations in Senator Hughes's district. There are the crimes of criminal mischief. That is if you damage someone's property. There's a crime of theft or attempted theft. There is the crime of trespass, so if you are on someone's property and try to get into one of their vehicles, you've already committed a crime. If that vehicle is located in a

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building on someone's property, that's a felony offense of burglary. And I did acknowledge to Senator Hughes when I met with him that, to his credit or to someone's credit at least who asked him to introduce a bill, this is only a misdemeanor offense. And in response to what Senator Halloran asked before, a Class III misdemeanor for a first or second offense may not seem to be that significant of a crime or a penalty--it does carry a possible jail sentence--but it is, nonetheless, a criminal conviction. And at first glance, well, just paying a fine is not that big of a deal, but we've been before this committee for cases and situations that don't seem like that much of a deal, because if a person is convicted of it, even if they have a fine, they've got a record and it's a theft kind of sounding record. It's trespass of a vehicle. And that's why we are here with bills to provide for set-aside provisions, bills for a second chance on employment applications, because what we have experienced and observed is an overcriminalization of conduct where you have so many people who make innocuous and not so innocuous mistakes or decisions and they end up with a record that haunts them for the rest of their life, far beyond a fine. So for those reasons, we'd encourage the committee to not advance this bill. [LB593]

SENATOR EBKE: Any questions for Mr. Eickholt? Senator Krist. [LB593]

SENATOR KRIST: I followed that rationale and I agree with you 99.9 percent of the time. This might not be one that I would think we would need to press. But you know, there's something to be said for the protection and safety of...so I'm a little conflicted. Yesterday I talked to legal counsel. I was asked to comment on the...completely different church. It's not even the same pew, okay, or however you want to put it. But a man who was exposing himself in the public library system down in Omaha over and over and over and over, and I've always thought that if a smart county attorney or prosecutor could find something, but there's no escalator to some of those. So even though this is a misdemeanor and there is some consequence, I think we do have some holes in terms of charging and sentencing. Where just as we did several years ago with the DUI, DWI, where fifth, sixth offense it jumps up...actually, third or fourth offense it jumps up, some things are worth taking a look at in terms of increasing the penalty to try to reduce the recidivism. And that's an open-ended, Spike, so you're welcome to comment on it if you'd like to. [LB593]

SPIKE EICKHOLT: One comment I'd have is that this committee is responsible for passing state laws and there are some city ordinances that address this very situation Senator Hughes is trying to do with a state law. In other words, there's Lincoln ordinances that deal with trespass of vehicles, entry of vehicles, that sort of thing, and Omaha has similar ordinances. It's always sort of the worst-case example, the person who was in the library doing something very lewd can only be charged with public indecency, which is a misdemeanor. And one always thinks that perhaps that person is up to something much more than just exposure. But at the same time, I would urge the committee to keep in mind that when you pass a law and it's in statute and that example goes away, these laws are on the books... [LB593]

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SENATOR KRIST: Right. [LB593]

SPIKE EICKHOLT: ...and you have to look at those in every situation. I would just tell the committee if you're going to do something with this bill, the bill refers to vehicle. That's not motor vehicle necessarily. And motor vehicle is defined in the traffic statutes as being a car. A vehicle could be lawn mower, ATV, things that do exist, and farm equipment in the rural parts of the state. So that's one point I wanted to mention. But that's the only comment that I have. [LB593]

SENATOR KRIST: Okay. It's amazing how you and legal counsel are on the same sheet of music (inaudible). You must both be lawyers. [LB593]

SENATOR EBKE: Senator Pansing Brooks. [LB593]

SENATOR PANSING BROOKS: So you...thank you, Mr. Eickholt. You talked about that there are other crimes, like criminal mischief, criminal theft, trespass. Are they lower penalties? Is that what the issue is here? [LB593]

SPIKE EICKHOLT: Theft is...it can be a misdemeanor. But if it's theft of a vehicle or something of at least \$500 or \$1,500, it's a felony. And if you attempt to commit a theft of something more than \$1,500 or \$5,000, that is also a felony. So if this bill passed what I think you would see on these car hopping cases and people are caught--many times they'll find they'll link them to this whole series of vehicles that have been entered and having things taken--you'll have four or five different cases filed or charges filed. They'll be companion counts. There will be criminal mischief and theft, criminal mischief and theft if they can show any damage. And what I think you would see if you pass this bill is criminal mischief, theft, trespass to a vehicle, and you'd have the staking up the addition of different charges on often. It's not that these aren't prevalent crimes. They are. But as I pointed out before, just in our position, our opinion, it gives too much leverage to the prosecutors. [LB593]

SENATOR PANSING BROOKS: So you mentioned trespass. What trespass are you talking about? [LB593]

SPIKE EICKHOLT: I can give the example of if a vehicle is in someone's driveway or on their farm, in their farm field, if they...and I been (inaudible). [LB593]

SENATOR PANSING BROOKS: That's trespass on the land. [LB593]

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SPIKE EICKHOLT: Yeah, exactly. You're committing...you don't have a right to be on someone's private property. You've committed that crime just to get to the vehicle. [LB593]

SENATOR PANSING BROOKS: So but there's no entry like if you entered a house without permission? [LB593]

SPIKE EICKHOLT: Entry knowing or should have known that you didn't have permission or license to be there. And there's a more serious penalty if the land was posted (inaudible) specifically told individually not to be on the land, it could be a more serious misdemeanor offense. [LB593]

SENATOR PANSING BROOKS: Okay. So you're saying there is an entry if you knew or should have known? [LB593]

SPIKE EICKHOLT: That's right. There's second-degree trespass. [LB593]

SENATOR PANSING BROOKS: But isn't that true on the street too? [LB593]

SPIKE EICKHOLT: Well, no, that's not someone's private property if it's on the street. [LB593]

SENATOR PANSING BROOKS: Pardon me? [LB593]

SPIKE EICKHOLT: If it's on the public street, I don't think that would be trespass because it's public property. It's not a person's. [LB593]

SENATOR PANSING BROOKS: You couldn't apply if you knew or should have known that you didn't have...? [LB593]

SPIKE EICKHOLT: I don't think, to be fair, I don't think a prosecutor could charge that as trespass. [LB593]

SENATOR PANSING BROOKS: Okay. Thank you. [LB593]

SENATOR EBKE: Other questions? [LB593]

SENATOR HALLORAN: Chairwoman. [LB593]

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SENATOR EBKE: Senator Halloran. [LB593]

SENATOR HALLORAN: Thank you, Madam Chair. I just took a few minutes here to search for devices to assist in entering cars. I'm sure you're aware of some of these. [LB593]

SPIKE EICKHOLT: I've seen some, yes. [LB593]

SENATOR HALLORAN: Yeah. I think if you give me an hour I can probably on-line purchase one of these. And the deeper issue would be car theft, but to go back to the issue of whether or not you lock your cars or not, anymore that's a false sense of security, I'm sorry. You can buy an app. You can buy an app that...and walk by late model cars and recover the code for entering your car, not just to go searching through it but on a grander scale for theft. But I just want to point that out that locking the car, locking the door on your house doesn't stop people from trespassing. [LB593]

SPIKE EICKHOLT: It doesn't. If I could respond, there is a crime in Nebraska called possession of burglar's tools. It's a felony and it's defined to include, I would suspect, some of the items that you saw on-line. [LB593]

SENATOR HALLORAN: Well, that's good. But I'm just pointing out that these devices are readily available and if someone saw somebody entering or, you know, looking through a car, appeared to be in a car that wasn't theirs, that might be a good reason to suspect maybe there's something going on, but... [LB593]

SPIKE EICKHOLT: That could be. And I'm not denying...we're not denying there's a problem. I think Senator Pansing Brooks brought up a different way of looking at it. Perhaps the insurance companies ought to somehow not reimburse people if they leave their cars unlocked, and perhaps they could prosecute people for selling these items that assist you breaking into cars. [LB593]

SENATOR HALLORAN: Sure. And there should be some level of responsibility on all of us to lock our houses and our cars, but at some point in time ultimately the responsibility is on the part of the party that wants to break in. [LB593]

SPIKE EICKHOLT: I agree. [LB593]

SENATOR HALLORAN: And it seems like we have to bend over backwards, as private citizens, to make sure that we don't give them an attractive nuisance, if you will, to break into my car. But I shouldn't have to be worrying about that when I leave my car every time whether somebody is

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going to do that or not. But I understand it happens but I'm just saying this may be some way of building a law that might help prohibit some. Thank you. [LB593]

SENATOR EBKE: (Exhibit 1) Any other questions? Thank you very much for being here. Other opponents. Anyone in the neutral capacity? We have a letter of opposition from Amy Miller of the ACLU of Nebraska. Senator Hughes. Senator Hughes waives. Okay, our next hearing on LB560 we're going to have to skip for a bit because Senator Schumacher is in another committee hearing with another bill right now. So we'll go ahead and move to Senator Chambers and LB446, if you're ready. You practiced this one a few times, right? [LB593 LB446]

SENATOR CHAMBERS: Madam Chair, before we start, I want to exercise a prerogative of the U.S. Supreme Court: No cameras allowed for this hearing. That's a joke. (Laughter) People take seriously what I say. But my name is Ernie Chambers. I represent the 11th Legislative District. This bill is designed to abolish the death penalty, replace it with a sentence of life without parole. As some of you are aware who were here when it happened, the death penalty was abolished by the Legislature. The Governor's veto of that bill was overridden by the Legislature. The Governor led an effort and put several hundreds of thousands of dollars into a...it's not just a petition effort but a petition effort that would result in a referendum which means after you get a certain number of signatures that are valid the proposition is put to a vote of the people and, if that vote is successful and the piece of legislation had not yet taken effect, it will not have taken effect. And that's what happened. That's why the people who were on death row at the time that the bill was enacted into law had no way to even make an appeal to the fact that the Legislature had abolished the death penalty as a basis for the sentence not to be carried out. And even before that successful vote against the bill that had been passed, the Governor and the Attorney General and the Director of Corrections undertook a concerted effort over a period of months to obtain an illegal drug. The appellate court in Washington, D.C., which is the highest appeals court under the U.S. Supreme Court, had stated that this drug has not been approved for use by the FDA for any legitimate purpose, therefore, it was illegal to import the drug. A couple of states tried it. The drugs were seized. The specific drug was sodium thiopental and under Nebraska law that was one of the three drugs mandated to be used in the so-called lethal injection cocktail. There were many statements relative to the illegality. But the Governor led the effort, and continued to push it, to get these illegal drugs. They dealt with a drug dealer who had tricked Nebraska in the past. Drugs, sodium thiopental, had not been tested, had not been overseen, had not been approved for use by the FDA. The Attorney General's Office got, this is under Jon Bruning--the current Attorney General's name is Peterson, to distinguish the two--had prevailed on the U.S. Supreme Court to impose a death sentence. That will be touched on in this statement of intent but I wanted to give a little background because we do have new people on the committee who had not been here before. I don't want to take a lot of time in my presentation but I want there to be enough said so it's clear what is implicated here. LB446 replaces the death penalty with a sentence of life without possibility of parole. Section 22 leaves undisturbed the discretion of the sentencing court

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to order the payment of restitution. Section 23 provides the following. "It is the intent of the Legislature that in any criminal proceeding in which the death penalty has been imposed but not carried out prior to the effective date of this act, such penalty shall be changed to life imprisonment," without the possibility of parole. That was put in not making a declaration that the statute would alter the sentence because the Legislature cannot do that. Once a sentence has become final, the only one that can modify it would be the Board of Pardons or an appellate court that always has the power to modify a sentence or to throw it out. In this case, you have...you had, before that campaign against the repeal, states that had repealed the death penalty and no court allowed any of those sentences to be carried out, pointing out that the will of the people is established through its representatives, namely the Legislature, and since the Legislature had done away with the sentence, the will of the people should be carried out and nobody should be executed after the death penalty had been repealed, even though all proceedings in that particular case had been finalized. In addition to the negative propensity to diminish the value of human life, the death penalty in Nebraska has exerted a degrading, corrupting influence on the Office of the Attorney General which disingenuously prevailed on the Nebraska Supreme Court to issue a death warrant setting an execution date for inmate Carey Dean Moore despite knowing that no execution could be carried out due to the legal unavailability of sodium thiopental, one of the drugs mandated by law for use in judicial executions. Under international law, under military law, it is torture to have what are called sham executions. You give people the belief that they are to be executed but you never intend to do it and that has been condemned universally as torture. So this amounted to a sham execution because the Attorney General knew that there was no way to carry out the penalty. Continuing, the Attorney General's Office deliberately withheld this critical material fact from the Nebraska Supreme Court which was compelled to withdraw the death warrant. And it triggered an extraordinarily harsh rebuke from the Douglas County District Court in its December 11, 2011, order dismissing the postconviction motion of Moore whose aim was to have the Attorney General sanctioned by the court for its duplicitous, unethical scheme. Wrote the district court, quote: Notwithstanding persuasive proof that the Department of Correctional Services obtained controlled substances of unknown efficacy from a foreign distributor and manufacturer, not inspected, registered, or approved by the FDA or DEA, and lack of transparency and candor even with the Nebraska Supreme Court and the Douglas County Attorney's Office by the AG beginning on January 24, 2011, and such acts require accountability, it is not available through postconviction relief. The court didn't say that the Attorney General's Office did not act in a way that was wrong, did not say that they were excused for tricking the Supreme Court and the Douglas County Attorney's Office, but that you cannot seek sanctions by way of postconviction relief. That's for testing the legality of your sentence and incarceration but it cannot be used to get punishment. Even if your lawyer behaved in a way that was incompetent and you're using that as a basis to modify your sentence or get a new trial, you cannot use that as a way to have the lawyer sanctioned. Paraphrasing a cogent declaration in the U.S. Supreme Court's Opinion in the case of Furman v. Georgia which nullified all death penalty laws in the U.S., quote, the issue

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of the death penalty, implicating human dignity, is not to be resolved by means of a popularity contest or opinion poll. That's what happened. These serious matters are not resolved by a vote of the people, period. This is why legislatures operate. The policy of the state is set by the Legislature. If people don't like the way their representative beholds, the solution is to not send that person back to office. But the Supreme Court, every district court, every city court, every legislature knows that if you submit it, everything that a legislature is going to undertake, to a vote of the people, much would not ever be enacted into law. Who believes that you could successfully get the public to vote for an income tax, get the public to vote for an increase in the income tax, an increase in the sales tax? So if the argument that a majority of the people don't like something, therefore, the Legislature shouldn't do it, then throw out all the taxes. That's a bogus, phony argument. It will continue to be made where the death penalty is concerned. But I will continue as long as I'm in the Legislature to try to abolish it. The state should not kill any of its citizens. If I killed somebody it's against the law. If I could persuade Senator Halloran to join me and we bumped off Senator Hansen it's still against the law. If we could persuade everybody in the Judiciary Committee, everybody in the Legislature, everybody in the city of Omaha that we're going to get together and string up Ernie Chambers, you all don't, string up Ernie Chambers, well, now, nobody would charge you with it but it still would be against the law. In other words, the number of people who participate in a wrongful action cannot make that which is wrong right. So if morally and ethically it's wrong for me to kill somebody, you cannot multiply the number who participate and change that which is wrong into something that is right. And that's why legislatures enact laws to prohibit certain things and no matter how many people participate in doing it, it's still going to be wrong. If 30 people decided to occupy federal land, that doesn't make it right, and the power of the state can be used to break that up. I'm going to read into the record just a few things here that will not be available to everybody probably because I put together this little chart, I call it. The total number of people sentenced to death in Nebraska between 1903 and 2010 when the last person was executed--you'll find this on page 2 of the committee statement (sic: statement of intent)--the total number sentenced was 72. The total number executed is 23. You have 72 people who, based on those who support the death penalty, who are deemed to be the worst of the worst and they were sentenced to die, more than two thirds of them were not executed even though they were sentenced to die. Those who were executed, of the 23, 8 were killed by hanging between 1903 and 1913. Electrocutation became the thing after an execution was carried out by means of an electric chair in New York. And the first one was like a fiasco; it was like an experiment. They did not fasten the chair to the floor. They did not know how electricity would react on a human being and a test had been made on killing animals. They killed a horse, then they killed smaller animals. And since electricity could kill them, they decided to use that by...for executions. When they would hang people, sometimes the knot would slip and the person would slowly strangle to death. Sometimes if a person was heavy, then it would actually pull the head completely off the body. And that expression "shake a leg" came from old England where you would have to stand on this platform. They opened the trapdoor and you'd fall. And in order to kill you quicker, there were two people there. One would

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get each leg and put his weight on that leg to strangle the person quicker if the neck were not broken. In Canada there was a hanging and the person's head was not completely pulled off but it broke vessels and the blood squirted on the chaplain and everybody else in the killing chamber who were close enough to it. So they wanted to find a way that was not like that. So when they put this man in the electric chair, the chair started rocking and moving across the floor and the guy started screaming: It hurts, turn it off, turn it off! And the executioner panicked and he broke the current and everybody was wondering what they should do. So it was determined that they had a right to undertake to do it again. It even went to court and the U.S. Supreme Court had said that since the sentence was death, the fact that they didn't succeed in carrying it out the first time did not mean they couldn't try again. So this time they were successful because they left the current on until all movement stopped and the corpse did somewhat take flame. But anyway, by electrocution: 15. States are monkey see, monkey do. One state did it so the others do it. That was between the years of 1920-1997 when the last execution was carried out and that was by electrocution. Of those who had been sentenced to death but were not, 31 were commuted, 6 died of natural causes in that period of time, 3 by natural causes, 1 from cancer, 2 from suicide. The one who died from cancer was a man who had killed some people in Rulo and he had been on death row for some time. He developed cancer and he died from that before they could execute him. And a death sentence had been placed against him but it couldn't be carried out for various problems with the legal aspects of it. I don't even know what this term "furloughed" means, but one man named Jay O'Hearn in 1913 was furloughed. I don't know if that meant they did away with the sentence and let him out of prison, too, but that's the way his case was described. Vacated, meaning the sentence was set aside and the person released: Jeremy Sheets in 2001. He was convicted of having joined with another guy in murdering a North High student. And this person was in a jail in one of the small towns. He implicated Jeremy Sheets along with himself and then killed himself. He was convicted, Sheets was, on the basis of what this individual had said. But since Sheets and his attorney had no opportunity to confront that witness, his statements could not be used against Jeremy Sheets. The argument was made that he knew he was going to die because he was going to kill himself but that did not qualify under the hearsay rule which said if a person makes an excited statement or under the fear of death, then that statement could be used. He knew he was going to kill himself. But at any rate, Sheets was dismissed and he was let out. Currently there are ten people on death row. The number of white people sentenced, the total number, was 49; 5 were hanged; 11 were electrocuted; 22 were commuted. Those who died were the six--all of them were white--three natural causes, one from cancer, two from suicide. One was furloughed, one vacated. There are four white people currently on death row. Black people, the total number sentenced to death: 14. Three were hanged, three were electrocuted, six were commuted, two currently are on death row. Hispanics, a total of six: one was commuted, six currently are on death row...five currently on death row. Native American, total sentenced to death, three: one electrocuted, two commuted. So that is the status of this penalty. And when you have what's called a penalty and the vast majority of those who are eligible for it do not get it, that would be thrown out. It wouldn't even stay on the books.

