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Transcriber's Office

Judiciary Committee
February 05, 2015

[LB504 LB505 LB630 LB651 CONFIRMATION]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 5, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB651, LB504, LB505, LB630, and a gubernatorial appointment. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: Ladies and gentlemen, the bewitching hour is here. We now have a quorum. Testifiers, before you testify we want you to fill out the testifier sheet. And then when you come up, hand it to one of our clerks. And that way we'll get the proper name in the record and know who we're having testify. Speak clearly into the microphone not to amplify your voice but to make sure the record gets it because it will be transcribed and will become part of the record. Silence your cell phones so that they're not going off during the middle of the testimony. I will introduce the senators here. I was kind of stalling hoping some more would show up. But on the right is Senator Matt Williams from Gothenburg; Senator Adam Morfeld from Lincoln; Diane Amdor is our clerk...committee counsel. I got them reversed. Looking at my other side is committee clerk Oliver VanDervoort. Down on the end is Dr. Laura Ebke from Crete and Senator Patty Panzel (phonetically) Brooks from Lincoln.

SENATOR PANSING BROOKS: Close enough. (Laugh) You said Panzel (phonetically). That's okay. We've got now Pansing...

SENATOR SEILER: Did I say Guenzel?

SENATOR PANSING BROOKS: No, you said Panzel (phonetically). (Laughter) So Guenzel and Pansing merged.

SENATOR SEILER: When I was in law school, there was a law firm here in Lincoln by the name of Pansing Guenzel. I've been calling her that ever since she arrived. (Laughter)

SENATOR PANSING BROOKS: So we just got a good merger of those two names: Panzel (phonetically).

SENATOR SEILER: And you've got to admit, you've got to admit I apologized early for the whole year.

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SENATOR PANSING BROOKS: Oh, I don't care at all. And, yes, my father would think it was quite funny.

SENATOR SEILER: Our pages are Drew and Jonathan today. We will be taking the hearings in order starting out with the Board of Parole. Are you being introduced by somebody?

RANDALL REHMEIER: No, I don't think so.

SENATOR SEILER: Okay, then you can come up to the table and be introduced.

RANDALL REHMEIER: (Exhibit 1) I have some handouts here. Sir, can I go ahead and sit down then? [CONFIRMATION]

SENATOR SEILER: You bet. [CONFIRMATION]

RANDALL REHMEIER: All right. I'll wait for you to get your... [CONFIRMATION]

SENATOR SEILER: Pronounce your name and spell your name. [CONFIRMATION]

RANDALL REHMEIER: Okay. And my name is Randall L. Rehmeier; first name, R-a-n-d-a-l-l L. Rehmeier, R-e-h-m-e-i-e-r. And may I proceed then, Senator? [CONFIRMATION]

SENATOR SEILER: You're ready to go. [CONFIRMATION]

RANDALL REHMEIER: Okay. Good afternoon, Senator Seiler and distinguished members of the Judiciary Committee. My name is Randall L. Rehmeier. I appear before you today seeking the confirmation of my nomination by Governor Ricketts to serve on the Nebraska Board of Parole. I have been involved in the criminal justice system for over 40 years. I have attached to my testimony today a condensed resume with regard to my experience, background, some of my activities, community activities as well as professional activities, my work experience. The pertinent portions of my work experience as it might relate to this particular position would be that I was involved starting in 1974 in private practice in Nebraska City. I was a deputy county attorney as a young lawyer. I, four years later, then became the county attorney in Otoe County and served in that capacity for a period of nine years. And then in 1987, I was appointed to the county court bench in the Second Judicial District, which is Otoe, Cass, and Sarpy Counties. I was there for three years and then I was appointed to the district court bench where I served until the year 2013 when I resigned that position. Since that time I have a small farm in Nemaha

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County. I've been working on it a little bit. But I also have been filling in as a retired judge assisting when called upon in that capacity. I've been very involved in judicial activities. I won't go through all of them. But I was president of the District Judges Association. I was chairperson of the judicial ethics committee which involved all of the different benches in the state. And also I was involved in the orientation of new judges. I was the chairman of that committee for about somewhere around ten years. So as we had new judges coming on, I was involved in orchestrating more or less their orientation to become new judges. With regard to...back to the front page of my testimony, I am keenly aware of the recent issues involving the Department of Corrections and, to some extent, the Board of Parole. It is paramount that the public's confidence in the criminal justice system be restored. I will collaborate with the Department of Correctional Services and other entities while still respecting the independence of the Parole Board in an attempt to share ideas and implement workable procedures that will continue to enhance the number of offenders set for parole hearings and placed on parole. On the other hand, the safety of the public is an overriding factor that must be considered in all cases coming before the Board of Parole. When appropriate, parole is beneficial to all as it provides an opportunity for an incarcerated individual to serve the remainder of their court-imposed sentence in the community with the supervision of an assigned parole officer. Also, parole encourages programming and self-betterment courses to address criminal thinking and addiction. Many come into the system lacking basic education; therefore, GED, high school diplomas, and other forms of education are appropriate in many cases. I will support the parole process and particularly those who offer themselves as viable candidates to be released into our community without risking public safety. I am humbly asking for your support so that I may serve as a member of the Nebraska Board of Parole. If you have any questions, I would be happy to try to answer them at this time.

[CONFIRMATION]

SENATOR SEILER: Senators? Senator Chambers. [CONFIRMATION]

SENATOR CHAMBERS: Why do you say "humbly?" You don't have to be humble. Be proud.

[CONFIRMATION]

RANDALL REHMEIER: I am respectful. [CONFIRMATION]

SENATOR CHAMBERS: Okay. [CONFIRMATION]

RANDALL REHMEIER: I am respectful. [CONFIRMATION]

SENATOR CHAMBERS: Are you acquainted with the nominee? [CONFIRMATION]

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RANDALL REHMEIER: I am the nominee. [CONFIRMATION]

SENATOR CHAMBERS: That's not the question that I asked. (Laughter) [CONFIRMATION]

RANDALL REHMEIER: I am. I know him very well. I've known him for 60-some years.
[CONFIRMATION]

SENATOR CHAMBERS: And your opinion of him, if it could be summed up in one word,
would be what? [CONFIRMATION]

RANDALL REHMEIER: Fair. [CONFIRMATION]

SENATOR CHAMBERS: Fair? [CONFIRMATION]

RANDALL REHMEIER: Fair. [CONFIRMATION]

SENATOR CHAMBERS: So far, you got an A-plus. [CONFIRMATION]

RANDALL REHMEIER: I like to hear that. [CONFIRMATION]

SENATOR CHAMBERS: Do you think he ought to be confirmed? [CONFIRMATION]

RANDALL REHMEIER: I do. [CONFIRMATION]

SENATOR CHAMBERS: You've persuaded me. (Laughter) [CONFIRMATION]

RANDALL REHMEIER: Thank you, Senator Chambers. I'm glad to hear that.
[CONFIRMATION]

SENATOR SEILER: Yes, Senator Morfeld. [CONFIRMATION]

SENATOR MORFELD: If you've persuaded him, you've persuaded me. Thank you, Chairman.
[CONFIRMATION]

SENATOR SEILER: Anybody else? Now as I understand it, you have actually sat as an officer
on the Parole Board since your appointment. [CONFIRMATION]

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RANDALL REHMEIER: Since my appointment, I have been assisting with the Parole Board. I was there this morning until noon, a little bit after noon, then I came down here.

[CONFIRMATION]

SENATOR SEILER: Okay. Now I know you have your experience as being a district judge; you would have been associated with the Parole Board. One of the things that we were looking at after the hearings of LR424 was making Parole a separate entity from the department of prisons. Do you have any thoughts on that? [CONFIRMATION]

RANDALL REHMEIER: From the department of prisons, you know, I am familiar with the parole and the Parole Board, and the separation between it and the Department of Corrections as an independent agency. Now I'm not exactly sure how to answer that question at this point.

[CONFIRMATION]

SENATOR SEILER: Okay. That's fair. [CONFIRMATION]

RANDALL REHMEIER: I don't know exactly how to answer that. I've been there for a week. So I'm working my way there. I hope that I can give you a better answer in the future. But you know, the independence of the Parole Board is particularly important. So to that extent, that would be my answer. [CONFIRMATION]

SENATOR SEILER: Okay. That's a good answer. [CONFIRMATION]

RANDALL REHMEIER: I'm sorry I don't have a better one. [CONFIRMATION]

SENATOR SEILER: Do you have a question? [CONFIRMATION]

SENATOR PANSING BROOKS: No. Good answer. [CONFIRMATION]

SENATOR SEILER: Oh, okay. Any other questions? Thank you very much for your appearance. [CONFIRMATION]

RANDALL REHMEIER: Okay. Thank you, Senator Seiler. [CONFIRMATION]

SENATOR SEILER: Anybody further to testify in his support? Seeing none, I will close the...anybody in opposition I guess? Anybody in the neutral? Seeing none, we'll close the

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hearing on his appointment. Thank you very much. Senator Bloomfield, LB651.
[CONFIRMATION]

SENATOR BLOOMFIELD: Thank you, Chairman Seiler. Good afternoon, colleagues. My name is Senator Dave Bloomfield, D-a-v-e B-l-o-o-m-f-i-e-l-d, and I represent the 17th Legislative District. I'm here today to present LB651 to the committee for your consideration. This summer, the Government, Military and Veterans Affairs Committee held an interim study, LR582, which looked at unfunded and underfunded mandates on counties and county governments. During that hearing, it was brought up that when a judge waives certain fees, and they can then be sent to the county board or the silly...city, not silly, to the city or village for payment, this creates an additional burden on our cities and counties. While I understand the fees are allocated for specific funds or programs, the judges retirement fee, the uniform data analysis fee, the court automation fee, and a partial legal service fee, I think there has to be a better way. There will be individuals following me that can tell you more about fees and the burden it places on the cities and counties. With that, I'll tell you this bill is not in my wheelhouse. So I'm more than willing to work with the committee to find a solution to address the unfunded mandates. And with that, I would let you ask questions of the other people. And I'm here if you need to ask a question, but I probably won't know the answer. [LB651]

SENATOR SEILER: Any questions of this witness? Seeing none, you may step down. [LB651]

SENATOR BLOOMFIELD: And, Senator Seiler, I will probably waive closing and return to Government. [LB651]

SENATOR SEILER: Okay. [LB651]

SENATOR BLOOMFIELD: Thank you. [LB651]

SENATOR SEILER: You bet. Proponents of this bill. [LB651]

BETH BAZYN FERRELL: Good afternoon, Chairman Seiler, members of the committee. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm with the Nebraska Association of County Officials, and I'm appearing in support of LB651. As Senator Bloomfield said, this issue of uncollectable court costs was identified in the unfunded mandates interim study this summer. And we appreciate Senator Bloomfield introducing the bill to continue that discussion. NACO's support of the bill isn't a reflection on what courts do or isn't a reflection on judges' retirement, but it's more a discussion of the overall policy of what should local property tax dollars be used to pay for. Just a little explanation about the process and how it works,

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according to statute there's a certain time frame when the clerk magistrate who is with the county court submits a claim to the county for uncollectable court costs. And then the county pays those costs. Those could be costs that are dismissed or cases that were transferred to juvenile court, some other things like that. It's a \$17 overall fee. Of that, \$6 is for judges retirement, \$2 is for Legal Aid, \$8 is for court automation, and \$1 is a uniform data analysis fee. Now, there aren't any county court fees that stay in the county because county court is a state function. The court fees are either collected from the parties or else the county pays them if they're uncollectable. And then all those fees go to the state. The bill as it's drafted would strike the language that allows the uncollectable court fees to be collected from counties or under city or village ordinances. And we do recognize that some of those fees benefit counties. For example, the court automation fee helps pay for JUSTICE, which is the electronic case management system. The Legal Aid services fee helps fund the Commission on Public Advocacy. But our real issue with the whole process is there seems to be a disconnect in how the whole process works, to go from the property taxes that are collected from taxpayers here through the county court system and then into the state's coffers. And so, like Senator Bloomfield, we'd be happy to look at other options to try and figure out how to make the process clearer and better. But we do feel that there is a disconnect and we would support looking at the process further. Be happy to answer questions. [LB651]

