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Judiciary Committee  
February 18, 2016

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[LB839 LB920 LB1000 LB1054 LB1097]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 18, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1000, LB1097, LB1054, LB920, and LB839. 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 COASH: We are going to go ahead and get started with the hearing. It is time. My name is Colby Coash. I'm the Vice Chair of the committee. Senator Seiler is introducing a bill in another committee so I'm going to get us started here today. We're going to go off the agenda as it's posted, so it's going to start with LB1000, Senator Mello. For those of you that are here to testify, a couple things. We'll ask you to fill out a sheet, which is on the table by the door, indicating your support or opposition or neutrality to the bill. If you're here and you'd like to testify...or, excuse me, if you'd like to be on record but don't want to testify, you can also sign in, indicate your support in that way. When you come up and speak you can state your full name and spell it for the record. I'd ask everybody to silence their cell phones before we get started. I'm going to let the senators who are here right now introduce themselves, starting with my far right.

SENATOR WILLIAMS: Senator Matt Williams from Gothenburg, Legislative District 36, Dawson County, Custer County, and the north part of Buffalo County.

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

SENATOR COASH: Senator Coash, District 27.

SENATOR PANSING BROOKS: Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln.

SENATOR EBKE: Laura Ebke, District 32, Jefferson, Saline, Thayer, and Fillmore Counties and the southwest portion of Lancaster County.

SENATOR COASH: And Diane Amdor is our legal counsel, Oliver is our committee clerk. We've got Julia and Kaylee, who are our pages today. If you've brought any handouts, they will get those to the committee. With that, we're going to open up the hearing on LB1000. Senator Mello, welcome back to Judiciary.

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

Judiciary Committee  
February 18, 2016

---

SENATOR MELLO: (Exhibits 1 and 2) Good afternoon, Vice Chairman Coash, members of the Judiciary Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. This is the last time I will be appearing before the Judiciary Committee as well. I'm here today to introduce LB1000, as amended with AM2173. Recent high-profile incidents of police misconduct across the country have generated intense media and public attention. Police departments throughout the country have begun to use body-worn cameras to create an objective record of interactions with the general public. The mere presence of body-worn cameras fundamentally changes the dynamics of law enforcement encounters for both the police and for the public. By creating an objective visual record, body-worn cameras have the potential to protect the public from police officer misconduct, provide police officers a defense to allegations of misconduct, assist in law enforcement training, and help prosecutors secure convictions by supplying valuable visual evidence. In response to the recent interest in body-worn camera use by law enforcement officials, last session I brought LR261 and my office spent the interim researching what other states are doing around the country in respects to this issue. In the memo we provided to the committee from the Legislative Research Office, it outlines that before 2015 there were only four states that had enacted laws related to body-worn cameras. Now in 2016, at least 37 states are considering legislation and/or considered legislation relating to body-worn cameras. And there are now 19 states, along with the District of Columbia, that have enacted some form of state law related to the use of body-worn cameras by law enforcement officials. You will see that many states have gone far beyond what you see in the amendment we provided you with AM2173, from requiring the use of body-worn cameras to dictating how these cameras shall be used. I've worked closely with a variety of stakeholders over the past few months, with state and local law enforcement agencies, the ACLU of Nebraska, representatives of Media of Nebraska, and others to craft language that will work specifically for our state. LB1000, as amended by AM2173, does not require law enforcement agencies in Nebraska to use body-worn cameras. But if an agency decides to use body-worn cameras, this language dictates that the agency must adopt a written policy that provides for the implementation and the use of body-worn cameras. This policy will then be filed with the Nebraska Commission on Law Enforcement and Criminal Justice. AM2173 dictates that when a written...a written policy shall include...what a written policy shall include but leaves an important level of discretion to the local law enforcement agency. What works for the Nebraska State Patrol may not work for the Omaha Police Department or the Beatrice Police Department, and the language in AM2173 ensures that different agencies will be able to adopt a policy that works for their specific agency needs. A written policy required by LB1000, as amended, shall include the following: training requirements for the use of body-worn cameras, procedures to ensure the body-worn camera is working properly, a procedure for wearing the body-worn camera to maximize its recording capability, requirements that will ensure a body-worn camera is only used for law enforcement purposes, provide for when a peace officer should notify a subject that they are being recorded and when recording should be discontinued, guidelines as to how the recordings will be handled and transferred to the appropriate database, provide that

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

Judiciary Committee  
February 18, 2016

---

recordings shall be available for supervisory or internal review, establishes a minimum retention of recordings of 90 days or in line with the statute of limitations of the offense or until the case has been adjudicated, and a procedure for the destruction of recordings following the minimum retention period set out by the amended version of this bill. While there is a fiscal note attached to the green copy of the bill, I would note that the changes made in AM2173 would alleviate the concerns of the cost of data retention. Additionally, LB1000, as amended by AM2173, would not require the use of body-worn cameras. Colleagues, the nature of law enforcement across the country is being changed by the use of new technology, specifically the use of body-worn cameras. When implemented correctly, body-worn cameras could help promote transparency and accountability within law enforcement and of law enforcement but also, importantly, the general public. LB1000, as amended by AM2173, is the result of months of research and consensus building with state and local law enforcement, the ACLU of Nebraska, and others who the committee have received letters of support from. This bill represents what will work for our state when moving forward with this important law enforcement technology. With that, Mr. Vice Chairman, I'd be happy to answer any questions you may have. [LB1000]

SENATOR COASH: Thank you, Senator Mello. Senator. [LB1000]

SENATOR WILLIAMS: We're still waiting to get the amendment. [LB1000]

SENATOR PANSING BROOKS: It was passed out (inaudible). [LB1000]

SENATOR MELLO: Okay. [LB1000]

SENATOR PANSING BROOKS: So we're just trying to get (inaudible). [LB1000]

SENATOR COASH: Competent folks over there working on that, they're going to get that taken care of. But any questions for Senator Mello? Senator Chambers. [LB1000]

SENATOR CHAMBERS: Senator Mello, I'm sorry I'm late. But is the bill going to say that the information on these cameras is not a matter of public record? [LB1000]

SENATOR MELLO: The amended language in the bill would treat the recordings similar to other existing recording materials that are exempt from public records but allows an interested party to file an investigatory, I believe it's called, an investigatory request in regards to releasing that information or that public data if there is an overarching public purpose to do so. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR CHAMBERS: But it's not going to be released by the police. There was a case where a man was shot in the back, and that's what resulted in my statement about ISIS and the police. And there was one still picture released to show this man looking at a police car. But the chief refused to release the tape. Now based on the word, descriptions, this man was on the hood of a car, getting ready to go over a fence, and the cop shot him in the back. The cop said that he felt other officers were in danger. The man was unarmed. But if the other cops were in danger, they'd be the one looking at him. Why didn't they shoot him? So I think the chief covered up. I think they will continue to cover up, and I think it gives the public a false sense of security when whether or not these tapes are released is in the hands of the police. To me, it's the same as not having anything. It's even worse, because now you know there's nothing there. But you saw what happened in Chicago. The police wrote lying reports. The upper echelon knew it. The top lawyer for Chicago knew it. And every one of those reports was a lie because, when finally the mayor ordered the video released, you saw what actually happened. And every cop who wrote something lied. So I'm willing to talk to you later and maybe you can persuade me, but I want that on the record because I'm not going to be interrogating everybody who talks on the bill. [LB1000]

SENATOR MELLO: I appreciate that, Senator Chambers. I do. I want to be very clear, as we discussed this bill with a number of interested parties over the last few months, we treat body-worn camera recordings in the bill, as amended, the same way we treat dash cam recordings by law enforcement in regards to they are exempt from public records requests but it doesn't mean you can't go through the legal process to have them mandatorily be released the same way that dash cam footage can be released in that same manner, so. [LB1000]

SENATOR CHAMBERS: And I don't think that ought to be secret either. I call it secret, because even when there's no longer any investigation they're hiding something. What are they hiding if nothing is wrong? And that's what they'll often say: If you've got nothing to hide, why don't you let me go in your pockets, why don't you let me come in your house, why don't you let me in your car? Just so my views are clearly on the record, I'm not even asking for a response from you. [LB1000]

SENATOR MELLO: Okay. [LB1000]

SENATOR CHAMBERS: But I wanted you to be alerted. [LB1000]

SENATOR MELLO: Okay. Thank you. [LB1000]

SENATOR CHAMBERS: Okay. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR COASH: Thank you, Senator Mello. Senator Mello, we had a discussion kind of similar to this requiring...Senator Pansing Brooks's bill requiring some particular procedures regarding police lineups. And some of the opposition to that surrounded the specificity that was in her bill. And I'll ask you the same question that was asked when we talked about mandating police procedures. First of all, are these nine procedures that you've outlined in your amendment based off of some national standard that is being adopted across the country? [LB1000]

SENATOR MELLO: The green copy, I should give you a little context if I can, Senator Coash. And that's a great question because I know that that was an issue raised from Senator Pansing Brooks's bill in this committee. If you look at the green copy of the bill, we probably followed somewhat of a similar process in regards to being a little bit more, I would say, prescriptive in regards to laying out in statute exactly components in regards to how their internal policy needs to be laid out. In working with the interested stakeholders, we tried to take, I think, more of a middle ground of providing I think a more broader framework in the sense of saying these are components that are best practices across the country, laying out these are areas that your policy needs to include, but we give, obviously, law enforcement agencies the flexibility in regards to how they choose to spell out these specific components in their local jurisdictional policy. I think that is where we tried to find a middle ground in regards to where the green copy of the bill was, as introduced, and what you have in front of you in AM2173. [LB1000]

SENATOR COASH: All right. Thank you, Senator Mello. Senator Pansing Brooks. [LB1000]

SENATOR PANSING BROOKS: I'm trying to figure out, by rapidly reading the amendment, if...could you explain what happens if you call a police officer to something like if maybe something has been stolen out of your garage or something? And the police officer comes and you politely invite the police officer in because you like to be polite. This actually happened. So...and then I was talking to the police officer when that happened. And I think some people have a concern, and actually the police officer sort of raised these issues with me, what about when somebody...when a police officer walks in the house and they're not investigating me. Do they just get to film everything in the house and how does that all work? [LB1000]

SENATOR MELLO: Well, I think it's... [LB1000]

SENATOR PANSING BROOKS: Because...excuse me one second. I know that, like at least with the Lincoln Police, the camera goes on the minute the sirens go...and lights go on or the minute the back door is open so...of the police car. So those two automatic ways to activate the cameras make some sense because they're either on a chase or they're bringing in somebody that they've got to treat appropriately and so they have to have that information. So what about if they're just

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

Judiciary Committee  
February 18, 2016

---

coming inside to talk to somebody or...and it isn't part of an investigation other than just communicating politely with an officer? [LB1000]

SENATOR MELLO: That's a good question. I'll do my best to try to answer it, Senator, because I think the way the bill, as amended, is drafted it requires that law enforcement agencies, as part of their policy of utilizing body-worn cameras, have to provide a policy in regards to when a peace officer notifies the subject that they are being recorded, as well as when the recording will be shut down or be discontinued. So that...in the bill, it states that Lincoln Police Department, if we use your example, the Lincoln Police Department would have to create their body-worn camera policy that specifically says this...the peace officer shall notify an individual then, at this moment in time or whenever, I think we put it as whenever applicable, reasonably applicable, to let the individual know you are being recorded, as well as a policy in regards to when they then tell them we are shutting the camera off in this particular case. And that's a determination made by the local law enforcement agency and that was, in part, because, to some extent, your example could be that the Lincoln Police Department wants to keep it on all the time. Some may say we want to shut it off in the sense of there's been issues raised in regard to conversations we've had in regards to sometimes there are instances, you know, in some respects, of an assault, domestic violence assault, where that individual doesn't want to be recorded by a peace officer... [LB1000]

SENATOR PANSING BROOKS: Right. [LB1000]

SENATOR MELLO: ...in light of what just occurred to them. And to give that discretion to the law enforcement agency to say here is when we're going to tell an individual we're going to turn on the camera, here is opportunities when we think we can turn off the camera in these scenarios based on different scenarios that the law enforcement agency feels they need to do. That's the way we spell out in the bill, is to give that flexibility to the agency to do. [LB1000]

SENATOR PANSING BROOKS: But so I presume...what you're really saying, it's going to be more difficult to do that probably. [LB1000]

SENATOR MELLO: More difficult to...? [LB1000]

SENATOR PANSING BROOKS: To ever even...I mean it's very difficult for the police to create some policy that allows some individual police officer to decide when not to turn on...when to turn these devices on and off. I don't know. It's just...it's an interesting (inaudible) policy and makes it...makes communication and connection to police a little bit more difficult and more formal and less...you know, way friendly. Anyway, just interesting to think about. Thank you. I'm not really asking you a question. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR MELLO: Okay. [LB1000]

SENATOR PANSING BROOKS: Thank you. [LB1000]

SENATOR COASH: Senator Mello, as a follow-up to that, is there anything in AM2173 that mandates that they be used if they haven't? In other words,... [LB1000]

SENATOR MELLO: No. [LB1000]

SENATOR COASH: ...if a police department said, yeah, we want to have cameras but we're going to decide when and where we're going to use them, in other words, if an officer said, it's my discretion, if I want to turn it on I'll turn it on. [LB1000]

SENATOR MELLO: This is if an agency utilizes body-worn cameras the bill, as amended, requires that law enforcement agency to develop a policy based on the amendment, that they would have to create an internal policy that dictates the use of body-worn cameras. [LB1000]

SENATOR COASH: Could a policy state that it's the officer's discretion of whether or not he or she wants to even turn it on? [LB1000]

SENATOR MELLO: As the way we've drafted it now, if that's part of their policy, they just have to...as we laid out, their policy has to include that specific component that Senator Pansing Brooks just said, which is provide for when an officer should notify them, if they've got a camera and they've got it on, how that officer needs to notify, Senator Coash, that I have a body-worn camera on, you're being recorded. [LB1000]

SENATOR COASH: Right. [LB1000]

SENATOR MELLO: And then, Senator Coash, I'm going to turn off the camera now. That just says that they have to have a policy to spell that out if they have cameras. [LB1000]

SENATOR COASH: Right. I know a lot of law enforcement agencies have, not body-worn cameras, but in-car cameras. [LB1000]

SENATOR MELLO: Uh-huh, dash cam cameras. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR COASH: Dash cam cameras. Are those...is there a similar statute requiring policy for those that you're aware of, or are dash cam cameras and their policies up to the whim of the local law enforcement agency? [LB1000]

SENATOR MELLO: There is not. As I mentioned to Senator Chambers' question earlier, we've mimicked the public records-related issue in light of dash cameras that you have in front of you in AM2173 when it deals with the release of footage or camera footage, but not as our understanding that there's a statute dictating cameras. The unique component is cameras in cars are always usually turned on and that's a little bit of a different component, and the camera stays stationary. They can only have a view of what's in front of it, unlike a body-worn camera that follows obviously that officer wherever they may go, whether into someone's home, whether into some other facility. There's a little bit of difference and I think that's why we decided to take the approach we did. We did not want to go back and open up car cameras or dash cam footage camera statutes, so to speak, to have anything mirror what we were looking at with body-worn cameras. [LB1000]

SENATOR COASH: All right. Thank you. I don't see any other questions. Thanks for opening. [LB1000]

SENATOR MELLO: All right. Thank you. [LB1000]

SENATOR COASH: Okay. We're going to go ahead and start on the proponent testimony of LB1000, those wishing to testify in support of the bill. [LB1000]

SPIKE EICKHOLT: (Exhibit 3) Good afternoon, Vice Chairman Coash, members of the committee. Spike Eickholt, first name S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the ACLU of Nebraska, testifying in support of LB1000 and AM2173 which replaces LB1000. The ACLU...in recent years, the ACLU has had a growing concern regarding government intrusion on people's private lives, particularly government surveillance, including camera surveillance. However, this concept, the concept of body-worn cameras, is a little bit different because it involves not only the surveillance perhaps of people but also the surveillance of government actors, particularly police officers, and that this will provide an opportunity for the public to watch and see how police officers interact with members of the public. As Senator Mello explained and some of the committee members answered, there's still a privacy concern here that Senator Mello tried to accommodate at least by providing some discretion for the law enforcement agencies to develop a policy that would provide for some sort of standard rules for when body-worn cameras are used and when they are not used. One of the frustrating things now is that in this state, similar to the dash cams, is there are no policies regarding body-worn cameras. A few agencies have some sort of guidelines for individual officers to follow when they



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

Judiciary Committee  
February 18, 2016

---

turn them on, when they turn off. Sometimes, as Senator Coash indicated, they simply turn them on and off at their individual discretion, by way the officers might turn on an audio recording at their individual discretion or that kind of thing. Dash cams are a little bit different, because as Senator Pansing Brooks indicated before, the construction of the cameras, they are typically turn on automatically when overhead lights are turned on. There's a backseat camera for the Lincoln Police cars and Lancaster County Sheriff's that comes on when the back door is open to a vehicle. But the nature of the body cameras allows for some discretion for the police officers. And in some respects, that's sort of troubling because that gives, if you will, an officer or officers who are acting inappropriately a way out to not record these things or perhaps to record them and just not document what actually happened and hope that they aren't viewed. But on the other hand, as Senator Mello alluded, body cameras are different in the sense that, and maybe it's just a difference in degree, that they do go everywhere. If they're on all the time and if they're recording everything the police officer witnesses or observes, then they will be viewed inside of people's homes. And that raises some significant Fourth Amendment questions and issues. They will be sort of intruding on people's lives in noncriminal settings, for instance, serious car accidents or people who are mentally ill and dangerous interacting with police officers. And perhaps the public witnessing that person in that state of their life is not nearly as important as observing a peace officer. The Fourth Amendment issue is a bit concerning and...for us in the sense that there's a reason that law enforcement are using the body-worn cameras. The quality of the video many times is very good and the technology allows the officers to go back and view these things again. And to kind of (inaudible) Senator Pansing Brooks's example, if an officer is in the home viewing it, they can be accessed later and viewed in very great detail. So we think that Senator Mello's bill, as amended, does accommodate the balancing interests. [LB1000]

SENATOR COASH: All right. Thank you, Mr. Eickholt. Senator Krist. [LB1000]

SENATOR KRIST: Thanks for coming, Spike. And thank you, Vice Chair Coash. The thing that I find sometimes amusing is that those that want the camera on at the right times want it on, and those that want the camera off to protect their personal privacy want it off all the time in some cases. Now having said that, I respect the two opinions. But at least with a policy in place and an individual municipality publishing that policy, if someone comes to my door in uniform, if I want the camera turned off and the policy says clearly if an individual citizen asks for the camera to be turned off, unless there's a compelling reason or there's suspicion of or you're serving a warrant to the effect of, that's where I see the strength of the policy being put into place. And then it's, pardon the expression, buyer beware. If you know your rights as an individual and if you stand up for your rights, and right now I would prefer you turned the camera off, the police officer could say, okay, maybe at this point I want to have another police officer with me. And he backs away from the situation and respects that. I like the policy being in place. I like the policy, even more than being in place, being published so people understand what their rights are in relationship to the cameras. I'm a firm believer, and one of these handouts says that we're all...I