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So that I hope gives you the context in which I'm presenting this bill. And if you have questions I'll answer them but I would rather you let me wait until I close so that we can let whoever is here to speak have that time. But if you have a burning question, then naturally I'll answer because I'm at your disposal up to a point, Senator Halloran. (Laughter) [LB446]

SENATOR HALLORAN: You're still welcome in my office anytime. [LB446]

SENATOR CHAMBERS: Okay. [LB446]

SENATOR EBKE: Burning questions at this point? Okay, thank you, Senator Chambers. Okay, about how many people do we have testifying on this bill? Okay, let's get started. First proponent. [LB446]

STEPHEN GRIFFITH: (Exhibit 5) Thank you, Senator Ebke. Members of the committee, my name is Stephen Griffith, S-t-e-p-h-e-n G-r-i-f-f-i-t-h. I'm executive director of Nebraskans for Alternatives to the Death Penalty. For more than 35 years NADP has worked to abolish the death penalty and to end executions in Nebraska. We thank Senator Chambers for bringing LB446. As he described, last November voters approved Referendum 426. That repealed LB268 and reinstated capital punishment in Nebraska. That's a legal reality. It changed the law but that vote doesn't change the facts. Fact is, the death penalty is still an inherently flawed system. It still risks executing innocent people who have been wrongfully convicted. Since 1973, more than 155 people have been released from death row with evidence of their innocence. It still is applied arbitrarily and unequally. Race and economic status make a difference, as does geography, where your crime and where your trial takes place. It still does not deter other murders or violent crime. There are no reliable studies that show capital punishment has any deterrent effect. And the one study that's often cited in support of the death penalty has been refuted by its authors. It still is not a partisan issue as shown by the override vote in the past Legislature that included 16 Republicans, 13 Democrats, and 1 Independent. It still is extraordinarily expensive. There are still serious problems with lethal injection, with numerous incidents of botched executions. And in Nebraska we still are not able to purchase drugs needed to carry out an execution. The United States is still the only western democracy to use the death penalty and even then in the 31 states that have capital punishment only a handful of counties actually impose death sentences. In the U.S., the death penalty is becoming increasingly unusual and there are growing questions about its constitutionality. And the death penalty is still contrary to the religious and moral beliefs of millions of people in many denominations and non-Christian faiths as well. Many of them teach that capital punishment violates their core religious beliefs. All these things are still true. Someone asked me a few weeks ago why, given the outcome of the election, why I would even bother to try to persuade you to end the death penalty again. Well, when I was in seminary one of our guest speakers was Will D. Campbell, the southern Baptist minister, civil rights activist, and

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best-selling author. Campbell told of being at a debate about the death penalty. After the proponents made their statement for capital punishment, the moderator asked Campbell why he opposed the death penalty. Campbell replied, well, it's just tacky. That's not a legal concept. It's...I know it's not a theological concept. But now 40 years later, even with the facts I've learned and the studies I've read, all of the debate points, all the Bible studies and prayer groups I've led, that may be the best argument I've heard. Whatever else capital punishment purports to be, it is taking a human life. And for the state to be in the business of killing someone who kills someone to show that it's wrong to kill someone, well, that's still just tacky. I respectfully ask that you advance this bill. [LB446]

SENATOR EBKE: Thank you, Mr. Griffith. Any other, any questions? I see none. Thank you for being here. [LB446]

DEB ANDREWS: I'm Deb Andrews, D-e-b A-n-d-r-e-w-s. I support LB446 to eliminate the death penalty. The ballot which repealed the death penalty repeal was worded in a confusing fashion. As research shows, just one third of Nebraskans are proficient at reading and the same holds true for college graduates according to the National Assessment of Adult Literacy. When voters marked the ballot to repeal, which repeal were functional illiterates voting for? The Beatrice Six debacle proved once again our system makes mistakes and may be corrupt in the process of investigations. The lone individual who was...who never pleaded guilty and never stopped questioning the government was killed in an accident at work after he gained his freedom. Capital punishment is an integral component of totalitarianism. According to research conducted by Princeton and Northwestern Universities, our government has evolved to become a union oligarchy. Sheldon Wolin, retired University of California at Berkeley professor and author, further defines this as inverted totalitarianism. Pliant legislators are served up for lobbyists to shape as was on full display Monday with LB503, the union dues legislation. Differences among us are promoted to undermine cohesiveness. All levels of government are under union control. Economics dominates politics. Different forms of ruthlessness come with that domination. I urge you to eliminate the death penalty and support LB446. Our system of government has strayed far from its constitutional roots. Eliminating the death penalty is an important step toward regaining our liberty. [LB446]

SENATOR EBKE: Thank you, Ms. Andrews. Any questions? I see none. Thank you. Next proponent. [LB446]

MATT MALY: (Exhibit 6) Good afternoon, Chairperson Ebke and members of the Committee. My name is Matt Maly, M-a-t-t M-a-l-y. Unfortunately I had prepared about five minutes' worth of testimony today but out of respect for your time I'll try to abbreviate as best I can. I'm the coordinator for the Nebraska chapter of Conservatives Concerned About the Death Penalty and I

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oppose capital punishment because it's a wasteful and ineffective big-government program, it's incompatible with my conservative principles, it's not fiscally responsible, it's not pro-life, and it's not limited government. It's not fiscally responsible because it costs taxpayers considerably more than its alternative of life without parole. I've distributed a recent study done by conservative economist Dr. Ernie Goss which shows that Nebraska's death penalty system costs \$14.6 million more than life without parole every year. It's also not pro-life. Since 1977 there have been 1,448 executions in the United States. In the same time frame, there have been 157 innocent people exonerated from death rows for crimes they never committed. That's about one exoneration for every nine executions, and keep in mind that we happen to have exactly ten men on death row in Nebraska as we speak. Lastly, it's just not limited government. As a conservative I don't trust the government to deliver the mail on time or even to fill the potholes correctly so how could I trust them to make life and death decisions? Obviously this is an issue that voters have weighed in on recently and some of you may feel torn. On one hand, you came to the Legislature to make government smaller and more efficient, which is exactly what this bill does, but on the other hand, you don't want to reject the will of the citizens, and I understand that. But no one voted to repeal LB268 because they wanted to bring back the system and leave it as it is today. Throughout the campaign, death penalty supporters were the first to admit that the system is broken. The point of disagreement was on whether or not it was worth it to continue to try to fix that system. So now that the ball has been put back into your court, we realize that we're in the exact same position we were two years ago. There has been legislation introduced this session to exempt lethal injection drug purchases from public records requests as an attempt to "fix the system." But even if that were to pass and somehow be upheld in the courts and then we were to find a source of the drugs, none of which are likely in my opinion, the system would still be far from fixed, because there's a big difference between finding the drugs and making the death penalty operational again and taking all the reforms that would be necessary to making it as efficient, effective, and fair as life without the possibility of parole. Even when Nebraska was briefly able to carry out executions it was still wasting taxpayer dollars 20 years ago, it was still causing mental and emotional harm to state employees, it was still prolonging pain and suffering of victims' families, and it was still failing to deter crime even at that time. To truly fix this would take many, many bills over many, many sessions. And as you more thoroughly understand all the moving parts here and all the problems that would need to be addressed and the long history of failed attempts at fixing Nebraska's death penalty, the conclusion I believe you'll come to, if not today, eventually, is that this system can never be fixed because if the death penalty process is short, quick, and cheap, innocent people will inevitably fall through the cracks. We cannot and will not accept that. If, on the other hand, we take every possible precaution to protect the innocent, the system will be long, slow, and expensive. We cannot and will not accept that either. So the ball has been put back in your court. You've been given one last chance to try to fix this. Now it's up to you to use the facts and our history and your own personal values to determine whether or not that's possible. I'd be happy to take any questions if you have them. [LB446]

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SENATOR EBKE: Thank you, Mr. Maly. Senator Krist. [LB446]

SENATOR KRIST: We've heard the history. We understand what happened. But my contention is that in the election cycle that this vote came in, we see the folks who didn't want to come to the polls for one reason or another, the lack of people who wanted to come and exercise their right to vote. It's my contention that if more people voted in that election, that the results would have been different. I don't know how different but I think it would have been different. But that's not the question that I have for you. The question that I'll pose to you is actually a leading question. Are you from Nebraska? Did you grow up here? [LB446]

MATT MALY: Yeah, born and raised in Omaha. [LB446]

SENATOR KRIST: Do you like the Nebraska way of doing business? [LB446]

MATT MALY: I do in general. [LB446]

SENATOR KRIST: Do you think if we put to a vote of the people that we could mask the companies and hide who is providing those drugs that they would vote that that would happen, that we should have that part of the Nebraska way of doing business? [LB446]

MATT MALY: If that were put to a vote, my personal opinion is that that would not pass, that Nebraskans value transparency too much. [LB446]

SENATOR KRIST: Yeah. And I feel that the 49 people in this Legislature need to hear from the people in just that way because we're going to have an opportunity to do that because it was prioritized because it was going to be brought to the floor of the Legislature. And if that's truly the Nebraska way, or not, then citizens need to weigh in with e-mails, with letters, with cards, with...that bill, by the way, should have been in here. It was put into a committee where it could have been heard and put out to the floor of the Legislature. So my challenge to you is in taking this one step at a time. Conservative value and moral value in the state of Nebraska needs to take the high ground. We don't mask who does business with who and who provides drugs to anyone for any killing process. If so, I need some...what did they outlaw years ago, that d-CON stuff that...I need some of that. So if somebody would like to do that, we'll make that legal for someone to mask their identity. So thank you for your testimony today. [LB446]

SENATOR EBKE: Any other questions? Thank you for being here today. Next proponent. [LB446]

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FRAN KAYE: (Exhibit 7) Good afternoon, Senator Ebke and members of the committee and my own senator, Senator Baker. My name is Fran Kaye, F-r-a-n K-a-y-e, and I am here to support LB446. Just to mention, I have been here supporting these bills at various Judiciary Committees since 1982, so we don't give up. Let me start today with a story about the murder of a good friend of mine and what I've learned from thinking about that. The phone rang on a Saturday afternoon before Thanksgiving. Hello? Chris got stabbed. Oh, no! Is he going to be okay? What hospital is he in? No, he's dead. Chris, the friendly young man with the infectious smile and the three little girls, was dead, another catastrophe. Chris had kind of run off the rails after his wife got killed in a car wreck and their grandmother, who had been raising the girls, had just died of cancer. How do you make human sense of so much grief? This would not have been a death penalty case. It happened during a fight. But even so, a death for a death solves nothing. We would not execute the car that killed the young mother. We are not yet able to kill cancer, even in self-defense. Justice, in most cases of human death, does not include revenge. We don't even think about it that way. To honor the person who has been killed, we get unsafe cars off the road and we work for safer highways, better cars, more appropriate speed limits. We invest generously in cancer research and we teach and practice healthy lifestyles. If the death penalty really meant a life for a life, if there were some kind of magic whereby the murderer's death would bring a victim back full of miraculous life, then the death penalty would have utility and meaning. But life doesn't work that way. As it is, executions serve only revenge. They inflict another death, leave another family to grieve and wonder. The death penalty does not reduce the murder rate, which is consistently lower in non-death penalty states and nations than in comparable polities with the death penalty. Our prisons, despite their flaws, are perfectly adequate at restraining murderers. A murderer is less likely to escape and kill again than the state is likely to convict and execute an innocent person. We know innocent Americans have been executed in the United States since the reimposition of the death penalty. The person who killed Chris is getting out soon. I am not afraid. Much as we would prefer that the lynch law had not played a role in our execution history, its stain is part of the reason that black and other minority persons are disproportionately likely to be sentenced to death. Instead of trying to find some magic formula that will allow us only to execute the guilty and only the worst of the worst, an impossible goal for any human system, let's accept that inflicting deadly violence is not part of the solution to deadly violence. Let's work on poverty, addiction, and mental health amelioration. Our goal is not to show that we are tough on crime, it is to cut the murder rate and make us all safer. The death penalty absolutely fails as a means to that end. Please support LB446. [LB446]

SENATOR EBKE: Thank you, Ms. Kaye. Any questions? [LB446]

SENATOR KRIST: Just... [LB446]

SENATOR EBKE: Oh, Senator Krist. [LB446]

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SENATOR KRIST: Just so it's not coming from us, you were here during the hearing when Senator Baker introduced his bill for the assistance for your...for the county in terms of what they were declaring bankruptcy because of the Beatrice Six? [LB446]

FRAN KAYE: Yes, I was here for that. I didn't say anything. [LB446]

SENATOR KRIST: Okay. During that hearing, we had the defense attorney sitting there. And I'm not going to put words in your mouth, but do you recall the gist of what he said about the death penalty and his client? [LB446]

FRAN KAYE: I've heard so much about this I'm a little confused, but the death penalty was used to threaten his client. And those people who were threatened there, they were very vulnerable people and the kind of people who are suggestible and they were threatened with the death penalty and so they confessed because they were scared, all except for the one man. Five out of six of them confessed just because they were bullied into it by being threatened that way. [LB446]

SENATOR KRIST: That's the gist and I appreciate you putting it on there. I want to just add that he specifically said if it wouldn't have been for the death penalty, he would have taken that case to court and he believes that there was a good chance that he would have beat that particular charge against his client who happened to be a lady whose name I can't remember right now. [LB446]

FRAN KAYE: Helen Wilson (sic--Ada JoAnn Taylor). [LB446]

SENATOR KRIST: Helen Wilson (sic), okay, thank you. I just wanted to put that on the record because it is going to argued, I'm sure, by the attorneys or the Attorney General that it's a tool in the bag that they have to have. Well, in most cases that tool does not create justice, it prevents justice. So thank you very much for coming. [LB446]

FRAN KAYE: Thank you. [LB446]

SENATOR EBKE: Next proponent. Just a reminder, if you're going to speak on this, please make sure that we've got the on-deck chair filled. [LB446]

ELLE HANSEN: Good afternoon, Senator Ebke, members of the Judiciary Committee. My name is Elle Hansen, E-l-l-e H-a-n-s-e-n. I did not think we were going to be sitting back in this room again. I thought the question had been answered, and it has in many ways. I'd like to speak

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to previous testimony that was given and repeat it because apparently it wasn't repeated enough in 2015. States with a death penalty consistently have higher murder rates and four times higher prison murder rates. In fact, Senator Crawford said so from the floor of the Legislature during the 2015 campaign. I have since contacted her staff to determine where that information was derived and that was from the credible Death Penalty Information Center who gets their statistics from federally vetted...essentially the FBI and the federal government. During the 2015 campaign to abolish the death penalty, we had zero murders in the city of Lincoln that we know of. For seven months after, up until the very tail end of the year, we were murder free until a young man was murdered in a local park. Since then and since the reinstatement of the death penalty, since the repeal was placed on hold, our murder rate in Lincoln has skyrocketed. I don't feel safe in my home. Many of you know that I have lost three loved ones to murder during the 2015 campaign and unfortunately on June 26 my little sister, Marlene Rashidi--and let the record show that I am showing a picture to the committee members of Marlene--was murdered here in Lincoln. She was shot and killed and another young lady was shot and survived. I'm confident that had the law to repeal and abolish the death penalty in Nebraska been allowed to remain in effect, our murder rate wouldn't be so high and I think there's a greater likelihood that my little sister would be alive today, happy at UNK, probably off at a track meet. She was a thrower. She was on the UNK track team. And she loved to learn. She loved the opportunity...she appreciated the privilege of her education for what it was. And now all I have to go and spend time with is her gravestone in a cemetery. The death penalty didn't deter the individual who killed...the individuals who killed my loved ones and it's not going to. However, violence does beget more violence and the family members, whether pro-death penalty or pro-abolition of the death penalty, continue to bear the brunt and the weight and more emotional damage is inflicted because of the death penalty. Thank you. [LB446]

SENATOR EBKE: Thank you, Ms. Hansen. Any questions? I see none. Thank you. [LB446]

ELLE HANSEN: Thank you. [LB446]

SENATOR EBKE: Next proponent. [LB446]

MIRIAM THIMM KELLE: (Exhibit 8) Hi. I'm Miriam Thimm Kelle, spelled M-i-r-i-a-m T-h-i-m-m K-e-l-l-e, and I'm in support of LB446 and I have been against the death penalty my whole life. Senator Chambers once asked me why it took me 20 years to come out publicly. Well, I told him, I had to be sure; in other words, what is right for me is right for my state. I have more information in that I didn't want to share at that time is that my mom has schizophrenia. This is a devastating disease. I was six months old when she got sick and she remained hospitalized through the state system until she died. I work as a registered nurse with individuals with these very problems. I have coworkers that have children who have this very diagnosis at a very early

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age. Most of the three that I'm talking about are nine years old and can't testify today because their school is actually working this week. I have experienced things that other Nebraska residents do not nor should not have to see. Kids are not born evil, as some would like you to believe. Some kids have bigger challenges and need more assistance than they receive. I believe in science. I remember when I was a young nurse that we used a test tape to measure how much sugar a diabetic passed in the urine and guessed at the right amount of insulin. I was told in nursing school that diabetics used to die in the drunk tank as no one knew what was wrong with them. We now know about capillary glucose as easy and accurate way for home care. It's one of the first tests done by an EMT on the illness call. I'm going to add to my testimony about the MRIs that we do not do in the state of Nebraska. A 4 micron MRI will depict whether a person is suffering from schizophrenia or bipolar because the brain is so red-hot. I've shown pictures to some of the senators in the last sessions of that very test but that test is not done and should be done. It's a very concrete way to tell if this person is suffering from schizophrenia or not, these changes, so the hallucinations, delusions, yet in Kansas in the last three years an execution carried out and the middle of the paragraph of all the murders and heinous things he did it said paranoid schizophrenia. And I'm so excited that my kids are fine but generations after me may not be so lucky not to have the delusions of mental illness and have it themselves. What we put in place in my lifetime might be the things that will lead us to really use science and not the knee-jerk reaction of hate. It's difficult for me to relive my brother James Thimm's death but I will do so at the cost of the death penalty. I wish I could go a year without buying clothes to wear to this Capitol, planning for gas to make the trips here, and the nightmares that I have about hearing after James. When I look into the eyes of Bud Welch who lost his daughter at the Oklahoma City bombing, I wonder if I'd been active much sooner if she would be alive or not. I'm not taking blame for that. I'm just saying we are not doing what we need to do for mental health treatment. I also watched Mr. Koresh separate the kids on the buses live on CNN and I knew which ones he wouldn't send out because...and would be spared. I urge you to take the proactive approach that may save a...spare a life instead of take a life. Help me not to have to educate every, each and every person in Nebraska what I have endured. I want Senator Chambers to continue his powerful message and I want this body to listen. It's very, very important that we use science and not a knee-jerk reaction of hate to what we determine for this state. Thank you very much. [LB446]

SENATOR EBKE: Thank you, Ms. Kelle. Senator Krist. [LB446]

SENATOR KRIST: What is the name of the...or the specific MRI that you're speaking of?
[LB446]

MIRIAM THIMM KELLE: It's a regular MRI but it's a 4 micron that determines that it's more precise. [LB446]

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SENATOR KRIST: And why aren't we doing it? [LB446]

MIRIAM THIMM KELLE: I do not know. [LB446]

SENATOR KRIST: Is it more expensive? [LB446]

MIRIAM THIMM KELLE: We don't have one in this state. [LB446]

SENATOR KRIST: (Inaudible)...okay. Thank you very much. [LB446]

MIRIAM THIMM KELLE: You're welcome. [LB446]

SENATOR KRIST: Thank you for your testimony. [LB446]

SENATOR EBKE: Other questions? Okay, thank you. Next proponent. [LB446]

MARK METCALF: (Exhibit 9) My name is Mark Metcalf. I'm a retired public schoolteacher living in District 32, Senator Ebke's district. First of all, let me commend you and those of your fellow legislators who last year did the right thing, finally, and passed a bill abolishing the death penalty in Nebraska. Later you showed even more courage and overrode the Governor's veto of that law. We know what happened next. On the issue of the death penalty, Nebraska's state senators were ahead of the people whom some of your colleagues are fond of calling the second house. It should not be surprising that our senators can be right about something and we the people can be wrong. Just take a close look at the word "demagogue" and what it suggests about the people. Take a close look at the word "senator" and what it suggests about you. And let's look at the house I represent. We don't have committee meetings or committee hearings. We don't even have committees. We probably pull down more than \$12,000 a year but none of that is compensation for crafting, debating, and passing laws. You cannot vote or term limit any of us out of that house and that house can be wrong, just as dead wrong as our system of justice can be at times. Good thing we have our senators, our council of elders who often make important decisions after careful deliberation, deliberation that often requires extended debate. Last year the law abolishing the death penalty in Nebraska was passed after decades of careful, at times agonizing, deliberation. But that law was washed away in a wave of populism. I won't itemize here the many reasons why the death penalty should be abolished. You know those reasons, or you should. I simply ask that you stand up for yourselves and recognize that you can, at times, be wiser than the people. Please advance LB446. I'll close as a good legislator ought to and yield the balance of my time to Senator Chambers if he'd like it. (Laughter) [LB446]

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SENATOR EBKE: Thank you, Mr. Metcalf. Questions? Thanks for being here today. [LB446]

MARK METCALF: Thanks. [LB446]

SENATOR EBKE: Next proponent. [LB446]

TOM VENZOR: (Exhibit 10) Madam Vice Chair and members of the Judiciary Committee, my name is Tom Venzor, that's T-o-m V-e-n-z-o-r, and I'm the executive director for the Nebraska Catholic Conference. The Nebraska Catholic Conference represents the mutual public policy interests of the three Catholic bishops serving in Nebraska and the conference supports LB446. The teaching of the Catholic church does not condemn the use of the death penalty in principle. The death penalty is not regarded as intrinsically immoral; recourse of the death penalty is not excluded from the right and duty of the state to defend society from unjust aggressors and this teaching is rooted in both sacred scripture and Christian tradition. Nevertheless, Catholic teaching also applies an extremely important consideration for using the death penalty, namely, if nonlethal means are sufficient to defend the innocent and preserve public order and safety, then public authority should limit itself to such means as they are more in keeping with the common good and more in conformity with the dignity of human life. In short, as St. Pope John Paul II articulated in his 1995 encyclical The Gospel of Life (sic--Evangelium Vitae), is the death penalty absolutely necessary for the protection of public safety? Are there no other means by which to defend society from an unjust aggressor? This standard which is rooted in the faith and tradition of the Catholic church is also a reasonable measure by which sound and justified public policy can be founded. The Nebraska Catholic Conference both invites and encourages legislators and all Nebraskans to consider LB446 within this framework. Speaking from a global perspective, St. Pope John Paul II, Pope Benedict XVI, and Pope Francis have all affirmed that cases of absolute necessity for the death penalty are rare if not practically nonexistent. In our own particular circumstances here in Nebraska, the three bishops of Nebraska and the Nebraska Catholic Conference has strongly held that the death penalty is not absolutely necessary to maintain the public safety. In our modern and technologically sophisticated age, means of punishments other than the death penalty are available and adequate for maintaining the public safety. Furthermore, in a culture that too frequently resorts to death and violence as a response to social problems such as abortion and doctor-prescribed suicide, the use of the death penalty has the potential of contributing to the growing disrespect for the dignity and value of human life. While many have valid and understandable concerns about the frequency of violence and heinous crimes in their communities, policymakers and societies as a whole need to do all that they can to deter and respond to violence that undermines a stable society. The death penalty, however, ought not be used as a panacea, a cure-all solution for other systemic problems that occur in maintaining the public safety. Additionally, while many across the state desire to seek the death penalty with a sound sense of retributive justice, it should be noted that there are also those who seek the use of the death penalty as a matter of revenge. Just retribution is a legitimate

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desire, however, actions achieved under the veil of vengeance are its own form of violence. Ultimately we urge the Judiciary Committee, all legislators, and Nebraskans across the state to respond to evil with the justice that is worthy of our best nature as people of faith and reasonable judgment. For these reasons the Nebraska Catholic Conference supports LB446. Thank you for your time and consideration. [LB446]

SENATOR PANSING BROOKS: Thank you, Mr. Venzor. Any questions? [LB446]

TOM VENZOR: Thank you. [LB446]

SENATOR PANSING BROOKS: Thank you. Further proponents? [LB446]

MARY BOSCHULT: (Exhibits 11 and 12) Good afternoon, Senator Ebke and members of the Judiciary Committee. I am Mary Boschult, M-a-r-y B-o-s-c-h-u-l-t, and I'm representing the League of Women Voters of Lincoln and Lancaster County. We are here today to express our support for LB446, a bill to eliminate the death penalty in Nebraska. The League of Women Voters of the United States has long supported abolishing the death penalty. In 2016, our Lincoln/Lancaster league researched and developed a policy specific to Nebraska for the league. The policy was adopted through review and concurrence of all members of the Lincoln/Lancaster league. Our league remains opposed to the death penalty in Nebraska. We believe that the state of Nebraska should not be executing or threatening to execute its own people. Almost all developed countries in the world have already abolished the death penalty. The death penalty should be abolished in Nebraska because it is applied arbitrarily, innocent people have been convicted and executed in Nebraska, the cost associated with trying and executing an individual greatly exceed the cost of life sentence without parole. Repeated studies regarding the death penalty have shown that the death penalty is no more a deterrent than life imprisonment without parole. The League of Women Voters is a nonpartisan organization that encourages informed and active participation in government. We do not endorse or oppose candidates. We work to increase understanding of major policy issues and influence public policy through education and advocacy. We urge you to advance LB446 to General File. Thank you. [LB446]