SENATOR SEILER: Any questions? Senator Williams. [LB651]

SENATOR WILLIAMS: Thank you, Ms. Ferrell. Would you just walk me through the process right now? You've got a situation where the fee can't be paid and can't be waived. Okay. [LB651]

BETH BAZYN FERRELL: Right, okay. Then the clerk magistrate would submit a claim to the county, and the county would pay that fee. [LB651]

SENATOR WILLIAMS: Pay that fee. [LB651]

BETH BAZYN FERRELL: Right, yes. [LB651]

SENATOR WILLIAMS: And then it gets allocated back according to \$6 to the judges, and that is where it goes. [LB651]

BETH BAZYN FERRELL: Exactly, yes. [LB651]

SENATOR WILLIAMS: Okay. And your bill would do what with that? [LB651]

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BETH BAZYN FERRELL: This bill would say that those uncollectable court fees can't be paid by the county. It really doesn't address who would pay for them; it just says that the county would not be responsible for them. [LB651]

SENATOR WILLIAMS: Okay. Thank you. [LB651]

SENATOR SEILER: What fee...go ahead. [LB651]

SENATOR PANSING BROOKS: I have a...do you have an opinion who should pay for them? [LB651]

BETH BAZYN FERRELL: Well, ultimately the parties should. But as we know, that's probably not going to happen. [LB651]

SENATOR PANSING BROOKS: Parks? [LB651]

SENATOR EBKE: Parties. [LB651]

BETH BAZYN FERRELL: The parties. [LB651]

SENATOR PANSING BROOKS: Oh, parties. I'm sorry. [LB651]

BETH BAZYN FERRELL: But as far as who should pay for them, that's a very good question. Somebody has to be responsible for the cost. And that's I think part of the discussion that we need to have is who really should pay for those. Should it be property tax dollars? Should it be state dollars? Where should that money come from if the parties aren't able or willing or whatever the case might be to pay for them? [LB651]

SENATOR PANSING BROOKS: Yeah. Thank you. [LB651]

SENATOR EBKE: So clarify this again for me. You have court fees of \$50. I don't know what...yeah, okay. So you have court fees of \$50 and they're broken down as we've stipulated there. And so we have somebody who has been assessed those fees, can't come in and pay. They would normally come in pay the county court. And so if they can't pay them then the fees just get written off. And right now you have to send the money in even if you didn't collect the fees, is that correct? [LB651]

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BETH BAZYN FERRELL: Well, the magistrate, who's essentially the clerk of the county court, would submit a claim to the county. So that would go before the county board to pay that claim. [LB651]

SENATOR EBKE: Okay. [LB651]

BETH BAZYN FERRELL: And then that money would then be sent into the state. [LB651]

SENATOR EBKE: Okay. So a judge orders fees paid, but the fees aren't paid. And so then the county is on the hook for them. [LB651]

BETH BAZYN FERRELL: Right, that's exactly it. [LB651]

SENATOR EBKE: Gotcha, gotcha. [LB651]

SENATOR SEILER: Yes, Senator Morfeld. [LB651]

SENATOR MORFELD: Do you have any legislative history on this? I mean has this just always been the way it's been? Or has there been a different arrangement in the past? [LB651]

BETH BAZYN FERRELL: I don't have a long history on it. I know last year there was a bill before this committee, LB927, that looked at just the judges retirement part of it. So it's been around for quite a while. But that's been the process. [LB651]

SENATOR MORFELD: Okay. Thank you. [LB651]

BETH BAZYN FERRELL: But I'd be happy to look it up and find out for sure. [LB651]

SENATOR PANSING BROOKS: Okay, I have a question. [LB651]

SENATOR SEILER: Yes, Senator. [LB651]

SENATOR PANSING BROOKS: Well, just looking, I guess court automation and uniform data analysis fee, that seems like in the realm of county work. I mean if it's running your offices and things like...doesn't that seem like it's really...I don't know. [LB651]

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BETH BAZYN FERRELL: And that is something that our board talked about when we decided what position to take on this bill. Those things do benefit counties. The judges retirement piece of it, yes, there's a benefit but it's perhaps not as direct of a benefit. The reason we took a support position though is really because this issue was brought forward in the interim study on unfunded mandates. So there's good and bad. [LB651]

SENATOR PANSING BROOKS: Yeah. But don't the judges work for the counties? These are judges that work for the counties? Or are they all state employees, or who is it? [LB651]

BETH BAZYN FERRELL: The judges work under the Supreme Court. [LB651]

SENATOR PANSING BROOKS: Yes, okay. [LB651]

SENATOR COASH: The state pays their salary. [LB651]

SENATOR PANSING BROOKS: I know, but I thought that each of the counties...thank you. [LB651]

BETH BAZYN FERRELL: There are other testifiers that will follow me. [LB651]

SENATOR PANSING BROOKS: Okay, thank you. [LB651]

BETH BAZYN FERRELL: They may be able to answer that better than I can. [LB651]

SENATOR PANSING BROOKS: Okay. Thank you. I probably should know it, but I don't. [LB651]

SENATOR SEILER: You say certain fees can be waived. At least...not you, but the summary here says certain fees can be waived. Do you have knowledge of what can be waived and what can't? [LB651]

BETH BAZYN FERRELL: Again, I may defer to someone that will follow... [LB651]

SENATOR SEILER: Okay, that's fine, only if you know. [LB651]

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BETH BAZYN FERRELL: ...but it's my understanding that it's those that I mentioned would be waived. [LB651]

SENATOR SEILER: Okay. Any further questions? Seeing none, you may step down. Next witness as a proponent. [LB651]

JACK CHELOHA: Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Jack Cheloha; first name is spelled J-a-c-k, last name is spelled C-h-e-l-o-h-a. I'm the registered lobbyist for the city of Omaha. I want to testify in favor of LB651 today. When I saw the bill was out and the hearing date was set for today, I sent an e-mail to our city prosecutor and asked him would this have any effect on his budget. And he said, yes, it would. In Douglas County, the way we have an agreement with our county attorney is the county attorney's office handles the felony prosecution cases. And the city prosecutor handles the misdemeanor cases. This bill would affect those unwaivable costs under either scenario. Specifically as to the ones the city are ordered to pay even if the costs are uncollectable, we estimate that it still costs the city of Omaha roughly \$20,000 a month, or approximately \$200,000 a year. I don't have an opinion as to the merits, as to the unwaivable fees, whether they're good programs or not good programs. But we decided, based on this cost, it would seem that maybe there's a better way of doing it. We would try to eliminate where one government agency, here the city is paying another government agency for, you know, the work that's being done. And because of that, we're supportive of the bill and we think it would be financially beneficial to us. I'll try to answer any questions you might have. [LB651]

SENATOR SEILER: Any questions? Seeing none, thank you. [LB651]

JACK CHELOHA: Thank you. [LB651]

SENATOR SEILER: Next witness, proponents. Seeing nobody stumbling from their chairs, opponents. [LB651]

COREY STEEL: (Exhibit 1) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I'm the State Court Administrator for the Nebraska judicial branch. I'm here to testify in opposition of LB651, specifically addressing issues of sustainability. First, the immediate and long-term financial impact of LB651, the immediate impact is reduced revenue to vital programs such as court automation, judicial retirement, Legal Aid assistance, and uniform data fund that's been mentioned before that is housed by the Nebraska Crime Commission. What we have figured with the State Court Administrator's Office, this would be a 20 percent reduction in our overall revenue from court fees. More importantly, the long-term result is less funding for projects, not only automated court

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and probation procedures, but those that directly affect counties. Let me give you an example. The Supreme Court in the last month has rolled out electronic notice or eNotice. This allows courts, both county, district, and separate juvenile courts, to notify all attorneys and interested parties in court cases of new orders, notices, and other court entries electronically via e-mail rather than by paper. A long-term effect of this computer application is reduced printing cost and copying costs which would be a county-saved expense. In other words, counties benefit directly from the fees paid under the current statute. This is just one example of those that we provide through our JUSTICE system. Our JUSTICE system is a statewide court information database that all courts, county, juvenile, and district courts, input their information in that we maintain and pay for through the court's budget. The counties directly benefit from that system and from the things that we've put in place. The loss of revenue to the uniform data fund would also cut the probation's IT case management system. With the increase in probation responsibilities, these funds are vital to the technology demands to keep up with the growing population demands. The uniform data fund hands out those dollars through state entities, and one of those recipients of those state grants is our probation department. To summarize, jeopardizing the long-term sustainability of programs like court automation, judicial retirement, Legal Aid, and uniform data that provide valuable benefits to our courts, counties, and our citizens, this would cause the Supreme Court to adjust our overall budget request and add more General Fund dollars to continue to provide those needed automation services for our courts and our probation. I urge the committee not to advance LB651 and would be happy to answer any questions that you have. [LB651]

SENATOR SEILER: Questions? Seeing none, you may step down, Corey. Thank you for your testimony. Further opposition to LB651. [LB651]

BILL MUELLER: Chairman Seiler, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in opposition to LB651. What the committee has already heard is that one of the fees that the counties are attempting to not pay is a fee for the judges retirement fund. And in looking at the fiscal note submitted by the Supreme Court, the court estimates that this amount is about \$312,699 a year. And that would be roughly 10 percent of the state's contribution to judges retirement. Yesterday in the hearing we spoke about these very fees and talked about how perhaps one option would be to make all of these fees nonwaivable. Our concern on behalf of the bar and the judges is just that if these fees are not continued to be paid, there will be additional General Funds required to be paid in addition to those already being paid. The bar also supports strongly the Legal Aid and Services Fund fee. And again, this fee does not fund the Commission on Public Advocacy, but instead it funds a grant program that is administered by the Commission on Public Advocacy that provides legal representation to civil indigent persons. And the bar strongly supports that program and would not want to see that fund adversely affected. That fund has been very adversely affected, as has the judges retirement fund, because court costs have been going down,

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as the committee heard yesterday. I would be happy to answer any questions that the committee may have. [LB651]

SENATOR SEILER: Questions? Seeing none, thank...Matt. [LB651]

SENATOR WILLIAMS: I do have a question. [LB651]

BILL MUELLER: Yes. [LB651]

SENATOR WILLIAMS: Mr. Mueller, from the Bar Association's position, has anybody come up with a thought of is there someone or someplace that's better to pay these fees than have them come through the county where they're increasing the real estate taxes where they're a portion of that? [LB651]

BILL MUELLER: I think really the choice would be if the Legislature and the Governor wants to fund these programs with state General Fund dollars and I... [LB651]

SENATOR WILLIAMS: So you would look...that's potentially the alternative. [LB651]

BILL MUELLER: Sure. [LB651]

SENATOR WILLIAMS: So they're either at the county or we're going to be funding them through... [LB651]

BILL MUELLER: Yes. Historically, there has been a reluctance on the part of the Legislature and the Governor to fund these programs through state General Funds. We would not have any objection funding them that way, but they are funds that are needed... [LB651]

SENATOR WILLIAMS: Your question is just so they're funded. [LB651]

BILL MUELLER: It needs to be funded. It's really up to the Legislature to decide how they're funded. [LB651]

SENATOR WILLIAMS: Thank you. [LB651]

SENATOR SEILER: Thank you. [LB651]

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BILL MUELLER: Thank you. [LB651]

SENATOR SEILER: Further opposition. Anybody in the neutral. [LB651]