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

Judiciary Committee  
February 18, 2016

---

won't say police officers. I think we're all better behaved in most cases when we know someone is watching. Unfortunately, that's the way we are in society. So that was all just a big soapbox. If you'd like to respond to that, you certainly can. [LB1000]

SPIKE EICKHOLT: The only thing I can say is that the different drafts of the bill in the other states that have adopted similar legislation usually have that sort of buyer beware provision where there's some sort of notice that usually, as soon as practicable, the officer is trying to warn a subject or a person or a citizen that they're being recorded. Some states allow for an opportunity where that person can request they not be recorded. But I think other people will testify. I think some of the handouts describe it. Many times we know it's a deescalation, if you will, between the contact between an officer who knows they're recorded, as well as now the person in contact with the officer. [LB1000]

SENATOR KRIST: Thank you. [LB1000]

SENATOR COASH: Spike, I could ask Senator Mello this but maybe you know. Do we have any jurisdictions using these body cameras right now? [LB1000]

SPIKE EICKHOLT: I know that...yes, we do. I know that Omaha Police Department has a number of them. I think that UNO Police Department has. I think all their officers have them and use them. I know that some area agencies, and I work with the criminal defense lawyers and some of our members who are also supporting the bill talked that some of the different police agencies are using them. I know that Beatrice Police Department is using them. So there are some. I know that Lincoln Police Department is not. I think they have some on their bike, bicycle police officers use those, but some of them don't invest in it, if you will. This costs some money to purchase the cameras and some money to store the recordings. But there are some agencies that are doing that and that's why we support that concept of at least having a uniform statewide policy. [LB1000]

SENATOR COASH: All right. Thank you. Senator Pansing Brooks. [LB1000]

SENATOR PANSING BROOKS: Thank you, Senator Coash. Thank you for coming, Mr. Eickholt. I was just wondering, were you involved in the drafting of the amendment at all? [LB1000]

SPIKE EICKHOLT: There's so many different things that went around... [LB1000]

SENATOR PANSING BROOKS: I guess I just... [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SPIKE EICKHOLT: ...that...I was, yes. [LB1000]

SENATOR PANSING BROOKS: Okay. Well, I just wondered because I know that there's other areas of the law, which I can't find right now, but where it deals with records. So why not just amend that portion that deals with where...how you deal with public information and when it's released instead of creating a whole new section? [LB1000]

SPIKE EICKHOLT: One of the...I think the bill... [LB1000]

SENATOR PANSING BROOKS: Do you know what I'm talking about? [LB1000]

SPIKE EICKHOLT: I think so. There's Chapter 84, I can't remember the subsection, deals with public records, what's public and what's not. And there's a specific exception for law enforcement records. [LB1000]

SENATOR PANSING BROOKS: Yes. [LB1000]

SPIKE EICKHOLT: And I think one of the earlier versions referenced that. But I think, as Senator Mello explained, you know, if you have a body camera and you have the recording and something is witnessed on it, the officer is going to write a narrative report and perhaps even have some of it witnessed on a dash cam. And it would really make no sense to have a separate statutory exception for the body-worn camera when it sort of is related to similar records that are kept by the law enforcement agencies and are not necessarily public. They can be discoverable (inaudible). [LB1000]

SENATOR PANSING BROOKS: Okay. [LB1000]

SPIKE EICKHOLT: So I think the desire was to have it, as Senator Mello said, be consistent. And speaking for the ACLU, there might be times where we wish those things were public, but frankly, I don't know if this is the bill sort of to make that argument. [LB1000]

SENATOR PANSING BROOKS: Okay. I think that's all I have right now. Thank you. [LB1000]

SENATOR COASH: Seeing no other questions, appreciate your testimony. [LB1000]

SENATOR CHAMBERS: Excuse me. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR COASH: Senator Chambers. [LB1000]

SENATOR CHAMBERS: I wanted to let everybody ask their questions. Did you...did I understand you to say you did or did not have any role to play in drafting the amendment? [LB1000]

SPIKE EICKHOLT: I did receive a copy of it before and I... [LB1000]

SENATOR CHAMBERS: Okay. [LB1000]

SPIKE EICKHOLT: ...I may have provided some feedback. [LB1000]

SENATOR CHAMBERS: Would you turn to page 3. [LB1000]

SPIKE EICKHOLT: Okay. [LB1000]

SENATOR CHAMBERS: Starting in line 10, in parenthetical number (7), "Guidelines which provide that all recordings shall be available for supervisory or internal review consistent with any collective bargaining agreement." Suppose the agreement says it's not going to be made available. The statute will be trumped by the bargaining agreement, wouldn't it? [LB1000]

SPIKE EICKHOLT: It could be, I mean, if a collective bargaining agreement was somehow negotiated where it prohibited. [LB1000]

SENATOR CHAMBERS: The language here makes the bargaining agreement paramount over the statute. [LB1000]

SPIKE EICKHOLT: It could. That's correct. [LB1000]

SENATOR CHAMBERS: Okay. And of what value is this to the public, since it's not a public record and the police can say we're not going to show it to you? How...of what value is it to the public? And here's what I'm getting at. People file complaints with internal affairs. They don't make findings against the police. So filing it with internal affairs, like Jesse James investigating Frank James, is what a lot of people feel, that the agency should not investigate itself. But agencies do investigate themselves and rarely, if ever, do they make any finding. If this recording is not available to the public, how does it serve a public purpose? [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SPIKE EICKHOLT: If it's not available to the public, at least easily, we would still argue that at least there was some purpose. The way, if you will, that a police officer acting improperly can get away with it is that many times police officers have the ability to control the narrative of what happened or didn't happen. They write the report. The technology of the body cameras, an officer cannot erase a recording. He or she could try to physically destroy the device, which would be very conspicuous. They can't access it like they can maybe a memory card on a cell phone and take it out and just take it. One argument, one way...and I understand exactly what...at least I think I understand what you're saying. I understand your point. One way that this could help is that at least the officer or officers are dimly aware that a recording is being made. And it may go away, it may not be discovered, but it's being recorded. And if it's being recorded, it could be found somehow, maybe not as easily if it was not a public...maybe not as easily as if it was a public record or available to a citizen review board or something like that, but hopefully that would deter some conduct. [LB1000]

SENATOR CHAMBERS: There's great skepticism when any law enforcement agency investigates itself. And if they deny that, then they're denying reality. If anybody is familiar with how things work with police denies it, they're denying reality. So I don't trust the police to have the final word. And I don't think it does any value to do what Senator Mello mentioned might be available, go through some court proceedings, because there have been one or two cases where the chief in Omaha did behave properly, but the bargaining agreement required an auditor...I meant a... [LB1000]

\_\_\_\_\_: Arbiter. [LB1000]

SENATOR CHAMBERS: What do you call it when you put these people together? [LB1000]

SENATOR PANSING BROOKS: Mediator? [LB1000]

SENATOR CHAMBERS: Yeah. [LB1000]

SPIKE EICKHOLT: Arbiter? [LB1000]

SENATOR CHAMBERS: Yeah, arbitrator. And the cops were exonerated based on what the arbitrator said, even when the video was displayed and you could see what happened. One female officer said that this man she was kicking was trying to reach for a knife she had. Well, he's on the ground. She's kicking him and her knife is in her pocket. Well, what she said is contradicted by the video. But the arbitrator said, well, yeah, that's...we're going to accept that. So he got away clean. I don't see where this does any value at all. It's like so many things where

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Transcriber's Office

Judiciary Committee  
February 18, 2016

---

the police are concerned. You want to give the public the impression that something is happening. And the argument against what I'm saying might be, well, if they're going to have the cameras, shouldn't you have a policy? Well, there's a policy with high-speed chases, and they ignore it. So I don't see any value whatsoever to this bill unless what is on those cameras is accessible to the public. And I'm talking to you because you are familiar with this and you may have had some discussions, but I say again to you what I said to Senator Mello. The questions I'm putting to you I won't put to everybody else because I don't want to be repetitive and I may want it noted in the record. And however way you'd want to respond, if you choose to, then you're free to do so. [LB1000]

SPIKE EICKHOLT: I'd probably better not respond then. [LB1000]

SENATOR CHAMBERS: Huh? [LB1000]

SPIKE EICKHOLT: I probably better not respond. [LB1000]

SENATOR CHAMBERS: Oh, okay. That's all that I have. [LB1000]

SENATOR COASH: Seeing no other questions, appreciate your testimony. We'll take the next testifier in support. [LB1000]

OWEN YARDLEY: (Exhibit 4) Thank you, Senators. I am Owen Yardley, O-w-e-n Y-a-r-d-l-e-y, chief of police at the University of Nebraska-Lincoln Police Department. I'd like to thank Senator Mello and his staff for their interest in this bill and the opportunity to participate in the related discussions. I'm here to provide support for LB1000 as it is amended. This bill provides a framework for developing policies and procedures for agencies that use or will use body-worn cameras. UNL Police began evaluating body-worn cameras in 2005 in several configurations; have been using them for most of the last decade. Our original goal was to develop a process where we could document, to the best of our abilities and in an unbiased manner, the interactions between officers and the public during investigative contacts. We also felt it was important to document the entire contact. Without recording the entire interaction, portions of the contact could be viewed without a context of the totality of the events or discussions that occurred before or after the recorded portion. We have found these cameras to be beneficial when reviewing officer interactions with the public, documenting evidence and evidentiary procedures, and when used in working...work-related training. As with any technology, these cameras are effective in their purpose. But we acknowledge that they may not be absolutely reliable or effective in every situation. That being said, we have found them to be an effective tool for our department in providing context to situations, resolving complaints, and offering additional documentation of police investigations. This bill will help ensure that agencies using body-worn cameras have

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

Judiciary Committee  
February 18, 2016

---

reviewed and addressed the critical issues surrounding the use of these devices. Happy to take questions. [LB1000]

SENATOR COASH: Thank you, Officer. Senator Chambers. [LB1000]

SENATOR CHAMBERS: Since you are a chief--and I recognize it's the limited jurisdiction of UNL but, still, I view you as a law enforcement professional who can answer this question--of what value is this to the public if it is not...if what is on the camera is not a public record? Of what value is it to the public and why should it not be available? [LB1000]

OWEN YARDLEY: If they're not available to the public? The cameras are available in court, you know, court proceedings. They are admitted into court. They would be visible to the public at that point, along with other people doing the reviews. I do feel that there could be benefits, as we've seen recently, in releasing video to help diffuse situations, especially with the public. I think that's something that has to be weighed by each department on the benefits of that and when they should be. And I'll do a little bit. The situation you described earlier, I think it would be...it could be appropriately used in that situation. But then with Senator Pansing Brooks's situation, if they're released to the public, it may be offensive or detrimental to her privacy in doing that. I think that's a situation that each department is going to have to weigh. This is a balancing act. And my one comment about the cameras not being 100 percent reliable or effective is that there are so many different situations that law enforcement encounters, it may be effective in one and it may not be...it may be detrimental in another one, depending on how that's...how those are released. So I think that's something that needs to be very judiciously balanced by each police department. [LB1000]

SENATOR CHAMBERS: Well, suppose we make it available to the media. [LB1000]

OWEN YARDLEY: What's that? [LB1000]

SENATOR CHAMBERS: We make it available to the media. The media will have access to what is on these cameras. What about that? [LB1000]

OWEN YARDLEY: Well, as I said, that's the other issue because it may be beneficial in your situation, but where Senator Pansing Brooks is concerned about privacy with an officer talking to her in her home, that would be...that could be released too. And so it may have a positive effect in one situation but a negative in another, so. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR CHAMBERS: But, see, there could be a responsibility placed on the media to make appropriate use of this material and shielding and guarding the privacy of people who are not affected. Because even in the bill it talks about people who are...when it's describing a subject, those who just, and I'm paraphrasing, who incidentally may be shown or incidentally may be heard, they're not within the definition of subject. But I think you've probably said as much as you could say on that question that I asked, and all you'd be doing is repeating. But I want to ask you about a definition. Do you have a copy of the amendment? [LB1000]

OWEN YARDLEY: I do. [LB1000]

SENATOR CHAMBERS: Mine is two-sided, so I want to be sure that I have the...on page 1, and tell me when you've got it. [LB1000]

OWEN YARDLEY: I have it. [LB1000]

SENATOR CHAMBERS: Okay. I'm going to read it so that for the record it will be clear what I'm going to ask you. "Member of the public means any person who is not an on-duty peace officer." When is a peace officer deemed not to be on duty? [LB1000]

OWEN YARDLEY: My belief is this bill is applying to those officers who are actually in...well, not in uniform but in a working capacity. [LB1000]

SENATOR CHAMBERS: Okay. Now let's go to line 22, "Peace officer or officer means any officer or employee of a law enforcement agency authorized by law to make arrests." So in one case, in line 20, a peace officer is a member of the public, because when they put those qualifying words "on-duty" in front of "peace officer," and yet the officer is not always on duty, then that officer is a member of the public. [LB1000]

OWEN YARDLEY: As it's stated, yes. [LB1000]

SENATOR CHAMBERS: But when it defines peace officer, starting in line 22, "Peace officer or officer means any officer or employee of a law enforcement agency authorized by the law to make arrests." So based on this, all an officer has to do is be an employee and he or she is a peace officer. So is this officer, one in the same time, a member of the public and also a peace officer? Or let me put it a different way. When this officer is not on duty then that officer becomes a member of the public and is no longer a peace officer, correct? [LB1000]

OWEN YARDLEY: For this bill I'd say yes. [LB1000]



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

Judiciary Committee  
February 18, 2016

---

SENATOR CHAMBERS: I got to chew on that a bit more, but I wanted to be sure that, again for the record, the areas where I have a little bit of concern, and I've brought it out. And that's all I would have of you. Thank you. [LB1000]

SENATOR COASH: Any other questions for the chief? Senator Pansing Brooks. [LB1000]

SENATOR PANSING BROOKS: Thank you for coming, Chief. Again, just looking back at that language on (4) and (5) that Senator Chambers brought up, I mean in one instance they're not an on-duty peace officer but they are automatically authorized to make arrests, right, so... [LB1000]

OWEN YARDLEY: Correct. [LB1000]

SENATOR PANSING BROOKS: ...even if they're not on duty? [LB1000]

OWEN YARDLEY: My interpretation would be if they're not on duty, you know, a lot of things can happen to officers just like anybody else. They can be victims of crime and any other situation. So they will be treated, when off duty, just the same as any other member of the public. [LB1000]

SENATOR PANSING BROOKS: It seems like, though, (5) brings them back into not being a member of the public. [LB1000]

OWEN YARDLEY: Depending on how you read it, yes, I think it could. [LB1000]

SENATOR PANSING BROOKS: Okay, because that is...I mean then no police officer would ever be considered a member of the public, so...in that regard. Okay. And then the other thing I was just wondering about was how have you handled...I think there's a lot of space needed to hold all this information. Do you have the capability to hold it at UNL? And how would...how do off...what about police stations like Lincoln and Omaha that are very large? [LB1000]

OWEN YARDLEY: Well, there's a few ways you can handle the storage. Third-party vendors offer storage. We're fortunate probably at the university that we can leverage some other resources at the university, you know, computer storage capabilities to manage it in house. [LB1000]

SENATOR PANSING BROOKS: So how long do you store it? [LB1000]

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

Judiciary Committee  
February 18, 2016

---

OWEN YARDLEY: How what? [LB1000]

SENATOR PANSING BROOKS: I mean are you storing everything, I mean all? You're downloading every officer's information every day? [LB1000]

OWEN YARDLEY: We record...officers record investigative contacts with people. They don't have them turned on from the minute they begin their shift to the minute they end it. [LB1000]

SENATOR PANSING BROOKS: Okay. [LB1000]

OWEN YARDLEY: It's only during investigative contacts. When they come in at the end of the day or during their shift, they'll download it. It gets downloaded into the storage system. [LB1000]

SENATOR PANSING BROOKS: Okay. Do you know if in the country there is a presumption, like if an officer doesn't turn on his or her camera, if they're in a situation where there's a claim against a police officer, is there an extra burden on that police officer or that police department to prove why they didn't turn it on in that situation where there was some claim against the department? [LB1000]

OWEN YARDLEY: Again, that goes back to my comment about 100 percent reliable. The cameras are another technology device and, you know, from our experience with computers, cell phones, everything else, they're not reliable all the time. They may not stay up. Batteries may go low on them. There's just a lot of things that can possibly go wrong. But when a situation occurs and the officer has a camera, the office...and it's not working for whatever reason, there most likely will be a perception that there's something wrong with that. It's incumbent on the agencies to investigate that and see why it occurred, whether it was a technology issue or whether it was an action on the officer, and then take appropriate action from there. [LB1000]

SENATOR PANSING BROOKS: And have you had to hire extra people to handle this technology? [LB1000]

OWEN YARDLEY: For our storage, it's... [LB1000]

SENATOR PANSING BROOKS: Storage and technology... [LB1000]

OWEN YARDLEY: Well, the system, I'd say,... [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR PANSING BROOKS: ...tweaking. [LB1000]

OWEN YARDLEY: ...managing the cameras and the storage, it's probably for us the equivalent of a half FTE, half an employee. [LB1000]

SENATOR PANSING BROOKS: Okay. Thank you, Chief Yardley. Appreciate it. [LB1000]

SENATOR COASH: Senator Chambers. [LB1000]

SENATOR CHAMBERS: Will you look on page 4 so I can zero in on exactly what I'm interested in. It talks about...well, I'll just read it, starting in line 3, "a peace officer or other employee of a law enforcement agency subject to section 2 of this act, its designated agent, or an employee of such agent shall not intentionally and knowingly release a recording created with a body-worn camera without the permission of the applicable law enforcement agency. A person who violates subdivision (1)(a) of this section shall be guilty of a Class V misdemeanor." And if an employee had done something like that, there's another section of statute which relates to a person who did not properly discharge his or her duties pursuant to the law, rules, and regulations and the punishment can be more severe. This is something like an anti-whistle-blower provision, isn't it? [LB1000]

OWEN YARDLEY: I can't...I don't recall exactly which one of these. One of these is very similar to an existing statute about the destruction of public property. [LB1000]

SENATOR CHAMBERS: Well, I'm just talking about this one now. [LB1000]

OWEN YARDLEY: No, I realize that. [LB1000]

SENATOR CHAMBERS: Okay. [LB1000]

OWEN YARDLEY: But one is very similar to already existing statutory language. [LB1000]

SENATOR CHAMBERS: But that doesn't matter. I'm asking you what this means wherever it is, because a lot of times a bill comes and it might have reference or a cross-reference someplace else. But I look at what we're being asked to put in here. So if it's wrong here, it would be wrong someplace else. But the bill is before us and I just want to hold you to what you can look at and see exactly what I'm asking my question about. This would mean that if an officer or an employee was aware that the chief had made statements and representations about what had