SENATOR EBKE: Thank you. Any questions? Guess not. Thank you for being here today. [LB446]

MARY BOSCHULT: Thank you. [LB446]

SENATOR EBKE: Next proponent. [LB446]

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SPIKE EICKHOLT: (Exhibit 13) Good afternoon, Madam Chair and members of the committee. Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska, testifying in support of this bill. The ACLU has long supported the repeal of the death penalty. And like many of the other testifiers who testified earlier, it is disappointing perhaps to be here again, but we are here again because what this bill does is the right thing to do. I want to acknowledge publicly if I have not already in other forums, the courage and leadership of the members who are here who voted to repeal the death penalty and override the Governor's veto last year. It was the right thing to do. You have a copy of my testimony being distributed in letter format. I'm not going to read that. I'm not going to repeat anything that people said before, at least not too much. The death penalty is wrong because it is wrong for the state to kill people. It's wrong because it's done in an arbitrary way. It's wrong because it gives the state leverage to abuse people in the court process, as Senator Krist alluded to earlier in his questioning. And more importantly, it's wrong because our system is broken and it's broken in a couple of specific ways that you may have not heard people testify to earlier. First, there's an argument that seems to be kind of percolating among the building about a deterrent effect that the death penalty might have and it's somehow linked or tapped to the prison situation. In other words, if we had the death penalty, maybe people wouldn't be...inmates wouldn't be killing other inmates or inmates wouldn't be being killed in the prison facilities. That is not an accurate statement. First of all, we have the death penalty on the books and inmates are being killed in Tecumseh so that is not a deterrent effect. And more importantly, the argument really is just tapping in, I would submit, on the frustration and the anxiety that many people might have over our prison system. What's happening in the prison is not because of a lack of deterrence or a lack of significant criminal penalties. It's because our prisons are overcrowded and they are in bad shape in that respect. But the death penalty is broken in another system that some people have alluded to earlier and that is we don't have the means to carry out the present method, we don't have the substances, the drugs. In sort of a futile attempt to get this machine reworking, some of your fellow members are proposing to somehow carve out, sabotage, limit the open records law. And that's really unfortunate because we are a state that does value open government and to somehow get this machine jump-started to do that is just really unfortunate and shortsighted. One thing that you will probably hear about in the next few weeks if you read the paper, there was a Supreme Court case, a U.S. Supreme Court case in January of 2016, Florida v. Hurst. In that case the U.S. Supreme Court struck down Florida's sentencing method with respect to that penalty and the weighing of aggravating and mitigating factors. That statutory scheme that was invalidated in Florida is very similar to Nebraska's and already the inmates on death row are beginning to litigate that very issue. The Delaware Supreme Court also invalidated, following the U.S. Supreme Court, the Delaware statutory scheme which, again, is similar to Nebraska's. I mention that because somehow bringing back the death penalty gives everyone the false assurance, who supports the death penalty at least, that it's going to work. It's not going to work. There's a whole nother wave of legal cases, whole nother wave of problems with respect to the death penalty. It's better to just scrap it. [LB446]

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SENATOR EBKE: Thank you, Mr. Eickholt. Any questions for him? Okay, thanks. Next proponent. [LB446]

JOSEPH HAMS: (Exhibit 14) Good afternoon. My name is Joseph Hams, J-o-s-e-p-h H-a-m-s. Thank you to everyone for being here. This is the first time I've ever testified in front of a group like this. Senator Pansing Brooks, thank you for your work. I'm in your district. Senator Ernie Chambers, thank you. You have truly, Senator Chambers, you have truly been an inspiration to everyone who wishes to see the end of the death penalty in Nebraska. And I'm sure we all thank you for that. I've...I'm submitting the exact same paper that I'm reading here so you can go ahead and read that, plus a very sassy bumper sticker on the back if you'd like to see that. This afternoon there have been many powerful and important reasons shared that illustrate why it is important to abolish the death penalty. It kills innocent people, it hurts families, it discriminates against minorities, it does not reduce crime, and it costs too much. I don't honestly know what the benefit of having the death penalty is. It does not benefit or protect ordinary Nebraskans but, rather, it is only a benefit to vengeful people who wish to wield their power. The thing that scares me most about the death penalty is the ability for the government to exterminate people that it deems as evil. "Evil" is the word that is used to describe those on death row. Please don't forget, though, that they are human beings just as we are. They have blood running through their veins. They have beating hearts and breathing lungs. They have thoughts, emotions, memories, and dreams. They have relationships--families and friends. What gives a vengeful politician the right to exterminate not just the person but all of that? My biggest fear is of an oppressive government that, with the power of the death penalty, can bully people into submission--silencing them and even exterminating them when it deems necessary. As reported on October 11, 2016, in the Omaha World-Herald, Governor Ricketts and his family's business poured around \$300,000 into pro-death penalty groups to fund the petition drive and the subsequent pro-death penalty campaign. It is clear that we already have at least one vengeful politician that's ready to spend his own money to exterminate people that he deems as unfit to live. The death penalty is unjust and immoral. It is downright barbaric for the state to be able to kill defenseless people. Yes, their crimes are horrific, but when they are in prison they are defenseless. I have a quote from Maximilien Robespierre on this. He says, "A victor who kills his captive enemies is called a barbarian! A grown man who kills a child that he could disarm and punish seems to us a monster! An accused man condemned by society is nothing else for it but a defeated and powerless enemy. Before it, he is weaker than a child before a grown man." Why then does the government insist on killing a defeated and powerless enemy? The state is simply becoming the master and exterminator of the citizens it is supposed to serve. Please, Senators, do not let our government become an oppressive and murderous regime that some wish it to be. Do not let our government exterminate people because it has deemed them as evil. Consider what this teaches our children. On Monday, I sat through a two and a half...long hearing on civics education curriculum. I heard impassioned testimony on both sides. Nebraskans care deeply about what we teach our children. Imagine the example that the death penalty sets for our children. It teaches if

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I hate you, I can kill you. Do not let our government teach that to our children. We should teach our children, instead, to love their enemies instead of exterminating them and that the role of the government is to serve its citizens and not to kill them. Thank you. [LB446]

SENATOR EBKE: Okay. Thanks for being here, Mr. Hams. Any questions? Okay, thanks. [LB446]

JOSEPH HAMS: Thank you. [LB446]

SENATOR PANSING BROOKS: Thank you. [LB446]

SENATOR EBKE: Next proponent. [LB446]

JOE NIGRO: Good afternoon. I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender and I appear on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB446. We oppose the death penalty because it is wrong. Some will say, why push this issue again when the voters just reinstated the death penalty last fall? The answer is because it is the right thing to do. In the 1700s and the 1800s people didn't give up pushing for abolition because it was the right thing to do. In the '50s and '60s people didn't give up pushing for civil rights because it was the right thing to do. You already know that the scheme set up to impose the death penalty is broken. It cannot be fixed. Imposing the death penalty costs far more than imposing and having someone serve a life sentence. It is not a deterrent. Innocent people have been convicted. We can't fix a wrongful execution. As we saw in Beatrice, the threat of the death penalty got innocent people to falsely confess. The death penalty is more likely to be imposed on the poor, it is more likely to be imposed on those who kill white people, and it is more likely to be imposed on people of color. Seven of the ten people on Nebraska's death row are minorities. When people are told the only way to execute someone is to have secret druggists in secret labs concocting secret drugs of death, you have to wonder what country we're talking about because it sure doesn't sound like America. A good friend of mine who is a renown professor of Holocaust studies at the university and who is originally from Austria told me that Europe saw what can happen when the state is given the ultimate power and they are never going to go there again. If you are judged by the company you keep, would we rather stay on a list with China, Saudi Arabia, Iran, Iraq, and Pakistan, the nations we join with the most executions, or would we rather be on a list with Canada, Australia, France, Germany, and Britain, all countries which do not have the death penalty? Which of those lists include countries with which we are more similar? Now, Senator Chambers, last week we discussed part of the Eighth Amendment about excessive fines and excessive bail and today we discussed that part of the Eighth Amendment that prohibits cruel and unusual punishment. Killing is certainly cruel and the rarity with which we execute people here in Nebraska certainly makes it unusual. Sometimes people will describe a heinous

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case and ask if it should merit the death penalty. The answer is no. It isn't about the crime or the people who have committed these offenses. And to say a death sentence is the only justice for the victims is to somehow imply that other victims didn't receive justice when their killers received life sentences. This is about us. We have to be better than the people who have committed these heinous acts. We should not engage in state-sponsored murder. I don't believe the death penalty will exist in America in 15 years. Twenty years ago the death penalty was supported by 95 percent of Nebraskans. Last fall it was supported by 61 percent. In a decade that support will be below 50 percent. The death penalty is barbaric, it's uncivilized, and it's unfair. Let's end the madness now. Let's be on the right side of history. Please vote to advance LB446. Thank you. [LB446]

SENATOR EBKE: Thank you, Mr. Nigro. Any questions? Okay, thanks. Next proponent. If there are other proponents, let's make sure we're moving to the front. Otherwise we'll move to the opponents next. [LB446]

GREG LAUBY: (Exhibit 15) Senators, my name is Gregory C. Lauby, G-r-e-g-o-r-y C. L-a-u-b-y. I support the elimination of the death penalty. That support is longstanding and prompted my statement to the Judiciary Committee hearing on November 20, 1997. I'm a novice compared to Senator Chambers, but I have admired his work on this issue from the time he began. I am providing a copy of that statement. It could require some revisions and some updating but I think it is clear about how strong I feel about this issue and some of the principles on it. It also contains on the second page a recommendation that this Legislature enact a study to allow it to become a leader in identifying the causes of felony crimes and implementing programs that other places have found successful. Some of those studies have already been conducted and by now a review of social...by the social scientists in Nebraska of those studies I think would lead to great value in terms of designing programs and methods that would prevent recidivism and give a much greater assurance to the general population that the death penalty could be eliminated without threat to public safety. There were a couple of other things that I would have...would suggest that could be done to improve the acceptability of the elimination of the penalty. For example, it was heavily criticized that even going to a life without parole sentence was not adequate because that could be reversed by the courts or the Board of Pardons. I certainly would not approve of any kind of restriction on the appellate power of the federal courts or the state courts to protect the innocent, but perhaps there could be a modification of the authority to commute at the Board of Pardons level if the executive branch feels that that's appropriate. In terms of the election results I would just like to quote to you something that has been attributed to Henry Ford and that was: If I had listened to my customers, I would have given them a faster horse. And with that, I would like to go on but I see my three minutes is up. I'm...so I will refrain. [LB446]

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SENATOR EBKE: Thank you, Mr. Lauby. Questions? Thank you very much. Have a good day. [LB446]

GREG LAUBY: Thank you very much. [LB446]

SENATOR EBKE: Are there any other proponents? Opponent test...or is there more? This is a...okay, opponents. [LB446]

CHRISTINE TUTTLE: My name is Christine Tuttle, C-h-r-i-s-t-i-n-e, Tuttle, T-u-t-t-l-e. My mother, Evonne Tuttle, was murdered in 2002 in the US Bank murders. Today she would have been 52 years old. It's her birthday. Instead of celebrating I'm here because I also do not give up. My mom was killed on September 26, 2002. She was 37 years young and had two little girls at home. My sister Virginia was five and Sarah was three. Has anyone ever have...has anyone ever told a three- and five-year-old that their mother is dead? The goodbye hugs and kisses that morning were the last they would ever receive from their mom. Also killed that day were Samuel Sun, Lola Elwood, Lisa Bryant, and Jo Mausbach. All these lives were taken within 40 seconds. In the video my mom is standing at the teller counter cashing a paycheck, a paycheck from a part-time job she quit to spend more time with her family. As she's standing there smiling and laughing, you see--thank you--three armed men in masks, carrying guns, walking into the bank. And you want to yell that they're coming but you can't. Before the robbery even starts it's done and all five people are dead--one victim so afraid she peed herself and they walked over and killed her, another victim was motioned to come closer only to be shot. As heinous as the crime was, I am so thankful that my mom was not beat, raped, and tortured like other victims of the men on death row. Carey Dean Moore shot and killed two cab drivers in Omaha just to prove he could take a life by himself. John Lotter raped and murdered 20-year-old Teena Brandon. I actually toured Tecumseh prison in a minimum security unit and John walked freely beside me. He was not on death row, in a special area. Raymond Mata killed three-year-old Adam Gomez, dismembered him, and fed him to the dog. Arthur Gales was convicted of attempted murder and severe beating of Judy Chandler. He also raped and murdered her 13-year-old daughter and 7-year-old son. Jeffrey Hessler kidnapped, raped, and murdered a 15-year-old newspaper carrier named Heather. Roy Ellis abducted, raped, and killed 12-year-old Amber Harris. Marco Torres was convicted of the double murder of Timothy Donohue and Edward Hall. That brings us to Jose Sandoval, Erick Vela, and Jorge Galindo. These three men are known for killing my mom, along with the four others I mentioned previously. All of the men on death row are the worst of the worst and that is what death row is reserved for. All of them are guilty and not one of them even claims to be innocent. In 2008 the Lincoln Journal Star interviewed Jose Sandoval. He said, and I quote: I am a heartless, selfish, egotistic, sarcastic, prideful, bad seed. I was a thief, a liar, a con, a hustler, a Latin King, and a drop-of-a-dime fighter, a robot, a monster, and a scary-looking, sadistic killer. He goes on to say his death sentence was just and he deserves to die for his crimes. He said this himself. He also spoke about the ability to obtain weapons, drugs, and

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pornography while on death row. I don't have data or statistics or Bible quotes. All I have is my story. As far as the price of the death penalty goes, there is all sorts of different figures. But honestly the price does not matter to me. How much would just one more hug with my mom cost, or one more Christmas or birthday? Some things you just can't put a price on. Capital punishment is an investment worth taking. These ten men on death row have nothing to lose. I believe if they had an opportunity to kill again, they would. The only way this can ever happen is for them to be executed. There are six ways for guilty lifers and death row inmates to get out of prison: existing law; sentences being commuted; case law; change in law; released by error; and escape. And that's a chance I don't think we should take. I'm not asking for these murderers to have painful, torturous executions. I am not a bitter, hateful, revengeful person. Some people need closure, some people don't. Maybe this is their way. I don't know. Everybody finds closure in different ways. I truly believe justice will not be served until these men are executed. Please do not base your decision on cost, timeliness, appeals, and things of this nature. All of this stuff can be fixed. It is a broken system and when things are broke, you fix them, you don't throw them away. Several years ago Jose Sandoval wrote me a letter from his prison cell. He told me that if I don't forgive him for what he did I will go to hell. He also told me that if I want answers to what he did, I can come visit him. How would that make you feel? He is still victimizing me and my family even from death row and I want to know that I will never receive another letter from him and I also want to know that these men will never hurt another person. On November 8 the people of Nebraska spoke. Did you hear them? Lastly, to those of you that celebrated the abolishment of the death penalty on May 27, shame on you. I watched you laugh and hug and high-five. You celebrated on the pain and the sorrow of my family and we have hurt enough. This behavior hurt me and it angered me and it is not becoming of state senators and I hope and pray that you do not make the same mistake again. [LB446]

SENATOR EBKE: Thank you, Ms. Tuttle. Any questions? Thank you for being here today. Next opponent. [LB446]

RICK EBERHARDT: (Exhibit 16) Good afternoon, Senators. Thank you for having me here today. Senators, my name is Rick Eberhardt and I currently serve as the Pierce County Sheriff. I came here today as an opponent of LB446. My involvement in the death penalty started during the early rounds of the debate on LB268. During that time the family of Evonne Tuttle and myself walked the halls of this Capitol Building. We talked to senators in their offices and later we pulled senators off the floor and shared our stories and beliefs. Later we saw things happen here that we thought were not possible. As the bill advanced in the Legislature, an amendment to LB268 was attached to that bill. That amendment would have allowed the people of the state of Nebraska to decide the death penalty issue. Members of this Legislature voted to stop the people from having a vote. Enclosed you will find a copy of that amendment and your votes. On May 27, 2015, the day of the final vote on LB268, after the vote was announced I saw people stand up in the balcony and cheer and clap and celebrate. I saw senators hug each other, give arm bars, fist

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bumps, and smiles on the legislative floor. I then went out to the foyer of the Chamber. I saw people hugging and crying and being so happy that murderers, rapists, and people that torture were let off death row. That is what I saw, but what I felt was sad for the people that lost loved ones, that didn't get to hug their kids, didn't get to see them sing at a Christmas concert, they didn't get to walk their daughter down the aisle. Who was there to talk for them? The law enforcement officers who investigated the crimes, who had to look at through horrible things that nobody should ever see? The prosecutors that took time away from being at home, working at the office late at night getting prepared? The jury that was pulled off the street that shouldn't have to witness those things, see those things, hear those things? But they did and along with the judges they made tough decisions. And it was all taken away with your push of a button. I saw our state leaders and people celebrate on the tears and sorrows of the victims and their families. It was truly a sad, sad day. Attached you will find pictures and videos of what I saw. After that, 166,692 Nebraskans signed the petition that the people wanted to decide this important issue. Anti-death penalty groups came from far and wide and spent millions of dollars. They flew in individuals from all over the country, and some senators traveled all over the United States giving speeches to anti-death penalty groups on how you did away with the death penalty. Two went away...two went as far away as Rome. Millions were spent on personnel and TV and radio and in the end it was the fathers, mothers, grandmas, grandpas, brothers, and sisters that stepped into a voting booth on November 8, 2016, and by a margin of 173,000 votes stated that Nebraska is a death penalty state. In doing so they issued a work order to you, our state leaders, to find a workable way to carry out these sentences in a timely and a humane way. There are those here today that will have different beliefs on this difficult issue. I understand and I respect their opinion. Some will talk about the executions that were carried out in other states. They will claim that those who were executed suffered. Senators, I am here to assure you that their suffering was pale in comparison to the suffering of the victims and their families of those on death row. I suggest you model our laws after states that can carry out death sentences and if cloaking of the drug source is necessary, so be it. If you...I feel that this is...if...I feel if this is not done, suppliers and participants will be hounded in the media and the courts for their participation in executions. I am here to remind you of who the real victims are. Please remember them. They were real people that cried out when their lives were taken from them. Their names were: 3-year-old Adam Gomez; 12-year-old Amanda (sic--Amber) Harris; 13-year-old Latara Chandler; 7-year-old Tamar Chandler; 15-year-old Heather Guerrero; Reuel Van Ness; Maynard Helgeland; Timothy Donohue; Edward Hall; Jo Mausbach; Lisa (sic--Lola) Elwood...Lisa Bryant; Lola Elwood; Samuel Sun; and Evonne Tuttle, and their many friends and families that they left behind. Please do not impede or obstruct the will of the people by voting LB446 out of committee. Remember that the people of the state of Nebraska have spoken on this issue. I would like to thank you for giving me this opportunity to testify. And, Senators, there may not be very many of us here that are proponents of the death penalty. We showed up on November 8 between the hours of 8:00 and 8:00 and we pulled the curtain shut and we cast our ballots. The people spoke on this issue. Thank you. [LB446]

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SENATOR EBKE: Thank you, Sheriff. Senator Krist. [LB446]

SENATOR KRIST: Just as you are as passionate on your side, I am as passionate on the other side. I want you to know that I will vote this out of committee again. My district, District 10, and the preponderance of the Omaha area did not vote for the repeal of the law, so I have to represent what I am and the constituents that I represent. Regarding your exhibit on the voting down, on Select File, which was a last-ditch effort to derail the piece of legislation, it was just that. And if you ask Senator McCoy why he did it, he wanted to stop the nonsense right then and put it to the vote of the people. At that point we had deliberated eight hours on General File and almost the entire time on Select before this thing was thrown out. You ask Senator McCoy why he didn't bring a constitutional LR to put it on the ballot to begin with. I won't contest that there were 160,000 people in this state that decided to overturn and repeal the repeal, if you will. But I don't think you...have you ever seen a real execution, a beheading? [LB446]

RICK EBERHARDT: No, sir. [LB446]

SENATOR KRIST: Ever witnessed it? [LB446]

RICK EBERHARDT: No, sir. [LB446]

SENATOR KRIST: Okay. I take myself back to that point in Saudi Arabia in "Chop Chop" Square and that's why I'm against the death penalty because I have seen an oppressive country do things so horrific. And now we're asking to give leniency to or to look the other way for someone to lie about actually giving the drug to kill somebody. I feel strongly for those who have been injured long term by losing family members, as I have. But I've also seen the opposite side of the coin. I just wanted you to know I appreciate you coming. I would never make these comments to Ms. Tuttle. But you're an officer of the law and you understand I have my obligations and you have yours. [LB446]

RICK EBERHARDT: And, Senator, I think it's...but I would hope...you saw the pictures. Senators that are sitting in front of me celebrated--fist bumps. Watch the video. Can you imagine what that was like for the families? Watch the video, watch the CD. [LB446]

SENATOR KRIST: I'll take that critique because I was one of the people who felt very strongly that my side had succeeded that day but...and I would say that I was sorry if someone was offended. [LB446]

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RICK EBERHARDT: Nobody has apologized to any of the family as of yet that I know. [LB446]

SENATOR KRIST: Well, let me do that publicly. [LB446]

RICK EBERHARDT: Okay. [LB446]

SENATOR KRIST: Let me just say that our joyfulness was in succeeding in a task that we thought we needed to succeed in. And as I said, I feel as strongly on one side as you do on the other. And I appreciate you coming here. And both of us in the line of duty have supported the freedom of anybody to sit in that chair and say anything that they want to say. So I respect your service as well. [LB446]

RICK EBERHARDT: Thank you. [LB446]

SENATOR KRIST: Thank you. [LB446]

SENATOR EBKE: Other questions? Senator Morfeld. I'll get to you in a second, Senator Chambers. Senator Morfeld. [LB446]