JANET WIECHELMAN: (Exhibit 2) Good afternoon, Senator Seiler and committee members. My name is Janet Wiechelman, J-a-n-e-t, Wiechelman, W-i-e-c-h-e-l-m-a-n. I am the clerk of the district court of Cedar County, Nebraska, and also the legislative liaison for the Clerks of District Court Association. I'm here in a neutral position to LB651. This summer Senator Crawford had introduced LR582, a legislative study on unfunded county mandates. I presented to the Government, Military and Veterans Affairs Committee different aspects of what expenses the counties pay in support of the court system. Nebraska Revised Statute 29-2709 was one issue that I had identified. In order to provide the committee with actual data of the amounts the counties pay for uncollectable county court costs, I requested the Administrative Office of the Courts to prepare a report for the years 2012, 2013, and year to date 2014...to date on the amount of claims presented by the county courts for those fees. The spreadsheet, which is attached to this, my statement, provides a breakdown of three categories of dismissed, bind over, and other per county and then the total for the three years. I'd be willing to answer any questions as you look at that. I've also included a printout from the Supreme Court's Web site which shows the court costs that are owed by the counties when a traffic, juvenile, or misdemeanor case is considered uncollectable and the court costs when a felony has been bound over to district court. I acknowledge that our association is taking a different position than NACO in the legislation brought by Senator Bloomfield. Our association does have concern if certain fees would be waivable and the funding be cut. Some of these fees do affect the district courts, such as the automation and the Legal Aid services fees. I will note that in my testimony on the summer study that I request that more communication be made between all entities involved in the court system to find more avenues to collect these unpaid costs in the court system. We ask that LB651 be amended to address our concerns. Thank you for your time, and I would be willing to answer any questions you may have. [LB651]

SENATOR SEILER: Questions? I have one. [LB651]

JANET WIECHELMAN: Yes. [LB651]

SENATOR SEILER: There's been a reference in the written material and you, I believe, alluded to it. There's certain fees that can be waived. [LB651]

JANET WIECHELMAN: Yes. [LB651]

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SENATOR SEILER: Do you know which ones those are? [LB651]

JANET WIECHELMAN: If it is a traffic or a misdemeanor that's considered unclaimed or dismissed in county court, it is the \$6 judges retirement fee, \$2 to the Legal Aid services, \$8 to the automation fee, and \$1 to the uniform data analysis fee. Those are those that are considered uncollectable. However, if it is a bind over, a felony from county court to district court, that includes all the fees in county court to district court. [LB651]

SENATOR SEILER: Okay. Thank you for clarifying that. Anybody else? Seeing none, you may step down. [LB651]

JANET WIECHELMAN: Thank you. [LB651]

SENATOR SEILER: Anyone else in the neutral? And I believe Senator Bloomfield waived. This will close the hearing on LB651. Next hearing, Senator Krist on LB504. (See also Exhibit 3) [LB651]

SENATOR KRIST: (Exhibit 1) I'd like to thank Ollie for scheduling me three in a row so I can stay in my own committee this afternoon. That was very nice. Good afternoon, Senator Seiler and fellow members of the Judiciary Committee. My name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in Omaha, portions of Douglas County which include the city of Bennington. I appear before you today in introduction and support of LB504. The bill was brought to me and to you on behalf of the Nebraska Criminal Defense Attorneys Association. Under current law, the court must order a presentence investigation of an offender in a felony conviction and may order a presentence investigation of an offender in a misdemeanor conviction. The court, in determining the sentence given to the offender, considers the information from the investigation. The presentence investigation includes an analysis of the circumstances involved surrounding the commission of the crime, the offender's history of his delinquency, his or her delinquency, physical and mental condition, family situation, and background, economic status, education, occupation, and personal habits. Also included are criminal records and victim statements. The law permits inspection of the presentence report by the offender or his or her attorney. That inspection generally occurs in court chambers, the office of the court clerk, or probation office. The attorney bears a professional responsibility to carefully examine the report, discuss the report with the offender, and bring inaccuracies in the report to the attention of the judge so that the sentencing decision is made with accurate information. LB504 provides that a copy of the presentence report or examination be provided to the counsel for the defendant and the prosecution at least seven days in advance of the sentencing. Because access to the report is restricted to the office of the court or probation, it is difficult for counsel to review the report thoroughly. The attorney is only allowed to take notes

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from the information in the report. The attorney must then confer with the client about the accuracy of the information in the report based upon the notes or from the attorney's recollection. This bill would allow the attorney adequate opportunity to view the report with the client so that additions and corrections to the report can be made if needed, may be presented in the court in consideration prior to sentencing. The bill also allows the court to order the redaction of address, phone numbers, and contact information for victims or witnesses named in the report. This process would occur upon application by the prosecutor and showing a preponderance of evidence that the redaction is warranted in the interest of public safety. I bring to your attention that all of the legislation listed is...currently listed, the changes are found on page 4 beginning on line 8. The best interest...on line 8, "A copy of the report or examination shall be provided to counsel for the defendant and the prosecution at no charge at least seven days in advance of the sentencing hearing," etcetera, etcetera. I covered most of that in my opening. I would tell you that I have been in contact with Corey Steel and his office. And I'm going to give you a copy this morning that was provided to me by Ms. Deb Minardi from the office of the Administrative Office of the Courts and Probation, Mr. Steel's office that you just heard from, noting that there are issues that they would take. And I have also informed the Defense Attorneys Association that they need to work with the Administrative Office of the Courts to look through these notes and make sure that we alleviate some or all of their concerns. Why is this important? Well, justice is important, and if a lawyer is forced at final notice in the court chamber immediately before sentencing to actually have to redact or to quantify or correct some of the information, I think it puts both the lawyer and the defendant at a disadvantage. With that, I will take any questions that I can. But I'll tell you that a member of the association is here with technical information. She will follow me. And I think you're better served with those questions with her, but I stand for questions. [LB504]

SENATOR SEILER: Seeing no questions, you may step down. [LB504]

SENATOR KRIST: It's a long way down. [LB504]

SENATOR SEILER: Testimony in support of this, LB504. [LB504]

JOHN BERRY: Senator Seiler, members of the committee, my name is John Berry. I'm the president of the Nebraska Criminal Defense Attorneys Association, and we support this bill, several reasons why. First, it's a cost-saving measure. We have attorneys in the western part of the state that cover several counties. They have to drive sometimes hundreds of miles to review a presentence report that may or may not be done five days prior and review that report, get back and meet with the client. It can cost counties money. And then it also, especially with indigent...close to indigent defendants who could normally afford an attorney, all of a sudden they're paying to send an attorney to drive a couple hours to get this report. In terms of this being

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done before, it has. It is done in the federal system. Currently under the federal system, even though there is a 70-day speedy trial window, generally about 30 days prior to sentencing we receive an initial copy of the presentence report. And when I say we, I mean the prosecutor, the judge, and defense counsel receive it via e-mail. Once it is received, we have plenty of time to review it with our clients and to object to it. For practical reasons, attorneys need to see these documents and need to allow their clients access. In the past, I've been in other counties where I have submitted information from independent investigations. These were plea cases but the judge had allowed discretion in sentencing. And there were some real questions as to what the evidence in the police reports proved. I had independent investigators review them, submitted those reports. A couple of days before the sentencing when the presentence report was done, they were not in the report. There was no reference to them. I had sent them to the judge. And generally speaking, when you show up with about 50 to 100 pages at the day of sentencing, judges don't like to see that. In terms of other issues that come up is judges generally request drug and alcohol evaluations and substance abuse evaluations. It is our duty as defense attorneys to make sure those are included in the presentence report when and if they are done. Oftentimes, if we do not have access to the report until a couple days before either due to our schedule or because the probation office did not get it done within the five-day period, what happens is then we have very little time to get it to the judge, review it with our client and, more importantly, for the judge to review it and use that information and make a decision. I believe that concludes my main points in this. I would point out that I understand that there is some concern about victim impact statements. I would tell you that as attorneys it's our job to share that victim impact statement with our clients regardless. So whether the client actually sees the victim impact statement is irrelevant because they have actually heard about the contents from the attorney and, therefore, I feel this would in no way affect the safety of any victims. Finally, I'd like to say we're pretty flexible on how the bill is written and the specifics of it. All we want is the opportunity to provide due process for our clients. That includes the reading of the presentence report in plenty of time to discuss. [LB504]

SENATOR SEILER: Senator Williams. [LB504]

SENATOR WILLIAMS: Thank you, Chairman Seiler. As a practical matter, how do you gain access to the presentencing report now? [LB504]

JOHN BERRY: The way we get access now is go to the judge's chambers and request it. And so sometimes...and it's simple if I'm here in Lincoln. [LB504]

SENATOR WILLIAMS: When would the judge have that in his hands typically? [LB504]

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JOHN BERRY: My understanding is it's generally...they generally get it at about that five day prior to sentencing mark. And so we calendar for that time and then contact the court and try to obtain it at that time. [LB504]

SENATOR WILLIAMS: So my friend the defense counsel that lives in Gothenburg and is trying this case in Omaha, how would he get access to that, drive to Omaha? [LB504]

JOHN BERRY: Drive to Omaha, yes. I've heard of instances where judges have provided it to defense counsel, but I'll tell you that's rare. [LB504]

SENATOR WILLIAMS: Okay. Thank you. [LB504]

SENATOR SEILER: Senator. [LB504]

SENATOR PANSING BROOKS: Pansing Brooks. What I'm wondering is just, so say it's boxes and boxes of material because I'm sure that some people...there's volumes of information on somebody. So how do you...do you have to sit there and read all of that right there? Or how does that work? [LB504]

JOHN BERRY: That's correct, yes. And generally, they're in binders and so they're separated. But especially when you get into more...I don't want to say more serious cases, but cases where there's a lot at stake and someone has been seriously injured and the victims are concerned and there's a lot of support. But there can be several volumes of binders because they're going to include the police reports and information regarding...well, quite a bit of information about the defendant as well. And of course it's our job to make sure it's accurate. And when there's that much information, you're absolutely right. Those boxes or binders of information, it can take hours. [LB504]

SENATOR PANSING BROOKS: Thank you. [LB504]

SENATOR WILLIAMS: One more question. In these cases, and I'm assuming you've done this a number of times, when you're in there looking at this report is it often that you're finding mistakes in it that need to be corrected, that need to be changed somehow? [LB504]

JOHN BERRY: It's often enough that I have concerns. Sometimes...the problem that we run into is whether we know they're mistakes. And until we have the opportunity to discuss with our clients some of the issues pertaining to either their criminal history, family history, substance abuse issues, we don't really know if they're mistakes until we have the opportunity to confer that

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with our client. On the other hand, I have reviewed presentence reports where there have been specific information provided by the probation officer that has been...that was wrong or unexplained, like the defendant has not worked for a year and a half and, therefore, he's not a good candidate for probation. Oh, but by the way, he was in jail for that year and a half awaiting his trial because he couldn't post bond. So those things come up and they need to either be explained or they're wrong. So, yes, I think that happens. [LB504]

SENATOR SEILER: Senator. [LB504]

SENATOR EBKE: Okay, I'm not a lawyer so help me out with this. Is there a reason, practical or otherwise, why these things couldn't all be digitized? [LB504]

JOHN BERRY: There is no reason, and I think that they should be. [LB504]

SENATOR EBKE: Okay. Thanks. [LB504]

SENATOR SEILER: I have a couple questions. On the federal process, are those addresses, telephone numbers redacted in the federal system of witnesses and victims? [LB504]

JOHN BERRY: In terms of redaction in the federal system, once something is filed there's a certain amount of time to redact it. The presentence report itself is not actually filed. And so the public doesn't have access to it. But in terms of what the defendant receives,... [LB504]

SENATOR SEILER: Right. [LB504]