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

Judiciary Committee  
February 18, 2016

---

happened and everything the chief said was false, and this person released this to the FBI, then that would be a misdemeanor, wouldn't it? Or to the Justice Department, it would be a misdemeanor, based on the language of the law. If it's knowingly and intentionally released, the language of the statute is what has to prevail. If this person knowingly and intentionally released it to the Justice Department because this person knows that what the chief released to the public is absolutely false, or even the chief may have been implicated in something that was illegal, this person couldn't release it to the county attorney without committing a crime. Isn't that right, based on the language of the statute? [LB1000]

OWEN YARDLEY: I guess it could be, yeah, could be interpreted that way. [LB1000]

SENATOR CHAMBERS: You don't have to interpret it. I'll ask you to read the language for me then because we may not be reading the same language. If you would start, okay, in line 5, starting with "an employee." And would you read it aloud, please? [LB1000]

OWEN YARDLEY: "...or an employee of such agent shall not intentionally or knowingly release a recording created with a body-worn camera without the permission of the applicable law enforcement agency." So, yes, you would be correct. [LB1000]

SENATOR CHAMBERS: And then following that, what does it say about that person if such a release is made? [LB1000]

OWEN YARDLEY: The person who does release it? I'm sorry, the person who does release it? [LB1000]

SENATOR CHAMBERS: Yes. [LB1000]

OWEN YARDLEY: It violates the section of this and is guilty of a Class V misdemeanor. [LB1000]

SENATOR CHAMBERS: And a Class V misdemeanor is a crime, isn't it? [LB1000]

OWEN YARDLEY: That's correct. [LB1000]

SENATOR CHAMBERS: So if this person were a whistle-blower, then this statute makes it a crime to be a whistle-blower, doesn't it? [LB1000]

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

Judiciary Committee  
February 18, 2016

---

OWEN YARDLEY: It possibly could, yes. [LB1000]

SENATOR CHAMBERS: Okay. I have problems with this and I want to make it clear to the people in law enforcement so they won't say, well, why didn't he bring that up while we were there and we could have addressed it. So I'm not going to argue with you or quarrel with you. I just wanted to focus on what I have a concern about. [LB1000]

OWEN YARDLEY: Can I have one more response? [LB1000]

SENATOR CHAMBERS: Sure. [LB1000]

OWEN YARDLEY: I know the intent of this was...didn't take into account of releasing it to a federal agency or somebody like that who may be able to do an investigation such as a civil rights issue, things like that. It was more that it would be inappropriately released to...you know, so it shows up on...sensitive materials are now going to show up on You Tube or some other social media platform inappropriately. I honestly did not consider a whistle-blower provision or rationale to this simply because there's other provisions for protecting whistle-blowers. [LB1000]

SENATOR CHAMBERS: But, see, you look at it from the standpoint of a law enforcement person, and I look at it from the standpoint of a policymaker putting laws into place that create crimes. And that's a problem that I have with this and there's nothing in here that I see which says unless it is released to a federal agency or the county attorney or something of that nature. And like I said, that this is not to be argumentative so you don't even have to respond to anything I say unless you just want to. But that's all I would have in the way of questions. [LB1000]

OWEN YARDLEY: Okay. [LB1000]

SENATOR COASH: I don't see any other questions. Thank you, Chief. Appreciate (inaudible). We'll take the next testifier in support. Is anyone here to testify in support of LB1000? Okay, seeing none, we'll move on to the opposition testimony. Welcome. [LB1000]

BRUCE LANG: Senator Coash, committee, I'm Bruce Lang, B-r-u-c-e L-a-n-g, chief of police for the city of Beatrice. I'm also representing the Police Chiefs Association of Nebraska. I speak to you today in opposition to the bill for a couple of maybe unconventional reasons, but you touched on it earlier. Our position is that procedures, specifically nuts and bolts procedures, put in state law become very difficult to deal with when we're talking about technology. For example, we start talking about amount of storage. For example, we're talking about keeping it now for 90 days. In a large agency, those...when they start to implement this, and Beatrice has

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

Judiciary Committee  
February 18, 2016

---

been using body cameras for a little over a year now, when they start implementing they're going to find that the storage is pretty mind-boggling and the storage requirements. Just an agency our size is already keeping them for 15 days for the general storage and then the evidence on top of that. And we're in the 4 to 5 terabyte storage requirements just for a city our size. We don't think that a state law is the place to put this. We think that put procedures with the Crime Commission. I'm fine with...we're fine with a statute that would dictate to the Crime Commission that they make sure that all law enforcement have policies in place that deal with the nuts and bolts of how these things work, because we think that that's the place that can be easier...it would be easier for them to change. What we know is that technology changes much faster than the Legislature changes laws, and we don't even know what technology will be here a year or two from now. And as far as how body cameras work, for example, most of the technology now is interfacing the body cams with the in-car cameras and with their computers. And the one we...it's hard to then write laws that deal with how are we going to handle that storage, how are we going to manage that, and when we get into things specific to how long we're going to keep them and, you know, some of those kind of things, you talk about keeping all of the information versus evidence. And when you talk about evidence, for example, what we have our officers do is on every contact that they have, as the senator pointed out, if somebody gets invited to the house, we look at it from a little bit different angle, because we have the officer turn it on so that if we come into your house to take a report and then you call me the next day and say, your officer was so rude or, heaven forbid, he touched me inappropriately or he said something, I have that. And that officer has got to have that on so I've got that recording that we can come back then and look into those allegations. That kind of complaint happens every day in every community in Nebraska and probably across the country. That's where these cameras are of their greatest value, is they keep officers accountable because they know, if I'm rude, not just abusive but if I'm rude, that's going to come back and they're going to be able to see that and I could face disciplinary problems. Senator Chambers' concerns about releasing them--I'm not speaking for the Chiefs Association now but as the chief for Beatrice--reducing restrictions on releasing that information, I don't see that as being an issue. So I don't think we're hanging our hat there. [LB1000]

SENATOR COASH: Chief, let me ask you a question. You mentioned at the opening of your testimony that you're okay with putting this into the Crime Commission. [LB1000]

BRUCE LANG: Yes, sir. [LB1000]

SENATOR COASH: So if the Crime Commission were given statutory direction to promulgate rules and regulations around these,... [LB1000]

BRUCE LANG: Yes, sir. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR COASH: ...as Senator Mello has done, you'd be okay with that? [LB1000]

BRUCE LANG: Senator, on behalf of the Police Chiefs Association, we would prefer that. And personally, myself, I would prefer that. [LB1000]

SENATOR COASH: So I'm confused. If you have to do the same thing, what do you care if it's the Legislature telling you to do it or the Crime Commission telling you? [LB1000]

BRUCE LANG: Great question. Thank you. The reason is if the Crime Commission has a statute that says, okay, we're going to do storage of all of our body camera footage, we're going to keep it for 45 days, in six months or a year the technology changes to where it's not even captured in that fashion or it's kept in a different way, we can...the commission can then work to change those rules and it's a much simpler process. They can come back, they can get a coalition of law enforcement and anybody else that you need to have, and they can promulgate the rules on the fly, so to speak, and it's so much easier to change. [LB1000]

SENATOR COASH: But does the commission have the authority to mandate what law enforcement does? [LB1000]

BRUCE LANG: No, it doesn't. But this bill right here, basically what it does is it doesn't mandate anything anyway because you'd simply not use them. You know, they can simply not have them on. And you know, then you've defeated what body cameras...the folks like the ACLU and...when that all came about, that was because of police misconduct. Senator Chambers points out that, you know, this is ways to show whether police misconduct. We agree. We agree that that's a good tool for that. We want to have them on. We're just saying that the nuts and bolts of how we do this is best served outside of a state law. [LB1000]

SENATOR COASH: Okay. Senator Krist. [LB1000]

SENATOR KRIST: I'm going to make a statement, Chief, and I just want you to agree or disagree. [LB1000]

BRUCE LANG: Okay. [LB1000]

SENATOR KRIST: If a local political subdivision decides to equip body cameras, all of their police and law enforcement officers with body cameras, there should be a policy published and that policy should be accessible to the general public. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

BRUCE LANG: I agree. [LB1000]

SENATOR KRIST: Okay. Another statement: The Crime Commission cannot mandate any kind of policy or procedure. It can suggest that you set up a...set aside a policy but it can't mandate that you would do something. [LB1000]

BRUCE LANG: Agreed. [LB1000]

SENATOR KRIST: Okay. So if I'm sitting in this desk and I'm concerned with making sure that you put together a policy, would you like me to change this bill--this is a question--... [LB1000]

BRUCE LANG: Uh-huh. [LB1000]

SENATOR KRIST: ...change this bill to say, Mr. Fisher, you will do this and you will do this on the authority of the Legislature to make sure that there's a standard policy, it's a published policy across the state? [LB1000]

BRUCE LANG: We're 100 percent okay with that. [LB1000]

SENATOR KRIST: Okay. That's what I thought you were saying. [LB1000]

BRUCE LANG: We're 100 percent. [LB1000]

SENATOR KRIST: I didn't think you were trying to get around the whole... [LB1000]

BRUCE LANG: No, we have...I mean we have a policy. [LB1000]

SENATOR KRIST: ...accountability. [LB1000]

BRUCE LANG: Yeah. And just one of the earlier comments, lots of agencies in Nebraska have body cameras now, Kearney, Grand Island, some...lots (inaudible). [LB1000]

SENATOR KRIST: Okay. But my problem with all of those people doing different things... [LB1000]

BRUCE LANG: Uh-huh. [LB1000]



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

Judiciary Committee  
February 18, 2016

---

SENATOR KRIST: ...is that I don't know what they're doing. [LB1000]

BRUCE LANG: I agree. [LB1000]

SENATOR KRIST: And all I know is when he walks into my home, I have some of my colleagues that are really concerned with their constitutional rights and privacy and all that, and I respect that,... [LB1000]

BRUCE LANG: Uh-huh. [LB1000]

SENATOR KRIST: ...so they may ask them to turn it off. They don't know what your policy is. [LB1000]

BRUCE LANG: Correct. [LB1000]

SENATOR KRIST: They may be at a social gathering in Beatrice and not know how things are run in Beatrice. This is one of these things that I believe if we're doing our job correctly, we need to make sure that if there is a compelling reason to do something. So what you've said is there is a compelling reason to make sure that policy is in place and that it's understood by the population that you serve. And just as we talked about local control with our...in many situations, I won't bring up a specific bill, but... [LB1000]

BRUCE LANG: Right. [LB1000]

SENATOR KRIST: ...just like we talk about local control, I would think that if we would give the Crime Commission the power to do such, that they would take or solicit the input from locals and make sure that that works. And I think that's what you were saying about they are better suited to make those kinds of decisions and mandates. [LB1000]

BRUCE LANG: That is what I'm saying. [LB1000]

SENATOR KRIST: Good. Thank you. [LB1000]

SENATOR COASH: Senator Pansing Brooks. [LB1000]

SENATOR PANSING BROOKS: Okay. So I just want to clarify. So it's necessary, as Senator Krist is saying, for the Legislature to say the Crime Commission shall set this and law

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

Judiciary Committee  
February 18, 2016

---

enforcement agencies will follow the standards set forth. Because the Crime Commission doesn't...it does not oversee every law enforcement agency in the state of Nebraska. Is that correct? [LB1000]

BRUCE LANG: Well, it..."oversee," I don't know if that's the right term. [LB1000]

SENATOR PANSING BROOKS: Well, okay. [LB1000]

BRUCE LANG: Nobody oversees an individual public police department, sheriff's office. There's no grand person that oversees that, per se, if that's what you're asking me. [LB1000]

SENATOR PANSING BROOKS: Well, I...it's my understanding that they have sort of a jurisdiction over certain sections or departments, either... [LB1000]

BRUCE LANG: There are certain things that are required by statute that they are tasked with making sure occur. One that comes to mind is racial profiling, statistics and gathering of those things. That comes just off the top of my head. So the precedent is set that they do, do that, but they don't... [LB1000]

SENATOR PANSING BROOKS: But they have no teeth to enforce unless we state all agencies shall, by a certain date, have some sort of policy. [LB1000]

BRUCE LANG: Right. And we're okay with that. We're just saying in the statute, the nuts...putting the nuts and bolts, days, storage, that kind of thing, we don't think that belongs in a state statute. [LB1000]

SENATOR PANSING BROOKS: Well, at least you're consistent on that. That's good. Thank you. [LB1000]

SENATOR COASH: Senator Williams. [LB1000]

SENATOR WILLIAMS: Thank you, Senator Coash. Mr. Lang, I think you testified that you have a policy already in Beatrice. [LB1000]

BRUCE LANG: Yes, sir. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR WILLIAMS: How close is that policy to the amendment that we're looking at here? [LB1000]

BRUCE LANG: To be honest with you, not very, because we deal with...we don't deal much with release of that. We keep it all anyway. We keep it for X number of days. So our policy deals with those kind of things, that the officer has to turn it on at a contact. We look at more of a "thou shalt" kind of a policy just of the things we want our officers to do with it, probably not as all encompassing as this kind of a statute would be. [LB1000]

SENATOR WILLIAMS: And you've had experience. You've been using body cameras, I think you said, for over a year now. [LB1000]

BRUCE LANG: Yeah, about 13 months. [LB1000]

SENATOR WILLIAMS: When you review this amendment as it is written, would it be difficult for your department to comply with these requirements? [LB1000]

BRUCE LANG: No. In short, no, it would not be difficult. The... [LB1000]

SENATOR WILLIAMS: And would it still allow you to accomplish what you believe as a department you should accomplish with the use of body cameras? [LB1000]

BRUCE LANG: With the technology today, yes. [LB1000]

SENATOR WILLIAMS: Thank you. [LB1000]

SENATOR COASH: I don't see any other questions. [LB1000]

BRUCE LANG: Thank you. [LB1000]

SENATOR COASH: Thank you, Chief. Take the next testifier in opposition. Seeing none, is there anyone here to testify in the neutral capacity? [LB1000]

WALTER RADCLIFFE: (Exhibit 5) Mr. Chairman, members of the committee, my name is Walter Radcliffe, R-a-d-c-l-i-f-f-e. I'm appearing before you today as a registered lobbyist neutrally on LB1000 on behalf of Media of Nebraska, which is an organization comprised of the Nebraska Press Association, Broadcasters, both the Lincoln newspaper, the Omaha World-

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Transcriber's Office

Judiciary Committee  
February 18, 2016

---

Herald, and the outstate dailies. I want to thank Senator Mello for addressing some of our concerns which, Senator Chambers, were very similar to yours with regards to the public nature of any recordings from body cams. As the green copy was originally drafted, we were concerned that the recordings would not be public record. And we worked with Senator Mello through several iterations, and the amendment that you have before you treats...when we began, Senator Mello expressed the desire that this be treated the same way as dash cams. And very honestly, there are no statutes on dash cams that speak to anything about them and certainly nothing about their public records or their public record availability. The amendment that you have before you does not mention anything about whether body cam recordings are or are not public records. Therefore, they would be treated under the public records law. And as you know, anything that is not specifically exempt is deemed a public record so, therefore, it would be our position that they are public records, unless they fall under the investigatory exception in the public records law. As you remember, Senator Chambers, when that law was crafted, law enforcement came forward and said, we do not want to make available our investigative reports when they are in progress, and there was an agreement reached that that was in fact appropriate, so, therefore, anything that is deemed part of an investigative report is not a matter of public record. Now, admittedly, there have been instances in the state when that's been a point of litigation, infrequently but occasionally it has. So consequently, that's why the Media of Nebraska is neutral on LB1000. Sitting here today--you always learn something when you come to a hearing, especially when Senator Chambers has read the bill--the one thing that did...that concerned me and I think we should talk...we could talk about this because we hadn't noticed it, is the preemptory nature of a collective bargaining agreement. We certainly would not want a collective bargaining agreement to allow something to become a public record and supersede state statute. But I think that's something that could be resolved because in all my discussions with Senator Mello and his staff, they had indicated that their intention was to treat body cam records the same as dash cam records and the same as any other public records. So we have no problem with the investigatory exception and would believe that would apply the way it's currently drafted. I'd be happy to try to answer any questions. [LB1000]

SENATOR COASH: Senator Pansing Brooks has a question. [LB1000]

SENATOR PANSING BROOKS: I just have to react because I do take notes on every single thing. This is the first time that you've appeared, I believe, before our committee in the past two years. [LB1000]

WALTER RADCLIFFE: Oh, this is home to me, Senator Patty Pansing Brooks, as Senator Chambers knows. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR PANSING BROOKS: I know, but I'm just...I am blown away that this is the first time in two years that we've seen you before the committee. [LB1000]

WALTER RADCLIFFE: Well, usually the committee handles things so well that you don't need any advice or direction from me. [LB1000]

SENATOR PANSING BROOKS: Yeah, you're just pulling us off the floor instead, so. [LB1000]

SENATOR KRIST: Save the watches. [LB1000]

WALTER RADCLIFFE: Yeah. Yeah. [LB1000]

SENATOR COASH: Senator Chambers. [LB1000]

SENATOR CHAMBERS: Mr. Radcliffe, the county attorney and I both have concerns about the police investigating themselves, grand jury proceedings that are closed to the public. He pointed out that there is a video that they made with one of these cameras on the dash and that the investigation is over but the police still will not release it. That's what I mean. I don't trust them at all. [LB1000]

WALTER RADCLIFFE: I realize the question of when an investigation is terminated and, quite frankly, when something is no longer a part of that investigative record is not a settled matter. It's taken on a case-by-case basis. And as you know, Senator Chambers, if it's not resolved and somebody wants to pursue it in the courts, they can and do. I do agree that is and remains an open question. [LB1000]

SENATOR CHAMBERS: And they can keep saying that it's a part of investigation and you have to take their word for it, and I don't believe them and I don't trust them. But in the statute, if you give them the authority to make those decisions, the decision is going to be to keep the public from knowing because police have a lot to hide. Why do you think they just now decided to charge these two cops in California with having raped these two women over a period of years? Other cops knew about it. People had probably complained about it. But maybe somebody in the media got hold of it and they couldn't hide it any longer. In Chicago, you heard me mention it but I'll mention it again, all of the cops who wrote reports and were there lied. They outright lied. And the authorities in the police department and in the law department knew they had lied because they had seen the video, and that's why it was not to be released. But when it was ordered released, then you could see that all of them lied. And I feel they will lie about everything. But they say I'm against the police. No, I've dealt with the police and I've gotten