SENATOR MORFELD: Thank you. Thank you for coming today. I'd like to also note for the record my district did not vote for the repeal of the death penalty so I represent my district well and I'm proud to do it. I do not condone what's happened to any of those family members, Ms. Tuttle included, and those people should be in prison for the rest of their lives. And if they're harassing Ms. Tuttle, then they shouldn't be allowed to send mail or do anything of that nature unless it's with their attorney. And if there needs to be a law put in place to do that, then I'd support a law in that regard as well. That being said, I think the other side of the coin, the thing that was most compelling to me, is the fact that the death penalty is sometimes used...I think that, like most professions, a vast majority of law enforcement officers are hardworking, honest, trustworthy individuals and I have a lot of respect for them. They do a job that I've never done before and I have a lot of respect for. That being said, it's also one of the most powerful positions in our society, particularly the position of prosecutor. And when you look at what happened down in the Beatrice Six and how the death penalty was used to elicit the false confessions and it's been used in that same way before to put people and sentence them to life, that was one of the many reasons that I decided to repeal the death penalty. I understand where you're coming from. I have yet to see evidence that the death penalty reduces crime, that the death penalty prevents the crime, the horrific crimes in which people are prosecuted under the death penalty. And so I respect the work that you do, Sheriff. It's Sheriff, correct? [LB446]

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RICK EBERHARDT: Correct. [LB446]

SENATOR MORFELD: Pierce County? Yeah. I respect the work that you do, Sheriff, and I respect your right to be here, but I think that there's another side to this story and I think that I stand by my vote. And if the people of my district decide to remove me from office because of that vote, then I'll sleep well at night. In this case, my district voted not to repeal the death penalty. Thank you. [LB446]

SENATOR EBKE: Senator Pansing Brooks. [LB446]

SENATOR PANSING BROOKS: I, too, would like to say that I am sorry for any families who felt that we were being disrespectful to them. That was not the case and I don't appreciate coming forward and acting as if our...clearly the success of that vote had nothing to do with the pain and the suffering of the people of Nebraska who have been so devastated by murder in their families. And to act as if these pictures show otherwise, I resent that. I'm sorry but I do. And I apologize to Ms. Tuttle if you thought for any reason that our feelings were the least bit disrespectful or related to the fact that you had endured such pain and suffering over the loss of your mother and I am very sorry. But we had heard testimony, very compelling testimony from Ms. Taylor and how she'd lost 19.5 years with her child after having been threatened by law enforcement with the death penalty. So did we feel some joy at the fact that we felt there was some justice that could be found by keeping people in prison for their whole life? Yes, we did. But to act like that had anything to do with Ms. Tuttle, I am...that really does...I resent that. And I'm sorry. Thank you for coming. I don't expect that my actions be so completely misconstrued. Thank you. [LB446]

SENATOR EBKE: Senator Pansing Brooks, thank you. We're breaking protocol just a little bit. I'll...we'll give you... [LB446]

SENATOR CHAMBERS: Yeah, because my picture is in here a lot. [LB446]

SENATOR PANSING BROOKS: Mine is too. [LB446]

SENATOR EBKE: Yeah, so. [LB446]

SENATOR CHAMBERS: Now I don't know what he thought he was doing but I'm going to tell you something that happened in my family. My youngest sister was my favorite sister, as often happens. So her son, my nephew, was one of my favorites. He knew it. Everybody knew it. He was brutally murdered. [LB446]

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RICK EBERHARDT: I'm sorry for your loss. [LB446]

SENATOR CHAMBERS: People laughed. And you know what they came to me and said, people on your side: How do you feel about the death penalty now? I said, I feel the same way I did. You mean after what happened to your nephew? He was shot several times in the head; they never found the one who did it. And I said on the floor of the Legislature and other places I'm against the death penalty. It's a principle with me. Killing my nephew was horrible. But if you kill whoever killed him, it's not going to make me any difference whatsoever. It wouldn't make his mother, my little sister--she was grown at the time, naturally--any difference. My son just a few years ago was shot. Fortunately he didn't die. I'm still against the death penalty. So for you to come here and say that because things happen to people it turns them into bloodthirsty people who think that other people ought to be killed, you're mistaken. And there were some people who were very troubled by you because they said you were going around using your position as sheriff to intimidate people and telling them how they'd better vote for the repeal of what we did. So things are said about all of us. But as long as I have breath in my body and I'm in this Legislature, I'm going to do what I believe is right. And I don't think the state should kill anybody. And I want people to know what my view is. And they can challenge me on it and they're entitled to do that. They can come here and speak and that's the purpose of the public hearings. I speak to you because you're an officer of the law and you know how infuriated people are when they see my picture because that was why they voted for term limits. And there are people in this chamber right now who were elected to the Legislature by using my name and saying that their opponent voted with me on the death penalty issue. More than 30 others did, but their names were never used. They happen to all have been white. So there are some unsavory, unethical things done. You don't even have to respond. But I want you to know that you're not the only one who has seen terrible things happen to people. [LB446]

RICK EBERHARDT: I understand that, Senator, but I just, you know, I was here that day and when the vote was announced they stood up, people stood up and cheered and clapped and celebrated while family members, innocent people were murdered. And arm bars, arm slaps, the pictures are there. How would that make you feel if--some of you have kids--if they were outside an emergency room where they died and there were a bunch of people out there doing that? You'd be very upset. [LB446]

SENATOR CHAMBERS: That wouldn't happen outside an emergency room. Sheriff, you... [LB446]

RICK EBERHARDT: Well, or wherever it happened. [LB446]

SENATOR CHAMBERS: ...know better. [LB446]

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RICK EBERHARDT: But it was wrong to celebrate. [LB446]

SENATOR CHAMBERS: You know better and you know why people were happy in the Legislature. There was no thought of victims or anything else. But the state finally was taken out of the killing business and that's why people were happy. And I was very pleased. [LB446]

RICK EBERHARDT: And I don't think we should celebrate that. I don't think that should be celebrated because... [LB446]

SENATOR CHAMBERS: I do. [LB446]

SENATOR EBKE: Do we have any other... [LB446]

RICK EBERHARDT: That's a difference of opinion. [LB446]

SENATOR EBKE: ...questions or comments? [LB446]

RICK EBERHARDT: Thank you. [LB446]

SENATOR EBKE: Thank you for being here today, Sheriff. Next opponent. Just a reminder, if there are any other opponents, let's move up. [LB446]

COREY O'BRIEN: Good afternoon, Chairwoman Ebke, members of the Judiciary Committee. My name is Corey O'Brien. That's C-o-r-e-y O-'-B-r-i-e-n. I'm the criminal prosecution section chief for the Nebraska Attorney General's Office and I appear here today on behalf of the Nebraska Attorney General's Office, Attorney General Doug Peterson, and the Nebraska County Attorneys Association in opposition to LB446. The Attorney General's Office and the County Attorneys Association believes the death penalty is a just and appropriate punishment in a narrowly defined group of especially egregious first-degree murders. These are murders committed against innocent children, multiple murders committed by the same perpetrator, murders of law enforcement officers or correctional officers without any justification, murders where the perpetrator inflicts gratuitous torture upon the victim prior to death, murders for hire, and murders committed for the purposes of solely concealing another crime or the identity of the perpetrator in an earlier crime. Each of the murders committed by the ten men currently sentenced to Nebraska's death row involved one or more of these circumstances and existing Nebraska jurisprudence ensures that only those future murders that fit into one of these narrowly defined and tailored categories will ever be eligible for the death sentence. In November of 2016, Nebraska voters went through a very challenging referendum process and from that process the

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citizens have spoken. LB446 is in stark contradiction to the voice of the citizens. As a result, the Nebraska Attorney General's Office and the Nebraska County Attorneys Association opposes LB446. With that, I'd be willing to answer any questions of which I'm capable. Thank you. [LB446]

SENATOR EBKE: Thank you, Mr. O'Brien. Do we have any questions? I see none. Thank you for being here today. Do we have any other opponents? Do we have any neutral testimony? [LB446]

SENATOR KRIST: Just to put it on the record, the Attorney General of the State of Nebraska has yet to testify on any key issues in front of this committee this session. [LB446]

SENATOR EBKE: So noted. [LB446]

SENATOR KRIST: Thank you. [LB446]

SENATOR EBKE: Senator Chambers. [LB446]

SENATOR CHAMBERS: Yes. [LB446]

SENATOR EBKE: (Exhibits 1-4) We do have some letters, I believe. We have letters in support from Sarah Hanify of the National Association of Social Workers-Nebraska and from Nancy Meyer and letters of opposition from Ron and Lynette Nash and Donn and Judith Williamson. Senator Chambers. [LB446]

SENATOR CHAMBERS: I'm going to say this. Ordinarily I won't let anybody tell me how to represent the people in my district. Senator Ebke through various things that happened in the Chamber became Chairperson of this committee. Generally I let her try to tell me how to represent my constituents. Some lumbering sheriff is going to come in here and use my picture and then it's a violation of protocol for me to say something about it. Had she tried to stop me, I was going to speak anyway, and next session we're going to do something about this notion of saying that the one who introduced the bill cannot sit at that chair. I know more about my bills than anybody else. I will ask the questions of everybody when others on the panel will not, especially if they are cops or representatives of the Attorney General's Office. That man got no questions from me because I was trying to make a compromise with Senator Ebke. I would have asked him, about all these horrible murderers that he mentioned, why are there only ten people on death row and the majority of them minorities? Because people like him and the Attorney General, when they do get involved in these prosecutions. But he also represented the county

attorneys. You know why there are only ten people on death row? Because they enter plea bargains and they use the death penalty to threaten these people to make them plead guilty. Now I'm going to show you where they are lying through their teeth and I said liars. They say the death penalty is reserved for the worst of the worst. So you have a guy out in Hastings and in Kearney who murdered his wife first and he waylaid her and shot her in the back with a high-powered rifle, went to the city where the lawyer who had handled their divorce lived. This lawyer came out of his office. This guy from ambush shot him in the back and killed him too. The county attorney out there, who since then has become a judge, used to come here and speak on behalf of the county attorneys for the death penalty in opposition to repeal. When those two murders occurred, the first one occurred and in exchange for a plea of guilty he took the death penalty off the table. Now this guy got one murder to his record. Mr. O'Brien talked about multiple murders. This guy murdered the lawyer. And you know why the county attorney out there took the death penalty off the table? If he'd plead guilty to a lesser charge, there would be no trial and he wouldn't get the death penalty. Multiple murder, the one who used to come here, the dishonest prosecutor, is the one who took the death penalty off the table. If he was so vicious, and he was, the murderer, how did he all of a sudden become less vicious because he pleaded guilty? How did he suddenly become less of a threat to the other inmates because now he's in general population? Why did a plea of murder, a plea of guilt, take him out of the category of the worst of the worst? Why did he cease to be a threat to the other inmates by being in the general population? Why were the families of the murder victims less upset because he pleaded guilty? They come here with that nonsense and they get away with it generally. I'll tell you why I don't think Donald...I'm having a senior moment. Who is the county attorney of Douglas County?
[LB446]

SENATOR EBKE: Don Kleine. [LB446]

SENATOR CHAMBERS: Right. Everybody knows it. (Laughter) You know I know because he's the one I said if I ever had to be prosecuted, he's the one who would do it. When McCoy was here, the case he kept bringing up was the guy who had killed his mother and thrown the little boy in the river. McCoy brought it up over and over and said how horrible this is. Donald Kleine was the one who had testified for the death penalty and against my bill to repeal. You know what Donald Kleine did? He entered into a plea bargain. And this case, which was presented as the worst of the worst, where the death penalty was merited there more than anywhere else, he's the one who took it off the table in exchange for a guilty plea. Then he had to acknowledge that it created a difficulty because people throughout the courthouse and the legal profession were wondering why of all people would Don Kleine let this be resolved by a plea bargain. Then the World-Herald put some other cases of murders where plea bargains were entered by the county attorney's office and no death penalty was involved. The death penalty makes the work of these lazy scoundrels easy on all crimes. They have more than the high...they're in the high 90s in terms of convictions because most of the cases end by plea bargains. And if you took the death

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penalty away, some of these cases would go to trial because they can't threaten people like they did the Beatrice Six. They couldn't take people who were mentally challenged and a trial would demonstrate it and frighten them with the death penalty so that the jury wouldn't see the kind of people that were being prosecuted in this fashion. If there is any group worthy of condemnation, it is the prosecutors in this state and I'll say it to their face. That's why the county attorney didn't come this time, in my opinion. The Attorney General, as it was pointed out by Senator Krist, won't testify before this group but there have been times he's been slipping and sliding around outside the Chamber pulling people out to try to lobby them. But he won't come here and face the music. Now I think it's arrogant for people who may have lost somebody to murder to think they're the only ones who have suffered any sadness. They think everybody would be like they are. People respond to things based on the way they're put together and I'm not the one to say how somebody should feel when they lose a loved one. If they'd want to take the person who did it and punch the eyes out and drive a nail through their head, they're free to feel that way. And if that makes them feel better, who do they hurt other than maybe themselves by prolonging that sadness by having those thoughts? Thoughts don't hurt anybody. Let them be free to think what they want. But the state can never take as its policy and practice conduct that is befitting somebody who is temporarily deranged whether through sadness, hatred, anger, or whatever. We are the leavening influence. We are the civilizing agent. We are the ones to make sure this is an ordered society where life is respected. And the state cannot fulfill that role when it does the very thing that it says is worse. Those who believe in the Bible and say a life...he who sheds blood shall have his blood shed by man, who was the first murderer? Cain. Cain murdered his brother, his own brother. And if because he shed man's blood God put in place the law that by man should his blood be shed, Cain--God talked to people then based on these stories--he said, I cannot bear what you're doing to me, because God had told him, you are banished from the Garden of Eden and you'll wander for the rest of your days. Cain said, every man's hand will be raised against me, I cannot bear that. So you know what God did? He put a mark on Cain. He said, so no man will put his hand on you, and talked about what would happen to the one who did it. This is God putting a mark on the first murderer to make sure that nobody touched him. When Jesus was confronted with a death penalty case--adultery carried the death penalty--the death penalty crowd brought the woman to Jesus. And that was an example, first of all, of how unfairly, how arbitrarily and discriminatorily the death penalty is invoked, because both parties under the Jewish law were to be killed but they only brought the woman, the one who was a part of the society who can be dispatched and nobody cares. So to make a long story short, Jesus knelt on the ground and wrote something. And here's the conversation that I think took place. Jesus said he was the son of God. He had committed no sins. So he also said he came not to destroy the law but to fulfill it. The religious people had been trying to catch him in his words forever so here they had him. They said, you said you came to fulfill the law, not to destroy it, the law says that this woman should die. He didn't deny it but he did say, let he that is without sin among you cast the first stone. So there was a smart aleck, probably from the then-attorney general's office, who said, aha, he that is without sin should cast the first stone and the law said

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there should be a stone cast, you say you're sinless. Jesus said, thou hast said. He said, then why don't you cast the first stone? Jesus said, the one who is sinless will not cast the stone, so I'm fulfilling the spirit of the law, I'm here to amend the law. Let those take a life who have never committed a sin. That would be the standard if Christians were going to go by what Jesus did. But we know that's just a lot of conversation and I'll tell you why I say it. These people who want the death penalty come here indignant about the fact that we want to do away with the death penalty. I could tell you things that were told to me by this sheriff and his pals who were out there pushing petitions to reinstate the death penalty, the kind of threats they were making to people and saying this is a relatively small population, we know who the people are. But I didn't hit him with that. So when they come here to this committee and I'm on it, if they can give it, they got to take it. And next session I'm going to make it clear to the Speaker that if they're going to put a rule in here where they're going to dictate how you represent your constituents, it's not necessary for me to come to these committee hearings because I'm not going to let anybody tell me how to represent the people who sent me here. And I'm saying that for the record. I'm not going to waste my time. I'm not anybody's child. And I'm not a child, period. But I will push for what I believe in. I don't care who's for it. And the sheriff told fibs. I'm not aware of two senators who went to Rome. I'm not aware of millions of dollars being spent in the campaign that they put on to reinstate the death penalty. I think their side spent more because the Ricketts family put several hundreds of thousands of dollars into it. So he misstated how much money was spent, misstated where senators have gone. Let me tell you the truth about what happened in Rome. When the word went out that Nebraska had abolished the death penalty, in Rome they lighted up the Colosseum. They put a huge banner and it was photographed and it went around the world: Nebraska abolished the death penalty. Congratulations. Nebraska had caught up with the EU. You cannot get into the European Union if you have the death penalty. Because Turkey wants to get into the EU, they abolished the death penalty. So the tide of civilization is against this. The Nebraska...the U.S. Supreme Court said that when you do certain things in your Legislature, the mark of an evolving society, the civilizing effect that occurs will result in the termination of the use of the death penalty. I was the one who when people were being attacked by the Attorney General, by the Governor, senators were condemned for voting with me even by the Governor, I was the one who pointed out that these people have stated why they voted to abolish the death penalty. They had deeply held, sincere religious convictions. They stated and declared that the reason they could not vote for killing was because they were pro-life from birth to natural death and the death penalty was not natural death. They pointed out how the--and I did this, too--how the Pope spoke against the death penalty, said with the modern techniques of penology there is no need to kill anybody at the hands of the state. So although the church as a policy and as far as having spoken, *ex cathedra*, the death penalty was not against Catholic doctrine, per se, but in these modern times, and he was about the third Pope to say it, there should be no death penalty. He said legislators should vote against the death penalty. And there are people who practice their faith and that's what they said. The Governor, on the other hand, who talks about being a man of faith and a Catholic, went against what the Pope had said ought to be the position taken. The

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Catholic Conference, the three Catholic bishops in Nebraska, campaigned actively against the death penalty, encouraged the priests to speak against it as the policy of the church in these modern times. The Governor ignored all that and looked only at the fact that I voted against the death penalty, other senators did, so all of their protestations about their belief in life were thrown out the window; all of them were lying; that's not why they did that. They voted to abolish the death penalty to be with Senator Chambers. Senator Schnoor, ex-senator whom the Governor appointed, stood up on the floor and echoed the Governor and he got beat in his campaign. And as I said, there are people in this Legislature now who made the campaign and got like Senator Seiler who was Chairman of this committee and voted against the death penalty. I saw the campaign literature put out against him: He stood with Senator Chambers, not with you all. Well, how about the 30 others who voted? Why didn't that brochure list out all of those other white senators and say he stood with them? That wasn't the only senator's race where this happened. And I'm putting this on the record so people who may not have been aware of it will be aware of it. I don't believe there is a senator in this place who voted to abolish the death penalty because he or she wanted to vote with me. I watched the agony that Senator Hilkemann and others went through. It was not a walk in the park. He said he did not sleep well until he voted the way he should, and that was to abolish the death penalty and override the Governor's veto. And I want to say this to Senator Ebke, no disrespect intended. Had things not taken the turn that they did with that sheriff, you wouldn't be hearing everything I'm saying now. But I think it was a cowardly, underhanded thing he did. You saw how big he was, didn't you? He carries a gun, too, don't you? You know that, don't you? And I've had big people threaten me before. And when they threaten me man to man--I can't say eyeball to eyeball--eyeball to his belt buckle, and he threatens to me, the more...the less he looks like Goliath and the more he looks like Tom Thumb. And if he's here, I hope he hears me saying it. And if he's not here, somebody tell him what I said, because I'm not the one who runs and hides. I don't send somebody to do my dirty work. The Attorney General should be here. How many of you have ever heard me run when I'm being attacked on the floor of the Legislature or anywhere else? I don't hide. My phone number, my address are in the phone book. I don't have guards. I don't carry guns. And I say what I believe anyplace. So now there are people who are going to have to do what they do and I will presume on serious issues like this they do it for the reason that they say. But regardless of what I may say, they know why they do whatever it is they do. Now, any questions that you want to ask me I will answer. [LB446]

SENATOR EBKE: Senator Pansing Brooks. [LB446]

SENATOR PANSING BROOKS: Thank you. Thank you, Senator Chambers. Senator Chambers, we did hear that the Colosseum was lit on behalf of Nebraska. Do you think that was in celebration of the pain and suffering that people whose families had been murdered... [LB446]

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SENATOR CHAMBERS: That wasn't in anybody's mind. Those people had been fighting against the death penalty for decades. I knew some of them. I had watched them standing in front of the Governor's Mansion in all kinds of weather. And for the sheriff to suggest that was another one of his disingenuous, dishonest statements. Nobody said anything about any victims. It was the hard work that had been done all of those years and that is why the people celebrated, and the people were entitled to do so. The state was taken out of the killing business and that was a cause for joy all over the country. And I did, by the way, get communications from all over the world. And they wanted me to talk about what a great thing it was that I did but here's what I said. And if you read all of my interviews, it was historic but a historic act is never the work of one person. It couldn't have been done by one person because, if I could have done it, do you think it would have taken me 40 years to do it? So the joy was genuine and it was based on having achieved something that seemed unachievable. [LB446]

SENATOR PANSING BROOKS: I would agree and I would hope that and again say I feel...I am sorry to any family member who felt that it was anything other than the effort to take the state out of the business of killing. [LB446]

SENATOR CHAMBERS: The sheriff said that. I think... [LB446]

SENATOR PANSING BROOKS: Yes. [LB446]

SENATOR CHAMBERS: ...those family members, I think, in my opinion, they knew why we were joyful about what had happened. [LB446]

SENATOR PANSING BROOKS: I would hope so. Thank you, Senator Chambers. [LB446]

SENATOR EBKE: Senator Krist. [LB446]

SENATOR KRIST: I am going to repeat my apology if that's the way it was taken. But my point is, I don't often correct you, but Senator Coash did spend some time in some foreign countries as they asked him to speak on what we achieved in the state. [LB446]

SENATOR CHAMBERS: He went to Rome? [LB446]

SENATOR PANSING BROOKS: I think so. [LB446]

SENATOR HALLORAN: Yeah. [LB446]

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SENATOR KRIST: A couple. Yeah. Yeah, he was a traveling fool there for awhile. [LB446]

SENATOR CHAMBERS: And who was the other one? [LB446]

SENATOR KRIST: It was just Coash that I know of. [LB446]

SENATOR CHAMBERS: Just...okay, well, the sheriff couldn't count. I'll excuse him for that. He got one right. [LB446]