JOHN BERRY: ...the answer is no. We don't receive that. We just receive that personal identifying information about our clients, not necessarily about victims of crimes. [LB504]

SENATOR SEILER: So you don't get a victim's report then. [LB504]

JOHN BERRY: No, not in the same sense that you do on the state side, no. [LB504]

SENATOR SEILER: Okay. How many days do you get that in the state court now? I know when I practiced, we got it the morning of the sentencing. We were sat over in a corner, not very private, and said, review this with your client. And then when you came up before the bar, the judge asked you, are you satisfied with this report? Well, man, if there was one thing that always got me real nervous about my malpractice was when I said yes. [LB504]

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JOHN BERRY: I think that's...sometimes it's the day of. Sometimes it's a few days before. And you know, I think that it is difficult sometimes, especially when you have a low-functioning client, to ensure that the information is correct and collaterally check some of that information. And so, yes, that...but it isn't uncommon the morning of, the day before that the attorneys are reviewing the presentence report and hoping to be able to explain everything to their client and resolve everything to their client's satisfaction and to resolve everything so that their clients get justice. [LB504]

SENATOR SEILER: Any further questions? Thank you, Mr. Berry. [LB504]

JOHN BERRY: Thank you, sir. [LB504]

SENATOR SEILER: Next testimony. [LB504]

BILL MUELLER: Chairman Seiler, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of LB504. Our bar legislation committee reviews all the bills introduced that our firm believes may be of interest to the bar. And we have prosecutors and we have criminal defense lawyers on our committee. And generally when we get to a criminal bill, criminal law bill, the prosecutors and defense lawyers won't agree on the bill. So the bar will generally take a neutral position, a no position. When this bill came up, both the prosecutors and the criminal defense lawyers said we should support this bill. So I'm here today to do that. And we would urge that the committee advance this bill. [LB504]

SENATOR SEILER: Any questions? Senator Chambers. [LB504]

SENATOR CHAMBERS: I thought if a situation like this arose, I'd be very pleased. I'm worried. (Laughter) [LB504]

SENATOR SEILER: Any further questions? Seeing none, thank you. [LB504]

BILL MUELLER: Thank you. [LB504]

SENATOR SEILER: Next testimony in favor. Seeing nobody, testimony in opposition. I have one question. Bill, will you come back up to testify. [LB504]

SENATOR WILLIAMS: You should have left. (Laughter) [LB504]

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SENATOR CHAMBERS: This is not my doing. [LB504]

BILL MUELLER: I wonder. I would be pleased to respond to your question. [LB504]

SENATOR SEILER: I have a question as to whether or not the judges and the bar responded to the probation officers. Is this time frame of five days feasible or not? [LB504]

BILL MUELLER: We have not talked to them about this. I don't know whether the Criminal Defense Attorneys Association may have. They actually brought the bill, so Mr. Berry or their lobbyist may know that. [LB504]

SENATOR SEILER: Okay. Thank you very much. Any further testimony? Seeing none, you may close. [LB504]

SENATOR KRIST: To answer your question, Senator Ebke, I'm told most if not all of this is already digitized and then is printed and copied and put into the binders. So I'm suggesting to legal counsel, and I'll do this as a committee amendment, on page 4, line 9, that the examination shall be provided by any means available. And so I'm not forcing the courts to immediately get into a point where they digitize everything and send it out. But it seems to me in the situation you talked about, Senator Williams, it would be easy to sit seven days prior and send it in. Please send it to me electronically which would save a lot of time and a lot of effort. Besides that I really have nothing to say in closing. I think in the interest of justice and the best defense possible that it's a critical part, a critical thing that I think we can do. [LB504]

SENATOR SEILER: I think this is...excuse me, go ahead. [LB504]

SENATOR PANSING BROOKS: No, that's okay. I just...I thought I've heard that some of the judges are not as excited about sending it out via e-mail to anybody. [LB504]

SENATOR KRIST: Well, I made sure that I gave you the opposite side of that coin which is from the Administrative Office of the Courts. I asked Mr. Steel before he left if he was going to testify to this and he said no. But I think we're going to fix this problem. And those things that we're talking about we'll talk about with the association and get to the bottom of it. So I would expect that there's going to be, besides the recommended amendment that I have, there will be some action required. But overall, I think it's moving in the right direction. [LB504]

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SENATOR PANSING BROOKS: It was my understanding that some different offices have to come in and "re-put in" information because they're not, all the offices are not talking to each other. I don't know if there's other (inaudible). [LB504]

SENATOR KRIST: It's a data collection problem in some cases and in the assignment of whether probation does it, whether the JUSTICE system does it, whether the court system does it. And that's part of the... [LB504]

SENATOR PANSING BROOKS: And then connecting each of the records on the same person. [LB504]

SENATOR KRIST: We may be forcing them to solve their own problems internally as well by doing this. [LB504]

SENATOR SEILER: Well, I think there is one philosophy out there, and that's district judges inherently and have for years...are worried about those reports getting outside the counsel for the defense, prosecution, and the judge itself. And so that's a fear we have to overcome. And I think that's what's behind all of it. [LB504]

SENATOR KRIST: And that's why we specifically reference the redaction which... [LB504]

SENATOR PANSING BROOKS: Yeah, pretty easy to globally replace things, I mean, or search for something like a keyword. [LB504]

SENATOR KRIST: Right. [LB504]

SENATOR EBKE: Wouldn't it be possible to create some sort of a secure system that would allow a link to an on-line storage and allow a link to be sent that was only usable for, you know, some period of time so that you send out the link to the defense attorney and say, okay, here is the file for your client, you know, and...I mean there's probably some work-around. [LB504]

SENATOR KRIST: There are several secure network capabilities that you can sign into, signature system. And I know there's been talk about having the lawyers on that secure net. I know we have one in our company where everything that goes out goes out scrambled. And then it, you know, obviously gets descrambled on the other side, or unscrambled. But again, if we elicit their help here in terms of working it out, I think there's a solution to the problem. [LB504]

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SENATOR SEILER: Thank you. LB504... [LB504]

SENATOR WILLIAMS: I would just add to that. In reviewing the fiscal note that's attached to this, it appears that there would be maybe even a significant reduction in the fiscal note if there could digitalization of some type. [LB504]

SENATOR KRIST: Electronic transmission, right. I agree. [LB504]

SENATOR SEILER: Senator, you may open on LB505. (See also Exhibit 2) [LB504]

SENATOR KRIST: Okay. Good afternoon, Senator Seiler, fellow members of the Judiciary Committee. I am Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District in northwest Omaha along with portions of Douglas County which includes the city of Bennington. I appear before you today in introduction and support of LB505 which was brought to me by the Nebraska Criminal Defense Attorneys Association. Senator Chambers introduced a bill in 2007 and was passed by the Legislature to protect Nebraskans who were arrested but not convicted of a crime from a stigma of a criminal record. LB505 is designed to strengthen these privacy protections. LB505 does essentially two things. It seals the court records from the public when criminal charges are filed and later dismissed. Law enforcement is already required to remove these arrests from the public database. And number two, it expands the category of arrests eligible for these privacy protections to include (a) individuals who have been acquitted of criminal charges and (b) offenders who successfully complete drug court or some other problem-solving court. The bill has also clarified that...the bill also clarifies that when an arrest is removed from the public record, a person is not required to disclose the arrest in response to a public inquiry. Finally, a person who wilfully discloses this information after it has been removed from the public record is guilty of a Class III misdemeanor. Acquittal is obviously not as important to the organization as the rest of this bill is and would be obviously negotiable to be taken out. Expanding these privacy protections to include successful graduates of our drug courts and problem-solving courts is consistent with the studies this summer. And those of you who have discussed it, the Performance Audit Committee, the special investigative committee, and the CSG working group all talked about problem-solving courts in terms of changes to the court system where diversion is given, successful treatment is given, and then coming out the other side of it so that we can actually expunge or seal some of these records. Again, I'm going to be followed by some technical folks from the Nebraska Criminal Defense Attorneys Association. I'd be happy to answer any questions that I could. I will refer you to this green copy which has some pretty substantial changes. The first, on page 2, line 3: "After the expiration of the periods described in subsection (2) of this section, a criminal justice agency shall respond to a public inquiry in the same manner as if there were no criminal history record." The next section, starting on line 26: "in the case of an arrest, citation in lieu of arrest, or referral for prosecution

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without citation, all criminal history record information relating to the case" will be removed. Again, a significant change in terms of line 5 on page 3: "In the case of an arrest for which charges are not filed as a result of a completed diversion, the criminal history record information shall not be a part of the public record after two years...citation in lieu of arrest, or referral for prosecution after citation." And then the other significant part for me, line 22 on page 3: "Order that all records, including any information or other data concerning any proceedings relating to the offense, including the arrest, taking into custody, petition, complaint, indictment, information, trial, hearing, adjudication, correctional supervision, dismissal, or other disposition or sentence, are not part of the public record and shall not be disseminated to persons other than criminal justice agencies." I would note, I don't know whether Mr. Otto intends to testify, but Mr. Otto has put several...I think he might have sent a letter in on his recommendations. They feel that potentially with their clients that this may be a big job to expunge in terms of permanent records, or seal. And so I mention that to you just in case he doesn't come up. And I don't haven't any other letters or recommendations, so I stand for questions. [LB505]

SENATOR SEILER: Anybody have any further questions of this witness? [LB505]

SENATOR MORFELD: Senator. [LB505]

SENATOR SEILER: Yes, Senator Morfeld. [LB505]

SENATOR MORFELD: Is this...this seems fairly common sense. Is this common in other states to have it so that it shows up on your criminal record and that's open to the public that you've been charged but acquitted? [LB505]

SENATOR KRIST: Before 2007, these things stuck with us in the state of Nebraska... [LB505]

SENATOR MORFELD: Okay. [LB505]

SENATOR KRIST: ...and made it very difficult for someone who had potentially, quote, unquote, paid their debt to society or was never actually found guilty, for that to leave the records. As I said, the legislation that Senator Chambers brought about then was a beginning. The commonsense part of this I would agree with you, but common sense doesn't always prevail. And I think this is the next step in terms of trying to make sure that those people during reentry programs and after diversion programs are allowed to succeed so that we reduce recidivism. That's essentially the genesis behind this. [LB505]

SENATOR MORFELD: Okay. Thank you. [LB505]

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SENATOR SEILER: Anybody else? Seeing none, you may step down. Next testimony in favor. [LB505]

KIM DUNOVAN: (Exhibit 1) Good afternoon. My name is Kim Dunovan, D-u-n-o-v-a-n. I'm testifying on my own behalf. I've also been working with the Criminal Defense Attorneys Association. I'm here as well on behalf of my former Legal Aid clients. I was a staff attorney at Legal Aid for about seven years where I heard too many stories from my clients who missed out on good job opportunities because of a criminal records check. Many people don't understand that when a prosecutor drops charges or they complete a diversion program after a case has been filed in court and they successfully graduate from that program, the case will remain on their public record forever. LB505 is important because it finishes a job that was started back in 2007 when the Legislature passed a bill to protect legally innocent Nebraskans who had been arrested but not prosecuted from the stigma of a permanent criminal record. Privacy protections are even more important today when criminal records can now be easily accessed by anyone with a computer. The experience of my former Legal Aid clients is consistent with national research showing that many employers routinely use criminal record checks to screen out anyone who has an arrest record. Since 2007, following passage of the requisite time that's in the current statute, an arrest should no longer be disclosed by law enforcement in criminal records checks when no charges are filed or the criminal case is dismissed. This bill will close what I call a loophole because it will also require the courts to seal the records in dismissed cases using the same record-sealing procedure that was implemented back in 2010 for juvenile cases. So implementation of this new record-sealing requirement shouldn't be burdensome. It's something that's already been implemented by the courts in order to execute their requirements in the juvenile expungement cases. And does it make any sense that we protect the privacy of someone who has completed a diversion program before charges are filed, but we stigmatize graduates of our successful diversion programs, like our drug courts, with a permanent criminal record? Passage of LB505 will seal those court records and ensure that we're giving these graduates the best chance at long-term success. Technology has amplified the harm that has been done by a criminal arrest record. Passage of this bill will mean that Nebraska will join the majority of states that have enacted criminal record sealing for the legally innocent. Thank you for your time, and I would certainly attempt to answer any questions if anyone has any. [LB505]