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

Judiciary Committee  
February 18, 2016

---

information from people who work with the police who tell how they do things, and people know it anyway. So I don't see any value in this bill at all. If they want body cameras, let them get them. And the only reason they'll use them is to see if they did something that will make the police look bad. And maybe the public will find out about it and they'll tell, hey, if you're going to do that, pull the shades down, make sure nobody is around when you do that next time. But they're not going to on their own initiate action against a cop. And when the county attorney was accused in a publication in England about having too cozy a relationship with the police and yet he was the one who was going to conduct the investigation for the grand jury or be with over the grand jury, he mentioned two cases for sure that I know something about. One was where a cop had forced a prostitute to perform oral sex on him. The other was where a cop was at some activity that was filmed by citizens and one of the cops had destroyed information in a camera. That wasn't...that didn't come about because of a police investigation. The prostitute was smart enough to use a plastic card and deposit his semen on it. That was concrete evidence. It wasn't because the police investigated or the county attorney did anything. She did the work and it was undeniable--there it is. And the other case where he went after a cop for destroying the memory in a telephone, there were other video representations on which that charge could be based. So if that prostitute had not done what she did, nothing would have been done. Had there not been independent video evidence in the other case, nothing would have been done. So even when the county attorney decides to do something, it's not as a result of investigating by his office or he sees something that he thinks is not as it should be. I'm expressing my opinions to show why I don't trust them. So based on what you said and what Senator Mello has said, there's nothing in here that indicates there is any point at which the public would be entitled to have that information released because, as you said, how are you going to determine when an investigation is over? If the police agency says, no, it's ongoing, it's open, you can't get it ever. So I don't want a sham here, the public think there's something here and it's not. I think media people are too easily satisfied. [LB1000]

WALTER RADCLIFFE: Senator Pansing Brooks, do you see why I don't come very often? (Laughter) But let me respond to what Senator Chambers said with regards to the media's interest in this. I'll leave the...some things never change in this committee for 40 years. (Laugh) But the issue of when an investigation...when something no longer becomes part of an investigative report and can become public, yes, there have been instances where that's been contested. There's no question about it. However, in all fair...I say in all fairness, but in all reality to everybody involved, those cases are few in number. I mean, by and large, when public record requests have been made by the media from any public agency, they are usually complied with, and complied with within the statutorily prescribed time. Yes, Senator, anything that can be abused will be abused, and we all know that. But this does bring body cameras within the prescribed and existing public records law. My only concern, and I just want to quickly review that after listening today, would be with regards to the superseding of the law by a collective bargaining agreement. And I don't think that, if in fact that's the case, I can't imagine that that

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

Judiciary Committee  
February 18, 2016

---

was an intentional thing. So I'd say again, Media believes that the way the amendment is drafted, the public records issue of body cams is the same and is protected as it is with dash cams, recognizing the potential problem that Senator Chambers raises. [LB1000]

SENATOR CHAMBERS: Senator, excuse me, Mr. Radcliffe, the only time they're going to withhold something is if it's detrimental to their interest. So those few and far between times when they don't want to release it is exactly when it needs to be released. If you tell them you can decide what you're going to release, you tell a thief that, then the thief will release when he went to church, when he was playing with the children, when he's given money into the offering instead of taking it out. And then you say, well, we want to see what you were doing between 8:30 and 9:30 on Wednesday, October 12. He says, well, I'm not going to show you that, because at that time he was plying his trade. And by comparing police to a thief, based on what I feel, from what I know they've done in my community, that's upgrading them. And I'm not saying every officer, but I'm saying the kind of information that the public needs to see, the chief is not going to reveal it. Why wouldn't he want the public to see that when his officer shot this man in the back who was unarmed that there were other officers who were supposedly menaced but they didn't see the need to shoot him? I have to speculate. But based on what was written, that's what I come up with. And the chief will not release that tape to this day. The man is dead, so what...and a cop was fired, so what reason is there not to release it? Because it would show activities that the Omaha police engage in that the chief knows about and allows to take place. [LB1000]

WALTER RADCLIFFE: Senator Chambers, whether this law, this bill, passes or doesn't pass, its impact regarding the points that you raise...it is not impactful. [LB1000]

SENATOR CHAMBERS: Well, here's the question that I was working up to. If I could get that into the law, would Media of Nebraska oppose that kind of language in the law where they've got to come clean on everything? [LB1000]

WALTER RADCLIFFE: Media has always supported anything that enhances disclosure. [LB1000]

SENATOR CHAMBERS: I thought...okay. That's all that I have. And since I see him so seldom, I have to renew old acquaintances so they won't be forgot. [LB1000]

WALTER RADCLIFFE: It would be very difficult, Senator Chambers, to forget our relationship. [LB1000]

SENATOR CHAMBERS: That's all I have. [LB1000]

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

Judiciary Committee  
February 18, 2016

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SENATOR COASH: Thank you, Senator Chambers. Thank you, Mr. Radcliffe. [LB1000]

WALTER RADCLIFFE: Thank you. [LB1000]

SENATOR COASH: Is anyone else here to testify in a neutral capacity? [LB1000]

GREG GONZALEZ: Good afternoon, members of the Judiciary Committee. My name is Greg Gonzalez, Omaha Police. Probably saved the best for last. So I just want to let everybody know that this bill I'm supporting neutral because it doesn't mandate body cameras. A lot of states in the United States actually do. And so this bill, the issue that we have with it is not so much what's going to be codified in law, because we're going to roll out 115 cameras here in the next couple months. We don't have them out but we did do a pilot study in the summer of last year and it proved exactly what all the studies are showing, that it does alter behavior for not only the officer but the suspects and everybody involved. So we support the efforts of Senator Mello. We actually have had some conversations with him. We just don't support the fact that one of the issues that we need to really look at if we're going to codify in law is the cost of storage, especially for a department our size. We're not a smaller jurisdiction. As you know, we have 450 officers assigned to patrol. And our policy will already dictate, if you're lawfully at a residence, absent really minor circumstances like the one that you mentioned, Senator, there's some leeway for the officer to turn the camera off. But most of the time it's pretty specific, our policy will dictate you will not turn it off once you're lawfully on a radio call, traffic stop, or any lawful situation where called 911. We do know, at the tune of almost \$1 million it's going to cost us for 115 body cameras. Luckily, we have private donors that have assisted us. However, we know the storage. We really don't know what it's going to cost because we're under a five-year agreement that we know we're going to be able to keep all the evidence for those five years. Our policy will say two years absent an officer-involved shooting, like you mentioned, where we'll keep it longer. However, after that agreement, it's going to cost millions of dollars. In fact, some departments have abolished their body camera policies and their cameras for statute that's exactly, one, requiring it, or, two, because they can't afford it or too many FOIA requests. So if you have any questions I'm here to answer, because for about the past two years we've kind of lived the body camera track, if you will, so. [LB1000]

SENATOR COASH: Senator Chambers. [LB1000]

SENATOR CHAMBERS: Let me address him in a way that's going to ruin his reputation. "Brother" Gonzalez,... [LB1000]

GREG GONZALEZ: Yes. [LB1000]



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

Judiciary Committee  
February 18, 2016

---

SENATOR CHAMBERS: ...you heard some of the comments that I made about a specific incident. Why would the chief not allow that camera video in the cruiser to be released, if you know and if you won't disclose something that under ordinary circumstances you're not supposed to? [LB1000]

GREG GONZALEZ: I don't know exactly, but I will tell you as a matter of personnel issue, he won't unless that goes to arbitration, that specific case. [LB1000]

SENATOR CHAMBERS: I didn't quite hear everything. [LB1000]

GREG GONZALEZ: As a matter of practice as a personnel issue, the chief will not, and in fact due to collective bargaining, can't release personnel matter information unless that specific case goes to arbitration. [LB1000]

SENATOR CHAMBERS: So this is one of those situations where the police can collectively bargain to the point where the chief's hands are tied and information that ordinarily would be a public matter shall not be. And we can change that by statute though. [LB1000]

GREG GONZALEZ: Right. [LB1000]

SENATOR CHAMBERS: And the reason I want my colleagues to get this, they think I make up things when I say that the collective bargaining agreement can trump statute. But it can only do it to the extent that we, in statute, allow it. For example, it says (inaudible) something and then it said, provided that the collective bargaining agreement is not violated, or something like that. My view is that everything that those cameras pick up ought to be a matter of public record. These are public employees doing the work of the public. They're paid with public money and the public has no way of knowing anything because there's no oversight and it's the organization deciding on its own. I wouldn't want to see the Legislature able to determine that every single thing we do is closed to the public. We are the servants of the public. And the reason I asked the question like this, so that you could be free to answer and tell why that particular thing is not being disclosed. And the chief...are you saying that you know that the public...I meant that the collective bargaining agreement would stop the disclosure of this particular one even if the chief wanted to disclose it? [LB1000]

GREG GONZALEZ: I'm not saying that absolute, but I do know as a matter of practice of the officers, there's a sense of due process, too, on the officer. So we have to be very delicate to not violate their rights, especially when it comes to personnel disciplinary issues. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR CHAMBERS: Well, if the officer had been fired, then what difference does it make what is disclosed... [LB1000]

GREG GONZALEZ: That would be... [LB1000]

SENATOR CHAMBERS: ...because he's no longer a member of the union? [LB1000]

GREG GONZALEZ: That would be up to the law department. I don't know if that officer is going to appeal that termination. [LB1000]

SENATOR CHAMBERS: Okay. [LB1000]

GREG GONZALEZ: There's a lot of unknowns. Wish I could answer. [LB1000]

SENATOR CHAMBERS: And I don't want to ask you beyond what you might know or be able to say, so that's all I have. [LB1000]

GREG GONZALEZ: Yeah. Sorry. [LB1000]

SENATOR CHAMBERS: They didn't get how I addressed you. What do you think his colleagues are going to say when they say, he went in there and Senator Chambers referred to him as "Brother," what's going on? [LB1000]

GREG GONZALEZ: We're all brothers and sisters. [LB1000]

SENATOR CHAMBERS: See, he's quick, isn't he? (Laughter) [LB1000]

SENATOR COASH: Hold on a second. Senator Pansing Brooks. [LB1000]

SENATOR PANSING BROOKS: Thank you for coming in. I guess I'm just interested because I think we're at such a cusp of a new world of what we're going to do because, of course, the police want to protect themselves and not have everything...you know, the one piece that I really took away from law school was my "con" law professor who said don't be at the wrong place at the wrong time. And I think that that's so true in many cases. And you know, it's interesting because the police have that fear as well, having...being at the wrong place at the wrong time or saying the wrong thing in the wrong way that's seen inappropriately or that the public could say that's totally wrong, you're mistreating a member of our community, or something like that. So

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

Judiciary Committee  
February 18, 2016

---

now we have a situation where the police are as concerned about that as citizens are concerned about it. [LB1000]

GREG GONZALEZ: Uh-huh. [LB1000]

SENATOR PANSING BROOKS: And in a way it's really a hard balance because what's happening is people...I feel like I need to tell my family don't allow the police to come in for whatever reason. And I've never said that before. I've always welcomed police in. And when they came over to look, I want to welcome and have a good relationship. But if I'm going to be filmed and have anybody able to see anything that's going on and assumptions made that I don't even understand or can control or know, then that's a sad state of affairs. And it becomes very one-sided if the police can protect all of their actions but I, as a citizen, cannot protect mine. And that's not...we're going into this new world and either information is good and valid or it's not. And it seems to me we either need to release the information and make it available for everybody and we all live up to better standards of how to act and who to be and the citizen to represent, or we don't. And again, it becomes more of one of a police state and I don't think anybody really wants that. [LB1000]

GREG GONZALEZ: Right. I can only speak for Omaha. Our policy will be public and we're about 99 percent done with it. There is a prohibition section in there but that's based on best practices for IACP. So for a simple report call that you mentioned and that person really says, just don't want you to record, absent some other circumstances or...there is some leeway for the officer not to record. It's those times where the officer, based on their training and experience, should record, they say don't record, they have that ability to record. [LB1000]

SENATOR PANSING BROOKS: Right. [LB1000]

GREG GONZALEZ: So there is a balance. [LB1000]

SENATOR PANSING BROOKS: It's interesting. Thank you. [LB1000]

GREG GONZALEZ: Yeah. [LB1000]

SENATOR COASH: Senator Krist. [LB1000]

SENATOR KRIST: Did you say you were here on behalf of the chief and the police department or the union? [LB1000]

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

Judiciary Committee  
February 18, 2016

---

GREG GONZALEZ: I am, yes, sir. [LB1000]

SENATOR KRIST: Both? [LB1000]

GREG GONZALEZ: On behalf of the police department and the chief. [LB1000]

SENATOR KRIST: And the union? [LB1000]

GREG GONZALEZ: No, chief of police. [LB1000]

SENATOR KRIST: Okay. Just want to make sure because it might have been somehow some... [LB1000]

GREG GONZALEZ: No. [LB1000]

SENATOR KRIST: ...lack of clarity. So you heard the question that I asked the chief before. Would Omaha be in favor--and if you don't know that's fine--would Omaha be in favor of us telling the Crime Commission to form a policy statewide on the use of body cams? [LB1000]

GREG GONZALEZ: We would have no problem with that. I would just ask that we have a seat at the table because our really only disagreement necessarily with this is the cost of the storage and the parameters based on the storage. Other than that, everything else should be in policy. [LB1000]

SENATOR KRIST: And just one more time for the record because I think it's an important part of your testimony, in the pilot project that you have been running over the past...two years? [LB1000]

GREG GONZALEZ: We ran it in the summer, last summer, and we did it for I believe 12 weeks with 12 officers. And we're done now. [LB1000]

SENATOR KRIST: And the facts speak for themselves. It does change behavior on both sides of the gun, so to speak. [LB1000]

GREG GONZALEZ: There's no question. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR KRIST: Okay. And that, by itself, is probably a reason to figure out the storage issue so we can utilize the tool for both the protection of the officer and the public. [LB1000]

GREG GONZALEZ: That's correct. [LB1000]

SENATOR KRIST: Thank you very much. [LB1000]

GREG GONZALEZ: You're welcome. [LB1000]

SENATOR KRIST: Thanks. Come on up. [LB1000]

JIM MAGUIRE: Good afternoon, Senators. My name is Jim Maguire, it's J-i-m M-a-g-u-i-r-e. I'm here as a representative for the Nebraska Fraternal Order of Police, speaking in a neutral capacity. I'll be brief. There's a couple issues that I think that the body here should at least consider among the amendments on here. One, I did not see something specifically identifying the release of these body cam videos. I do think that there has to be something uniform and it has to be in this state law, in this bill, because if you leave it up to the individual departments, you're going to have piecemeal pieces of policy that's going to say you can release this, and this department is not going to release it, and a third department might release it, what have you. It needs to be completely uniform. I've looked through the amendments. I just don't see it. One thing that you should at least consider, we've all been talking about the use of body cams for police misconduct. Let me throw a wrinkle at you on some of the things that you might have to consider. You are all in politics, and politics can be dirty. Don't think for a second that a political contender against you won't call us to have us pull you over. And then the first thing they're going to say is, I want a copy of that video, to see your behavior towards police. We get...I've personally had it happen to me when it comes to private detectives, where you have spurned spouses that are going through divorces and they're trying to get custody of their kids. First thing they're going to say is, this person is a suspended driver. You find out that they are. You pull them over. You either take them to jail or write them a ticket. First thing that that private investigator asks me, I need a copy of that body cam. These are certain issues that should be considered. Don't...think of the other side, instead of solely police misconduct. The other issue that I would bring up is in the bill it says that the officer must inform the citizen that they're being recorded. It's a one-party consent state. We don't inform them when we pull them over and advise them that they're under, you know, audio. And if we have you step out, you're under audio and video. If you are being arrested for murder or something like that, it's mandatory that you take them back to the office and that they be interviewed under a recording. We don't have to advise them that they're being video-recorded. So much as we are to expect now that citizens are recording us, it should be...they should just expect that, yeah, there's a very good chance that I am going to be recorded by the law enforcement officer. That's all I have. Thank you. [LB1000]

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

Judiciary Committee  
February 18, 2016

---

SENATOR COASH: Thank you. Anyone else here to testify in the neutral? Seeing none, Senator Mello. [LB1000]

SENATOR MELLO: Thank you, Vice Chairman Coash, members of the Judiciary Committee. Just to point out a couple clarifications in regards to some question and answer. And I appreciate Mr. Radcliffe, in regards to representing Media of Nebraska. Apparently, the "Twitterverse" is out there asking questions in regards to what organized media would be supportive of making this exempt from public records. I maybe was not as clear in regards to answering the question that the amendment that we agreed to with Media of Nebraska treats, essentially, body camera footage the same way it does with dash cam footage, which is a public record. It's simply exempt, as you heard, for investigatory purposes. I understand and can appreciate Senator Chambers' concern even with that change that we were able to work out with Media of Nebraska. But in hearing, obviously, some of the other discussion from the entity in opposition but even those in the neutral capacity, I look forward to working with this committee in regards to trying to find some way forward. I firmly believe, coming in to today, in regard to talking with a number of organizations and entities that we've been discussing this amendment with as well as the green copy with, that we had come to a general conclusion that what we had crafted was what we thought was a middle ground in regards to what you've heard others suggest of giving it to the Crime Commission in comparison to putting it in statute and still addressing the transparency issue that was raised by Media of Nebraska. But if the committee would like to have, obviously, ongoing discussion in regards to what maybe would be a better approach moving forward, like always, I'm more than willing to sit down and do the heavy lifting with the committee to figure out a way to move forward. The reality is something needs to get done. And I think of anything you heard from everyone, which is there are agencies who are utilizing these cameras with a patchwork array of different policies around the state, and it only suffices that we should try to create a uniform policy in this particular case, if possible, when it comes to what policy everyone should follow when it deals with an entity that is creating a public record of interactions with the public and law enforcement. And so with that, I know this is a very busy committee in the next coming next few weeks with the number of bills you'll have, but I look forward to hearing back from the committee to see what we can do to move forward with LB1000 as amended. With that, Mr. Vice Chair, I'd be happy to answer any questions you may have. [LB1000]

SENATOR COASH: (Exhibits 5-8) Thank you, Senator Mello. Before we close the hearing, I'll read into the record three letters of support from the city of Lincoln, Nebraskans for Peace, Criminal Defense Attorneys, and a letter in neutrality again from the Media of Nebraska. That will close the hearing on LB1000. We'll open the hearing on LB1097 and turn it back to the Chair. [LB1000]

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

Judiciary Committee  
February 18, 2016

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SENATOR SEILER: Thank you. Thank you for filling in. Senator Morfeld, you may begin.  
[LB1097]