SENATOR KRIST: All right. Well, again, I don't correct you very often, but I just wanted to put that on the record. [LB446]

SENATOR CHAMBERS: And I was...I stand corrected. You've improved my education and I always thank people who can do that. [LB446]

SENATOR KRIST: Thank you. [LB446]

SENATOR EBKE: Senator Halloran. [LB446]

SENATOR HALLORAN: Thank you, Madam Chair. You know, Senator Chambers, I'll let you misrepresent my campaign. I'm not going to carry that on here or correct you on that in any fashion. I can certainly understand fighting hard for an issue and then celebrating for that issue. But I think it takes some adults in the room to recognize that, it being a very emotional issue for both sides, that maybe the level of celebration should have been a little more subtle than that, a little more subdued. I'm just...it's hindsight now. [LB446]

SENATOR CHAMBERS: Uh-uh. No. You know,... [LB446]

SENATOR HALLORAN: Well, I'm just...I'm just saying. [LB446]

SENATOR CHAMBERS: ...when there was an execution, they had people out at the prison shouting the "N" word, fry him, cook him, "Wili" Otey. And that's what turned Senator Coash against the death penalty. He saw what it made these white people in Nebraska. And it was written about in the paper,... [LB446]

SENATOR HALLORAN: Two wrongs don't make a right. Two wrongs don't make a right. [LB446]

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SENATOR CHAMBERS: ...the drinking and all the rest of it. And I'm going to show you a brochure that was in your campaign and you can tell me somebody falsified it if you want to. Did you see the brochure that I'm talking about? [LB446]

SENATOR HALLORAN: The ad showed a picture of Jane Kleeb, right? Is that the one you're talking about? [LB446]

SENATOR CHAMBERS: I'm talking about a card that was put out but I'll show it to you. [LB446]

SENATOR HALLORAN: Well, he can go ahead. That's fine. [LB446]

SENATOR CHAMBERS: Okay. [LB446]

SENATOR EBKE: Okay. Are there any other questions? Okay. I will call an end to this hearing. Staff needs to...is stuck here and has been here for three hours, so we're going to let them get up and take about a five- to ten-minute break and then we will proceed. Senator Schumacher is available again so we'll move back to LB560. So for those of you who are waiting for LR26, we'll get to you, I promise. [LB446]

BREAK

(RECORDER MALFUNCTION--SOME TESTIMONY LOST)

SENATOR EBKE: Ready? Okay. Well, it appears that the backup system wasn't working since we started this hearing, just this one. And we have to start at the beginning. And... [LB560]

SENATOR PANSING BROOKS: Are you serious? [LB560]

SENATOR EBKE: It appears that that's the case. Well, Senator Chambers says that he knows what you said. [LB560]

SENATOR PANSING BROOKS: Yeah, I took notes so I can tell you. (Laughter) [LB560]

SENATOR EBKE: But if you... [LB560]

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SENATOR KRIST: Did you have written testimony that you read off of? [LB560]

SENATOR PANSING BROOKS: No. [LB560]

SENATOR EBKE: No, he didn't. [LB560]

SENATOR PANSING BROOKS: Well, just come make it up again. Come on. [LB560]

SENATOR EBKE: We do have...we do have written testimony in support from Spike Eickholt and from Marshall Lux, so you guys probably not. [LB560]

SENATOR KRIST: Could you give us the Reader's Digest version, please? [LB560]

SENATOR EBKE: (Exhibits 4 and 5) So we're going to restart the committee hearing on LB560 and we'll note that our system was out that we had. Senator Schumacher had begun and had introduced the bill, and the Ombudsman, Marshall Lux, testified in favor, as did Spike Eickholt. Those two proponents we have testimony from in written format. And we will let Senator Schumacher reopen...or try to reopen. [LB560]

SENATOR SCHUMACHER: Thank you, Chairperson Ebke, members of the Judiciary Committee. My name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature and here to open on LB560. Since this is the Judiciary Committee, it's capable of taking judicial notice of my prior testimony, and I would ask the committee to take judicial notice of my prior testimony and my prior introduction. In short, LB560 does three things. It implements a recommendation made by the LR34 Special Committee in its 2016 final report calling upon the Legislature to create a statutory right to an administrative hearing. It does this by saying that at day 90 an inmate who's been put in solitary confinement may request a judge to review the situation. The judge can appoint a special master to look at the situation and make a recommendation to the judge for a ruling on it. That takes the issue out of the loop, an internal loop at the Department of Corrections. It implements a recommendation from the Vera Institute that calls for a prohibition against vulnerable people being put in restrictive housing settings. That would include teens, pregnant women, developmentally disabled, and mentally ill inmates. And it rewrites the definition of solitary confinement to mean confinement in an isolated cell for an average of 22 or more hours per day with limited human interaction or constructive activity and an environment that ensures maximum control. It strikes the existing definition. And that, in substance, is what the bill does. Thank you for your consideration. [LB560]

SENATOR EBKE: And we have noted what you said before. [LB560]

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SENATOR SCHUMACHER: Thank you. [LB560]

SENATOR EBKE: Thank you. Okay, so...oh, I guess Senator Pansing Brooks has a question. [LB560]

SENATOR PANSING BROOKS: Yeah. The other was a lot better. (Laughter) [LB560]

SENATOR HALLORAN: I beg to differ. [LB560]

SENATOR PANSING BROOKS: How did you settle on day 90? [LB560]

SENATOR SCHUMACHER: It was longer than 60 and shorter than 120. [LB560]

SENATOR PANSING BROOKS: All right. [LB560]

SENATOR EBKE: Okay. [LB560]

SENATOR PANSING BROOKS: Just wondered. [LB560]

SENATOR EBKE: Any other questions? Okay. Thank you. And you'll still hang around for a little bit. [LB560]

SENATOR SCHUMACHER: I'll hang around for a little bit. [LB560]

SENATOR EBKE: Okay. And, Mr. Lux, you want to just leave it at your written? [LB560]

MARSHALL LUX: Yes. [LB560]

MARSHALL LUX (FROM HIS WRITTEN TESTIMONY): I am here to testify in support of LB560 because our office has been struggling for many years to encourage the Department of Corrections to reform its practices regarding the placement of inmates in long-term segregation. The barrier to reform has always been that there are some administrators in the department who want to have absolute and unbridled discretion when it comes to deciding which inmates to place on long-term segregation. The problem with this is that absolute discretion often leads to arbitrary decision making, and unjust results. Recommendation number 8 of the LR424 Committee's final report--December 15, 2014--included the following language: The Committee

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believes that the next Director of Corrections should be a "reform minded" individual committed to carrying out...such reforms as may be necessary to overhaul the state's use of segregated confinement. I believe that Mr. Frakes has, in fact, carried forward a number of reforms in the area of segregated confinement. This needs to be acknowledged: promulgated regulations on the subject of segregation; individualized treatment plans for those in segregation; set up a system of discharge planning; plans for mission-specific housing. However, as the Lincoln Journal Star editorial points out, the goal of reforming the system's handling of segregated confinement remains "unmet," and I would emphasize a couple of specific areas. I do not believe that reform in this area can be counted as complete until two other issues are addressed. These are: (1) providing for due process for those inmates placed in long-term segregated housing; and (2) articulating a system of strict criteria for deciding which inmates should be classified to long-term segregated housing. LB560 as introduced will address the due process piece by allowing for district court review of long-term segregation cases. But other action will have to be taken to address the need to have strict criteria for classifying inmates to long-term segregated housing. Historically, the problem has been that there were no real criteria for deciding who should be classified to long-term segregated housing, and this allowed corrections administrators to act arbitrarily in assigning inmates to segregation. In its new regulations the department set up six criteria to be used for deciding when an inmate could be placed on long-term restrictive housing. Five of those criteria are lifted from the American Bar Association Standards on the treatment of prisoners, and they are very specific on the question of who can be placed in long-term segregation. However, the sixth criteria, which has been called a "catchall provision," states that an inmate can be placed in segregation if his or her "presence in the general population would create a significant risk of physical harm to staff, themselves and/or other inmates." This "catchall provision" is so broad that it will allow arbitrary decision making in these cases based on an administrator's opinion, unsupported by evidence, that the inmate represents a "risk." With this in mind, the LR34 Committee report, part of which you have in front of you, recommended that DCS strike the catchall provision from the list of criteria. Unfortunately, the department has not shown a great deal of enthusiasm for doing that, and so I would recommend that LB560 be amended to specifically adopt the five ABA criteria as the sole standards for making these decisions. I have drafted a possible amendment to Section 3 of LB560, which would place the ABA criteria in statute, without the catchall provision. Finally, I would suggest that if the Legislature is going to allow appeals of long-term segregated housing cases to the district courts, then it would be desirable to include the standards that the courts would need to apply to those cases in the statutes themselves. [LB560]

SENATOR EBKE: Yeah. And how about Spike? You're good? Okay. Are there any other proponents? Any opponents? [LB560]

SCOTT FRAKES: (Exhibit 6) Good afternoon, Chairperson Ebke, members of the Judiciary Committee. My name is Scott Frakes, F-r-a-k-e-s. I'm the director of the Nebraska Department

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of Correctional Services. I'm here today to provide testimony in opposition to LB560. LB560 provides a number of changes to the statutes regulating the use of restrictive housing. I have serious concerns about the provisions of the bill and how they will impact our ability to safely manage our correctional facilities. One of my main concerns with LB560 is the bill's requirement that inmates in restrictive housing receive at least two hours of out-of-cell time per day. Creating this as a statutory requirement will necessitate additional staff at each of our restrictive housing units to provide security escorts while individuals are out of cell and may require us, (inaudible) that caveat, but may require us to operating activities up to 24 hours per day. I'm also concerned about the provisions in LB560 to give inmates an opportunity to seek a review of the decision to place (inaudible) restrictive housing by the district court after 90 days of confinement in a calendar year. Inmates already have the opportunity to file an action in district court if they feel their constitutional rights are being violated. Another issue with the right to appeal provisions is that the bill lacks the details needed to make this process feasible. LB560 establishes a new legal right for inmates to appeal to the court but does not provide a standard of review, establish the burden of proof, address whether the inmate has the right to attend the hearing, or identify possible sanctions or remedies the court may order during an appeal of a restrictive housing placement decision. LB560 also fails to provide how this judicial review interacts with the existing appeal process in the promulgated rules which allow each inmate a direct appeal to the agency director. Lastly, I have concerns with the provisions of the bill regarding vulnerable populations. LB560 requires an inmate under 18, pregnant, or diagnosed with a serious mental illness shall not be placed in restrictive housing after July 1, 2017. I understand and I share many of the concerns raised by the proponents of the legislation about the potential harm to individuals from extended restrictive housing stays. However, I must have the ability to place an individual who demonstrates serious risk in restrictive housing in order to investigate and evaluate the level of risk and the least-restrictive housing option. As drafted, LB560 severely limits the department's ability to protect staff and other inmates from individuals whose behavior poses a significant threat. Adopting these provisions in LB560 will subject people to unnecessary risk. The department currently has special provisions in the rules and regulations for individuals under 18, pregnant, or with a serious mental illness. Pregnant inmates and those under 18 receive a review within eight hours of placement in restrictive housing. The secure mental health unit is a special housing unit which has dedicated behavioral health staff to meet the needs of mentally ill individuals whose behavior poses a threat to themselves or others. We are identifying additional out-of-cell and programming opportunities for the secure mental health unit. A long-term goal is to provide sufficient out-of-cell time, congregate activity, and access to programming so it no longer meets the definition of nor operates like a restrictive housing unit. We are making progress but this will take time to achieve and we don't have the capability to attain this by July 1, 2017. If LB560 were adopted today I would need to significantly expand security staff in our restrictive housing units in order to provide the escorts needed for 24 hours of out-of-cell time each week. It's been nine months since the restrictive housing rules and regulations found in Title 72, Chapter 1 of the Nebraska Administrative Code were implemented. Not enough time has

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passed to fully recognize the benefits or improvements needed to existing reforms. I'm convinced we're moving in the right direction. Based on our experiences during the first year, we will review and update the restrictive housing rules. The longer term restrictive housing work group will be involved in this review, as well as external stakeholders, including the Ombudsman's Office, the Inspector General for Corrections, and the Vera Institute of Justice. I look forward to continuing to work with the committee on restrictive housing reform. Our annual restrictive housing report in September will provide an update prior to the next legislative session on the progress after our first full year of implementation. Thank you for the opportunity to testify today and I will answer questions that you may have. [LB560]

SENATOR EBKE: Thank you, Director Frakes. Senator Krist. [LB560]

SENATOR KRIST: So thank you for coming, Director. My first question has to do with the credibility of the Vera Institute. Do you agree that Vera is a Bible to adjust to in terms of their evidence-based parameters and that kind of study and the things that they do? [LB560]

SCOTT FRAKES: I agree that they are experts in the field, yes. [LB560]

SENATOR KRIST: Okay. You put it much more concisely. Then do you disagree with the new definition, that being page 3, line 3? Says: confinement is in an isolated cell, alone or with a cell mate, for an average of 22 or more hours. And your reference to two hours per day, isn't our current standard one hour per day outside the cell? [LB560]

SCOTT FRAKES: It is. [LB560]

SENATOR KRIST: So we're asking for (inaudible)...I'm sorry. I didn't mean to interrupt you. Go ahead. [LB560]

SCOTT FRAKES: It is. So, you know, it's been a while since I looked at the recommendations specifically and I was not recalling that that verbiage came out of the recommendations. But if it did, let's go with the assumption that that's a reasonable expectation and a reasonable definition. The...I guess, really, I should let you finish a question before I go and say anything more. (Laugh) [LB560]

SENATOR KRIST: Okay. So the follow-on to that was just should we be moving or don't you think we should be moving towards two hours out and comply with that evidence-based definition, because I think that's what Vera suggested and what, actually, what LR34 suggested as well. [LB560]

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SCOTT FRAKES: LR34. Again, well, yes, I think we should continue to move down the path of less time in cell while in restrictive housing, at the same time continuing to move down the path of less time...less people in restrictive housing and less time in restrictive housing,... [LB560]

SENATOR KRIST: Okay. [LB560]

SCOTT FRAKES: ...because the best work we can do is with those that don't go to restrictive housing. [LB560]

SENATOR KRIST: And the other, as I heard your other concern, you...I think what I heard you say was that there was already an appeal process that could be given to you as a director. Ultimately it goes to you. Is that right? [LB560]

SCOTT FRAKES: That is true. [LB560]

SENATOR KRIST: Okay. So at what point in the process does that happen? [LB560]

SCOTT FRAKES: At the point that they are assigned to longer term restrictive housing and then each time that is extended. So that would happen...could happen at the 30- to 60-day mark, during the immediate segregation process,... [LB560]

SENATOR KRIST: Okay. [LB560]

SCOTT FRAKES: ...and then it could happen again each 90 days. And then at...if they end up in there for an entire year, it happens every 30 days. [LB560]

SENATOR KRIST: So would you be agreeable to injecting in at some point during that process an outside set of eyes looking at this, as in the county attorney? [LB560]

SCOTT FRAKES: Well, again, I think that exists today. [LB560]

SENATOR KRIST: Okay. [LB560]

SCOTT FRAKES: That is within the ability of any inmate to reach out and file under, what is it, 1983 civil rights violations. So I think that there is a process there already that exists and could be utilized. [LB560]

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SENATOR KRIST: And are you comfortable that they know that those are their rights within the system? [LB560]

SCOTT FRAKES: Well, I'm reasonably comfortable the inmates are aware of their legal rights and their access to the courts because they do make good use of that access. We do provide a law library and we do provide an on-line legal service. [LB560]

SENATOR KRIST: Okay. Thank you very much. [LB560]

SENATOR EBKE: Other questions? Senator Pansing Brooks. [LB560]

SENATOR PANSING BROOKS: Thank you. Thank you for coming again, Senator...or Director Frakes. It's...so Marshall Lux, in his testimony, I don't know if you heard it, but he talked about there being some regulations, that the department has set up six criteria. Is that correct? [LB560]

SCOTT FRAKES: That's correct. [LB560]

SENATOR PANSING BROOKS: And five of which are directly related to the American Bar Association standards, but the sixth is a catchall that says basically that you can be placed in segregation if there are...if the presence would be a significant risk of harm to staff or to themselves or other inmates, right? [LB560]

SCOTT FRAKES: Correct. [LB560]

SENATOR PANSING BROOKS: So I think there's a concern that that's just overly broad and that that's just business as usual. So do you have a comment regarding that, because it does sound like exactly what you're doing anyway? [LB560]

SCOTT FRAKES: Okay. So I'll begin by referring to previous testimony that I've made on that issue in that all six criteria were brought to the table by members of the Ombudsman's Office. I didn't create the six criteria all on my own. The only caveat was that that sixth criteria was proposed...it was proposed that I would be the one that would review all placements that were made under criteria six. So as I testified before LR34 last fall, if by June 30 we have not gotten (inaudible), because at that point in time about 30 percent of the placements were for criteria number six. We're still educating staff and getting to understand and, you know, find some of the nuances and really not just be quick and say that one seems to fit, I'll grab that one. So I testified and said that if by June 30 we had not gotten below 20 percent in the use of number six that I would adopt the practice of reviewing all placements using item number...or criteria number six.

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And I still intend to follow through with that. We made it to 23 percent a few weeks ago. We're back to 24 percent today. Think some of the issues in the last couple weeks have contributed somewhat to that. I still intend to follow through. If we cannot get the use of number...criteria number six below 20 percent, I will adopt the original recommendation and I'll be the one that approves those. I prefer not to, but I think that that's a reasonable piece to adapt. Numbers...pardon me. The majority of the people that are currently being placed under criteria number six are coming to us under some type of protective custody request, and we still have a challenge in terms of threats of violence and other threats against people. We're trying. The right solution is to identify the people making the threats and hold them accountable and address that behavior. But unfortunately, in many cases people are not willing to tell us who they are because they've already...they're already concerned for their safety. So they recognize that if they then tell who the person is that threatened them, it will only make the situation worse. So we're dealing very diligently and focused around that issue of who are the people that are driving this behavior, because that's who we need to address to solve that problem. And then at the same time, we do have a subset of that group that is saying that they just don't want to leave restrictive housing. I think at sometime in the past I've talked about this, you know. So then you're using all the tools possible to find out why is that and, you know, what is it that we need to work with you on. One of the things that we have been successful in doing is hiring a psychologist for each of our three major restrictive housing units, so there's now a full-time psychologist dedicated to the restrictive housing unit at Tecumseh, NSP, and LCC. That's a great resource in terms of being able to work with people like that, that have decided that they would just rather be isolated from everyone rather than deal with the day-to-day issues of prison life, as well as providing for the mental health services and others. So I went quite a bit afar of your question. Coming back to it again, if we aren't below 20 percent in the use of criteria number six by June 30, I will review all those decisions within 24 hours. [LB560]

SENATOR PANSING BROOKS: Okay. And can you...I know you said something to Senator Krist about this. Could you review how you think that they can appeal beyond you? How is...what's the process to do that? [LB560]

SCOTT FRAKES: Oh, they could file with the courts and... [LB560]

SENATOR PANSING BROOKS: And at what point could they do that? [LB560]

SCOTT FRAKES: At any point that they believe that they've had a violation of their civil rights. That's...I have no legal training so I wouldn't go any farther than that, but I do know that that's an option that exists for incarcerated people. [LB560]

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SENATOR PANSING BROOKS: Okay. And what's the policy on people under 18 again? [LB560]

SCOTT FRAKES: They are reviewed by the warden within eight hours of placement and a determination is made, is there an alternative placement that is safe and that will meet the needs for all involved, or do they need to be retained in restrictive housing while we continue to look for the best and least-restrictive option? Now that's a very difficult piece of our population. It's small, fortunately. We're at about 50 people right now that are in the youth facility, which is I think a great thing. I'd love for it to be zero. But when people are determined by the courts to be adjudicated as adult felons, even though they're not yet the age of consent, it puts us in a difficult position. And as you know, some of them commit some very violent, heinous acts. Many of them come with significant trauma and criminal history and all the other pieces. So we recognize them as vulnerable populations. That's why that facility has the level of staff and programming and access. And even though we run a restrictive housing unit at that facility, in some ways, both the one at the women's facility and at the youth facility, ultimately could serve as models for how we would want to operate restricting housing in the department someday. [LB560]

SENATOR PANSING BROOKS: Okay. Thank you, Director. [LB560]

SENATOR EBKE: Other questions? Senator Chambers. [LB560]

SENATOR CHAMBERS: Mr. Frakes, if this bill were passed anyway and some dictates were contained in it, are you saying you would just disregard what the law says? [LB560]

SCOTT FRAKES: Never, Senator Chambers. [LB560]

SENATOR CHAMBERS: So then you'd be able to comply with the law if we passed it. [LB560]

SCOTT FRAKES: It would be...some of the pieces will be very challenging in terms of bringing staff on and... [LB560]

SENATOR CHAMBERS: But what I'm asking... [LB560]

SCOTT FRAKES: I will do my very best to comply and... [LB560]

SENATOR CHAMBERS: Now that's a different answer. I asked, would you comply? [LB560]

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SCOTT FRAKES: My...(laugh). [LB560]

SENATOR CHAMBERS: Yes or no? [LB560]

SCOTT FRAKES: My intent would be to comply with the law. [LB560]

SENATOR CHAMBERS: Say it again. [LB560]

SCOTT FRAKES: My intent would be to comply with the law. [LB560]

SENATOR CHAMBERS: You seem to be saying that under all the circumstances you could not tell me right now that you would comply with the law. I'm not saying you would deliberately not comply from an evil motive. You suggested employing additional people and so forth. So if you didn't comply with the law, why would you not comply with the law? What circumstances would exist so that you would not comply with mandatory provisions of a law? [LB560]

SCOTT FRAKES: If I was not able to attain the staffing levels needed to provide the escorts to safely bring people out for the two hours of out-of-cell time per day that would be required. [LB560]

SENATOR CHAMBERS: Well, you have staffing problems now, don't you? [LB560]

SCOTT FRAKES: I do. [LB560]

SENATOR CHAMBERS: When are you going to resign? [LB560]

SCOTT FRAKES: Hmm, I'm not quite yet to that... [LB560]