SENATOR SEILER: Any questions? I have one. Who initiates the sealing of these records, the county attorney? [LB505]

KIM DUNOVAN: It would be the court. The court...there's a requirement that the court would... [LB505]

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SENATOR SEILER: The court is either the judge or the clerk of the court or some high school graduate that's working in the clerk's office. Who begins this process? [LB505]

KIM DUNOVAN: When we worked last year when this was introduced by Senator Haar, we talked to the district court clerks. And they indicated that they would be the ones to implement that requirement when a case was dismissed. And they felt that that would be something they could do. [LB505]

SENATOR SEILER: Then you also have the county clerks that would also have to. [LB505]

KIM DUNOVAN: Right. So we would need to make sure that the clerks were implementing it. [LB505]

SENATOR SEILER: It seems like it would be a little more fluid if the county attorney, if he didn't prosecute, would dismiss. It seems like he has the control. And I'm flashing back to LR424 this summer when all the big shots went like this at some little high school graduate. It's her fault that we screwed up all these sentences. And I don't think we need to do that when we are doing this program. [LB505]

KIM DUNOVAN: That makes a lot of sense. I agree. That makes a lot of sense. [LB505]

SENATOR SEILER: Thank you. Any other questions? Senator Morfeld. [LB505]

SENATOR MORFELD: What is the purpose of the penalty provision? [LB505]

KIM DUNOVAN: Well, we looked at what the other states had done, and that was a provision that other states had put in their bill. There needs to be some consequence to encourage these companies that do criminal background checks to clean up their records because if there isn't any consequence then there's no reason for them to update their records and make sure that they don't continue to release a background check that is not consistent with the law. [LB505]

SENATOR MORFELD: Thank you. [LB505]

SENATOR SEILER: Senator Williams. [LB505]

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SENATOR WILLIAMS: A follow up to that, as a state, do we have jurisdiction to go after a company that may not be domiciled here that my business might have do a criminal check and they're somewhere else? [LB505]

KIM DUNOVAN: I think it would be a private right of action on the part of the person that's harmed. [LB505]

SENATOR WILLIAMS: Okay. Talk to me a little bit about what sealing the records mean and what the privacy protections would be with that. [LB505]

KIM DUNOVAN: Basically it...the language in the bill is consistent with the current statute that talks about removing these records from the public record so that they would no longer be subject to the Nebraska public records law. And they... [LB505]

SENATOR WILLIAMS: So the Nebraska public record law would allow access by people. [LB505]

KIM DUNOVAN: Allows access right now. [LB505]

SENATOR WILLIAMS: So these records become sealed so they're separately placed or handled so they're separate from that. So the question about cost that we're talking about here is the cost of being able to do that, make some change in that system. [LB505]

KIM DUNOVAN: That's correct. So we...the bill uses the same procedure that the courts have been required to already implement for juvenile cases that they're required to expunge which meant... [LB505]

SENATOR WILLIAMS: So they're doing it with those. [LB505]

KIM DUNOVAN: They are doing it with these juvenile cases. This would add some additional cases, but they could follow the same procedure. My understanding is that there was quite an investment required when the juvenile expungement bill was enacted for the courts to update their software in particular so that these records could still be visible to a criminal justice agency but would not be visible to the public if I go down and do a JUSTICE search or I do it on my computer, that these records wouldn't show up. And also... [LB505]

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SENATOR WILLIAMS: But that system doesn't need to be reinvented is what we're talking about. [LB505]

KIM DUNOVAN: That's correct. That's my understanding. [LB505]

SENATOR WILLIAMS: That system is, according...your knowledge would be it's there to do that. [LB505]

KIM DUNOVAN: Right, and we have been in contact Court Administrator's Office. And it's our understanding that they could plug this requirement into what they're already doing with the juvenile cases. [LB505]

SENATOR WILLIAMS: So one of the things we're talking about is being about to take that person that has gone entirely through the court process and was found not guilty, to have those records sealed. Talk to me just a little bit about the special court, in particular the drug court. If I'm understanding this right, a person could be a...I think you termed them a graduate of the drug court. And if they had met those requirements under LB505, those records would be closed. But they were found guilty, correct? [LB505]

KIM DUNOVAN: My understanding is that the case is filed in court. And they do have to plead guilty to the charge. They're given then an opportunity to complete all of the program requirements and then that conviction is vacated so that when the case is closed there is not a conviction. It's not closed with a conviction. So they still I think meet the definitions... [LB505]

SENATOR WILLIAMS: And my questions here are not questioning the drug court. [LB505]

KIM DUNOVAN: Right. [LB505]

SENATOR WILLIAMS: The drug court works, huge proponent of that. My question is trying to make a distinction in my mind at least from that person that went through this process and was acquitted, they were innocent of charges, versus somebody in a specialty court, a drug court, that did commit the offense, just happened to be...have the availability of going through the drug court as a solution. [LB505]

KIM DUNOVAN: Right. [LB505]

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SENATOR WILLIAMS: Okay. So this would treat that as if they were acquitted from the standpoint of the public access to the records. [LB505]

KIM DUNOVAN: Yeah, I think in each of these categories, the person is legally innocent when the case closes because that conviction is vacated. There was no trial. There was no evidence put on. And they still meet the definition of being legally innocent. The other thing I would point out about that is under current law based on the Legislature's...the privacy protections that were enacted in 2007, you'll see in current law, if you're arrested and the prosecutor looks at your case and your background and screens you and decides that you're eligible for a diversion program and says, you go to diversion and I won't file these charges in court and if you successfully complete the diversion there will be no court case, right now current law has that arrest record rolled off after two years. And what we're saying is now diversion programs are more often offered after the case is filed in court. And so now people who...in the same situation, the person who's offered diversion before a case is filed, the prosecutor may be pretty convinced that they're guilty but that they're screened and determined to be a person that's likely to be rehabilitated that we don't want to stigmatize with a criminal record. Now we move to a different diversion model where the charges are filed in court and it's...these problem-solving courts. And yet now these same people who were screened and treated as eligible for diversion, they will have a permanent record. So we're just trying to level the playing field for those people that are offered diversion if that makes sense. [LB505]

SENATOR WILLIAMS: Yep, it does. And the one thing that you said, I want to confirm if I heard this right, that through the drug program the sentence is acquittal after completion of...is that what you...? [LB505]

KIM DUNOVAN: The conviction is vacated. [LB505]

SENATOR WILLIAMS: Yeah. Thank you. [LB505]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. [LB505]

MARK PORTO: Good afternoon, Senator Seiler and members of the committee. My name is Mark Porto. I'm an attorney in Grand Island and here today representing the Nebraska Criminal Defense Attorneys Association. I originally planned to talk in part about the loophole that was previously discussed, but I think that that was covered pretty thoroughly. This bill, the first prong of it essentially just closes that loophole by including the court filings and the court records in addition to the police arrest records. The other thing I wanted to talk about, Senator Williams, in particular was the effect as to how this relates to the drug court and problem-solving courts.

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Importantly to this committee, I would think in light of its recent efforts to encourage and expand the Nebraska problem-solving courts, this bill would allow for the expungement of criminal history record information in circumstances where criminal charges are filed but are later dismissed after successful completion of drug court or another problem-solving court. According to a 2012 study by the state of Nebraska...University of Nebraska Public Policy Center, the state spends an average of \$17,639 per drug court participant. And while this is significantly less expensive than the alternative of incarceration, it is nevertheless a significant financial investment by the state. And the way...maybe I can clarify the way the process works, Senator Williams. The way that the drug court program generally works in Nebraska, we have a post-plea program as opposed to other states which have a pre-plea program. So the way it works is a defendant who is eligible for drug court generally comes to court and pleads guilty to the underlying criminal charges. At that time, the participant is referred to drug court and the sentencing is deferred until after the drug court program is either successfully or unsuccessfully completed. This process takes approximately two years. And then when completed, the participant then moves the district court to ask for leave to withdraw the plea which is granted. And then the case is dismissed. But while the case is dismissed, the court record remains available for public consumption and is easily accessible through any routine criminal background check which are completed by approximately 90 percent of employers. A core component of the drug court program is the acquisition of the skills and work ethic necessary to obtain suitable full-time employment. This core component and in turn the underlying financial investment that the state taxpayers pay for the drug court programs is undermined by the fact that all the records pertaining to the case which led to drug court participation remain available to potential employers even after a person has successfully completed the program. And LB505 would fix this problem first by adding to the list of people eligible for expungement those who have completed drug court and then, secondly, by including court filings in the JUSTICE system among the records that are removed from public view. And so for these reasons, the Nebraska Criminal Defense Attorneys would support the passage of LB505. If there's any other questions, I'd be happy to answer them. [LB505]

SENATOR SEILER: Seeing none, you may step down. [LB505]

MARK PORTO: Thank you. [LB505]

SENATOR SEILER: Thank you for your testimony. Further testimony on behalf of support of this legislative bill. Opposition? [LB505]

JIM OTTO: Senator Seiler, members of the Judiciary Committee, my name is Jim Otto; that's J-i-m O-t-t-o. I'm president of the Nebraska Retail Federation. And I'm here today on behalf of the Nebraska Retail Federation to testify in opposition to LB505. We're actually only in opposition

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to one very small part. We actually support the intent of LB505. We support the removal of expunged information from the public sector database. And we support efforts to protect expunged records from public view. Our members want to ensure that only accurate information is used. However, the bill includes a liability section that any...I'll quote now: any "person who willfully discloses, communicates, or allows access to criminal history record information that has been removed from the public record" would be faced with a Class III misdemeanor. The term "person" would largely capture any private database that uses criminal history information, particularly those used for employment screenings. These private databases are important because they provide national access to criminal record information used to protect our members. Without proper notice of an expungement, it is very difficult to know when a record has been removed. Our concern is that providing a criminal liability for a private organization would eliminate the ability to use criminal records for employment purposes in Nebraska. We believe this section of the bill would place too great a burden to collect and report valid public records. We would be glad to work with Senator Krist and the proponents to provide a more reasonable liability for ignoring a request to update a database, perhaps that could be a civil liability of some kind versus a criminal liability. Senator Morfeld, you mentioned...our main concern is, is there another way to ensure that is somewhat less than a criminal liability? With that, I would be glad to try to answer any questions. [LB505]

SENATOR SEILER: Senator Williams. [LB505]

SENATOR WILLIAMS: I've got a question following up on the testimony of the last witness that talked about that during the period that a person would be going through the process of the drug court, that maybe two-year period, if I'm understanding things right, the information on that person is available at that spot. And then later, on completion of drug court, it's sealed. Am I correct on that? Okay. Do the systems that are out there right now to do criminal background checks, are you talking about the fact that it would be a significant burden on them because that information is out there or could be out there, and then they have to take it back out? [LB505]

JIM OTTO: I'm not sure it's a significant burden. The concern would be that sometimes it's not correct or not quite correct. And if it is reported and wasn't reported to the reporting agency correctly...if there is a willful disregard for the law, there should be some kind of a consequence. I think that was used by the...we're just saying that consequence doesn't need to be a criminal consequence. Maybe it could be a civil consequence. I apologize, Senator Williams. I'm really not that familiar with the exact... [LB505]