SENATOR MORFELD: (Exhibit 1) Thank you, Senator Seiler. Members of Judiciary Committee, my name is Adam Morfeld; that's A-d-a-m M-o-r-f-e-l-d, representing the "Fighting" 46th Legislative District, here today to introduce LB1097. This legislation is a continuation of my efforts to provide resources and combat sexual assault not only on campus but across the state. LB1097 would create within the Department of Justice, under the direction of the Attorney General, the position of administrator for Sexual Assault Payment Program. The purpose of the program and the responsibilities of the administrator is to coordinate the distribution of forensic sexual assault medical examination kits to healthcare providers at no cost to the providers, would oversee forensic medical training throughout the state; and administer the Sexual Assault Program Cash Fund. LB1097 came about after discussions with the Attorney General on the importance of addressing the issue of sexual assault and about the need for a statewide fund to cover the cost of sexual assault examinations, as well as increased training and outreach on this important issue. The federal Violence Against Women Act, administered by the United States Department of Justice, provides that victims may not be billed for the cost of a sexual assault exam, regardless of whether he or she chooses to participate in the criminal justice system. The current system in Nebraska places the burden of paying for these examinations on the primary investigating agency. This bill is designed to provide greater access for victims across Nebraska to medical personnel trained in sexual assault examinations, and to deliver a higher standard of care during the procedures. This will be done by first establishing the position of the statewide sexual assault nurse examiner, commonly known as a SANE administrator, and, second, shifting the burden of paying for these examinations from local law enforcement agencies to a newly created state fund. After the creation of a stable source of income, this bill will encourage medical providers across the state to establish SANE programs where they are lacking, or improve their current procedures and staff numbers in training. The statewide SANE administrator will first coordinate the distribution of forensic medical examination kits at no cost to the medical care providers; oversee training and outreach initiatives throughout the state, and administer the Sexual Assault Payment Program Fund. The fund would also be used to facilitate programs that reduce or prevent crimes of domestic violence, dating violence, sexual assault, or stalking, or that enhance the safety of victims of such crimes. Please note that there is no fiscal impact in this bill this year as it goes into effect July 1, 2017. The intention is for it to be at least partially funded through a grant through the Violence Against Women Act. This legislation will provide some critical support to victims of sexual assault and will ensure high-quality care and resources to bring those who commit these crimes to justice statewide. I want to thank the Attorney General for providing leadership on this important issue, and I would encourage your favorable support of this bill. I also want to add that the Attorney General, in consultation with the Child Advocacy Centers and myself, have proposed a draft amendment, which you have just received, that would include the Child Advocacy Centers and also includes language to include

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Transcriber's Office

Judiciary Committee  
February 18, 2016

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programs that reduce or prevent additional crimes such as human trafficking, sex trafficking, labor trafficking, and others. I'd be happy to answer any questions that you may have. [LB1097]

SENATOR SEILER: Senator Ebke. [LB1097]

SENATOR EBKE: Thank you. Senator Morfeld, I'm wondering if you have any estimates about cost once this goes into effect. [LB1097]

SENATOR MORFELD: Certainly, and the Attorney General's Office is here. I think they would be able to give you more precise numbers. But it will cost some money and we're hoping that a decent portion of it will be able to be provided through the VAWA funds. [LB1097]

SENATOR EBKE: Sure. Okay. Some of us will be here again next year. [LB1097]

SENATOR MORFELD: Absolutely. [LB1097]

SENATOR EBKE: So we'll have to figure out how to pay for these things. [LB1097]

SENATOR MORFELD: Yep, and I'm sure it will be included in their annual...or, excuse me, biennial budget request. [LB1097]

SENATOR SEILER: Senator Coash. [LB1097]

SENATOR COASH: Thank you, Senator Seiler. Senator Morfeld, how is this being handled now under the current law? [LB1097]

SENATOR MORFELD: Yeah, and I only have anecdotal stories. There is going to be a SANE nurse behind me that will be able to actually testify to that, and the Attorney General. My understanding right now is it's a little bit of a patchwork in terms of how it's paid for, because it's paid for by the local law enforcement agency. And then there's also, from my understanding, sometimes been confusion on how much is paid for and how much is not paid for. In the bill it actually specifies that...I think it's at least \$200 for the actual medical provider, and up to \$300 for the facility fee. And if there's reasonable fees beyond that, they can be approved by the commission. So the answer to your question, Senator Coash, is it's a patchwork of ways. We're trying to provide uniformity and ensure that everybody has high-quality care. [LB1097]

SENATOR COASH: Thank you. [LB1097]



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

Judiciary Committee  
February 18, 2016

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SENATOR SEILER: Any other questions? Seeing none, thank you. [LB1097]

SENATOR MORFELD: Thank you. [LB1097]

SENATOR SEILER: You're going to stick around for closing? [LB1097]

SENATOR MORFELD: I will. [LB1097]

SENATOR SEILER: First proponent. [LB1097]

RYAN POST: Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Ryan Post, R-y-a-n P-o-s-t, and I'm an assistant attorney general in the Nebraska Attorney General's Office. First, the Attorney General wants to thank Senator Morfeld for introducing this legislation, as well as the senators that have signed on as cosponsors. Through our work with county attorneys, law enforcement, and victim advocates across the state, we learned about the need for a statewide fund to cover the cost of these exams, as well as increased training and outreach on this important issue. This bill is about making sure that all victims of sexual crimes receive the best care at a facility located near them from a trained professional who is using an up-to-date kit. As Senator Morfeld said, the federal Violence Against Women Act provides that victims may not be billed for these costs, and LB1097 reaffirms that under no condition should the patient or their insurance be billed for this exam. The fund as proposed would pay for those items specifically laid out in the bill, and these items are in line with federal requirements, as well as existing state statutes that this bill aims to replace. By providing the up-to-date kits completed by trained professionals, we can also help the crime lab process these kits more efficiently. In drafting this language we looked at the sexual assault payment programs of several neighboring states, including Iowa, as well as the language in federal statutes in the Violence Against Women Act. We have also consulted various medical professionals, law enforcement agencies, and advocate groups, some of whom will testify today. Again I just want to reiterate that this bill is about making sure that all victims of sexual crimes receive the best care at a facility near them from a trained professional who is using an up-to-date kit. And as I said, there are a number of experts lined up after me, but I'm happy to take any questions. If I may first respond to Senator Ebke's questions, we understand there's no A bill. Our best estimate at this point is \$500,000 to \$750,000. And the reason for that is there's actually more of these crimes that occur statewide than I think we would prefer. And so there are anywhere from 800 to 1,000 statewide. And so that's where the cost comes in. [LB1097]

SENATOR EBKE: Thank you. [LB1097]

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

Judiciary Committee  
February 18, 2016

---

SENATOR SEILER: Yes, Senator Coash. [LB1097]

SENATOR COASH: And on that \$500,000 to \$800,000, Senator Morfeld made mention of a grant that you're hoping to get. Can you speak to that? [LB1097]

RYAN POST: Yes, and I believe it's actually under VOCA instead of VAWA. Regardless, it's a...it would be part of a federal grant. Currently in Iowa they're able to receive about 60 percent of their money back and they get it in arrears. And so there's going to be an additional up-front investment from the Legislature, there would have to be; and then the goal would be to get some of that money in arrears to cover it so that the cost in the out years is not as expensive as the first year. [LB1097]

SENATOR COASH: Is there some value in doing it this year knowing it's not going to...knowing that it's not going to go into effect? [LB1097]

RYAN POST: Yes. It allows the law enforcement agencies across the state to plan, as well as the Crime Commission to work on the grant. It allows everyone to proceed with that process. [LB1097]

SENATOR COASH: All right, thank you. [LB1097]

SENATOR SEILER: Who pays for the kits now, and the services? Is it the counties? [LB1097]

RYAN POST: Well, currently in statute it's the investigating agency, the law enforcement agency investigating. [LB1097]

SENATOR SEILER: So the county attorney? [LB1097]

RYAN POST: Well, and that kind of gets to one of the earlier questions: What if there's multiple agencies investigating? And then exactly, when the statute describes the full out-of-pocket costs, what does that mean? And so we've tried to clarify all of those issues in this bill. [LB1097]

SENATOR SEILER: Okay. Would you send them a letter saying this is a non-unfunded mandate and they could...because they're always complaining we send them unfunded mandates, maybe we ought to send them a letter and say this is one we reversed it. [LB1097]

RYAN POST: It's my understanding they would be happy with this result and the... [LB1097]

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

Judiciary Committee  
February 18, 2016

---

SENATOR SEILER: Well, I'm sure. [LB1097]

RYAN POST: The other benefit is that it encourages, and this is another point of the bill, it... [LB1097]

SENATOR SEILER: No, I'm not arguing the bill, I'm just... [LB1097]

RYAN POST: I know. It encourages the establishment of these programs statewide. Right now there's a need for more of these nurses statewide so an individual may not have to travel an hour to get examined. And that's part of the purpose of the bill, so. [LB1097]

SENATOR SEILER: Thank you. Any further questions? Thank you very much. [LB1097]

RYAN POST: Thank you. [LB1097]

SENATOR SEILER: Next proponent. [LB1097]

ANNE BOATRIGHT: Good afternoon. My name is Anne Boatright, A-n-n-e B-o-a-t-r-i-g-h-t. I'm a registered nurse and currently work as a sexual assault nurse examiner for Methodist and Methodist Women's Hospital. I want to thank you, first off, for the opportunity to speak with you regarding LB1097. In my work as a sexual assault nurse, I have seen the impact sexual violence has on patients. Some of the health issues include: posttraumatic stress, flashbacks, depression, anxiety, high rates of suicide, and even stress-induced heart attacks and strokes. With these potential health implications, it's important for victims to be free from stress related to the financial cost of their immediate care and recovery. In the past three years we have seen a significant increase in the number of victims seeking care. Between 2013 and 2015, the number of patients served at Methodist rose from 137 to 314 patients, an increase of 230 percent. We have currently a staff of 25 sexual assault nurse examiners and, unfortunately, it's my understanding that we have more nurses in our facilities than many facilities across the state have combined. While Methodist is able to work with patients to alleviate financial concerns related to these exams, many other medical providers do not have the resources to do so. In my work with the state sexual assault response team, I have seen the financial difficulty many programs consistently face across the state, including programs that can no longer provide services due to these associated costs. It's imperative that service providers with sufficient training remain available to those across the state, thus providing a consistent standard of care. Why, you may ask, are sexual assault victims being billed for their sexual assault exams, and why is there such a lack of trained providers and standards across the state? I believe this to be related to several key issues LB1097 seeks to address. First, those who are raped experience tremendous guilt and the

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Transcriber's Office

Judiciary Committee  
February 18, 2016

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burden associated with medical cost can be a huge factor in reporting. This legislation would shift the financial burden off of patients, hospitals, and law enforcement, and ensure reimbursement. Secondly, the creation of a sustainable fund also allows for buy-in among hospital systems. Nebraska is currently 1 of 12 states that does not legislate reimbursement around these exams. Lastly, the creation of a statewide program administrator to coordinate programs, train nurses, implement best practice standards is crucial in our ability to combat the issues surrounding this violence. There is no community that's immune to sexual violence across the state of Nebraska. I'm reminded of a heartbreaking story of a victim of a violent assault. She was strangled, beaten, held against her will. The perpetrator fired a gun into the ceiling and stated he would kill her and himself, and then he raped her. She sobbed, stating: I screamed and screamed and no one helped me. This story reminds me of the tremendous service we provide and strong purpose in our work. I have seen, when services are made available, victims seek out services and utilize them. Trained providers assist victims to trust and heal in the system and the lack of current leadership and sustainable funding source across our state greatly impacts all Nebraskans regardless of location. I believe LB1097 allows us to make tremendous strides to combat violence in our state, and I thank you for your attention to this issue. [LB1097]

SENATOR SEILER: Questions? Ma'am, I...looking through the bill, I don't see any waiver of the HIPAA rules. Does HIPAA come into play that would stop the medical release of your findings? [LB1097]

ANNE BOATRIGHT: So we have a mandatory reporting law here in the state of Nebraska. The way that our Methodist Hospital has interpreted that mandatory reporting law is any patient that presents related to a crime that has been committed we report to law enforcement. We have a great working relationship with our local law enforcement and most of our patients do want to report when they come in. [LB1097]

SENATOR SEILER: Yeah. [LB1097]

ANNE BOATRIGHT: We often set the stage for how to report, which I think has been very helpful in our community. But I don't know that that's exactly how it's interpreted across the state. [LB1097]

SENATOR SEILER: I wondered if you had a form that you had the patient sign that released the HIPAA requirement. [LB1097]

ANNE BOATRIGHT: Yep. As part of the kit there is a waiver that is signed. [LB1097]

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Transcriber's Office

Judiciary Committee  
February 18, 2016

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SENATOR SEILER: Oh, okay. [LB1097]

ANNE BOATRIGHT: But our kit is very out of date and we know that. [LB1097]

SENATOR SEILER: Okay, thank you. Any further questions? Thank you very much for your testimony. [LB1097]

ANNE BOATRIGHT: Thank you. [LB1097]

SENATOR SEILER: Next proponent. [LB1097]

GREG GONZALEZ: Greg Gonzalez, deputy chief, Omaha Police Department. Just on behalf of the Police Department we just want to acknowledge and support the draft bill, support of LB1097 to really streamline the process for victims of sexual assault. And we just wanted to be on the record, so. [LB1097]

SENATOR SEILER: Any questions? Thank you for appearing. [LB1097]

GREG GONZALEZ: Thank you. [LB1097]

SENATOR SEILER: Next proponent. [LB1097]

STEPHANIE HUDDLE: (Exhibit 2) Good afternoon, Senator Seiler, members of the Judiciary Committee. My name is Stephanie Huddle, S-t-e-p-h-a-n-i-e H-u-d-d-l-e. I'm the public policy coordinator for the Nebraska Coalition to End Sexual and Domestic Violence, and I'm here to testify in regards to our support of LB1097. The Nebraska Coalition is a statewide nonprofit advocacy organization committed to the prevention and elimination of sexual and domestic violence. We provide training and technical assistance to Nebraska's network of domestic violence and sexual assault programs, supporting and building upon the services they provide. Our mission is to enhance safety and justice by changing the beliefs that perpetuate domestic violence and sexual assault. We believe LB1097 will allow those who have been subjected to crimes of sexual assault to be better served and will show Nebraska cares about victims and wants them to be able to receive the treatment and services they need. There are times victims of sexual assault receive hospital bills or they are submitted to their insurance for some of the services they receive after an assault, such as an emergency room fee. LB1097 clarifies what full out-of-pocket expense means, helping hospitals and clinics know what the payment expectation is. By appointing an administrator to oversee the payment for sexual assault forensic programs across the state, victims will not be subjected to additional mental trauma upon receiving a bill as

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

Judiciary Committee  
February 18, 2016

---

a reminder of what they had to endure, which could possibly become months after the sexual assault. LB1097 would also prevent the policy holder of the insurance under which a victim is covered, such as a college student who is covered under his or her parents, from receiving a notice from their insurance company regarding fees. This gives victims the autonomy to choose when to disclose the sexual assault to others at a time when they are ready. The administrator of this program would also be responsible for distributing kits to medical providers at no cost to them and oversee sexual assault forensic training. Because of this, there is an opportunity for more medical providers in rural areas to have sexual assault forensic exam kits on hand and available when they are needed, as well as have staff trained to conduct sexual assault forensic exams. Rural communities may need to rely less on urban areas, which benefits victims by having services closer to where they are and eliminates the need to travel long distances for a sexual assault forensic exam. Much of the language of LB1097 mirrors that found in the Violence Against Women Act and will assist Nebraska in becoming more in line with the requirements of federal law. While the state is not out of compliance, this bill makes the process and expectations of payment much more clear. The Nebraska Coalition to End Sexual and Domestic Violence asks you to advance LB1097. Thank you for the opportunity to speak with you, and I would be happy to answer any questions. [LB1097]

SENATOR SEILER: Seeing none, thank you very much for your input. [LB1097]

STEPHANIE HUDDLE: Thank you. [LB1097]

SENATOR SEILER: Further proponent. [LB1097]

IVY SVOBODA: (Exhibit 3) Good afternoon. My name is Ivy Svoboda, I-v-y S-v-o-b-o-d-a. I represent the Nebraska Alliance of Child Advocacy Centers. Our seven advocacy centers are fully accredited and provide evaluations and medical exams to evaluate sexual abuse to an average of 550 children each year. A majority of these are under the age of 12. We embrace the leadership of the Attorney General Doug Peterson, Senator Morfeld, and the rest of you all as sponsors to develop the fund for victims of sexual assault. We have been working collaboratively with the Attorney General's Office staff to ensure the statewide coverage and that victims receive the highest quality of medical assessments and that rape kits and sexual assault exams are consistent and available regardless of age and location. I prepared a handout on the Child Advocacy Centers and the work that you have supported and would be willing to respond to any questions. [LB1097]

SENATOR SEILER: Any questions? I don't think you read your whole handout. [LB1097]

IVY SVOBODA: That handout is supplemental, so. [LB1097]

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

Judiciary Committee  
February 18, 2016

---

SENATOR SEILER: Okay. I'm going to ask you if you want this to be made part of the record. [LB1097]

IVY SVOBODA: Yes, please. [LB1097]

SENATOR SEILER: Okay. It will be received. Thank you for your input. Further proponent. Seeing nobody moving, opponents. Neutral. [LB1097]

LAURIE HOLMAN: Good afternoon, Senator Seiler, members of the committee. My name is Laurie Holman; that's spelled L-a-u-r-i-e H-o-l-m-a-n, and I'm here today representing the Nebraska Commission on Law Enforcement and Criminal Justice, otherwise known as the Crime Commission. Director Fisher sends his regrets at not being able to be here today and has asked me to represent him in a neutral capacity regarding some of the proposed amendment language that was brought up earlier today. We received the amendment language this morning and we just have a couple of concerns with what is proposed there. First of all, we haven't had it for more than a couple hours, so we have not had time to create a fiscal note. And with the administration of this cash fund, since there will be federal money included, there will be federal guidelines that we have to be in compliance with. And we anticipate that there could be the necessity of a full-time staff person to administer the funds. And so we just need to make sure that we have enough time to work with the AG's Office and with Senator Morfeld's office to make sure that we are giving you an accurate representation of what will be required of the Crime Commission to administer the funds. Our second concern came from the grants division staff. Their concern was about separating the proposed position of the administrator of the fund and the administration of the funds between the Attorney General's Office and the Crime Commission. The Crime Commission has worked with the University of Nebraska at Omaha to create a 2015 to 2020 strategic plan for victims and survivors of crime, and it's provided recommendations to permanently improve and enhance services available to all victims of crime in Nebraska. In the conclusion of this document it states that despite the high level of passion and dedication the service providers have for the work they do, the one shortcoming that was consistently mentioned in focus groups was the need for better coordination of their efforts. And due to the multilayered complexity of victim services, the authors of the report recommend one centralized state victim advocacy office. Now we're not proposing that today. We know that that's not something that's being discussed right now. But the concern is that separating the administrator of the program and the administration of the funds between two different offices will create more decentralization of the program and would be taking a step away from the strategic plan that was created to help coordinate and centralize victim services. So that's something else that we would want to work with Senator Morfeld and the Attorney General's Office going forward. That's all I have. So if you have any questions, I'd be happy to... [LB1097]

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Transcriber's Office

Judiciary Committee  
February 18, 2016

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SENATOR SEILER: Are you saying you don't play well with the Attorney General's Office?  
[LB1097]

LAURIE HOLMAN: No, we're not saying that at all. We're just concerned that it would...I don't know that "clumsy" is the right word, but it would just create more work to coordinate it between two offices, but we're happy to figure that out. It's not a problem. It's just a concern that was brought up by the grants division. [LB1097]

SENATOR SEILER: Senator Krist. [LB1097]

SENATOR KRIST: When you're talking about the strategic plan, is that the strategic plan we developed last year and put into place for the development of the Crime Victim Fund that we tweaked it? [LB1097]