SENATOR CHAMBERS: Well, "not quite" is...that's better than saying I'm not going to. [LB560]

SCOTT FRAKES: At some point I'll feel that either I've completed the work that I'm capable of completing or that I'm no longer able to do the work that I believe needs to be done and then it will be time. [LB560]

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SENATOR CHAMBERS: Do you feel that you have...remember, there's one greater than I and you watching you and listening to everything you say. I'm going to give you a chance to wet your whistle. Would you allow your...first of all, you're modest. You have a national reputation. There are things that you did when you were in Washington State that were considered cutting edge that could be something to emulate in other places, but you haven't been able to do that here. If I were to judge you by strictly what you've done here, I'd say you are a total incompetent. But your reputation came here before you and that's why I feel such disappointment. When I have criticized what you do, I have given a way out. I point out that I've read what you've done. I know you know. I know you're a professional, but your tenure here has not demonstrated it. So either everything I read was fake news or alternative fact, or when you got here there were constraints put on you that you did not have to labor under in Washington State. Something is there to explain why your performance is not up to the standard you set in Washington State. There are restrictions on you, aren't there, because the philosophy of the leaders of this state is different from what it was in Washington State? Would you say that's true? When I say greater than you and I, I'm not talking about the Governor. This one is greater than even the Governor. [LB560]

SCOTT FRAKES: Yes, there are differences. [LB560]

SENATOR CHAMBERS: That's a hard question to answer, isn't it? [LB560]

SCOTT FRAKES: It is. [LB560]

SENATOR CHAMBERS: And it's not because you don't know the answer. You know the answer as well as I know it. I'm convinced that you know how to do better what you're doing than what you're actually doing now. I believe there are constraints on you that you are not...you have not been turned loose to do what you know how to do. You have not been allowed to say to the Governor--he's the one behind all this, I said it, you didn't, I'm speculating--Governor, this is what it takes to straighten out what you have in Nebraska. I know the answer to this question. Which state has the larger population, Washington State or Nebraska? [LB560]

SCOTT FRAKES: Washington. [LB560]

SENATOR CHAMBERS: If you can handle a big problem you could handle a smaller version of that same problem easier, couldn't you,... [LB560]

SCOTT FRAKES: If they... [LB560]

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SENATOR CHAMBERS: ...if you were given the tools you needed to handle it? [LB560]

SCOTT FRAKES: And if it was an apples to apples comparison, absolutely, but it's not. [LB560]

SENATOR CHAMBERS: So if you were given free rein to just say this is what it takes, and then let other people decide whether that's going to be made available, you would come up with some ideas different from the ones you're compelled to work with now, wouldn't you? Play like it's just me and you here. (Laughter) [LB560]

SENATOR EBKE: And the transcribers. [LB560]

SCOTT FRAKES: I'm trying to recall a situation where I said, this is what this department needs to move forward, and I was told no, and I'm...I don't have that, that situation. [LB560]

SENATOR CHAMBERS: Because you didn't ask for it because you knew. So if you know you shouldn't ask for it, you're not going to ask. So then I must conclude that you just can't do any better, is that it, and I was mistaken in my conviction about the level of professionalism you have? [LB560]

SCOTT FRAKES: Well, I'd still would enjoy and like to have the opportunity for you and I to just sit down together and thoroughly discuss this and talk about all that has been accomplished, the progress we have made despite the many challenges the system faces and that it's trying to pull away from. [LB560]

SENATOR CHAMBERS: But there are bad things happening now which didn't happen before you came here. It seems that you brought bad things with you. And I've been here for 40-some-odd years now and I had a chance to watch a number of directors. They did a better job than you're doing now. And I wasn't convinced that they were more professional than you, but now you're making me believe that they are because you're saying you were given everything that you need but you just can't cut the mustard any better than you're doing. Is that what I'm to understand from what you're telling me now? [LB560]

SCOTT FRAKES: No. [LB560]

SENATOR HALLORAN: Madam Chair, point of personal order. Is this directly related to this hearing, to this bill? [LB560]

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SENATOR CHAMBERS: I am asking questions and I will ask the questions that I want to ask. You ask your questions when your time comes. You don't run the committee. [LB560]

SENATOR HALLORAN: It's not a job (inaudible). [LB560]

SENATOR CHAMBERS: And I didn't interrupt you when you were doing what you do. But I'm going to let the Chairperson handle this. [LB560]

SENATOR EBKE: This is the tradition longstanding of this committee that anybody is free to ask any question of any...especially when it's a director or a representative of the administration, so. [LB560]

SENATOR HALLORAN: Okay. Fine. [LB560]

SENATOR CHAMBERS: Let's clear the air here, Mr. Frakes. You were here before this new class of freshmen senators came, weren't you? [LB560]

SCOTT FRAKES: Yes. [LB560]

SENATOR CHAMBERS: And we've had many discussions like this, haven't we? [LB560]

SCOTT FRAKES: Yes, we have. [LB560]

SENATOR CHAMBERS: And you felt...did you feel that you needed somebody wet behind the ears to interfere...intervene to protect you from the questions that I'm asking you? [LB560]

SCOTT FRAKES: Would you repeat that? [LB560]

SENATOR CHAMBERS: Did you feel you needed somebody to stand and protect you from the kind of questions I'm asking you? [LB560]

SCOTT FRAKES: Hmm. [LB560]

SENATOR CHAMBERS: Did you need a protector or did you feel like you could answer my questions? [LB560]

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SCOTT FRAKES: I'm comfortable answering your questions. [LB560]

SENATOR CHAMBERS: In other words, we had somebody who felt uncomfortable, if he was in your seat, because he doesn't know anything, so he feels you don't know anything and he has to intervene or interfere and take over the committee and ask whether or not this is appropriate. Do you feel that what we're discussing is pertinent to the bill that Senator Schumacher presented to us? [LB560]

SCOTT FRAKES: No, not exactly. [LB560]

SENATOR CHAMBERS: Okay. So tell me in what way it's not pertinent. [LB560]

SCOTT FRAKES: Well,... [LB560]

SENATOR CHAMBERS: Let's back up. Did you say during your testimony that there are certain things lacking in this bill? [LB560]

SCOTT FRAKES: I said I have concerns about the bill, yes. [LB560]

SENATOR CHAMBERS: Did you talk about how many more employees you would need to carry out the requirements of this bill because of security concerns and having people out and so forth? Did you talk about that? [LB560]

SCOTT FRAKES: Generically, yes. [LB560]

SENATOR CHAMBERS: And am I asking you questions about whether or not you have the wherewithal to do what would be necessary to carry out the dictates of this bill if we passed it? Is that what I was discussing with you? [LB560]

SCOTT FRAKES: With that clarification, I would agree. [LB560]

SENATOR CHAMBERS: So then you don't need anybody to stand between you and me and determine whether or not my questions are pertinent. But, see, I'm the one who determines that and I'm going to keep asking the questions that I think I should. Now if you feel that you can't handle it, tell me that and you will tell me something else too. I'm going to try to pick up the thread. I stated that I believe that you...or I did believe that you were a professional, that either you were not the professional that I thought you were or you are but you're not given free rein to

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do what that professionalism would lead you to do if you didn't have any constraints. So now that having been said, with the help you got from the peanut gallery, you feel that there are no constraints put on you that would lead you to perform in the way that the you have with the two riots--you all call them disturbances and so forth--things, in other words, that are going wrong on your watch that did not go wrong on the watch of any other director since I've been here. It's just...it's your failing that that happens. You have a higher rate of turnover, don't you, in employees than was the case before you got here? [LB560]

SCOTT FRAKES: I'd have to go back to review to see where we're at today as compared to where we were at when I arrived. [LB560]

SENATOR CHAMBERS: Do you have a high rate of turnover? [LB560]

SCOTT FRAKES: Do we have a high rate? [LB560]

SENATOR CHAMBERS: Yes. [LB560]

SCOTT FRAKES: Yes, we have a high rate. [LB560]

SENATOR CHAMBERS: Why is that? [LB560]

SCOTT FRAKES: Because there are issues with employee engagement, there are issues with a job market that provides many, many opportunities for people. [LB560]

SENATOR CHAMBERS: So you're not able to provide the opportunities that other places in the market can provide. Is that true? [LB560]

SCOTT FRAKES: I'm only saying that it's a very competitive job market and there are opportunities. [LB560]

SENATOR CHAMBERS: But that's not the question I asked you. And you're not able to compete in that job market. Is that true? [LB560]

SCOTT FRAKES: I think I'm in the same situation that many employers are in Nebraska. [LB560]

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SENATOR CHAMBERS: I'm going to ask the question a different way. Are there places where the people who work for Corrections can go and make more money doing similar work than what they make working for the Department of Corrections? [LB560]

SCOTT FRAKES: Yes, but they're not a significant competitor in terms of... [LB560]

SENATOR CHAMBERS: I can't really hear you. [LB560]

SCOTT FRAKES: There are other locations, some of the larger county, county jails that employ correctional officers and pay a high rate of pay. But they only have so many job opportunities. They are not a significant contributor to my overall turnover. They are a factor. [LB560]

SENATOR CHAMBERS: If you had more money and can offer a higher rate of pay to compete with the market so you could hold those people that you train...you don't want the prison to be like an on-the-job training for these employees so they can go someplace else. You want them to continue working in the Department of Corrections. I'm stating that, not asking it. You cannot pay them enough to compete with what they can get someplace else in these larger counties. Isn't that true? [LB560]

SCOTT FRAKES: We know that pay is not a long-term motivator. [LB560]

SENATOR CHAMBERS: No, I'm asking... [LB560]

SCOTT FRAKES: What keeps...what brings people to the job is a reasonable level of pay. We've had pretty good success in bringing people to the job. What keeps people on the job is employee engagement, satisfaction, their supervisors, which is a key piece of why we've finally been able to get a managerial leadership training program off the ground. So it's those factors that are going to change our turnover. [LB560]

SENATOR CHAMBERS: I'm going to ask about three more questions. [LB560]

SCOTT FRAKES: Okay. [LB560]

SENATOR CHAMBERS: But I'm going to repeat the other one. If you could pay...if there are people who left Corrections because they could get more pay somewhere else, they left because of the pay, not morale or anything like that, nothing raises a person's morale like getting the

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compensation you feel you're entitled to. If you could pay these people more, some of them would not have left. Isn't that true? [LB560]

SCOTT FRAKES: Some of them would not have left. [LB560]

SENATOR CHAMBERS: All right. Now if you could pay more, you could draw more people to help fill those vacant slots now, couldn't you? [LB560]

SCOTT FRAKES: There again, our issue has not been attracting people; it's been retaining people. [LB560]

SENATOR CHAMBERS: If you could pay more money, do you think you would attract more people? [LB560]

SCOTT FRAKES: Potentially so. [LB560]

SENATOR CHAMBERS: If you could pay more money, do you think you would hold those that you have attracted? [LB560]

SCOTT FRAKES: Not in...that would not be the only solution to the problem. If we don't change the issues around staff engagement, if we don't ensure that staff feel safe in the workplace,... [LB560]

SENATOR CHAMBERS: So then you think they're adequately paid. [LB560]

SCOTT FRAKES: I think we have a reasonable and competitive starting wage. [LB560]

SENATOR CHAMBERS: No, I'm asking you a question. It can be answered yes or no. You know the answer. In your opinion, in your opinion, are staff out there adequately paid? [LB560]

SCOTT FRAKES: There are staff within my agency that could benefit from further compensation. The compensation negotiated for a large part of my staff has placed them in, I believe, in a competitive level of pay. [LB560]

SENATOR CHAMBERS: When... [LB560]

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SCOTT FRAKES: So there's always a need to address compensation issues in large agencies. [LB560]

SENATOR CHAMBERS: I said I would ask two more questions. Because asked one of them, I'm going to make a comment. The Director Frakes who came here several years ago, and I was here, was different from the Frakes that I'm talking to now. And I think some things happened and you saw limitations here, after you've been here a while, that you didn't know were here when you agreed to come here. And I think you found a different set of circumstances once you got here. Is that true or false? [LB560]

SCOTT FRAKES: That's true in terms of the employment issues. That's true in terms of the... [LB560]

SENATOR CHAMBERS: Overall. [LB560]

SCOTT FRAKES: ...depth of dysfunction within my agency. That's true within some other factors. [LB560]

SENATOR CHAMBERS: Okay. [LB560]

SCOTT FRAKES: But I think you're looking for a different answer to a different question. [LB560]

SENATOR CHAMBERS: No, I just wanted a question to the answer that I asked, but you've answered it by not answering it. And I had said I would limit the questions I'd ask, so I've reached my limit. Thank you. [LB560]

SCOTT FRAKES: Thank you. [LB560]

SENATOR EBKE: Any other questions? Thank you, Director Frakes. [LB560]

SCOTT FRAKES: Thank you. [LB560]

SENATOR EBKE: (Exhibits 1, 2, and 3) Other opponents. Any other opponents to LB560? Do we have anybody testifying in a neutral capacity? I see none. Senator Schumacher. Do we have letters? We have three letters of support: one from John Else with the League of Women Voters

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of Nebraska; Kaitlin Reece of the Voices for Children in Nebraska; and Brad Meurrens of the Disability Rights of Nebraska. [LB560]

SENATOR SCHUMACHER: Thank you, Chair Ebke and members of the committee. Just to focus down a little bit some simple questions: Should we adopt the Vera language for our definition of solitary confinement, yes or no? Good idea; bad idea? Should an inmate who's been held in solitary confinement for 90 days have a right of access to a special master in the district court to review the situation or not? Simple question. Should a vulnerable person, as in 18 or younger, as in pregnant, as in disabled or mentally ill, have a restriction on how they can be handled in restrictive housing or solitary confinement, yes or no? We've been down this road time and time again. We've danced this dance for four years. We've heard, what is apparent to any of us who have rode this horse this long, the excuses: got to study it; we couldn't implement even the requirement that there be regulations because it was coming up too fast; we've got to delay things; things will be better on the other side of the rainbow. We heard it first here in the corrections area. Now we're hearing it in thing after thing, budget item after budget item. And after you've danced a dance long enough you pretty well get a picture of what's going on. Senator Chambers hit the nail on the head time after time after time. I have great empathy for Director Frakes. I think he has skills, lots of skills. I think he has a great background. I think when he came to Nebraska he hit a set of circumstances that makes anybody who has any empathy at all for him ask why does he continue on here, a mechanic that knows perfectly well what's wrong with the engine and could fix it, but is told he cannot have a toolbox. That's what's going on. And now with the new constraints that apparently are coming on with reference to what bills will be scheduled and the new requirements that apparently are coming down, even a bill that's controversial at all isn't going to get a chance to be heard, put to the bottom of the pile. I think after watching this for three, four years now that there is probably only one cure for this problem and that's going to come by way of a federal court order and, unless I'm being misled, that paperwork is being drafted and this nonsense can stop. I ask the committee to consider the bill and I think I'd have no objection to the amendment that was offered by Mr. Lux. I think it's a good idea. [LB560]

SENATOR EBKE: Thank you, Senator Schumacher. Senator Chambers. [LB560]

SENATOR CHAMBERS: For the record, Senator Schumacher, have you served on various committees that investigated the Department of Corrections and what has gone on there and has not gone on there that should? [LB560]

SENATOR SCHUMACHER: Yes, I think I've been on from the LR424 Committee and LR34 Committee and we spent just hour after hour investigating this, yes. [LB560]

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SENATOR CHAMBERS: Did you see the relevance of the questions that I was putting to Mr. Frakes in connection with what your bill is offering? [LB560]

SENATOR SCHUMACHER: Senator Chambers, you were hitting the nail on the head. They were totally relevant. [LB560]

SENATOR CHAMBERS: And somebody with experience may know more than somebody wet behind the ears who just got here and doesn't know what has happened and doesn't know what's happening now. Would you agree as a general statement that's true? [LB560]

SENATOR SCHUMACHER: Well, I kind of feel that I just got here, wet behind the ears yet. But, yes, as a general...the wetter you are, the more apt you are to... [LB560]

SENATOR CHAMBERS: And when you've gone over this ground over and over, have been given what we could call semi-promises, none of them having been kept, then you felt the need to bring legislation to mandate what had been suggested before in hearings might be done if we leave them alone and let them do it their way. [LB560]

SENATOR SCHUMACHER: I felt obligated. I was the one that was assigned to deal with solitary confinement in the past in trying to develop a program for the prisons and I felt this is within the ambit of what I was assigned to do and I had an obligation to do so, particularly in view of the fact that I really, really think we're going to have a sour experience once the federal courts step in. And if we can do anything to avoid that, we sure should consider it. [LB560]

SENATOR CHAMBERS: And that's all I would have. Thank you. [LB560]

SENATOR EBKE: Senator Krist. [LB560]

SENATOR KRIST: I would like to suggest that there's a feeling that we get and I think we describe it as *deja vu*. And to be sarcastic about the situation, it's *deja vu* all over again. I can remember testimony from Mr. Frakes, from Mr. Houston, from the Governor of the State of Nebraska, from any list of people starting back with LR424, and we've heard the same thing over and over and over again, slightly different tone, slightly different tenor. The questions are asked a little differently. We started out being fresh and naive when we were asking questions, and now it's not a preconceived idea. It's an educated opinion on what's going on in the corrections system. And when some of us have been here for eight years, some of us who are here for less than eight years have been here for eight years, and you're hearing the same thing over and over again, and I'm yelling fore to the foursome in front of me, I will remind them and you and me

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that we have fought the good fight and will continue to fight the good fight. But it's getting real frustrating. It's getting real old. And now we're being diverted, both in our priorities financially, fiscally, and in our priorities to make life better for the systems that are the state of Nebraska. Maybe that's just getting old or been here too long. But I've started to use a premise that I think is therapeutic for me. I've started to go back. And today we heard the death penalty. I went back and pulled that transcript from the death penalty for the last three times that...four times, I guess, being my fourth time that I've heard it. Nothing has changed. I pulled transcripts from bills that I've heard three, four, five times. Nothing has changed. The arguments sometimes have a different tone, different tenor, different people. But it's frustrating. And we're here to listen to constituents, to the citizens of the state of Nebraska, and to my knowledge no one on this committee or almost any committee I've ever been on has been discourteous or rough on the common citizen, but it's getting to the point where you almost have to have a different tone and tenor with people that are our government employees and agency heads, directors. I just...I think we just need to put people on notice that if you're coming before the committee, first of all, if it's the AG's Office, we'd like to see the AG. At least I give Direct Frakes the gold star. Every time there's been an issue, he's been here. Put people on notice that when you're coming before our committees, you're telling the truth, the whole truth, nothing but the truth, and there has to be progress. We have to see progress. So that's my soapbox for the day. Thanks for bringing the bill, again, and thanks for all the great work you've done. We've...some of us have been here since LR424 and we kind of got used to each other. So thank you. [LB560]

SENATOR SCHUMACHER: Thank you for what you've done, Senator Krist. [LB560]

SENATOR EBKE: Thank you, Senator Krist. Any other questions? Okay, that closes the hearing on LB560. We will get moving on LR26. Senator Vargas, I thought (inaudible). How many of you are planning on testifying on this bill? Please raise your hands. Okay. Fair enough. Just a reminder, we've got three-minute testimony. The lights will go on. Green light will start up when you start. When the yellow light comes on you have one minute left. And when the red light goes on please finish up. Thank you all for waiting all afternoon. Senator Vargas. [LB560 LR26]

SENATOR VARGAS: Thank you very much, Chairman Ebke and members of the Judiciary Committee. It's my first time in here. Thank you very much. [LR26]

SENATOR EBKE: Well, welcome. (Laughter) [LR26]

SENATOR VARGAS: My name is Senator Tony Vargas, T-o-n-y V-a-r-g-a-s. Apologize ahead of time, I'm feeling a little under the weather, so my voice is a little hoarse. I represent District 7, the neighborhoods of downtown and south Omaha, here in the Nebraska Legislature. I recognize today that this has been a very long day, you've had many, many different hearings, and I

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appreciate you for all the continued attention throughout the last part of this day for LR26. LR26 reaffirms the Legislature's support of DACA youth, young immigrants who were brought here as children whose only homes have been Nebraska. In 2012, President Obama implemented Deferred Action for Childhood Arrivals, or DACA, which allows young immigrants who enter the United States as children through no choice of their own the opportunity to receive a two-year period of deferred action from deportation and eligibility to obtain a work permit. As of 2015, more than 3,000 of approved DACA applications have been from Nebraskans all over the state. The Legislature has a history of supporting DACA youth even before President Obama implemented that policy. In 2006, the Legislature passed LB239 which allowed young immigrants who grew up and were educated here to qualify for in-state tuition. In 2015--and, note, we were the last state in the country to do this--the Legislature passed LB623, as many of you know, which allowed these same young Nebraskans to obtain a driver's license. And just last year the Legislature passed LB947 which allowed these same young Nebraskans to obtain professional and commercial licenses. All of these legislative actions recognize the contributions of young immigrants to our communities, but perhaps even more importantly, these actions recognize the dreams and the potential of our young people. Many of you know this, that I am a first-generation American. My parents immigrated to the United States from Peru in the '70s. They were young, they were newlyweds, and they wanted a future that was full of more possibilities than anything they potentially could have hoped for in Peru. They moved to New York, started a family, and worked hard every day. My mother was a...worked her way up to be a bank teller and my father worked in the factory and he's a machinist. And they worked hard so that we could eventually buy a house and we grew up in Long Island. They instilled in us their own deeply held values of education and generosity and community. My brothers grew up to be teachers, serve in the Navy, and volunteers in their own communities, and I sit before you now as their youngest son, a former teacher, a school board member, and now a senator. My parents got to live their American dream and that's all these young Nebraskans want too. But the threat of their futures in this country being taken away is real. Put simply, I introduced LR26 to address these deep fears that are felt by Nebraska's Latino families. My district is just about 50 percent Latino. It's the largest Latino-serving district in the state of Nebraska. But there are Latino families and workers and children all over the state and in all of your districts that are feeling these same fears as a result of the change in the presidential administration and changes in federal immigration policy. Admittedly, it often feels like there is not a lot that we as a State Legislature can do about federal policy, but it is our responsibility as elected representatives of all people in Nebraska to stand up in support of these young immigrants who continue to contribute so much to our communities. They need to know that no matter what is happening in other states, here in Nebraska we still support them and we see them as important members of our communities. I hope you will all take the opportunity today to be leaders by affirming the Legislature's continued support for DACA youth. Thank you. And with that, I'll be happy to answer any questions. [LR26]