SENATOR SEILER: Any further questions? It seems like there could be a gap there that say one of your retail people receive a criminal history that shows an arrest, pending case. Your employee quits, goes to another job, requests you to forward on his history and record to his next

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employer. He requests it. But in the meantime, the county attorney has dismissed the charges. It seems like you'd fall in a gap then of having given the criminal history to the next party. [LB505]

JIM OTTO: I think it's a valid point, Senator. I'm not sure I have the ability to answer it. But I think you raise a valid point. We'd have to address it. [LB505]

SENATOR SEILER: Thank you. Any further questions? Thank you. Any further opposition? Seeing none, anybody in the neutral? [LB505]

ALAN PETERSON: (Exhibit 2) Chairman Seiler, members of the Judiciary Committee, I'm Alan Peterson, A-l-a-n P-e-t-e-r-s-o-n, and I am lobbyist and counsel to the ACLU of Nebraska. We're neutral on this for a particular reason, had quite a debate about this within the legislative committee, mostly lawyers but not all of them, who make the decisions on opposition or support. And here's why. And I don't that it's any big secret, but I was the one who had a big problem with a piece of this bill. And it is an extremely unusual law that is proposed here that on the back page in subsection (4) any person who has had this expungement take place is then allowed to lie about it. If that person having had the expungement remedied, which we think is terrific, that's fine, very helpful, but if they're asked a direct question--have you been arrested, have you had a drug offense ever charged against you--say they're going into a medical field of some kind or whatever where that might matter, and this law if it becomes law will say they can deny it, refuse to disclose it, act as if it didn't happen. I don't know another law in our voluminous statutes that would tell one of our citizens that you may directly lie. And I know it doesn't use that word, but it's pretty hard to distinguish. The balance of the bill, its purpose, its intent ACLU is completely in agreement with. But the matter of expungement is one thing. And the matter of telling the person involved that they may apparently legally lie from hereon is another. What if they're under oath? What if in fact it's important that they tell the truth? Have you been arrested four times? Well, yes, but not convicted. Their answer could under this be, nope, never been arrested. Troubling and it troubles some of the members particularly of the ACLU. Terrific bill we thought other than that. That part bothers us enough that I'm testifying on the one hand, on the other hand--good and bad. So that's whatever contribution it may be. I suggest that's going too far. That's what they called in I think the book was 1984, newspeak where you could rewrite history. That would be nice. We can't do that. Thank you. [LB505]

SENATOR SEILER: So you're kind of hedging Amy Miller's letter that was sent in support of LB505. [LB505]

ALAN PETERSON: Yes, we had quite a discussion. [LB505]

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SENATOR SEILER: Okay, just so I fully understand. [LB505]

ALAN PETERSON: I understand. [LB505]

SENATOR SEILER: Senator. [LB505]

SENATOR PANSING BROOKS: Do you have an idea of better language or something better to do about that since the underlying idea of not having people who are arrested lose their jobs? I presume that that was the rub, that people are in favor of that. So do you have another idea? [LB505]

ALAN PETERSON: Yeah. [LB505]

SENATOR PANSING BROOKS: And when I read that I was thinking more of you don't have to fill it out on your...it's...rather than a lie it's an error of omission, or a right to omit in a way. [LB505]

ALAN PETERSON: You know, last year as part of I think it was LB907, the antiblack box provision was passed to prohibit the initial asking of a prospective employee questions about their criminal record. That seems fine to me. This is just troubling because it seems to endorse falsehood. Maybe another way to do it is to provide some suggested answers. I would suggest sometimes the truth works pretty well. I was charged. I was arrested. I did go through drug court. I passed. I graduated. I have no conviction. That's all true. That's sometimes a nice alternative as a lawyer. We're bound to use that one: the truth. [LB505]

SENATOR PANSING BROOKS: We need something better it seems because I can just see that application just being dumped in the wastebasket at that point. I can...it's difficult, isn't it? [LB505]

ALAN PETERSON: This is difficult. There's no easy answer. But I thought in this neutral capacity I could mention this troubling little aspect. [LB505]

SENATOR PANSING BROOKS: Yes, bring it up. [LB505]

ALAN PETERSON: A great bill other than that I think. [LB505]

SENATOR PANSING BROOKS: Thank you, Mr. Peterson. [LB505]

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SENATOR SEILER: Senator Chambers. [LB505]

SENATOR CHAMBERS: You said in a book, 1984, it was called newspeak. When oaths are taken, sometimes the oath requires you to say, if it's an oath of office or something, I take this freely and knowingly and without mental reservation. So the recognition of the mental reservation means that you utter certain words but you don't mean the words in the way that they're stated and that you provide in your mind, without sharing it with somebody else, conditions and--well, the word "reservations." So is a mental reservation the same as a lie? [LB505]

ALAN PETERSON: I think that's a matter of dictionary definitions. A mental reservation where you think you're telling the untruth and what you say will be understood in a false way and you know it, I can't really distinguish that. [LB505]

SENATOR CHAMBERS: To whom does that make any difference? If there's not a punishing god, to whom would it make any difference? [LB505]

ALAN PETERSON: We'll leave her out of it for my part. [LB505]

SENATOR CHAMBERS: You said what? [LB505]

ALAN PETERSON: I said I'd leave her or him out of that. But to who it makes a difference, the audience. It may be a legitimate inquiry as to what's your history for purpose of either a job or some other form of application. [LB505]

SENATOR CHAMBERS: If we're dealing with what the law is saying and the law is providing and the purpose of the law is to shield a person from having to state something which if stated in response to a question... [LB505]

ALAN PETERSON: Yes. [LB505]

SENATOR CHAMBERS: ...could undermine and remove the purpose that the law is trying to achieve, has not the law itself...and you've said it, that in your mind, the law is saying you can lie. [LB505]

ALAN PETERSON: I'm afraid it's pretty close to saying... [LB505]

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SENATOR CHAMBERS: Well, if the law allows you to do it, what's wrong with it? [LB505]

ALAN PETERSON: I think that lying isn't something that the state of Nebraska or any other state should not say is okay. But it's...is it ethical? What if you're a lawyer? And I wish you were. [LB505]

SENATOR CHAMBERS: And I'm glad I'm not. [LB505]

ALAN PETERSON: But I am. And I would hesitate certainly as an attorney answering a question. [LB505]

SENATOR CHAMBERS: Now, hasn't...I should say haven't because it would be more than one court. Haven't courts suggested that when political campaigns are going on and people, they can say just about anything they want to and they cannot be charged with a lie? And there were times when somebody would come up and say this person during his or her campaign said such and such and it wasn't true. And the courts would say words to the effect, well, politicking is in a realm of its own. And everybody knows that politicians lie. Nobody has ever to my knowledge tried to pass a law and was serious about it, I mean in the Legislature, not where somebody on the outside says you should make it against the law, that lying while campaigning should be a crime. [LB505]

ALAN PETERSON: There... [LB505]

SENATOR CHAMBERS: So should that be...? [LB505]

ALAN PETERSON: That's true. Usually lying is not a crime unless it's a perjury situation. [LB505]

SENATOR CHAMBERS: So what is it when you campaign? It is a lie though, isn't it, any time you make a statement that is false and you know it's false and it's given with the intent to deceive... [LB505]

ALAN PETERSON: Yes. [LB505]

SENATOR CHAMBERS: ...most people would consider that a lie. Courts have said even if you state words which objectively are accurate, if they are stated with the intent of misleading and

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they do mislead, then that's as much a lie as if you intentionally stated words that are false because the goal of requiring truth telling is the same. [LB505]

ALAN PETERSON: Right. [LB505]

SENATOR CHAMBERS: The condemnation of lying is the same whether you do it by commission or omission or any other kind of way. [LB505]

ALAN PETERSON: Deception, yes. [LB505]

SENATOR CHAMBERS: But it's not...it doesn't carry consequences everywhere. [LB505]

ALAN PETERSON: No, but it may carry them some places. You know, it depends. [LB505]

SENATOR CHAMBERS: It's a Class IV felony if you make false statements to get a credit card or any of these other financial transaction instruments, because I looked it up the other day, because if you have any felony you cannot get a permit to carry a gun. [LB505]

ALAN PETERSON: I understand. [LB505]

SENATOR CHAMBERS: If you commit a misdemeanor and it involves physical harm to somebody, you can get a gun. And having committed an act that harms somebody makes you more dangerous as a gun toter than somebody who is merely using words to mislead and wouldn't really hurt anybody in the way that physical violence would. So the consequences are...somebody in Shakespeare, one of Shakespeare's characters said the law is a ass. [LB505]

ALAN PETERSON: Charles Dickens said that. [LB505]

SENATOR CHAMBERS: And in some situations where untruths are uttered, people say, so what? If somebody is trying to get a job, trying to earn money for a family, here's what I would do if it were me and somebody is going to get in my business and if I let them into my business I can't get a job: I'm not going to tell them anything. And what I will do, and when I say I, if I were in that situation, I'm having such a hard time providing for my family that I'm going to ride this train as far as I can ride it. And if it jumps the track then I hope another train is nearby and I will latch on to that train and I will ride it without paying if I can get away with it. [LB505]

ALAN PETERSON: Yeah. [LB505]

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SENATOR CHAMBERS: Some people have the luxury of telling the truth, the whole truth, and nothing but the truth. We have a high-placed official--and it took me a while to get around to this, Mr. Chairman--who said he did not have the luxury of obeying or complying with the law. And he is going to be kept on by the new Director of Corrections for a job. Now if a person said that publicly, I don't have the luxury of obeying the law, should that person keep his job? If I'm going to get a nickel-and-dime job as a janitor and they ask me have I been arrested and I say no and I haven't violated a law, I wasn't convicted, I hadn't done what they arrested me for, and I can't get the job because I tell the truth. [LB505]

ALAN PETERSON: I understand. [LB505]

SENATOR CHAMBERS: On the other hand, I am a high-placed official with a duty and a responsibility. The law and court Opinions say that my relationship to the public is that I'm a trustee, and I have an obligation to serve those people without any deviation when it comes to my loyalty and holding to the truth. But they, everybody in this state will sit back--some of us won't--and say when Mr. Kenney said, I don't have the luxury of abiding by the law...where's the indignation? Where's the outrage? Attorney General Jon Bruning said nobody did anything in that prison scandal worthy of prosecution. Governor Heineman said the same thing. These are big shots. Then you get the little shot who's trying to work and support his...I'm not condemning you. But I'm telling you why I think people ought to be able to say, no, I was not arrested. [LB505]

ALAN PETERSON: I think I understand that position. Let me just mention that this law might actually make it criminal to tell the truth. [LB505]

SENATOR CHAMBERS: So tell me how you mean that. [LB505]

ALAN PETERSON: Because anyone who discloses the past fact truthfully has committed a crime. Mr. Otto I thought very reasonably suggested that is a problem, too, because the sanction is too heavy. [LB505]

SENATOR CHAMBERS: So you mean if they reveal something that they're not supposed...well, that's... [LB505]

ALAN PETERSON: Yes, that's right. The newspapers have run the story, let's say, of a drug bust. And so and so is named as one of the people busted, arrested. And after that, that person goes through drug court, is permitted at the end of the year and a half or two years to withdraw the plea and the conviction is erased, is expunged. That's all fine. What if the news reporter,

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however, remembers that person the next time they're picked up and says, well, hey, I believe this guy was arrested before for this. That's the crime that's now been created by this bill. [LB505]

SENATOR CHAMBERS: Ignorance of the law is no excuse. [LB505]

ALAN PETERSON: Right. [LB505]