LAURIE HOLMAN: Yes, I believe so, yes. [LB1097]

SENATOR KRIST: So you really haven't had time to digest the amendment and I appreciate that. But I think what I'd like to see, and I hope you would just provide it to the committee, is kind of a whiteboard approach of how to administer the grant... [LB1097]

LAURIE HOLMAN: Sure. [LB1097]

SENATOR KRIST: ...because there isn't anybody better at doing that than you all. [LB1097]

LAURIE HOLMAN: Sure. [LB1097]

SENATOR KRIST: So it gets a little complicated, as I can attest to. And so if you could come up with that, in terms of a recommendation, that would be very helpful for us. [LB1097]

LAURIE HOLMAN: We would be happy to do that. And when I was speaking with Ryan from the Attorney General's Office this morning, he made the point--and it's very valid--we have the administration of these federal grants right now. We administer VOCA and VAWA and we have the accounting division set up and this money goes out every single month to these groups. So it's not something that would be difficult for us to do; we just need to make sure we have everything in place so we don't end up not in compliance with federal guidelines again.  
[LB1097]



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

Judiciary Committee  
February 18, 2016

---

SENATOR KRIST: And I think the word "clumsy" is appropriate. [LB1097]

LAURIE HOLMAN: Okay (laugh). [LB1097]

SENATOR KRIST: Thank you. [LB1097]

LAURIE HOLMAN: Well, thank you. Yeah. [LB1097]

SENATOR SEILER: Any further questions? Thank you for your input. [LB1097]

LAURIE HOLMAN: Thank you. [LB1097]

SENATOR SEILER: (Exhibit 4) Any further in the neutral? I have a letter from the Nebraska Family Alliance, and they are in support of LB1097, and it will be received. Senator Morfeld, you may close. [LB1097]

SENATOR MORFELD: Well, I'll be very brief. First off I want to thank everyone for testifying. I appreciate the Crime Commission's concerns and know that they're in support of the spirit of the bill. We just need to work out the details, and I'm more than willing to do that and then come back to the committee with an amendment. I also appreciate Senator Ebke's point, too, that we are going to have to pay for this somehow, and I appreciate that. And that being said, with the available federal funds and the fact that this is an important issue, I think that we can find the funding. I do like that, Senator Seiler, you point out that this is not an unfunded mandate. I'm wondering where Larry Dix is right now. He's always talking to me about that. [LB1097]

SENATOR SEILER: Right. [LB1097]

SENATOR MORFELD: But I'll send him a note after this. [LB1097]

SENATOR SEILER: Please send it on behalf of the Judiciary Committee. [LB1097]

SENATOR MORFELD: (Laugh) I'll draft that. But I want to thank all of your attention to this important issue. It's an issue that, even if we do it incrementally and we don't have a centralized type of office to start out with, I think that any step that we take in providing more resources is a step in the right direction. And with that, I'd be happy to answer any questions. [LB1097]

SENATOR SEILER: Senator Krist. [LB1097]

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

Judiciary Committee  
February 18, 2016

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SENATOR KRIST: Just an offer, I've got Larry's number in my cell phone if you'd like, so (laughter). [LB1097]

SENATOR MORFELD: I do too. I'll text him. [LB1097]

SENATOR KRIST: There you go. [LB1097]

SENATOR MORFELD: Thank you. [LB1097]

SENATOR KRIST: Thank you. [LB1097]

SENATOR MORFELD: Appreciate that. [LB1097]

SENATOR SEILER: Any further questions? Thank you very much. [LB1097]

SENATOR MORFELD: Thank you. [LB1097]

SENATOR SEILER: Senator Hilkemann, you may proceed on LB1054. [LB1054]

SENATOR HILKEMANN: Good afternoon, Senator Seiler and members of the Judiciary Committee. I am Robert Hilkemann, that's R-o-b-e-r-t H-i-l-k-e-m-a-n-n, representing District 4 in west Omaha. I am pleased to come before this committee to encourage advancement of LB1054, the felony arrest DNA bill, or what is commonly known as Katie's Law. I became aware of Katie's Law while attending NCSL in Seattle. It was the first time that I had heard of obtaining DNA on felony arrest. I heard the testimony of James Tillman, a man who spent over 18 years in prison, falsely accused, who was exonerated with DNA evidence. I learned about the powerful tool that arrest DNA could provide for our local law enforcement agencies to help solve unsolved cases, help in solving current cases, and how it has prevented crime from occurring. And most importantly, probably most importantly is that it exonerates arrestees who are found innocent with this DNA. After studying this measure further, I am convinced that passage of this bill will help Nebraska be smarter on crime, Mr. Chairman, as you related to us many times during LB605 last year. When I heard about it in Seattle, I thought it was a good idea. After studying it and visiting with various law enforcement groups and talking with each of you individually, I have become passionate about this measure. I believe it will help Nebraska move into the 21st century in solving and preventing crimes. Essentially, LB1054 allows law enforcement officers to obtain a cheek swab of DNA for anyone arrested for a specified list of felonies included in the bill after July 15 of 2016. Officials can then send the results of that DNA test into the federal DNA database called CODIS. The CODIS will then search 13 markers of the

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

Judiciary Committee  
February 18, 2016

---

DNA for matches. The CODIS will only notify law enforcement if there is a match with another specimen in the CODIS pool. Then and only then is the identity of the person given to law enforcement. CODIS does not match for race or other characteristics. Only the sex of the person can be determined from these markers. If the arrestee is found not guilty of the charges, their information is removed from the system. Our state has provision in existing statute, Section 3 of the law, that persons found innocent can have their DNA removed from the database. Some may ask, is this legal? Well, the U.S. Supreme Court in Maryland v. King, June 2013, has ruled that using DNA is similar to fingerprints, which we routinely collect, and do not violate one's Fourth Amendment constitutional rights. It is important that we move on this bill this year so that we can take advantage of the Katie Sepich Enhanced DNA Collection Act of 2012 which will pay for the program the first year. We are honored today that one of the proponents for LB1054 is Jayann Sepich, the mother of Katie whom this law is named for. She has made this her life mission: to get Katie's Law in every state of the Union. While I have been working on this for six months, she has been working on it for years. She has been successful in seeing this law enacted in 28 states, including our neighbors of Kansas, Colorado, South Dakota, and Missouri. I'm going to keep my introduction short so you will have more time to ask her the many questions you may have regarding LB1054. She has seen the results of this law firsthand and is a walking encyclopedia on DNA and this law. You may hear from several groups who will oppose this legislation. I have visited with them. While I can appreciate the opponents' concerns, LB1054 addresses those concerns so the exonerated arrestees have a pathway to remove that DNA from their database. Is this an infringement on the rights of our citizens? This law applies only to people arrested for the most serious felonies. This does not include speeding or running a red light or DUI. Felony charges mean that you have to be doing something very significant, and 99.9 percent of Nebraska's citizens will never have to worry about this. As a member of the Appropriations Committee, I know all too well how much we are spending for Corrections. The Innocence Project projects that 4 to 7 percent of our prisoners are imprisoned wrongfully. If it's 4 percent, that in the state of Nebraska means \$8 million alone. In the case of Katie Sepich, her murderer could have been identified within three months if arrest DNA had been available in New Mexico at the time, not over three years as it took in her case. It would have saved law enforcement countless thousands of dollars. They estimate over \$200,000 was spent trying to solve that case in investigative costs and man-hours working that case. It has been helpful in solving cold cases. Not knowing how or why a loved one has been a victim of a violent crime is difficult for families to deal with. Almost 20 years ago my cousin's son was murdered in a horrific, brutal crime in La Jolla, California. It took over four years before that crime was solved, so I know firsthand the pain and the anguish that caused my cousin and his family. With that, I will take questions and then I'll introduce to you my first proponent who will be Jayann Sepich. [LB1054]

SENATOR SEILER: Senator Coash. [LB1054]

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Transcriber's Office

Judiciary Committee  
February 18, 2016

---

SENATOR COASH: Thank you, Senator Seiler. Senator Hilkemann, how...just procedurally how is DNA collected from an arrestee? [LB1054]

SENATOR HILKEMANN: It is with a buccal swab, cheek swab. [LB1054]

SENATOR COASH: Okay. How does your bill address a...I'll call them defendant because they've been arrested, right? This would be a person who's been arrested. [LB1054]

SENATOR HILKEMANN: That's correct. [LB1054]

SENATOR COASH: How would it address a defendant who clamps their mouth shut and says, I'm not going to do this, I'm not going to consent to a DNA swab? [LB1054]

SENATOR HILKEMANN: They would not be able to be released on bail without having done that. [LB1054]

SENATOR COASH: So they could not be released on bail. [LB1054]

SENATOR HILKEMANN: That would be correct. [LB1054]

SENATOR COASH: Okay. And that's in the bill? [LB1054]

SENATOR HILKEMANN: Senator, I don't believe it is specifically listed in that bill. That's the intent of the law. [LB1054]

SENATOR COASH: Okay. I think that's important because we have to find a way to deal with somebody who is...if this is to be the policy, we have to plan for somebody not...what we're going to do if someone refuses to do this. You know, are we going to get a couple of big corrections officers and pry their jaw open and say, well, the law says we have to get this so we're going to get this? Or are we going to have something else that's specific in law? So I think we have to keep that in mind. That's all I have for right now. [LB1054]

SENATOR SEILER: Senator Pansing Brooks. [LB1054]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Thank you for coming, Senator Hilkemann. I appreciate your efforts on this. I know last year I had a couple bills that dealt with

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

Judiciary Committee  
February 18, 2016

---

DNA evidence and so I think we've talked quite a bit about how important it is to be able to have DNA available to actually make sure that we have the right person and... [LB1054]

SENATOR HILKEMANN: Exactly. [LB1054]

SENATOR PANSING BROOKS: ...to keep our communities safer. So I'm looking and what little I know about the King case that you quoted, in that case it talks about a cheek swab not being an unreasonable search and seizure. So I know that that's why you...I think that's why you kept it to a cheek swab. [LB1054]

SENATOR HILKEMANN: That's correct. [LB1054]

SENATOR PANSING BROOKS: But when I look at the law that this all relates to, on page 3 it says, "DNA sample means a blood, tissue, or bodily fluid sample." It's on line 12. So in that regard, theoretically law enforcement could go farther and could take blood samples and that has not been proven to be an unreasonable search and seizure. So I'm trying to figure out, did you talk to anybody about that or...? [LB1054]

SENATOR HILKEMANN: Well, what you're referring to, Senator, is already in existing law in Nebraska. That's not added language. [LB1054]

SENATOR PANSING BROOKS: Right, but you're trying...but you've got DNA identification and you're saying it's for cheeks. But farther down in the law, DNA sample is described as something larger than your...than what you intend. [LB1054]

SENATOR HILKEMANN: Okay. [LB1054]

SENATOR PANSING BROOKS: So...and I don't see where it specifically says "cheek swab." Did you have a place? [LB1054]

SENATOR HILKEMANN: Senator, we could certainly get that amended into the...I would have no problem with that being amended into the bill. [LB1054]

SENATOR PANSING BROOKS: Okay, because I just think that that could be found unconstitutional as a taking or as an unreasonable search. So, okay, thank you. Just wondered if you'd talked about it with anybody. [LB1054]

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

Judiciary Committee  
February 18, 2016

---

SENATOR HILKEMANN: Pardon? [LB1054]

SENATOR PANSING BROOKS: I just wondered if you had talked about it with anybody in drafting this, so. [LB1054]

SENATOR HILKEMANN: I have to say that the bulk of this bill was drafted by our Attorney General's Office. [LB1054]

SENATOR PANSING BROOKS: Okay. All right. Thank you. [LB1054]

SENATOR SEILER: Any further? Senator Coash. [LB1054]

SENATOR COASH: Thank you, Senator Seiler. Senator Hilkemann, you know, we do take DNA postconviction here in Nebraska. [LB1054]

SENATOR HILKEMANN: Yes. [LB1054]

SENATOR COASH: We do. So we do have DNA taken at some point after conviction. What's the benefit of doing it as early as you're purporting here, as in postarrest, versus what we're already doing? [LB1054]

SENATOR HILKEMANN: Well, a lot of times, Senator, there's a lot of time that lapses between when a person is arrested for a crime and when they actually come to a conviction. And, for example, and you may hear this in the story that will follow, in the case of Katie's murder the person was arrested for a burglary three months after her...he did that particular crime. It was over three years before he was finally arrested when he did another burglary. He happened to be an illegal who went to Mexico and then he came back and did another crime. He could have been arrested in three months rather than three years down the line. [LB1054]

SENATOR COASH: Okay. Thank you. [LB1054]

SENATOR SEILER: Let me ask you a question about drafting. On section (2), on page 2, you list the number of crimes and you put this Section 28-502 or whatever it is. Are those numbers reflective of LB605 we passed last year? [LB1054]

SENATOR HILKEMANN: Senator, I don't know that answer. [LB1054]

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

Judiciary Committee  
February 18, 2016

---

SENATOR SEILER: Would you check with your drafter? [LB1054]

SENATOR HILKEMANN: I will certainly check with drafting on it. [LB1054]

SENATOR SEILER: Because rather than me check them all, I'd just as soon have the drafter (inaudible). [LB1054]

SENATOR HILKEMANN: Okay, thank you. [LB1054]

SENATOR SEILER: I want them consistent with LB605. [LB1054]

SENATOR HILKEMANN: Okay. We can...I will have my staff make sure they get that information. [LB1054]

SENATOR SEILER: Okay. Thank you. Senator Chambers. [LB1054]

SENATOR CHAMBERS: What does CODIS do with these samples if these contingencies occur, the case, the charges are dismissed, there's an acquittal, there's a reversal with a dismissal? What does CODIS do with the samples that they have, the federal? [LB1054]

SENATOR HILKEMANN: Those samples are eliminated, Senator. [LB1054]

SENATOR CHAMBERS: You said what? [LB1054]

SENATOR HILKEMANN: They are eliminated. They are taken, as if nothing had happened. They're gone. [LB1054]

SENATOR CHAMBERS: Does it say in here that CODIS will eliminate it? [LB1054]

SENATOR HILKEMANN: I think that's part of the federal CODIS act and CODIS handles that in and of its own. It's not listed in here. That's part of the provisions that go with CODIS. [LB1054]

SENATOR CHAMBERS: And what's the longest amount of time this sample can be held before a person can ask for expungement, because some of it talks about when the statute of limitations has run out? [LB1054]

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

Judiciary Committee  
February 18, 2016

---

SENATOR HILKEMANN: Uh-huh. I think... [LB1054]

SENATOR CHAMBERS: What then? [LB1054]

SENATOR HILKEMANN: Senator, I believe that that...it's already in the existing bill here that we're already doing with the CODIS. On the...Section 3 I think talks about that. [LB1054]

SENATOR CHAMBERS: Is there a statute of limitations on arson in Nebraska? [LB1054]

SENATOR HILKEMANN: Senator, I don't know the answer to that question. [LB1054]

SENATOR CHAMBERS: There are some crimes insurance companies don't want there to ever be a statute of limitation, and on some of these crimes that might be the case. But anyway, I'm not going to ask a lot of questions because the lady came from a long distance and I'll just listen to it and then deal with the bill as I think I should later on. [LB1054]

SENATOR HILKEMANN: Thank you, Senator. [LB1054]

SENATOR SEILER: No further questions? Thank you very much. Will you be around for closing? [LB1054]

SENATOR HILKEMANN: Thank you. I would. I can introduce you to my first proponent, Jayann Sepich. [LB1054]

SENATOR SEILER: That will be fine. Have her take your chair. [LB1054]

JAYANN SEPICH: (Exhibit 1) Mr. Chairman, members of the committee, my name is Jayann Sepich, that's J-a-y-a-n-n S-e-p-i-c-h, and I would like to say thank you so much for allowing me to be here today to testify. Twenty-eight states have laws requiring DNA be taken as a result of a felony arrest for certain crimes, and I'm urging Nebraska to do the same. In your packet, the first thing you have is a picture of my daughter. This is Katie, who was a 22-year-old graduate student when she was brutally raped and murdered and set on fire. Katie was an extraordinary young woman. She was full of life, laughter, and a determination to make the world a better place. But all that ended at the hands of a stranger who killed her in a random act of brutal violence. Katie fought hard for her life, and underneath her fingernails was the skin and blood of the man who killed her. A DNA profile was extracted and uploaded into the national criminal database called CODIS. That meant we had the identity of her killer. We just had to match it to a name. I told the



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

Judiciary Committee  
February 18, 2016

---

detective in charge that this man was such a brutal man, such a monster, that surely he would be arrested for something else, his cheek would be swabbed at the same time his fingerprints and his photographs were taken when he was booked for arrest, and his DNA would be matched and we would be able to identify him and, more importantly, stop him from brutalizing another woman. That's when I learned it was illegal at that time in my home state of New Mexico and almost every other state to take DNA at the time of a felony arrest. I was stunned and began doing research, and I learned of many cases showing exactly how arrestee DNA testing would save lives. In Chicago alone, there were 53 rapes and murders that would have been prevented if only eight felons had had their DNA taken at the time of their first felony arrest. And I started asking questions to find out why DNA wasn't being used just as fingerprints are, not only to solve crimes but to prevent crimes and save lives. I learned that the main reason was a misunderstanding of the CODIS system, the database and the way it works. You see, it is not our DNA that goes into CODIS. It is a DNA profile--only 13 markers out of over 3 billion. And I'm so absolutely certain that there is nothing private or personal about me and my DNA CODIS profile that I've had it analyzed and printed on the back of my business card. The New Mexico State Legislature passed an arrestee DNA law and now over 1,050 crimes have been matched in New Mexico to DNA taken for those arrested for a felony. Arrestee DNA also exonerates. In Illinois Jerry Hobbs and Robert Gonzalez in New Mexico were both exonerated for rape and murder charges as a direct result of arrestee DNA testing. We know what happens when states begin to use arrestee DNA testing. Crimes are solved, crimes are prevented, lives are saved, and the innocent exonerated. But what happens when states fail to act? More innocent lives are lost. The time to act is now, before another rapist or murderer goes free only to rape and murder again and again, before another innocent man spends one more night in prison when arrestee DNA could identify the real criminal, before another family feels the horrific pain of losing a loved one to a murderer or unjustly to a life in prison. [LB1054]

SENATOR SEILER: Ma'am, your red light is on. [LB1054]

JAYANN SEPICH: Thank you. [LB1054]

SENATOR SEILER: But I'm going to ask you to continue. [LB1054]

JAYANN SEPICH: I'm done. [LB1054]

SENATOR SEILER: You're done? Okay. [LB1054]

JAYANN SEPICH: I'm ready for questions. [LB1054]

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

Judiciary Committee  
February 18, 2016

---

SENATOR SEILER: Senator Krist. [LB1054]

SENATOR KRIST: Thanks for coming. If you would look back...and I know you did this for a reason. I am familiar with this. And for all full disclosure, I'm a cosponsor of this bill. This...whose...who is this? [LB1054]