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SENATOR EBKE: Senator Krist. [LR26]

SENATOR KRIST: Thank you, Senator Vargas, for bringing this. I was part of those two votes, and pretty proud of it, I might add, but tell me how...the questions continue to come in that immigration, whether legal or illegal, falls to the responsibility of the federal government and is not a state's rights issue nor a topic reserved by the states by the constitution. I disagree with that statement but I want to hear you say it, give me your explanation with these wonderful kids behind you. [LR26]

SENATOR VARGAS: Sir, can you repeat that last...the part that you're...that's in question? I didn't really catch that. [LR26]

SENATOR KRIST: Basically that it's the federal government's responsibility to tell us what to do, it's not the state's responsibility (inaudible) to stand up for them. [LR26]

SENATOR VARGAS: I'm glad you bring that up. I believe it's within our ability to stand up for these individuals. I think that's what we've done. What I'm stating is that what we are seeing is the federal government at times, and especially with some recent executive orders, are taking actions into their own hands. But we have taken actions into our own hands in the past to support. And I think that this is affirming that we are standing by the legislative actions that we took to ensure that we are supporting a group of individuals that are doing everything they can to continue to contribute to our state and want to stay here. And I think that's what we should do. We didn't pass these laws thinking they would go away and I want to make sure that we're standing by them. [LR26]

SENATOR KRIST: I think it's a great point and I will say one other thing and then I'm going to shut up for the rest of the day. But, you know, there was a lot of deliberation on the floor and we talked about the driver's licenses in particular. I have a friend who is an insurance agent in the Omaha area, does a lot of work in south Omaha, and he said you'd be amazed at the amount of insured drivers that we have now as opposed to before this legislation was passed and I'll tell you I feel pretty good about that, just to make sure that people understand that it happened. They had to get to work, they had to get to school. But by allowing them to participate in the American dream and giving them a driver's license, we now have made things safer for all of the people that are on the road. So you can comment to that if you want to, but that, as I said, is my last comment for the day. [LR26]

SENATOR VARGAS: I appreciate you calling that out. Oftentimes I don't believe we recognize that we pass landmark legislation and when you look at it from the outside, being able to have a driver's license is a win. And we debated it. It's a small step for somebody and a huge impact for

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individuals that want to be able to work. To be able to have professional licenses in their field and be certified also seems like a small thing; it is a huge thing for individuals that do not have that ability. We're talking about being able to go to college in your same state and have the same in-state tuition, the only state that you know of and you've had your experience in. It just echoes the impact of the work that a nonpartisan Legislature can do and what they have done, how much that makes the...impacts the lives of not only the 3,000-plus individuals that have applied and continue to be reapplying for DACA, but their families and the people that they continue to impact and motivate and influence through the work that they do throughout Nebraska. [LR26]

SENATOR KRIST: Thank you, Senator Vargas. [LR26]

SENATOR VARGAS: Thank you. [LR26]

SENATOR EBKE: Any other questions for Senator Vargas right now? Okay, thanks. [LR26]

SENATOR VARGAS: Thank you very much. [LR26]

SENATOR EBKE: Yep. You going to hang around? [LR26]

SENATOR VARGAS: Oh, I will absolutely hang around to hear every one of the stories back here. [LR26]

SENATOR EBKE: Okay. Okay, great. First proponent. Welcome, Mayor Foster. How are you? [LR26]

ROGER FOSTER: (Exhibits 13 and 14) I'm good. I don't envy your long day. Madam Chairman Ebke and members of the Judiciary Committee, my name is Roger Foster, R-o-g-e-r F-o-s-t-e-r, and I have the pleasure of serving as Crete's mayor. I won't...in the interest of time, I won't read my entire testimony but just summarize what this does to Crete. And I will also affirm that there are people scared in Crete. Like Senator Vargas said, people are genuinely scared and I'll give a quick example of that. On a nasty Friday probably three weeks ago, if you all remember, sleet, snow, blowing snow, we had anywhere from 150 to 170 people attend a community meeting about immigration, about their rights, their responsibilities, about our police department's role in any immigration, which is none, as Senator Krist stated, just so that they were comfortable. The fear of the municipality of Crete was simply that if people are not engaged with law enforcement and do not trust law enforcement, that has a negative effect on the entire community and makes all of us less safe if they're afraid to report a crime, if they've been a victim of a crime. So we wanted to reassure our residents that they were safe in Crete and they could trust our law

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enforcement was not there to deport them. So that is a genuine concern. And when I used that number of 150 to 170, I thought about it myself and I thought, you know, if that is one in five people that could be vulnerable by something that I think probably comes more so from the national level, that's ten years of growth for the city of Crete that experienced quite a bit of growth. If it's one in ten, it's 25 years' worth of growth. And as I told my peers at a League of Municipalities meeting, if something like that would happen, that would be like Crete's tornado without any FEMA funding, without any Red Cross, without any faith-based organizations coming in to help, because although it wouldn't have the catastrophic damage to assets, it would have a catastrophic damage to the people you would lose because that's simply a loss of life that may never return. I'll just finish up with this. When we look at it from a national perspective, although it may have a certain entertainment value to watch a fire on TV, when you're standing in your own backyard I think you have a different perspective on it. With that I thank you and I'd be happy to answer any questions you may have. [LR26]

SENATOR EBKE: Thank you, Mayor. Any questions for the mayor of the great city of Crete? [LR26]

SENATOR KRIST: Do you know anybody from Crete? [LR26]

SENATOR EBKE: I do know, I know a few. (Laughter) [LR26]

ROGER FOSTER: Thank you. [LR26]

SENATOR EBKE: Next proponent. [LR26]

DULCE CASTANEDA: (Exhibit 16) Good afternoon, Senators. My name is Dulce Castaneda, D-u-l-c-e C-a-s-t-a-n-e-d-a. I'm a Crete, Nebraska, native and also the community assistance director for the city of Crete. The community assistance office was created in mid-2016 to help community members who are new to the Crete area, particularly immigrants, and to facilitate a more welcoming and inclusive community for our residents, thus, I am here today to urge all of you to protect Deferred Action for Childhood Arrivals from any action the federal government might take to rescind this protection. In my position, I am fortunate to work with individuals who have benefited from DACA. These are individuals who are contributing greatly to our local economy, they're pursuing higher education, and they're establishing themselves and their families in our communities. They are individuals who are purchasing homes, getting involved in local affairs, and bringing a vibrant presence to Nebraska and the rest of our nation. They are people with high aspirations for themselves and their families who want nothing more than to thrive and give back to this country. Some of these individuals who benefit from DACA attend our local high school. Many of them will be graduating this May and have received letters of

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admissions to colleges in Nebraska and across the nation. Right now, as I speak with many of them, they are fearful for what will happen to them and DACA as they begin their college careers. We have told young people over and over again that they can thrive and move ahead in this country with a good education. So now is the moment to stay true to our message and help them move forward in their pursuit of this very goal. For these reasons, I urge all of you to vote in favor of this resolution so that these young people can continue to feel some level of protection within the state of Nebraska. We want and need these individuals here. When "DACAdmented" individuals succeed, our communities succeed. And when our communities succeed, Nebraska also succeeds. Thank you. [LR26]

SENATOR EBKE: Thank you. Any questions? Thanks for being here. Next proponent. [LR26]

JORDAN FEYERHERM: (Exhibit 17) Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Jordan Feyerherm, J-o-r-d-a-n F-e-y-e-r-h-e-r-m, and I am testifying on behalf of the Center for Rural Affairs. For thousands of Nebraskans the future is uncertain. People who only know the USA as home are now having to consider the prospect of being deported to what amounts to an unknown land. People who have been living, working, and raising families now face a nationwide fear of what is to come. A majority of DACA recipients came to this country as small children. About 70 percent were ten years of age or younger when they entered the country. These children grew up attending the same schools, watching the same television, and living in the same neighborhoods as children who were born in the U.S. Today, the average DACA recipient is 22 years old, has a job, is pursuing higher education, and makes \$17 an hour. These statistics are higher than the average native-born American aged 20 to 24. To enact any law that would in any way impair these individuals' capacity to learn, earn, and live would be counterproductive and harmful for the country as a whole. Because of DACA, these individuals have increased capacity to stimulate both the national and state economy. Recipients' hourly wages increased by 42 percent after DACA was passed; 6 percent of recipients started their own business; 12 percent purchased their first home; 90 percent received driver's licenses or state IDs. All these factors directly benefit the local and national economy while also improving the financial independence of recipients. Over a ten-year period, the economic impact of DACA recipients on Nebraska is estimated to result in a cumulative increase in GDP of \$781 million and in creation of 100 jobs annually. These hardworking young Nebraskans and their families are a critical part of our state's social and economic fabric and are actively contributing to local communities. For many small Nebraska towns who have long struggled with attracting new residents, immigrants are keeping these towns...these shops open and breathing fresh life into Main Streets across the state. As the mayor of Schuyler says, Schuyler would be dead without Latinos. Many other small countries...excuse me. Many other small counties and towns are experiencing similar revitalizations as Schuyler. Foreign-born residents now make up 6.8 percent of Nebraska's total population, many of whom are moving to rural communities across the state to pursue work and raise families. In 2014 alone, immigrants in Nebraska earned \$2.5 billion and

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paid over \$616 million in taxes, adding much-needed economic stimulation to communities whose native-born population is aging or moving away. Legislation promoting the safety, well-being, and welcoming of those with DACA status and their families will continue to uplift the many young people who want to put their towns to use and give back to the only country they've ever known as home. We strongly urge you to stand opposed to any federal action that would rescind Deferred Action for Childhood Arrivals or result in additional restrictions that would act as barriers to the continued contribution of these young Americans and their families to Nebraska communities and the people of Nebraska. Thank you very much for your time and I'll take any questions you have. [LR26]

SENATOR EBKE: Thank you. Any questions? I see none. Thank you. [LR26]

JORDAN FEYERHERM: Thank you. [LR26]

SENATOR EBKE: Next proponent. [LR26]

URIEL REYES VAZQUEZ: (Exhibit 18) Good day, Senators. It's nice to see some of you again. My name is Uriel Reyes Vazquez; that's U-r-i-e-l R-e-y-e-s V-a-z-q-u-e-z. I am here to testify in favor of LR26. I am a senior at Omaha South, and I am also a DACA student. I became a DACA student and emerged from the shadows so that I could be relieved of deportation. Senator Vargas has proposed a resolution that would put my family and I at ease regarding my ability to stay in this country and in this state. I was brought to the United States when I was one year old; I had no say in coming here. Despite this, I have made the U.S. my home and have worked hard in school so that I may have a better life than what my parents have to live on a daily basis. My father has worked tirelessly in home renovation, constantly getting cuts, bruises, and in one case, a broken arm. He suffers through all of this so his son can have a shot at realizing his American dream. He is one of the biggest reasons that I strive for success in the classroom, to make him proud, and to live his American dream through my choices. Well, under the new presidential administration, we have seen the American dream of others like me in other states be grinded to dust and shipped away in the back of an ICE van. Nebraska immigrants have been spared this fate, but as of now there are no protections other than DACA. This means that my family is very much at risk to be sent back on the whim of our superiors. I wish to be alleviated from this stress, from this fear, and to go to college, knowing that at the very least my family can rest easy, not constantly worrying about my well-being in the country. DACA has allowed me many privileges that one may take for granted in this country. Without LB623, I would not be able to obtain a driver's license, undoubtedly creating complications in my daily life. Without LB947, I would not be able to apply for a professional license in Nebraska once I graduate from college. This program has become an essential part of my life in the United States, and I would hate to see all of our past work with LB623 and LB947 go to waste if the federal government chose to rescind

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DACA. Senators, I urge you to support LR26, and allow my family and I to live our American dream; to live our lives free of the fear that our livelihoods could be ripped apart at the seams. Please allow us to continue our lives in this country and state that we have called our home for the last 18 years. Please oppose any federal action that would compromise Deferred Action for Childhood Arrivals. Thank you for your time. [LR26]

SENATOR EBKE: Thank you. Any questions? Thanks for being here again. Next proponent. [LR26]

LIZ PALMERIN: (Exhibit 19) Hello. My name is Liz Palmerin, L-i-z P-a-l-m-e-r-i-n. I am a DACA recipient and currently attend Central High School. I came today in support of LR26. I was brought to the United States at the age of three by my single mother. I grew up in a small town in Georgia and at the age of six moved to Nebraska. I have had the privilege to have a childhood full of caring individuals who have taught me that America is the land of the free and that anything I set my mind to can be accomplished here. To me Nebraska has always been my home. I grew up learning how to speak English at the same time I was learning how to speak Spanish. I felt devastated when my mother had to explain to me that I was undocumented and that under the law of this country I was raised in I was a criminal. I realized the extent of my status when I was 16. During this time all of my classmates were starting to get their driver's license and getting jobs, however, I could not. My life changed when DACA was passed in 2012. Things changed again when I found out that I was able to get my driver's license in Nebraska and in the future I would be able to get my dental license. For the first time I felt free in America. For the first time I knew that I could realize my full potential. The fight is not over though. DACA now faces the threat of being revoked. Without DACA I won't be able to stay in this place, the only place I've ever known and I call my home. I won't have the ability to become a dentist in the future. The laws that have passed in Nebraska have affected my life in the best way possible. With LR26 I know that my future in America is safe and I can continue to follow and live to my fullest potential and pursue my dreams. I sit here today thanking you for all your support thus far and I ask you to please consider my story and the story of other DACA recipients in your support of LR26. [LR26]

SENATOR EBKE: Thank you for your testimony. Any questions? Next proponent. [LR26]

DANIELLE MELNAR: (Exhibit 20) Thank you guys. Thank you for all of the leadership and especially the leadership coming out of Crete. I really appreciate that. Crete is an amazing town. I'll be there this weekend; there's a math conference. My name is Danielle Melnar, D-a-n-i-e-l-l-e M-e-l-n-a-r. I'm here to share the strong, amazing story of a strong young woman, Alejandra Ayotitla. She wrote this and I will read it, so it's from her. My name is Alejandra. I represent one of the thousands of DREAMers who have grown up in Nebraska as our home, and now we are

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contributing members of our community. Today I am here to thank you for your previous collaboration and invite you to please support LR26. I am a fourth-year student at the University of Nebraska-Lincoln; I am majoring in psychology, and minoring in Spanish and political science. Throughout my time at UNL I have taken advantage of my learning opportunities, such as studying abroad and working in research projects that seek to improve children's health and academic success. I also serve my community at El Centro, where I coordinate an adult education program that helps adults obtain their high school diploma and prepare them for their U.S. naturalization test. These are some opportunities that I have experienced thanks to DACA. My story is one of thousands of others. Our stories are unique, but at the same time they are united by perseverance, hard work, and our desire to contribute to the place we call home. Without DACA these experiences would not have been possible. I am grateful for the help of my mentors in college and at work, the support of various senators in our Legislature, and leaders from various community organizations. In 2006, the Nebraska Legislature passed LB239, which allowed DREAMers to pursue their higher education goals by allowing them to qualify for in-state tuition. Then in 2015 and 2016, I worked alongside many other DREAMers, community members, and senators to pass legislation that allowed DREAMers to obtain driver's license, professional and commercial licenses. The support we received from various senators, some of whom are members of this committee, and community leaders have made us feel that our contributions matter, and that this is also our home. I cannot tell you how significant it has been to count on your support, so I thank you for that. As DREAMers, we are committed to making educational, economic, and community contributions to our state because it is the only place we know as home. So, I kindly ask you to please consider supporting LR26 so that our Nebraska Legislature can continue to support our investments and those of our families, as well as oppose any federal action that might result in barriers that would inhibit our abilities to contribute to our communities. I do also want to note that I am an enrichment educator after school in south Omaha schools and I have children coming up to me scared asking me as the authority, what do I do if ICE comes to my door? This is real. Children are scared. And these...how am I supposed to teach these children when they think that their parents are going to be taken away from them? The fear is real and I think that we need to stand up and send a clear message not only to these children but to the whole nation that we will not live in this fear and we will stand up and we will be leaders. Thank you. [LR26]

SENATOR EBKE: Thank you. Any questions? Okay, thank you. Next proponent. [LR26]

SELMA DE ANDA: (Exhibit 21) Good evening, members of the Judiciary Committee. My name is Selma De Anda; that is S-e-l-m-a D-e A-n-d-a, and I'm here on behalf of the Define American chapter at UNL. And I am also one of the DACA recipients and I am a fourth-year student at the university. I am majoring in nutrition, exercise, and health science and I am here to encourage you to please support LR26. In order to make Nebraska as strong as it can be, it's necessary that the youth within our state be able to pursue their careers. As a nutrition exercise

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student, I hope to practice in the field of nutrition, health and fitness. And during my life I have always sacrificed many things to place my education first. I have stayed up countless nights studying in order to earn my grades. Also, thanks to DACA, I have been a part of the staff at Educational Talent Search; it's a TRIO program that works with underserved middle and high school students to improve access to higher education and I've been there since I began college. And my community involvement, like others have mentioned, have been to help advocate for LB623 and LB947, and now I am also advocating for this new resolution as well. And if anything changes with the current policies that affect DREAMers, I, along with the other DACA recipients, are limited in what we can achieve with our careers. It's very difficult to think that after all of the sacrifice and educational work, we may not be able to use, make use of that learning that we have gotten. And Nebraska has been my home for over 20 years. Living here has shaped me into the person that I am today, and I would like to give back to my community in the best way that I can. Thus, I cannot think of any better place to pursue my career after graduation than this state. And leaving the state is not in my plan at all because I do have a lot of friends here and the majority of my family, so I plan to stay near them. And in order to wrap this up, once again, I ask you to carefully consider and think about the many ways we can help our state thrive financially, academically, and in any way that we can with our different careers if we are able to stay here within the state of Nebraska. Thank you. [LR26]

SENATOR EBKE: Thank you. Senator Pansing Brooks. [LR26]

SENATOR PANSING BROOKS: Thank you very much for your testimony. I think that we haven't spoken to everybody but clearly there is great heart and concern for the DREAMers and I don't know what will happen on this resolution and the body has changed and...but clearly there are many who will stand with you and walk beside you as...if things change. And I know that many of us here will commit to doing that and working our hardest to stand as leaders in the state to protect you. We want you here. You're amazing people. Three years straight it's such an honor to get to talk with and know each of you. Thank you. [LR26]

SELMA DE ANDA: Thank you. [LR26]

SENATOR EBKE: Other questions? Okay. Thanks for being here today. [LR26]

SELMA DE ANDA: Thank you. [LR26]

SENATOR EBKE: Next proponent. [LR26]

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DULCE SHERMAN: (Exhibit 22) Hi. Thank you for the opportunity. Chairman Ebke and members of the committee, my name is Dulce Sherman, D-u-l-c-e S-h-e-r-m-a-n, and I am pleased to be here to testify in support of LR26 on behalf of OneWorld Community Health Centers. I am the director of human resources for OneWorld, and I work directly with our DACA employees. OneWorld has 12 clinics in Douglas, Sarpy, and Cass Counties that provided care to more than 37,000 patients in 2016. Our patients are primarily from low-income working families, 57 percent were uninsured, 68 percent were racial and ethnic minorities, and 43 percent were children. We employ several DACA employees at this time, and we would love to have many more. They are stellar workers who have a bright future ahead of them in the healthcare field. We have DACA employees who started entry-level positions while in school and who now are in medical professions working in our clinics. They are passionate about our mission of helping the medically underserved have access to quality healthcare. We urge you to advance LR26 to support Deferred Action for Childhood Arrivals until a more permanent solution is enacted. We know these young Nebraskans have so much to give back to their home state. They are very worried, as you've heard, about their future. It's something that resonates with all of us in our hearts. Adopting this resolution would go a long way to help them know that Legislature cares about them, wants them to stay in the communities they have grown up in, and recognizes the contributions they have made and will continue to make in our state. Thank you, Senator Vargas, for introducing the legislative resolution, which is one more step in the long history the Unicameral has had in supporting Nebraska's young DREAMers. We encourage the committee to advance LR26. Thank you. [LR26]

SENATOR EBKE: Thank you. Questions? Thanks for being here. [LR26]

DULCE SHERMAN: Thank you. [LR26]

SENATOR EBKE: Next proponent. [LR26]

LAZARO SPINDOLA: (Exhibit 23) Good afternoon, Chairwoman Ebke and members of the committee. Thank you for receiving me today. For the record, my name is Lazaro Spindola, L-a-z-a-r-o S-p-i-n-d-o-l-a. I am the executive director of the Latino American Commission and I am also testifying in the name of Nebraskans for Peace in support of LR26. You have had a long day and I apologize for making it even longer. A year ago I testified in support of giving DACA beneficiaries professional licenses. The year before that, I supported giving them driver's licenses. In 2006, LB239 gave DACA beneficiaries in-state tuition. It took 11 years for Nebraska to realize that 3,111 young, talented people just wanted the opportunity to give back to the state for allowing them the opportunity to grow and obtain a higher education, thus providing the highly skilled work force that so many claim that this great state needs. The business and industrial community are concerned because young, talented people are leaving the state.