SENATOR CHAMBERS: Not that every man knows the law, but it is a plea that every man will make and no man will know how to counter it. So reporters and everybody, when they're going to speak publicly, may be more circumspect if they thought there were consequences. And you know, I'm engaging with you now in an academic discussion. And I think it's appropriate. And I, when I first saw that in the bill, I had thoughts. But also, I live in the real world. I deal with people who will ask me questions, and I'll tell them a story or a fable, like Jesus did, except that I will say in conclusion, nothing gets the duck in trouble but his bill. You have to know when to hold 'em and know when to fold 'em. [LB505]

ALAN PETERSON: Maybe the proper response if somebody asked you that question is say, I can't answer that. [LB505]

SENATOR CHAMBERS: And you've answered it. [LB505]

ALAN PETERSON: Yep, perhaps. [LB505]

SENATOR CHAMBERS: That in itself is the answer. [LB505]

ALAN PETERSON: Senator, I've never heard you lie and I've been listening to you for 40 years. [LB505]

SENATOR CHAMBERS: Well, I'm smooth. (Laughter) No, I understand what you're saying but... [LB505]

ALAN PETERSON: It's just troubling. That's what I'm saying. [LB505]

SENATOR CHAMBERS: I'm more troubled by the many impediments put in the way of people trying to get a job. And sometimes the one who is going to judge that person and say you can't get a job might be somebody if his or her financial records were checked closely enough should be in the penitentiary. But see, they're safe. They're off limits. So what I'm talking about is in the

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context of how America actually functions. And big shots lie. Governors lie. And I would venture to say if you went far enough and looked at everything, you'd find where the President...the present Governor, Mr. Ricketts, has lied in some business dealings. And his daddy has too. And any businessman who has made a lot of money has lied. And I bet they've lied on their income tax returns. I bet they've lied in terms of what their employees are to do. They've implicated other people. Jonathan Winters--then I'm through--was in a movie called It's a Mad, Mad, Mad, Mad World. And they found this money. And these people were talking about how they were going to divide it up and that they...nope, no, you won't even have to pay taxes on it. And Jonathan Winters was indignant. He said even businessmen who lie, cheat, and steal pay taxes. But along with their stealing, they don't pay taxes by lying. But it's a good point that you raised, and I think that's something that each member on the committee will think about in terms of this bill. [LB505]

ALAN PETERSON: Okay. That's all I had in mind. I thought it's worthy of thinking. And maybe we need to fix that part of it. [LB505]

SENATOR PANSING BROOKS: Could I just add something? [LB505]

ALAN PETERSON: Yes. [LB505]

SENATOR PANSING BROOKS: Thank you. What I was wondering is, couldn't there be an interest of the state to make somebody whole, to help people in our community? There are all sorts of legal fictions that we create. And if the state has either improperly arrested somebody or if the state has determined that enough has been done for this person to right what wrong has been made and that there should be no further entitlements or privileges taken away from this person regarding their job or anything else, what about that? [LB505]

ALAN PETERSON: Well, Senator, and this won't be a very direct answer to your...I understand it was partly rhetorical. [LB505]

SENATOR PANSING BROOKS: Yeah. [LB505]

ALAN PETERSON: What if the state told people you should lie? [LB505]

SENATOR PANSING BROOKS: I agree with that. I'm not saying that. But what we're saying is that the state determines that if this happens then you no...you have a legal right to say that this is no longer part of my record. If the state says you have a legal right, then you are not lying. [LB505]

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ALAN PETERSON: Well, that's what we call a legal fiction. [LB505]

SENATOR PANSING BROOKS: It is a legal fiction, but there are legal fictions. [LB505]

ALAN PETERSON: Yeah. I don't know of any place where federal or state law tells somebody they can directly lie about something. And I'm just Alan Peterson. That's just me. I don't like it. I think we ought to find a better way to deal with citizens even when there's a good reason. And I understand. [LB505]

SENATOR PANSING BROOKS: I know you do. I'm just trying to figure out if there's... [LB505]

ALAN PETERSON: Thank you. [LB505]

SENATOR SEILER: Any other questions? Adam. [LB505]

SENATOR MORFELD: Thank you, Chairman. How is...so I'm just trying to wrap my head around your rationale. I mean, so how is this different than expungement of juvenile records? [LB505]

ALAN PETERSON: I'm sorry. [LB505]

SENATOR MORFELD: How is this different from expungement of juvenile records? So I commit a crime before I'm 18 and that's not on my record, right? And I don't have to put that on a...is it different or...? I guess I'm just trying to understand. [LB505]

ALAN PETERSON: There's no provision so far as I know in regard to juvenile record expungement that then tells the individual juvenile at any time they may say it never happened. Expungement is a good thing. It works. But this goes that extra step and endorses somebody telling a falsehood as I read it. [LB505]

SENATOR MORFELD: Okay. Thank you. [LB505]

SENATOR SEILER: My memory is of the juvenile act passed a hundred years ago when I was practicing criminal law was that there was two exceptions to the expungement. One was to a government application, and the other one was to a police officer on investigation. [LB505]

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ALAN PETERSON: Um-hum, may well be. [LB505]

SENATOR SEILER: I don't know if it's still there. [LB505]

ALAN PETERSON: But expungement is just... [LB505]

SENATOR SEILER: Ernie could have got rid of it over these many years. [LB505]

ALAN PETERSON: Expungement is removing a public record but, you know,... [LB505]

SENATOR SEILER: Okay, thank you for your testimony. [LB505]

ALAN PETERSON: Thank you very much. [LB505]

SENATOR WILLIAMS: I've got one more question since you're up here. [LB505]

SENATOR SEILER: One more. [LB505]

ALAN PETERSON: Yes, Senator Williams. Okay, since I'm up here, a target. [LB505]

SENATOR WILLIAMS: You addressed this and I think you're hitting on something that's incredibly important to most of us, the moral obligation here. Switch away from that. [LB505]

ALAN PETERSON: Yeah. [LB505]

SENATOR WILLIAMS: I'd like to hear your idea on the penalty provisions of this and what your thoughts are on that. [LB505]

ALAN PETERSON: Yeah, I... [LB505]

SENATOR WILLIAMS: And I'm in particular talking about those companies that routinely provide these services for businesses and how...that part. [LB505]

ALAN PETERSON: Right, yeah. Regional credit company used to be the big one. I think somebody bought them. They make investigations. They pay people like me when I was in college \$3 a report to report on some prospective insurance buyer or whatever to check on the

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risk. Three bucks, they didn't get much of an investigation, but it would include the criminal record. Let's say that exists, it's passed around. There is the federal Fair Credit Reporting Act. There might be a way to erase it, but until somebody tries to erase it, it's still there. I thought Mr. Otto made a very good point, that the criminal sanction is too heavy. Even if you would go with this bill to prevent people from disclosing, it just seemed to me too loosey-goosey a situation where a record that was true say for five years or ten years or whatever then gets expunged and then is no longer true and that statement that somebody made back during that five- or ten-year period was true then. Now it's a crime to disclose it or pass it on. I don't know. I thought Mr. Otto made a very good point. [LB505]

SENATOR WILLIAMS: Thank you. [LB505]

SENATOR CHAMBERS: I just have one question. [LB505]

SENATOR SEILER: Senator Chambers. [LB505]

SENATOR CHAMBERS: Could concealing information when you're asked a direct question or giving an evasive answer be considered deception? [LB505]

ALAN PETERSON: Yes. [LB505]

SENATOR CHAMBERS: Because I can show you... [LB505]

ALAN PETERSON: Mr. Paul Douglas was disbarred for that. [LB505]

SENATOR CHAMBERS: I won't do it here, but if I can show you where Jesus did that on more than one occasion, then he was a liar, wasn't he? Is it all right for Jesus to lie? [LB505]

ALAN PETERSON: You are much the better biblical scholar than I. [LB505]

SENATOR CHAMBERS: Let's forget that. I want to take an individual. [LB505]

ALAN PETERSON: Yeah. [LB505]

SENATOR CHAMBERS: Or does your rule that you're laying down apply only to certain people, or does it apply to every person? [LB505]

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ALAN PETERSON: It applies to the government, which is the collective governor of all of us to some extent, telling individual, me or you, you may lie about such and such a subject. [LB505]

SENATOR CHAMBERS: No, you very clearly indicated what constitutes a lie: deception. [LB505]

ALAN PETERSON: Intentional deception, yeah. [LB505]

SENATOR CHAMBERS: If Jesus withheld information, it's one thing to not speak at all. The law says if you have no duty to speak and you don't speak, that's all right. But if you undertake to speak, you must give a full and complete disclosure with reference to what you're being asked. [LB505]

ALAN PETERSON: Okay, yes. [LB505]

SENATOR CHAMBERS: So if I can show you, and I won't do it here because I don't want to bother these people of faith, but you don't believe anything any more than I do. I'm joking. You believe a lot. If I can show it to you, if I did it, it would be a lie. If he did it, would be it be a lie? [LB505]

ALAN PETERSON: I... [LB505]

SENATOR CHAMBERS: Don't hesitate. [LB505]

ALAN PETERSON: ...don't have enough facts there to answer that. (Laughter) [LB505]

SENATOR CHAMBERS: You hesitate. Why hesitate? Either it is...if Jesus can do it and it's all right, I certainly should be able to do it and it's all right. He sets the standard. Or is he one who says don't do as I do, do as I say do. And if he lied then God wasn't his father, but the devil was because he said you are of your father, the devil who was a liar from the beginning. Now if he lied himself, and I said if I can show it to you... [LB505]

ALAN PETERSON: Okay. [LB505]

SENATOR CHAMBERS: ...what would you say? You don't have to answer. But I'm going to show it you, then I'm going to see what you say and if you are as definite and unwavering as you are now. I wanted you to be sure that you were saying what you were saying, and I'm sure of

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what you said. Now it behooves me to present what I said I was going to present to you.
[LB505]

ALAN PETERSON: I'm just talking about values, one of which is tell the truth. And I think it's a serious question and this bill raises it with that language in subsection (4). I'm not here...Jesus doesn't need my defense, that's for sure. [LB505]

SENATOR CHAMBERS: If I said I have a Congressional Medal of Honor, this is just for the sake of the example,... [LB505]

ALAN PETERSON: Yeah, yeah. [LB505]

SENATOR CHAMBERS: ...and then I'm challenged on it and I'm being interrogated and the interrogator says, do you have a Congressional Medal of Honor, and I say, you say that I have, have I been deceptive in making that statement in response to a question? [LB505]

ALAN PETERSON: Yes, somewhat. It may not be a "lie." [LB505]

SENATOR CHAMBERS: But it's deceptive. [LB505]

ALAN PETERSON: Sure. [LB505]

SENATOR CHAMBERS: If my name is...now JC stands for Jesus Christ. EC stands for Ernie Chambers. But if my name were Ernie Christ, would it be deceptive? [LB505]

ALAN PETERSON: The best example of that, Senator... [LB505]

SENATOR CHAMBERS: I know what asking me, but I don't want to give you a straight answer. So I say you said that I am. You said that I have it. [LB505]

ALAN PETERSON: Yeah. [LB505]

SENATOR CHAMBERS: Okay. I'm just...that's all the time I'll take. See, that's why people ought to not say things that will bring me into the discussion. You see how quiet I've been on everything all day. And Mr. Alan Peterson pushed a button. [LB505]

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SENATOR MORFELD: Thanks, Alan. [LB505]

ALAN PETERSON: Thank you all. [LB505]

SENATOR SEILER: You may step down. Thank you. Next neutral. [LB505]