JAYANN SEPICH: That's my DNA profile. [LB1054]

SENATOR KRIST: Doesn't have your name on it. [LB1054]

JAYANN SEPICH: No. [LB1054]

SENATOR KRIST: Doesn't have your picture on it. [LB1054]

JAYANN SEPICH: No. [LB1054]

SENATOR KRIST: Doesn't violate any laws, any HIPAA, "DIPAA," "STRIPAA," whatever you were to call it today. [LB1054]

JAYANN SEPICH: No. [LB1054]

SENATOR KRIST: It's just these points. [LB1054]

JAYANN SEPICH: That's correct. [LB1054]

SENATOR KRIST: And you said there are 13 key points. [LB1054]

JAYANN SEPICH: Thirteen markers that were... [LB1054]

SENATOR KRIST: Thirteen. [LB1054]

JAYANN SEPICH: ...that were specifically selected by genetic scientists because these 13 markers are considered noncoding. And when I first started doing research on this, I called up a scientist that helped design the CODIS system. His name is Dr. Bruce Budowle. And I asked him to explain to me how CODIS worked, and he asked me if I was familiar with a vinyl record album. And I said absolutely, that's what I played when I was in high school. And he said, well,

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

Judiciary Committee  
February 18, 2016

---

if you look at that vinyl record album, you see the bands where the music is played, where the music is kept. When the needle is put down in those bands of music, you hear the music, you hear the songs. When the needle is put down in the spaces between the songs, there's nothing, no music, no information. He said those are the 13 markers that we selected to put into CODIS, into the database, because those 13 markers have absolutely no genetic information, no prediction of disease, nothing personal about a person. But if all 13 of those markers match...and that's actually 26 numbers because every marker is a base pair and you have two numbers, one from your mother and one from your father. If those match, there are no two people on the face of the earth that have those same numbers with the exception of identical twins. So this system was designed to make sure that it is no more of an invasion of privacy than a fingerprint, and that's what goes into CODIS. [LB1054]

SENATOR KRIST: So there's only two reasons that I support this. The first is it helps an innocent person be innocent. [LB1054]

JAYANN SEPICH: Absolutely. [LB1054]

SENATOR KRIST: And the second is, if it's done at the time when this bill suggests, we can avoid someone being released and repeating violent behavior. These kind of crimes that are in this bill, this isn't...these aren't things that you just don't think about. This is either a psychological profile or a violent criminal that would go out and do this and repeat offend again and again. I'm sorry for your loss, but I hope... [LB1054]

JAYANN SEPICH: Thank you. [LB1054]

SENATOR KRIST: ...we will pass this bill. [LB1054]

JAYANN SEPICH: Thank you. [LB1054]

SENATOR SEILER: Senator Williams. [LB1054]

SENATOR WILLIAMS: Thank you, Senator Seiler. And thank you, Ms. Sepich, for being here today. I understand, based on Senator Hilkemann's testimony and yours, that this has been adopted in 28 states thus far. [LB1054]

JAYANN SEPICH: Yes, sir. [LB1054]

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

Judiciary Committee  
February 18, 2016

---

SENATOR WILLIAMS: And appreciate your work in getting that done. Have the bills or the legislation adopted in those other states been very similar to what is proposed in Nebraska? [LB1054]

JAYANN SEPICH: They're not identical by any means. In 16 of those states, DNA is taken for all felony arrests, not just certain felony arrests, so, you know, there's a difference there. Every state is different. Every state's crime lab is set up a little differently so every bill is adapted to meet that state's requirements and to work with that state's crime lab. [LB1054]

SENATOR WILLIAMS: For those states, and I guess all of them would be gathering DNA evidence, are they gathering it on the front end following an arrest? [LB1054]

JAYANN SEPICH: The great majority of states take it at booking, which is when fingerprints and photographs are taken. There are some that delay it to a little, you know, a little bit later in the process. We've learned that that causes a lot of problems because booking is the best time to take it. That is when the administrative process is done. That's when they're used to taking fingerprints, they're used to taking the identifying information. So the majority of states are taking it at booking. [LB1054]

SENATOR WILLIAMS: From your work in those states, taking that DNA sample at booking has survived any constitutional challenges at this point? [LB1054]

JAYANN SEPICH: Yes, it has. And if you'll notice Maryland v. King, which was the United States Supreme Court, I've actually I believe provided a quote from that ruling. It says...and this is from the Supreme Court ruling, "DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment." [LB1054]

SENATOR WILLIAMS: Thank you. [LB1054]

JAYANN SEPICH: Thank you. [LB1054]

SENATOR SEILER: Any further...Senator Pansing Brooks. [LB1054]

SENATOR PANSING BROOKS: Since you're quoting Maryland v. King, do you know whether or not, I believe that Maryland v. King rests upon cheek swab rather than... [LB1054]

JAYANN SEPICH: It does. [LB1054]

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

Judiciary Committee  
February 18, 2016

---

SENATOR PANSING BROOKS: Okay. So it does not go and say that it's okay to take blood or tissue samples; it's a cheek swab. [LB1054]

JAYANN SEPICH: And a cheek swab gathers, you know, every bit of information as... [LB1054]

SENATOR PANSING BROOKS: Right. [LB1054]

JAYANN SEPICH: ...a blood draw. It is not necessary to draw blood. [LB1054]

SENATOR PANSING BROOKS: To do that. [LB1054]

JAYANN SEPICH: That's not necessary at all. [LB1054]

SENATOR PANSING BROOKS: Okay. So you wouldn't have any problem with that being corrected in this bill. [LB1054]

JAYANN SEPICH: None. It's less expensive, it's less cumbersome. [LB1054]

SENATOR PANSING BROOKS: It is. [LB1054]

JAYANN SEPICH: It's obviously less painful. I mean taking a cheek swab is about the same invasiveness as brushing your teeth. [LB1054]

SENATOR PANSING BROOKS: Right. Thank you very much. And I'm sorry for your loss. Thank you very much for coming. [LB1054]

JAYANN SEPICH: Thank you. Thank you. [LB1054]

SENATOR SEILER: Any further questions? Senator Williams. [LB1054]

SENATOR WILLIAMS: I've got one final question because, again, because you have such a wealth of knowledge of being different places. Are there any federal programs that help with the funding for DNA testing? [LB1054]

JAYANN SEPICH: I'm glad you asked that. I think the most germane to this hearing is the grant that was named after my daughter, the Katie Sepich Enhanced DNA Collection Act. It was

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

Judiciary Committee  
February 18, 2016

---

passed in 2012. It's authorized through 2016. It pays for all of the costs of implementation for the first year. The first year is by far the most expensive. Going forward, there are also other federal grants. There's the Debbie Smith DNA backlog reduction grant. There are many states that apply for and get assistance with their arrestee DNA programs under the Debbie Smith grant as well. That has just been reauthorized for another five years, so that is absolutely available. I don't want to say that it doesn't...it's not free to the states and I don't want to...I don't want to say that it is, you know? But the one thing I do want to say, and I think this is very important, is how much money it saves. There was an independent academic study done by the University of Virginia, and I'd be happy to e-mail that to you if you want to look at it in depth, but there were several conclusions to that study. But the one that stands out in my mind about money is that for every arrest...excuse me, every offender profile that goes into the CODIS database, which nationwide average goes in there at a cost of \$30, eventually saves the taxpayer \$27,000. And there was also another study done by the city of Denver when they did a DNA study and this was under the auspices of the United States Department of Justice, and this is on their Web site, the city of Denver DA's Web site, and it says that they found for every dollar they invested in DNA they saved \$90. So in the long-run, it saves a tremendous amount of money. I think the senator said in my daughter's case, if they had swabbed the cheek of the man that murdered my daughter less than 90 days after he killed her, when he was arrested for an unrelated burglary, over \$200,000 would have been saved investigating her case alone. We know that that DNA match saved a tremendous amount of money in court costs, because they found enough evidence, based on the investigative lead provided by that DNA match, that he confessed. He pled guilty. We didn't have a six-week trial. We had a 45-minute hearing, so that saved a lot of money as well. So finding the right person saves a great deal of money. And I know...with your permission, I have one more thing to add. It is every bit as important to me that we are exonerating people directly through arrestee DNA. We have examples of that. And when we are exonerating people, a lot of times up-front, they're not going into prison because the right person is going in, and they are not going into prison so they're not suing the state for millions of dollars for wrongful incarceration. I've become very good friends with a man named James Tillman who was in prison for 18 years, wrongfully convicted of a rape on erroneous eyewitness identification. The man that actually committed that rape, after James Tillman was exonerated, they matched the DNA to a man who was in prison. Had his DNA been taken the first time he was arrested for a felony, James Tillman would have been released from prison years and years sooner. So the good that this does on both sides, to keep those who are truly innocent out of prison and to identify the correct...to give law enforcement investigative leads to identify the correct person, is a beautiful tool and we shouldn't be afraid of DNA because DNA is truth. [LB1054]

SENATOR SEILER: Further questions? Senator. [LB1054]

SENATOR PANSING BROOKS: Just as you're talking about the savings, clearly if we...we have a case of the Beatrice Six and if we had been able to use the DNA evidence, number one, we

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

Judiciary Committee  
February 18, 2016

---

wouldn't have paid payment to each of them for the wrongful incarceration and we would have known much more quickly that they were innocent. So again, there it's hundreds of thousands of dollars of savings. [LB1054]

SENATOR SEILER: Senator Krist. [LB1054]

SENATOR KRIST: Just a follow-up. Senator Hilke is very aware our budget process here or our fiscal note process does project savings. So hopefully this hits the floor. When we have debate on this bill, those studies that you mentioned would be very helpful for us in order to make sure that we are able to portray to our colleagues what kind of savings this (inaudible) not just in dollars but in manpower across the state. And then just one other clarification, if you know. Is there, within the CODIS structure itself, is there a natural process that takes the information out or does the law enforcement agency or the individual have to petition to get his information, his or her information, removed? [LB1054]

JAYANN SEPICH: Okay. I hope I'm not going to get too technical but... [LB1054]

SENATOR KRIST: I can handle it. Go ahead. [LB1054]

JAYANN SEPICH: Okay. With...first of all, it is federal law that if a state...(recorder malfunction--some testimony lost). [LB1054]

SENATOR KRIST: Senator Seiler, we're back. We're back on. [LB1054]

SENATOR SEILER: We're back on? Okay. Thank you, Chuck, your magic wand. Okay, we're back on the record. Where's Ollie? [LB1054]

SENATOR KRIST: I'm going to ask you that question, just to elaborate one more time,... [LB1054]

JAYANN SEPICH: Okay. [LB1054]

SENATOR KRIST: ...when he comes back in and make sure we're on, about the second swabbing. [LB1054]

JAYANN SEPICH: Okay. [LB1054]

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

Judiciary Committee  
February 18, 2016

---

SENATOR KRIST: So that we can make sure that that's on there. [LB1054]

JAYANN SEPICH: Okay. That's fine. [LB1054]

SENATOR WILLIAMS: Did she testify that they destroy the sample too? [LB1054]

JAYANN SEPICH: Yes, they do. [LB1054]

SENATOR WILLIAMS: The sample? [LB1054]

JAYANN SEPICH: Yes, it is destroyed. [LB1054]

SENATOR WILLIAMS: I wanted to be sure I heard that right. [LB1054]

JAYANN SEPICH: It is destroyed. It's shredded. [LB1054]

SENATOR SEILER: Lois, would you find our escapee Oliver? [LB1054]

SENATOR WILLIAMS: Ollie is coming. [LB1054]

SENATOR SEILER: Oh, he is? Okay. Okay, let's go back on the record. We're back on the record. Senator Krist. [LB1054]

SENATOR KRIST: Okay, so just to make sure that there was no break in the transcription, I think it's a very important thing to put back on the record if it's not on there, or put it on the record in case it's not. What you testified to is within the CODIS system, when there is an exoneration or a dismissal or the person is not convicted, then the samples are destroyed. [LB1054]

JAYANN SEPICH: Yes. [LB1054]

SENATOR KRIST: And you said another part of that was that when the person, in the case of your daughter's assassin, he actually had to have his cheek swabbed a second time for verification and a warrant had to be placed in place in order to do that. [LB1054]



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

Judiciary Committee  
February 18, 2016

---

JAYANN SEPICH: Yes. What actually happens is once a match is made between the crime scene evidence and the offender profile, once that match is made the CODIS notifies the state crime lab that there is a match and they give the specimen ID number for the case number and the specimen number. And they say, we have a match of this case to this person. And at that time the state crime lab that originally took the sample goes and finds that original sample again and they retest it to make sure that it's accurate, that there wasn't an error made. And once they know that there were no errors made, then they go into their records, which is a separate, off-line, very guarded database that says specimen number 12345 is John Smith, because that's not in CODIS. And then they notify the investigative team that's working on that specific case, we have a match and it is this person. And that's used as an investigative lead. And then they start doing their investigation and they try to find corroborating evidence in addition to that DNA match. And when they feel that they have enough evidence to take it to the district attorney to actually bring charges, the district attorney then will get a warrant to have another DNA swab done for that person and they analyze it again, make sure it's, you know, it is correct again, and that is the evidence that is actually taken to court. [LB1054]

SENATOR KRIST: Thank you. [LB1054]

SENATOR SEILER: Any further questions? Seeing none, thank you very much for your time... [LB1054]

JAYANN SEPICH: Thank you. [LB1054]

SENATOR SEILER: ...and effort and your testimony. [LB1054]

JAYANN SEPICH: Thank you. [LB1054]

SENATOR SEILER: And you've given us a handout. You want this made part of the record, I assume. [LB1054]

JAYANN SEPICH: I absolutely do. And if you would allow me, I would like to just explain one...could I explain one more thing that's in here that I haven't explained? [LB1054]

SENATOR COASH: Could you explain that last page for me? [LB1054]

JAYANN SEPICH: Thank you so much. These three beautiful young women...now my daughter would not have been saved with arrestee DNA. We would have found out three years sooner he killed her, but her life would not have been saved. These are three women whose lives would

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

Judiciary Committee  
February 18, 2016

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have been saved with a law like the law in New Mexico. The first one up here is Brianna Denison. In 2007 we tried to pass an arrestee DNA law in Nevada, and we did not. James Biela raped three women. There was DNA evidence in CODIS from those rapes. And then he was arrested for assault with a deadly weapon, but Nevada didn't have an arrestee DNA law and so his cheek was not swabbed. And the woman that he assaulted refused to cooperate and so the case was dropped and he was released. He then went on to kidnap, rape, and murder Brianna Denison, so this law would have saved Brianna's life. Brianna's mother Bridgette and her aunt Lauren and I went back to the Nevada State Legislature and they did pass an arrestee DNA law and in Nevada they call it Brianna's Law. These other two young women, also their lives. They were both murdered by the same man and very similar. I won't go through the whole chain of events, but they, too, could have been saved with arrestee DNA: Morgan Harrington and Hannah Graham. This is why I'm here. I'm here because of these three woman and because of men like James Tillman whose lives are either ended or greatly, greatly harmed by wrongful incarcerations. And so I'm asking you to please consider this and this year because that's what happened when we didn't pass the law with Brianna. It was too late for her. So thank you so much. [LB1054]

SENATOR SEILER: Just a second. You referred to a picture on next to the last page of your program and you identified the two ladies on the left of the picture. Which one is on top and which one is on the bottom? [LB1054]

JAYANN SEPICH: Morgan Harrington... [LB1054]

SENATOR SEILER: Okay, is on top? [LB1054]

JAYANN SEPICH: ...is on the top, and Hannah Graham... [LB1054]

SENATOR SEILER: And Candy (sic) Graham is on the bottom. [LB1054]

JAYANN SEPICH: Hannah Graham, yes. [LB1054]

SENATOR SEILER: Thank you. The exhibit will be received. Thank you. [LB1054]

JAYANN SEPICH: Thank you. [LB1054]

SENATOR SEILER: We'll make it part of the record. Next proponent. [LB1054]

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

Judiciary Committee  
February 18, 2016

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COREY O'BRIEN: Good afternoon, Chairman Seiler, members of the committee. My name is Corey O'Brien, that's C-o-r-e-y O-'B-r-i-e-n, and I'm with the Nebraska Attorney General's Office, and I'm here in support of LB1054. Senator Hilkemann indicated that we were largely drafters of this bill. I just wanted to explain that we were brought into the process incredibly late and this is not an Attorney General's bill. But thanks to Senator Hilkemann, he actually brought us a copy of his original bill and it was about 28 pages long and it stripped out the existing DNA Testing Act that we already have in law. And so I interjected and I said, well, Senator, this goes a little too far and here's some recommendations. And so ultimately what you see in terms of the bill is a lot of the recommendations that our office made. There are four principal reasons why the AG's Office is in support of LB1054. First of all, we believe that it's substantially similar to the law in Maryland that was passed in...the DNA testing or DNA collection law in Maryland that was proven constitutional in Maryland v. King. There are some subtle differences. There probably are some things, as Senator Pansing Brooks brings out, that might need to be tweaked in terms of the collection of a buccal swab from an arrestee versus what's already in the existing law. Second, we also advocate that this law is good because it will help us solve cold cases and tie existing cases together with known offenders. Third, it involves a process, in the state's opinion, that's really no different than we've been using since the late '90s with regard, a collection of fingerprints and putting those in the AFIS system, which identifies latent prints from unsolved crimes with no-name fingerprints taken from arrestees at the time of booking. Finally and most importantly, Senators, is I've been a prosecutor for 18 years. I've gotten to work on many fabulous pieces of legislation over my career. I've gotten to work on numerous high-profile cases. Without a doubt, the highlight of my career and the most satisfying moment in my career was when I got a call standing in the parking lot at Nebraska State Patrol from the UNMC DNA lab indicating the exoneration of the Beatrice Six and the identification of the true killer of Helen Wilson. I broke down in tears in the middle of the parking lot--hopefully, that's not going to be on the public record but it probably is now--because at that moment I really understood what our job is to pursue justice; and though justice was tragically denied for a long period of time in that case, at least those men that had still been in prison and the four that had been released were going to have their names cleared. It's my contention that had DNA evidence been available at the time that they were convicted of these crimes and things like the CODIS database and the expanded CODIS database that's advocated in LB1054 were available at that time, that in all likelihood the tragedy that occurred in the Beatrice Six case would never have occurred, at least that's my hope. So I, on behalf of my office, advocate for any science and improvements in the way that we do business and making sure that we get the right results for the right reasons, such as the expansion of the CODIS database, so that we don't have tragedies like this. In preparation for my testimony today, I didn't have a lot of time but I did a quick Google search, and on the Google search I pulled up CODIS exonerations. Within the first page I pulled off five cases of CODIS exonerations. So it does play that added benefit. We'd ask you to advance LB1054 to the floor. And certainly I'd entertain any questions you have and any concerns that need to be addressed to make the bill better than it already is. [LB1054]

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

Judiciary Committee  
February 18, 2016

---

SENATOR SEILER: I'd like to just clarify your drafting. The DNA Identification Information Act was an existing law. [LB1054]