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According to the Census Bureau, the only rural counties in Nebraska where the population between 19 and 25 years of age is increasing are those that have a high percentage of Latino population. The DACA beneficiaries want to stay in Nebraska--they said it already--because here is where their families are, and also Latinos are all about family, right? Now that we have invested time, money, and resources in these young people, and now they're getting finally ready to cash in their knowledge, skills, and talent, we face a different kind of challenge. The federal government is interfering in our state's business and threatens to deport DACA beneficiaries. What kind of business strategy is this? Disregarding all the time, effort and treasure invested in training over 3,000 young professionals, the federal government will deprive us of their service. Gee, I feel like (inaudible) here. We need these young professionals in order to continue the growth of our great state. Nebraska needs to keep the best and brightest in order to guarantee a similarly bright future for our state. I urge you to move LR26 out of committee. It is good for Nebraska, and it is good for the nation. Regarding your question, Senator Krist, at the very beginning, I'm going to meddle here a little. This state voted... [LR26]

SENATOR KRIST: As always, Lazaro, go ahead. [LR26]

LAZARO SPINDOLA: This state voted for our President, overwhelmingly so. So if we're sending a message that we don't want him to mess with DACA beneficiaries, he should listen to us, right? Or maybe he doesn't listen to anybody. I don't know. (Laughter) I'll be happy to try to answer any questions. [LR26]

SENATOR EBKE: Senator Krist. [LR26]

SENATOR KRIST: Was that a paid political announcement? (Laughter) Thank you, Lazaro. [LR26]

SENATOR EBKE: Other questions? Thank you for being here today. [LR26]

LAZARO SPINDOLA: Thank you for receiving me. [LR26]

SENATOR EBKE: Next proponent. [LR26]

ANA GEORGINE PEREZ-VILLAGOMEZ: Hello, Senators. My name is Ana Georgine Perez-Villagomez, A-n-a G-e-o-r-g-i-n-e P-e-r-e-z-hyphen-V-i-l-l-a-g-o-m-e-z. So I don't have much prepared because I did not plan on testifying today. But DACA is important to me. It's an important topic for me because I'm a senior at South and most of the students at South are Hispanic. And a lot of my peers, they go day in, day out, thinking of the status that limits them.

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So if you go to my high school, one cannot differentiate between who is DACA and who isn't. Why not? Because that status does not define who we are. We will go. We will push our boundaries. And even if LR26 does not pass, like, we're still going to keep on fighting for what we know is important to us. And so last November, for one of the counselors at my school, she came up to us and she was like, okay, so we're going to form a team and on a topic about what you guys find important. And so it was a student innovation challenge with DLR. And so we formed a group of eight students and our topic was about the limitations on documented students and DACA students that were pursuing a postsecondary education. And so DACA students are already limited with federal financial aid grants and loans because they cannot get those to pursue their postsecondary education, so they're limited in their choices of college. And so because they're already limited, why do we want to limit them even more? And so when I go to College Possible, which is an organization that helps me...like it helps you on the track to college, because I'm a first-generation student, and so I see my peers worrying about the scholarships that are available to them. They're like, oh, I'm not going to be able a scholarship, because there are a lot of students but very little scholarships for them because they're DACA recipients. And so because although I'm not a DACA student, I still feel their pain and it worries me that because they don't have the opportunity that they might think, like, oh, I can't do it. Right? And so I want them to know that they can do it and it is possible for them. And so like with your guys' support we can do it. And so I invite you guys to South, to Omaha South, so you guys can see our presentation. And like anybody in here can go to South and we'll do the presentation for you guys. So thank you. Do you guys have any questions? [LR26]

SENATOR EBKE: Thanks for being here. Any questions? You go to South? [LR26]

ANA GEORGINE PEREZ-VILLAGOMEZ: Yeah. [LR26]

SENATOR EBKE: Okay. (Laughter) Thanks for being here today. [LR26]

ANA GEORGINE PEREZ-VILLAGOMEZ: Yeah. Thank you. [LR26]

SENATOR EBKE: Next proponent. Can I get a quick show of hands, how many more people testifying on this bill--one, two, three--in any capacity, proponent, opponent, anything? Okay, thanks. Okay. [LR26]

ALEXIS STEELE: All right. Good afternoon, Chairperson Ebke, honorable Senators, and fellow Nebraskans. My name is Alexis Steele, A-l-e-x-i-s S-t-e-e-l-e, and I am an attorney with Justice For Our Neighbors, a nonprofit law firm here in Nebraska. And I'm here on behalf of my organization today to express support of LR26 for three reasons: first, because LR26 is compassionate. Let's reiterate. The people whom we are discussing, DREAMers, are a very

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unique part of our community. They came to the U.S. not by their own volition but by the decision of their parents or others. Often they have no memory of coming to the United States let alone memory of another home, as many were brought here as infants. DREAMers are also unique because they are certifiably upstanding and productive members of our community. In applying for DACA, DREAMers must prove that they are good students and have clean records. Having taken a moment to admire the impressive makeup of our DREAMers, I urge you to consider the compassionate nature of today's resolution. Second, we support this resolution because it represents a clear and natural trajectory of our LB623 and LB947 which Nebraska passed in 2015 and 2016, respectively, to make driver's and commercial licenses available to DREAMers. Just as the Legislature had the opportunity to do so then, so do you, too, now have the opportunity to solidify Nebraska's support of one of its greatest investments: its hardworking youth, its hardworking and deserving youth. Third and finally, we are eager to support this resolution, its passage, as a resolution of promise not only for DREAMers but for all Nebraskans. The most recent National Immigration Law Center report found that upon receiving DACA, 54 percent of DREAMers buy their first car; 12 percent buy their first home; and 6 percent started new business, making DREAMers the most entrepreneurial subset of our community. This is just a small glimpse at DREAMers' invigorating impact on our economy which is enjoyed by all. And so on that note, I encourage you to vote for LR26 in support of our innocent, upstanding, productive, and incredibly deserving youth, in support of Nebraskans' future. And I invite any questions. Thank you very much. [LR26]

SENATOR EBKE: Thank you for your testimony. Any questions? Thanks for being here today. [LR26]

ALEXIS STEELE: Absolutely. Thank you. [LR26]

SENATOR EBKE: Next proponent. [LR26]

MARY BOSCHULT: (Exhibit 24) Senator Ebke and Members of the Judiciary Committee, my name is Mary Boschult, M-a-r-y B-o-s-c-h-u-l-t, and I'm representing the League of Women Voters of Lincoln and Lancaster County and I'm here today to support LR26, the resolution to support the Deferred Action for Childhood Arrivals youth in Nebraska. We want to recognize the positive commitment that this Legislature has already made with the authorization of in-state tuition, driver's licenses, and professional licenses for the DACA youth. We support this resolution as a member of the Nebraska Coalition for Immigration Reform. LR26 supports issues of social and economic justice for the DACA youth and for our state. These youth are part of our state economy. They are our CNAs, our psychologists, our accountants, our attorneys, and our soldiers. We need the youth and their families to continue their contributions to their

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communities and to the economy and quality of life in our state. Please vote to advance LR26 to General File. Thank you. [LR26]

SENATOR EBKE: Thank you. Any questions? Thanks for being here. [LR26]

MARY BOSCHULT: You're welcome. [LR26]

SENATOR EBKE: Next proponent. [LR26]

ARMANDO BECERRIL: Good evening, Senators. So about a year ago I was sitting in the same chair as a proponent of LB947 and now I sit here as a proponent of LR26. A year ago I was stressed about getting my MPA degree and now I sit here stressed trying to... [LR26]

SENATOR EBKE: Could you give us your name and spell it, please. [LR26]

ARMANDO BECERRIL: Yeah. Yeah. My name is Armando Becerril, A-r-m-a-n-d-o B-e-c-e-r-r-i-l. So kind of like I was saying, a year ago I was pretty stressed about getting my MPA degree. Luckily I got through that, so I sit here in front of you as a graduate, recipient of my master's of professional accountancy. In getting that, obviously I have to pursue my CPA, right? So I had to halt my pursuit because I didn't know what Mr. Trump's administration would do, if he would cut DACA or not. So prior to him being elected, I had finished, too, but I was like, well, there's so much uncertainty I don't know what to do. So I decided to put a halt. But luckily, with great support from the state of Nebraska having passed LB947 the prior year, and with this resolution coming up, I feel that it's now safe for me to continue that pursuit. And I also sit here as, you know, more of an example that you guys have supported us throughout this journey giving us the ability to go to college with in-state tuition and getting driver's licenses, professional licenses. And, you know, I sit here as an audit associate for KPMG, one of the biggest accounting firms in the world, auditing a Fortune 100 company--never thought I'd ever be able to say that. So, you know, more than anything, I support this because it's the right thing to do and because there's more people coming after me that will probably do bigger and better things. For example, I heard somebody that wants to be a dentist. Like, how amazing is that? How much hard work does that take? You know, just getting my master's degree was enough, but imagine going to dentistry school and going through all the situations. So I did graduate, like I said, from the University of Nebraska-Lincoln. And, you know, I just hope you guys support this because, like I said, it's the right thing to do. And Go Big Red! [LR26]

SENATOR EBKE: Any questions? Senator Pansing Brooks. [LR26]

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SENATOR PANSING BROOKS: Wow! What a great success story after last year. Thank you for telling that story. And we just...so many of you have such incredible stories, so thank you very much for coming. [LR26]

ARMANDO BECERRIL: Thank you guys. Thanks for your time. [LR26]

SENATOR EBKE: Thanks. Next proponent. [LR26]

FATIMA FLORES-LAGUNAS: (Exhibit 25) Good afternoon everyone. My name is Fatima Flores-Lagunas, F-a-t-i-m-a F-l-o-r-e-s-hyphen-L-a-g-u-n-a-s. Today I am not here to share my story because I'm sure you guys have heard it many times, but I am here to express a voice that cannot be with us today. His name is Pastor Sergio Amaya, S-e-r-g-i-o A-m-a-y-a. To the Judiciary Committee: May the peace and love of our Lord Jesus Christ be with you always and continue to provoke a spirit of service in your fellowmen, especially those that are waiting to receive, from you, the highest priority of needs that are within your reach. Honorable Senators: I am pleased to greet you all and to present myself as a Lutheran pastor. My name is Sergio Amaya and I'm a pastor at San Andres Lutheran in the city of Omaha, Nebraska. As always, I am accustomed to introducing myself in different personalities depending on climate of conversation whether it be social, political, economic, or religious. Therefore, it is very important for me to address you, with full certainty, that my desire is to express my concern about the different measures of immigration laws that the President of North America, Donald Trump, intends to deal with under the executive order with the students of DACA. I want to express my solidarity, and at the same time strongly urge that we humanize ourselves with the causes that generate fear and discourage thousands of young students. These are young students that have a spirit to dream and in those dreams they hope that at the end of their goals there will be men and woman supporting them so that they can develop socially, intellectually, and economically, particularly in this nation that is so loved and appreciated by the thousands of immigrants that have come throughout the history in search of these dreams. My intention, Senators, is to be of the people, to create bridges that unite us all. I do this with the sole purpose of helping those who need it, especially these young people who are looking for a way to show their talents. It is for this reason that I write you all in favor of LR26 and ask you all to vote yes. I hope God Almighty shares his grace in your lives and your works, but above all in your families. I bid farewell, sincerely, Pastor Sergio Amaya, pastor of San Andres. [LR26]

SENATOR EBKE: Thank you. [LR26]

FATIMA FLORES-LAGUNAS: (Exhibit 26) Additionally, there was a woman here that had to leave early so she asked me to present these on her behalf. [LR26]

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SENATOR EBKE: Any questions? Senator Krist. [LR26]

SENATOR KRIST: You guys are getting good at this (inaudible). Welcome back. [LR26]

FATIMA FLORES-LAGUNAS: Thank you. [LR26]

SENATOR EBKE: Thank you for being here today. Any other questions? Thanks. Next proponent. [LR26]

OMAID ZABIH: (Exhibit 27) Good evening. My name is Omaid Zabih; that's spelled O-m-a-i-d, my last name is spelled Z-a-b-i-h, and I'm a staff attorney with Nebraska Appleseed. I just wanted to highlight one piece from my testimony and that is to highlight some...a recent letter signed by a number of organizations. In our work with communities across the state we have heard the deep appreciation for DACA youth who are a strong part of our communities, are finishing their education and contributing to their home state. And recently more than 70 Nebraska organizations and local community leaders--this includes local chambers of commerce, school superintendents, city leaders, business, faith, agriculture, and other groups--sent a letter to Nebraska's congressional delegation supporting DACA youth and their families, and a copy of that letter is on the last page of my testimony. The University of Nebraska system, Creighton University, and the College of Saint Mary also signed separate letters of support. This broad and diverse set of voices expressed their strong appreciation of our youth. To quote from the letter, "These young Nebraskans are enthusiastically pursuing their education, dedicating their skills and entrepreneurial spirit, and becoming leaders in their communities. DACA has provided these hard-working young Nebraskans and their families with a measure of stability. They are a critical part of our state's social and economic fabric and are actively contributing to local communities and economies." And as you've heard today, our young Nebraska DACA youth have deep family, social, and economic ties to our state and country and it's also allowed talented young immigrants to maximize their educational and work opportunities to the benefits of their communities and Nebraska's economy. And we strongly urge the committee to advance this resolution. Thank you. [LR26]

SENATOR EBKE: Thank you. Senator Pansing Brooks. [LR26]

SENATOR PANSING BROOKS: Thank you for coming. I think you can get a lot more state senators' names on that list than you have right there, so, just FYI, I'm one, so. [LR26]

OMAID ZABIH: Thank you, Senator. [LR26]

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SENATOR EBKE: Senator Krist. [LR26]

SENATOR KRIST: Thanks to Appleseed for all their leadership, appreciate it. [LR26]

OMAID ZABIH: It's...yeah, no problem. It's mostly the young people you see sitting behind me that have done the bulk of the work, so. [LR26]

SENATOR KRIST: Yeah, it's just good to see consistent supporters and Appleseed has been there throughout the years. [LR26]

OMAID ZABIH: Thank you. [LR26]

SENATOR EBKE: Senator Chambers. [LR26]

SENATOR CHAMBERS: Warn your colleagues that one of these days one of them will be testifying and I'm going to interrupt and tell the story of Johnny Appleseed so we (inaudible) (laughter). [LR26]

SENATOR MORFELD: Again? (Laughter) [LR26]

SENATOR EBKE: Any other questions? Thanks for being here today. [LR26]

OMAID ZABIH: Thank you. [LR26]

SENATOR EBKE: (Exhibits 1-12 and 15) Are there any other proponents? Do we have any opponent testimony? Is there anybody to testify in a neutral capacity? If not, Senator Vargas. And we do have some letters that I will read into the record. We have letters of support from: League of Women Voters of Nebraska; Carol Windrum; Mary Bahney of the National Association of Social Workers of Nebraska; Chris Beutler of the city of Lincoln; Julia Tse, Voices for Children; Andrea Paret; Jim Otto, Nebraska Restaurant Association and Nebraska Retail Federation; Kathleen Grant of the Omaha Together One Community; Nancy Meyer; Danielle Conrad of ACLU of Nebraska; and Cecilia Rossiter...I don't know what this means...26? No, ignore that...Cecilia Rossiter. And then in opposition: Ron and Lynette Nash; Donn and Judith Williamson; and Kathy Wilmot. [LR26]

SENATOR VARGAS: (Exhibit 28) I just wanted to catch it there. I'm not sure if this is also the...from...city of Omaha was also included in there for Jean Stothert. [LR26]

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SENATOR EBKE: Hmm, I don't know. Have you seen one? Do we have one for the city of Omaha? [LR26]

SENATOR VARGAS: I have a copy of one right here. [LR26]

SENATOR EBKE: Okay, well, we don't. (Laughter) [LR26]

SENATOR VARGAS: City of Omaha, Jean Stothert, mayor. [LR26]

SENATOR EBKE: Okay, we'll get copies and add that to the list from the city of Omaha. [LR26]

SENATOR VARGAS: Chairwoman Ebke and members of the committee, I want to thank you for taking the time. I know it's been a late night. I don't have much more to say. Two things I want to say. First is I want to recognize all the individuals that testified and that have testified on these bills for the last several years and continually came to tell their story. It's...I think Senator Pansing Brooks made the astute observation that we look at each individual story as at the moment that they're telling them, but they're continuing to develop in their careers. They're continuing to develop and support Nebraska. They're creating jobs. They're thinking forward about their families. They are making a life here. We constantly make decisions about the economic, social investments in our state. And we are clearly seeing this return on investment. I don't want to just think about the individuals behind me as a return on investment, but it's clear that it is exactly what we intended is happening. And they will keep on coming is essentially also what I want to say. As long as we are continuing to stand by them, they are continuing to share with us their stories of the sacrifices they continue to make and why they care so much about the state, and I think that's amazing because I care so much about this country. And again, as a first-generation American I try not to lose sight of that because we are always constantly trying to do more within our next generations and I think that this is...that's what this is about. And so I want to thank you because hearing these stories I just never want to lose sight of the people that are sacrificing so much of their time and efforts to do more for us. One change, you might see this in the letter from ACLU, and there is an amendment here, suggestion that I would like for you to consider. This is on the second page of the letter from the ACLU and this amendment would go on page 2. And they basically say that, you know, we need some action or some intent language on action from this. And it would say: "That a copy of this resolution be delivered to the President of the United States, to the Speaker of the United States House of Representatives, to the President of the United States Senate, and to each member of the Nebraska congressional delegation." I think the intent here is that we are, if we're standing by LR26, if we're standing by what we've passed, that we are also making sure we are communicating and being transparent about what we're standing by and that this is delivered to those individuals that are stakeholders

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that represent our great state. And so with that, I ask that you consider this amendment and move forward in advancing LR26 for all the people that are in this room that spoke and for all those that are not, that are just waiting to have some...to pacify their fears and the tension that we're currently feeling in the state of Nebraska. Thank you. [LR26]

SENATOR EBKE: Senator Krist. [LR26]

SENATOR KRIST: Usually if we want to amend this, it becomes a whereas/therefore: and, therefore, we are delivering this in special attention to these people. And it's as simple as that. [LR26]

SENATOR VARGAS: Yep. [LR26]

SENATOR KRIST: And then you can pass it around for signature for everyone, which I'm sure (inaudible). But I think that's a great idea, I really do, and it says a lot. It will say a lot to our congressional delegation and it will say a lot to us and to you that they forward their names onto the product as well, so good idea. [LR26]

SENATOR VARGAS: I appreciate that. And I'll say one more thing because I know Senator Pansing Brooks mentioned this. We do have a different body and I think what's different about it is we have new people and we have had some significant time where we are starting to pass bills and build relationships and work on issues. And I implore the rest of the members of the Legislature to view this as a way to continue to support our nonpartisan Legislature--that's what we came here for, that's what we're doing--and just keep that spirit in mind because I think that's really critical to why we would be supporting this resolution and taking a step forward. [LR26]

SENATOR EBKE: I do...oh, Senator Morfeld. [LR26]

SENATOR MORFELD: Well, first off, welcome to the Judiciary Committee, Senator Vargas. This is actually, for the record, this is early for this committee, so. [LR26]

SENATOR VARGAS: Yeah, I was going to say, I was like,... [LR26]

SENATOR MORFELD: But I do appreciate the...anyway. You know, I just...this is going to be more of a statement because I haven't made a statement on this and I...this hearing on this issue on this type of issue is my favorite hearing each year. I remember it was either a year ago or two years ago the power went off in this building and we kept going. And I know that there's some people in here that were there that day and I think it's my favorite hearing because it's so

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inspiring to see so many of the young Nebraskans that we constantly talk about wanting to keep in this state stepping up and giving some of the best testimony that we hear all year. And they are really the epitome of the type of young Nebraskans that we want to have them call home, call Nebraska home. And so it's always very inspiring for me to see all of them come up here and I will continue to fight for all of our youth because we care about all of our youth, not just some youth, as Senator Chambers says, and ensure that this is a place that they can call home, that it's a safe place, and it's a place where they can be prosperous and that we can support that. So thank you, Senator. [LR26]

SENATOR VARGAS: Thank you very much, Senator Morfeld. [LR26]

SENATOR KRIST: The light actually did come on at the end of the hearing, so. [LR26]

SENATOR MORFELD: I think it did. (Laughter) [LR26]

SENATOR VARGAS: A spotlight just... [LR26]

SENATOR EBKE: Senator Hansen. [LR26]

SENATOR HANSEN: Thank you, Senator Ebke, and thank you for bringing this, Senator Vargas. I was going to say something similar along the lines of Senator Morfeld. I'm new to this committee but not new to this body and multiple people told me last year that LB947 was the best hearing they'd ever seen in their tenure. And after seeing all the testimony today, I believe it. So thank you. [LR26]

SENATOR VARGAS: Thank you very much, Senator Hansen. [LR26]

SENATOR EBKE: Okay, since this is a lovefest, (laughter)... [LR26]

SENATOR VARGAS: Not me. It's love...love it out there. [LR26]

SENATOR EBKE: Yeah, a lovefest. [LR26]

SENATOR VARGAS: We're (inaudible) from love. [LR26]

SENATOR MORFELD: Should we turn off the mikes? (Laughter) [LR26]

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SENATOR VARGAS: Get some music going? [LR26]

SENATOR EBKE: How many of you went to Crete High School? How many of you had me sign your diploma? Anybody that graduated before 2014? Let me just say, Senator Vargas, I think this is a good resolution. One question I would challenge you to consider if this moves to the floor is two years ago and then again one year ago the case that was made to many to get them to buy in was that this was a federal law. Okay? And it was actually a federal executive order that made this but that, you know, we could justify it, Nebraska jumping on, because everybody else had and because the feds...this was federal status. Okay? So think about what it means to say "oppose federal action" because that puts us...that kind of puts us in a different situation if you acknowledge that this was an executive order and that a new administration has, you know, changed...if the new administration changed things through executive order, so think about what opposing federal action means for the state of Nebraska. You don't have to answer now but just think about it. [LR26]

SENATOR VARGAS: I will say I'm considering...I considered that and, again, it gets me back to the question or the statement that Senator Krist brought up that my hope, my idealism is that we did not pass that legislation thinking it was temporary. But I understand the language and the choice that is being made or being brought forward in this resolution and the impact of that language. [LR26]

SENATOR EBKE: I think most of us, and I guess I'm getting on a soapbox here, I think most of us did not think that it was temporary or didn't assume that it was temporary but I think we realized that it could be. [LR26]

SENATOR VARGAS: Of course. [LR26]

SENATOR EBKE: And so that being the case, I think you just need to think about that. [LR26]

SENATOR VARGAS: Of course. Thank you very much, Chairwoman. [LR26]

SENATOR EBKE: Any other questions? Soapboxes? (Laughter) [LR26]

SENATOR VARGAS: Lovefest (inaudible)? [LR26]

SENATOR KRIST: Thank you. Thank you guys for coming. [LR26]

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SENATOR EBKE: Thanks. Thank you. This closes the hearing on LR26. [LR26]

SENATOR VARGAS: Thank you very much. [LR26]