KORBY GILBERTSON: Good afternoon, Chairman Seiler, members of the committee. For the record, my name is Korby Gilbertson; it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Media of Nebraska. I always hesitate to follow Alan since he's the one that taught me everything I know about open records...public records and open meetings. But Media of Nebraska had a long discussion about this bill. And the first comment that was made by a number of the members, that this gives the people the right to rewrite history. And also, there might be a public interest in knowing some of these things that had happened even though there was an acquittal or someone was able to go through diversion. So that's their primary concern. Two interesting...two points, one that Senator Morfeld made about the comparison between this and juveniles, it's always been maintained that juveniles don't have the capacity to make adult-type decisions. And I think that's why historically they've always been treated differently and why you don't see as much resistance in sealing juvenile records. Adults, however, are generally held to a higher standard in that they are expected to make adult decisions. Another issue that was discussed is it's not always employment applications or employment issues. Let's say you're applying to sit for the bar exam. And on that application it asks very pointed questions about if you've ever done drugs, if you've ever been arrested, if had anything more than a parking ticket. So now you're giving people who are going to be sitting for the bar exam the right to lie on that application as well. That was a question. So it's not always just someone trying to survive and get a job, but there are different levels. Another comment was made about there might be certain elected officials of different levels that might have been in court for different things that the public might have an interest in knowing about and not having those records expunged. So with that, I would try to answer any questions but obviously this is a public policy decision for you to make. We just want to make sure you think about all of the implications. [LB505]

SENATOR SEILER: Seeing...oh, Senator Chambers. [LB505]

KORBY GILBERTSON: (Laugh) And a button. [LB505]

SENATOR CHAMBERS: With reference to the media, reporters, the media manage to get in this state what's called a shield law. And they have it all over the country. And that involves a reporter not having to reveal sources. [LB505]

KORBY GILBERTSON: Right. [LB505]

SENATOR CHAMBERS: If there were no shield law, would a court be able to say, as long as you don't disclose this information, you'll be held in contempt of court? Could a court do that? [LB505]

KORBY GILBERTSON: I think as long as...it's another public policy decision for the Legislature to make. I don't think the court could do it without some type of authority to do it. [LB505]

SENATOR CHAMBERS: It's hard for me to understand, but is that a yes, that if it were not for the shield law then this reporter could be found in contempt for failure to disclose? [LB505]

KORBY GILBERTSON: If they didn't disclose, um-hum. [LB505]

SENATOR CHAMBERS: Now I could be in a position and I'm not a reporter. So I can be held in contempt. And the reporter has no duty to reveal it because there was a law that protected the reporter and said everybody else in society has to tell or go to jail. But since you're a reporter, you managed to get the Legislature to pass a law to shield and protect you. [LB505]

KORBY GILBERTSON: Um-hum, no different than if this passes. [LB505]

SENATOR CHAMBERS: But if we have a law that protects a person from having to say I didn't...or frees a person from saying when asked a question under the circumstances of this bill then somehow that shouldn't be. The state is... [LB505]

KORBY GILBERTSON: No, we're not saying it shouldn't be. We're just saying to consider everything. It's a public policy decision just like the shield law was. That's our only point. That's why I'm here neutrally. [LB505]

SENATOR CHAMBERS: Well, why can't we give everybody a shield so that nobody has to disclose what they choose not to disclose without consequence? [LB505]

KORBY GILBERTSON: Yep, 25 votes and you have it I think. [LB505]

SENATOR CHAMBERS: But we're talking about now. Oh, but you're here speaking for...as a lobbyist. [LB505]

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KORBY GILBERTSON: I am. [LB505]

SENATOR CHAMBERS: So you can only go as far as representing your client, which I understand. [LB505]

KORBY GILBERTSON: That's true. [LB505]

SENATOR CHAMBERS: But do you see how I'm honoring... [LB505]

KORBY GILBERTSON: I do. [LB505]

SENATOR CHAMBERS: ...what we understand the relationship between a lobbyist and a client is? You're not a lawyer where there's a lawyer-client relationship. You can just say, my client has not authorized me to say that. And we can question you all we want to. We cannot charge you with anything for not going further, but we can punish your client by not giving them what you are trying to get us to give. [LB505]

KORBY GILBERTSON: That's true, that's very true. [LB505]

SENATOR CHAMBERS: Here's the point I'm trying to do with this. We can have right after a discussion that somebody like I had with--I started to say senator but--Mr. Peterson. And we can be very precise and clear cut in the assertions that we make. But then when we come to the media, automatically something that kind of blurs everything is in place because the media had enough political clout to get the Legislature to put them in a position favored over everybody else. And a reporter is allowed to withhold information which the withholding of which could carry some very bad consequences even for the government. But since the law gave that person the right to withhold this information, the person can do it if he or she is a member of the media. But poor, old plumber Joe, as everybody talked about during that election, or floor-sweeping John would do the same thing. Then the judge would say, you're going to tell me what I want to know or I'm going to put you in jail. But unlike most criminals or most people who have been cited like this, I'm going to take the example of Andy Griffith on his program where he lets this drunk take the key and when his time is open he opens the door and lets himself out. That's what I'm going to do with you. I'm going to put the key to your cell in your hand. And as soon as you want to unlock the door, you're free to insert the key and unlock the door. [LB505]

KORBY GILBERTSON: Jump out of the chair. [LB505]

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SENATOR CHAMBERS: And the way you unlock the door is by telling the court what the court wants to know. So then it depends on how strong your will is and how long you're willing to suffer for what you say you believe. But if you're a member of the media, you don't even have to deal with that. [LB505]

KORBY GILBERTSON: That's true. [LB505]

SENATOR CHAMBERS: So things in this society are not as clear cut sometimes in the real world as it can be in an academic discussion like Mr. Peterson and I had. But I still think it's a good thing he raised the question because it is one and it is troubling, because the ethical or moral, if you want to call it that, religious purity of a position runs afoul of the real world. And which is to prevail? Should you tell the truth and your family goes hungry? Or should you withhold it or even say something contrary to it and let your family eat? It's all right for you to be hungry, but you don't have a right to let your children and those who rely on you be hungry because of what you believe, just like if I don't want to go to the doctor and I have cancer that's one thing. But if my child has meningitis or any of those diseases that can be treated by medicine, I don't have the right to deny my child that because I'm a fool. I can be a fool with myself, but I shouldn't be allowed to make my children suffer. And that's all that I'll have. But I just wanted this opportunity with somebody who is from the media and could confirm that they are given a position that nobody else in society has. Thank you very much. You've been very helpful. [LB505]

KORBY GILBERTSON: Thank you, Senator. [LB505]

SENATOR SEILER: Any further questions? Seeing none, thank you for your testimony. Any further in the neutral? If not, Senator Krist, you may close. [LB505]

SENATOR KRIST: I will not engage with my Jesuit philosophy at this point. I refuse to get sucked into this discussion. Actually, the Supreme Court Web site, supremecourt.nebraska.gov, addresses a question as to a juvenile when the juvenile record has been sealed. What should you do? The response on the Supreme Court Web site: If your juvenile record has been sealed, you are not obligated to disclose facts about the record at all. In fact, employers are not allowed to ask if you have had a juvenile record sealed. When applying for jobs, licenses, scholarships, or other rights or privileges, you may respond to questions as if no record exists. So I think we have some work to do as a committee before we kick this out to make sure that we understand that. I would say that the...also, and I'm not a lawyer either, but the law is silent on many things. And if (4), line 5, and (5), line 9, were omitted from this bill, I'm not sure that it would take the teeth out of what the good part of this bill does. Again, I would suspect that we can make that decision in Exec. I appreciate everyone coming forward in positive and negative. It's all part of the process.

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One other thing that I told legal counsel of earlier today, on page 4, line 2, there was a request from NACO and the county attorneys to change the word "offense" to "case." And I think that makes perfect sense and I'm for that. With that, I would close and take any questions. [LB505]

SENATOR SEILER: Yes, Senator. [LB505]

SENATOR PANSING BROOKS: Sorry, I'm back to my legal fiction. But there's a George Washington University article that says, "In fashioning legal rules, judges rely with surprising frequency on false, debatable, or untested factual premises. At times, of course, such false premises simply reflect judicial ignorance. But there is an increasingly large body of empirical research available to judges, and more often than not judges' reliance on false premises is not the result of ignorance. Instead, judges often rely on false factual suppositions in the service of other goals." So I would just submit that the goal of the state is to have people employed and productive and, if somebody is falsely arrested, that there is a reason that the state would determine that we could go forward similar to the juvenile's ability to go forward... [LB505]

SENATOR WILLIAMS: Somebody that went through drug court was not falsely arrested. [LB505]

SENATOR PANSING BROOKS: No, but along those lines, if it's not falsely arrested they have the ability to determine that if you comply with what we say that you need to comply with then we have a determination that you do not have to be further penalized by this, by every single future employer. We think it will cost us more in Medicaid. We think it will cost us more in all sorts of things besides the fact that your rights are... [LB505]

SENATOR WILLIAMS: We'll debate that in Exec. [LB505]

SENATOR SEILER: Wait a minute. Write your arguments down and bring them to Exec. [LB505]

SENATOR PANSING BROOKS: Law Review article later? Okay. [LB505]

SENATOR WILLIAMS: Yep. [LB505]

SENATOR SEILER: Bring them to Exec. [LB505]

SENATOR PANSING BROOKS: Okay. [LB505]

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SENATOR CHAMBERS: This is getting good. (Laughter) [LB505]

SENATOR WILLIAMS: It's not you this time. [LB505]

SENATOR KRIST: I feel like I'm in the Supreme Court. [LB505]

SENATOR SEILER: Anything further? Any further questions? [LB505]

SENATOR KRIST: No. No, sir. [LB505]

SENATOR SEILER: Seeing none, the record will be supplemented by the exhibits and any testimony from out in the hall, and this is closed. Senator Krist, you may open on LB630. [LB505]

SENATOR KRIST: (Exhibit 1) Thank you, Senator Seiler. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha and portions of Douglas County including the city of Bennington. I appear before you today in introduction of LB630. I am going to read this introduction and then I'm going to put my own words into a few...for a few items. Under current state and federal law, select employers are required to obtain criminal history record information checks for their potential employees. These information checks require the potential employees submit fingerprints to the Nebraska State Patrol who then forwards that information to the FBI in order to receive any criminal history record information. This process can take time and delay the employment process for the employers. Furthermore, the information that actually flows back to the employer is limited to a thumbs up or a thumbs down. Last year, we passed legislation that would provide the Department of Motor Vehicles with actual copies of criminal history reports. During the interim, discussions were had with the Nebraska State Patrol to try to determine if the background check process could be streamlined for employers that are not state agencies. It was believed that providing specific language similar to that passed last year would give the State Patrol the ability to work with other employers. Since the introduction of LB630, discussions have continued with the State Patrol in order to determine if a statutory change is necessary or if there are other solutions. Because of the continuing discussion, I would ask the committee to hold the bill. So I don't expect a lot of discussion. But I would bring to your attention that there was a letter from the State Patrol from Captain Sean Caradori, and it should have been distributed to you, which explicitly says that existing federal and state statutes restrict the availability of using fingerprint record checks on individuals and also restricts the class of those who may view a fingerprint search record. LB630 as drafted would violate federal FBI regulations which govern who may process the federal criminal history information. So I am obligated to introduce the bill. I'm not obligated to defend it at this point. And I'd ask the committee to hold it so that the folks who really are interested in

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this can either work the situation out or we can bring this back and talk about it next year. And I'll be the one that makes the IPP motion if it's necessary. [LB630]

SENATOR SEILER: Okay. A letter we have received from Schwarten. And we'll make that part of the record. We also have a letter from a member of the League of Nebraska Municipalities, Lynn Rex. Have you got a copy of that? [LB630]

SENATOR KRIST: Yes, sir. [LB630]

SENATOR SEILER: And that will be part of the record. Everybody should have a copy of that. Any further witnesses? [LB630]

SENATOR KRIST: We're done. [LB505]

SENATOR SEILER: Any opposition? Anybody in the neutral? Al, don't get up. (Laughter) [LB505]

SENATOR MORFELD: He was ready for you. [LB630]

SENATOR SEILER: The record is closed. Thank you. [LB630]