COREY O'BRIEN: It is. [LB1054]

SENATOR SEILER: So that when we look at this bill, the parts that aren't underlined are the old law and they will continue, right? [LB1054]

COREY O'BRIEN: Yes, that's the intent. [LB1054]

SENATOR SEILER: Okay, so only the underlined parts is modification of our current law. [LB1054]

COREY O'BRIEN: Right. [LB1054]

SENATOR SEILER: Okay. [LB1054]

COREY O'BRIEN: And you had asked me earlier off the mike in terms of whether or not buccal swab is included in the definition for DNA sample. And we believe that it is because it says, "blood, tissue, or bodily fluid sample," and that a buccal swab would be covered as a bodily fluid sample. [LB1054]

SENATOR SEILER: Okay. Any further questions? Senator Williams. [LB1054]

SENATOR WILLIAMS: Thank you, Senator Seiler. And thank you, Corey, for being here. We heard testimony earlier that some states have actually broadened this and they're taking these samples based on any felony arrest. Are you more comfortable with a defined list of felonies such as in Mr. Hilkemann's bill? [LB1054]

COREY O'BRIEN: Senator, I guess that's a hard question for me to ask...answer. As a prosecutor, I think that expanding the DNA database to the point where we can enhance the ability to do our jobs better would mean taking collections from all felonies. That being said, when we talked to Senator Hilkemann about this bill, you know, he expressed some concerns. We expressed some concerns about going too far too fast and whether or not there was rationale in, for instance, taking DNA from somebody convicted of a bad check violation, which is a felony in some cases, and whether or not that's rationally related to the investigation of these more serious crimes where DNA is usually prevalent. So ultimately the decision was made to

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

Judiciary Committee  
February 18, 2016

---

select the violent crimes and focus on that. As you heard Jayann testify, you know, some states have gone so far as to say all felonies. I would be in support of that. I think that there is justification for that. That being said, we're also interested in what Senator Hilkemann has in LB1054. So I didn't really answer your question, it was circuitous, but I... [LB1054]

SENATOR WILLIAMS: I'd like... [LB1054]

COREY O'BRIEN: ...I think there's precedent out there. The reason why we said that this was probably okay is because this is pretty much exactly the parameters that Maryland's law that was passed by the U.S., passed as being constitutional, you know, was not all felonies. It was select violent crimes. And so we knew we were on solid constitutional grounds based upon that Maryland v. King decision. Maryland v. King didn't look at a state's law that went to all felonies and whether or not that was appropriate. Part of me says that it probably would be constitutional, but we knew we were on more solid constitutional grounds by following Maryland's lead. [LB1054]

SENATOR WILLIAMS: That was the second part of my question. Something that I would like to ask you and then also Mr. Eickholt, because I'm assuming he's coming up here to testify, DNA evidence and the use of DNA evidence is not a static science. It continues to evolve and continues to move. Is there...are there any issues with CODIS in this situation that you're aware of as that science evolves? [LB1054]

COREY O'BRIEN: Not that I can think of off the top of my head, and I must confess I'm not...I have a pretty good knowledge of CODIS and how it operates, but I'm not an expert in CODIS. I can tell you the science is evolving almost daily. It's really hard to keep track of. You know, it was talked about 13 loci, or locations in the DNA chain that are currently looked at. Very shortly we're going to go to...both UNMC and the state lab are going to up to 22 loci that are actually looked at. So we're actually going to look at a bigger part of the DNA chain. So I mean there is constantly things evolving. The one interesting thing is that we're on the verge, and I would probably guesstimate within the next ten years--and there's probably already some of that technology out there--that we're going to be able to do instant DNA where law enforcement are going to be able to take a guy's profile to upload it into a computer system and basically spit out a preliminary result giving his known DNA profile and being able to compare that almost instantaneously on the spot. Right now, you know, depending on the best case scenario, it takes me about a week from UNMC or a rush from the state lab to get back a full profile. But we're on the verge of getting that and I think that will ultimately facilitate the utility of CODIS and arrestee DNA so that we have a better understanding whether or not the guy that's being arrested is also connected to other unsolved crimes in the area in a much more quick fashion. [LB1054]

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

Judiciary Committee  
February 18, 2016

---

SENATOR WILLIAMS: Thank you. [LB1054]

SENATOR SEILER: Senator, you always want to be last so I got one over here on my left. [LB1054]

SENATOR CHAMBERS: Say it again. [LB1054]

SENATOR SEILER: You always want to be last,... [LB1054]

SENATOR CHAMBERS: Yes. [LB1054]

SENATOR SEILER: ...so I've got one over on my left here. [LB1054]

SENATOR CHAMBERS: Oh, go ahead. [LB1054]

SENATOR SEILER: Senator Coash. [LB1054]

SENATOR COASH: Thank you, Senator Seiler. Corey, I don't know if you heard the question I asked Senator Hilkemann, but under the current law, what happens with a postconviction...well, I guess at that point it would be an inmate who refuses a DNA test? [LB1054]

COREY O'BRIEN: Under our existing law, it's my understanding that they cannot be released from custody until they supply a DNA sample. It has been a problem for us, according to some that I've talked to at the penitentiary though. We've got guys that are in there doing life and they're not supplying their DNA sample, some that are in there for murder. And the law really doesn't provide a mechanism for us to forcibly take the DNA from them under the existing act. And so we're a little bit at a loss as to how to advise them whether or not they actually take those DNA samples from those individuals. And that could be problematic because guys that are in there for homicide right now very well could be connected to other unsolved homicides. The bill right now, in terms of the arrestees, doesn't provide for a mechanism to actually take the DNA sample from them forcibly and what ramifications there are if we don't obtain the DNA sample. You know, I have cases now where we get a court order in order to get a DNA sample from somebody. If we can't get it from him without using any kind of restraint or anything like that, we then go back to the court and ask them to allow them to restrain them in order to take it. Maybe that's potentially an option if we can't get it from them. [LB1054]

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

Judiciary Committee  
February 18, 2016

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SENATOR COASH: So a remedy under the current law is to go to a judge and say, hey, we've... [LB1054]

COREY O'BRIEN: Basically laying out facts in an affidavit saying, Your Honor, we were unable to get a DNA sample from this individual without restraining him, here's the reasons why we need to restrain him, he won't let us do it or he's becoming violent or becoming obstinate, and let the judge decide whether or not we've set forth sufficient grounds in order to take the sample from him. [LB1054]

SENATOR COASH: Have you done that in the past? [LB1054]

COREY O'BRIEN: I've done it in a case where I had an existing...it wasn't a CODIS case but it was a case where I was trying to get physical characteristics from a suspect in a homicide. [LB1054]

SENATOR COASH: But some of those inmates that are serving life who we don't know if they've committed other crimes that are unsolved, you've never pursued a court order to get... [LB1054]

COREY O'BRIEN: No. [LB1054]

SENATOR COASH: Can you (inaudible)? [LB1054]

COREY O'BRIEN: Joe Kelly and I have talked about it at one point, probably years ago, and it kind of fell off the tracks and so we never really revisited it. [LB1054]

SENATOR COASH: Going back to your first comment about denying release, Corrections, so somebody who's actually served their time has been denied release as a result of their refusal to give a DNA swab? [LB1054]

COREY O'BRIEN: I believe that's what the remedy is. And that's what I've been led to believe. I don't know of anybody that's been denied release because they didn't provide a DNA sample though. I've never...it's just something that I've been told is that that's the available remedy. And I got to be honest, I haven't looked at the act close enough to see if that is actually in there. [LB1054]

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

Judiciary Committee  
February 18, 2016

---

SENATOR SEILER: Okay. Well, I think that's important for this committee to consider how the law should treat someone who refuses and what. I'll just ask you one final question. This...and if you know, this goes basically to the science. Can I get the same information if I pluck a hair off the guy's head? Rather than get a cheek swab, can I get to the same end? [LB1054]

COREY O'BRIEN: If you get root material. The hair itself does not have DNA in it. [LB1054]

SENATOR COASH: Okay. [LB1054]

COREY O'BRIEN: But the root material actually does have DNA so that is a possibility. Some people might argue that's even more invasive than basically rubbing the inside of the cheek for 30 seconds but... [LB1054]

SENATOR COASH: I probably watch too many cop shows, so. (Laughter) [LB1054]

SENATOR SEILER: Probably acting in them. [LB1054]

COREY O'BRIEN: I've actually had my DNA taken before and I didn't do anything bad. I just volunteered. I volunteered to have it done in case I cross-contaminated a piece of evidence, so. [LB1054]

SENATOR COASH: All right. Thank you. [LB1054]

SENATOR SEILER: Senator Laura Ebke. [LB1054]

SENATOR EBKE: Thank you. Do you know, I mean there's all these genealogy Web sites and...does that connect up with CODIS in any way ever? [LB1054]

COREY O'BRIEN: No. No. [LB1054]

SENATOR EBKE: I mean could it? [LB1054]

COREY O'BRIEN: No. Those are private entities and this is a government-run FBI program that has more rules and regulations than you could ever imagine. I mean the books that the state lab coordinator for CODIS has are probably this high. And you know, I'll call her all the time and I'll say, hey, I've got this sample from a homicide case or a rape case; can I put this into CODIS? And you know, there are very strict rules on what you actually can put into the database. It's not



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

Judiciary Committee  
February 18, 2016

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just offenders that are in the database too. It's evidence from unsolved crimes that goes into the database. And the rules are very, very strict, and they follow them to the letter, because if you don't then you lose the ability to use the database. And it's so vitally important, so. But, no, the ramifications are very strict on where the sample must come from and it cannot be linked up with anything else. They do the testing independently of the cheek swab that's taken from the suspect and then it can only be taken from law enforcement. [LB1054]

SENATOR SEILER: Senator Chambers. [LB1054]

SENATOR CHAMBERS: Mr. O'Brien, wasn't there a case that dealt with this notion of compelling a person who's locked up to give a DNA sample and that person could not be released until after such sample had been obtained? And the court said if it goes beyond the maximum term limit, that's an unconstitutional extension of the sentence. [LB1054]

COREY O'BRIEN: There might be such a case. It rings a bell. [LB1054]

SENATOR CHAMBERS: There was a case like... [LB1054]

COREY O'BRIEN: That rings a bell. [LB1054]

SENATOR CHAMBERS: Yeah, I read it. [LB1054]

COREY O'BRIEN: Uh-huh. [LB1054]

SENATOR CHAMBERS: And there's still some of that in this bill right now. So there is not an automatic elimination from the statute of language that has been ruled unconstitutional. And I notice this when I come across it like this, because I don't have occasion to just study all the statutes. But you may know and you may not, I wrote the DNA statute. And when I did, I had no model. No other state had it, nor did the federal government, so I had to just bring it out of my head. And that was the law that led to the Beatrice Six being exonerated. And then Lieutenant...I meant Attorney General Bruning invited me to the pardoning session. [LB1054]

COREY O'BRIEN: I was standing right next to you. [LB1054]

SENATOR CHAMBERS: I also wrote the law that made it possible for that expungement and the giving back of that DNA when there was no connection between the person and that DNA. After I was out of here, changes were made to the law, which would not have happened were I

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

Judiciary Committee  
February 18, 2016

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here. These things have an allure and they sound good. But I'll tell you why I wrote that law, because in Omaha they got a federal grant and it was conditioned on them obtaining as many DNA samples as they could. So they fabricated a notion of a serial rapist and they started taking DNA samples from black men, not charged with any offense. What they would do is take that great big crime trailer that they had--and they'd do it on Sunday or a holiday--and park it in front of somebody's house and say, we're going to stay here until you give us a DNA sample. The man was not charged with anything, no probable cause that he was involved; they just wanted to get it and they coerced him in that fashion. They then said they wanted from OPPD, Omaha Public Power District, a DNA sample from every black employee they had. And when the company was going to balk, the police department said, we will back a truck up to OPPD and we'll confiscate all of the files that you have and identify therefrom all the black employees you have, and we're going to take their DNA sample. They created what they called a description, not based on a photograph but it was drawn, and a height, and it was somebody about 5' 10", weighed 200 pounds, whatever it was. They had men, one guy was 6' 4" that they put pressure on, one was as thin and as frail as a rail they put pressure on, one worked in a barbershop where I used to work. He wasn't old enough. He was light-skinned. He was not tall. He didn't resemble it at all. And I objected publicly and said that I believe that there's money coming to OPD for this, and that's what happened. And I said when the money runs out, they're going to stop doing this, and that happened. But before that, I went to court and wanted a mandamus to prohibit and make the OPD stop doing it. There are a lot of things I had to do because law enforcement behaves in a way that is corrupt. Nobody in the Legislature wanted to do anything. Nobody in Omaha saw a need to do anything; I did. I'm skeptical of this kind of legislation. And it says when you're arrested then they can take it. Now based on your understanding, if a person is arrested for one of these crimes and not charged, must that person give one of these DNA samples? [LB1054]

COREY O'BRIEN: Yes, because as of right now collection is at the time of booking. [LB1054]

SENATOR CHAMBERS: And it has nothing to do with anything other than being arrested. So a cop could fabricate a charge for an arrest, and as soon as the guy is booked in they could say, we don't have anything, let him go. But they got the DNA sample. [LB1054]

COREY O'BRIEN: But if they're not charged, then it will...then they have the ability to have it expunged. [LB1054]

SENATOR CHAMBERS: And if he doesn't agree to give a DNA sample, what would they do to him? Would they hold him until he did give one? [LB1054]

COREY O'BRIEN: There's nothing in the bill specifically that says that. [LB1054]

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

Judiciary Committee  
February 18, 2016

---

SENATOR CHAMBERS: So then if a person chooses not to give a DNA sample, he or she does not have to give one under this law. [LB1054]

COREY O'BRIEN: In what's in the bill right now, I don't see anything that says that they have to. [LB1054]

SENATOR CHAMBERS: Are you aware of crimes that do not have a statute of limitations in terms of how long they can be charged? [LB1054]

COREY O'BRIEN: Yes. [LB1054]

SENATOR CHAMBERS: I think I see some of those crimes on this list. [LB1054]

COREY O'BRIEN: There are some. [LB1054]

SENATOR CHAMBERS: Well, you cannot ask for expungement until the DNA...I meant until the statute of limitations has run out, even if you're not charged. So you'd never be able to get your DNA, would you? [LB1054]

COREY O'BRIEN: Yeah. For things like sexual assault of a child and I believe incest, things like that, probably not. [LB1054]

SENATOR CHAMBERS: And arson. [LB1054]

COREY O'BRIEN: And murder. [LB1054]

SENATOR CHAMBERS: The ones that the insurance companies did not want to have a statute of limitations because there might be some chicanery and they always wanted to be able to go back and put the grabs on whoever did it. So... [LB1054]

COREY O'BRIEN: Spike and I were talking about that. We thought arson had a three-year statute of limitations, but you could be right. [LB1054]

SENATOR CHAMBERS: I didn't quite hear you. [LB1054]

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

Judiciary Committee  
February 18, 2016

---

COREY O'BRIEN: We, Spike and I, were talking about that. We thought arson had a three-year statute of limitation, but you could be right. [LB1054]

SENATOR CHAMBERS: See, these laws sound good to people. And I wasn't going to question anybody who talked and I gave my reason. This is bad legislation and if it comes out there, I will fight it tooth and nail. I've done too much work that others should have done and that I should not have had to do. And there are good results from what I did, but people don't know it. I'm the villain, but I'm the one who does things to try to bring justice for those who are rejected, who are thrown away, who, once they're accused, the accusation in the mind of the public is the same as a conviction. So they (inaudible) changing. And if this comes out on the floor like it is, we're going take every minute until they vote cloture. And I will still fight it. I'm tired of this kind of slipshod legislation coming here because it's being done in other states. Other states do this kind of trashy stuff because they don't have anybody like me to stop it. And people's good intentions are not enough for me. And senators who don't understand the law will be prevailed on to bring it out of a feeling that I'm doing somebody good and I'll feel good if I do it. But they can have all the press conferences they want to. They can say however many states are doing it that they want to. But there are defects in this law right now, the one we're looking at, the slimmed down version, and it should not be. I don't see how anybody who has anything to do with the law...and I want my good friend "Brother" Williams to listen because he's a lawyer. I'm arrested, Brother Williams, and charged with arson and they book me and they say, oh, no, the guy who did this, we found out he's a guy...he was a white guy. So they look at me, they say, well, there's no way we can hold Chambers because of that. I cannot get mine back because there's no statute of limitations. I cannot. I shouldn't have been arrested in the first place. But people in Nebraska and this Legislature are comfortable with that, but I'm not. And that's all I'll say. And I've said it to you because you're a lawyer and you'll understand. And it did ring a bell with you that there was a case...this trash got in when I wasn't here, where after somebody has completed the sentence that the court gave the Legislature said that person still cannot be released until he or she gives a DNA sample. And when you've been locked up a long time, you may not feel like you should have to do. But what are you going to do? You going to keep serving time? That's in the law. And people who bring these laws won't do anything about looking at that and correcting what's already here. I want to see the Legislature, this committee, advance this bill from the committee. And I'm going to tell you all something. [LB1054]

SENATOR KRIST: Is that a challenge? [LB1054]

SENATOR CHAMBERS: Absolutely. [LB1054]

SENATOR KRIST: Okay. [LB1054]

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

Judiciary Committee  
February 18, 2016

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SENATOR CHAMBERS: I want to show you all what I can do. And before I say more, there's nothing for me to do here. I don't deal with stuff like this except trying to correct it, and I can't waste my time here because I'm going to have to waste it on the floor. I'll do it out there. And by the way, I don't resent anybody coming here trying to get the state to enact a law, but the ones in this state should know better. The lawyers should know better, the senators should know better. And this that we have is a rewrite by lawyers. I don't even practice law. I can't practice law. I'm not a lawyer. I spent a lot of my years as a barber and I can see through this. And I believe if I was as blind as Ray Charles and Stevie Wonder, I could see through this. But I, before I say too much, I'm going because the thing that outrages me more than anything else is gross injustice worked against those who don't know that they are being unfairly treated, and even if they know, they have no help. And there are lawyers who know that the law is wrong and won't do anything about it. That's why I'm outraged. I understand why Jesus took that whip and drove those moneychangers out of the temple. He's supposed to be the peaceful person. But he saw that. He said, I can't take it. But I'm not going to take a whip and run anybody out of here. I'm going to leave. [LB1054]

SENATOR SEILER: Any further questions? Thank you. Next proponent. [LB1054]

MICHAEL McGEE: Good afternoon, Senators, Mr. Chairman. My name is Michael McGee, M-i-c-h-a-e-l M-c-G-e-e. I'm here representing the Omaha Police Department and we are in favor of LB1054. Obviously, as we have just heard from Mr. O'Brien the significance of arresting people and getting the convictions, but also as equally important is the exoneration of innocent people. And so on behalf of the Omaha Police Department, we would like to see this bill forwarded and passed. [LB1054]

SENATOR SEILER: Any questions? Thank you for your testimony. Next proponent. Seeing nobody coming forward, opponent. [LB1054]

SPIKE EICKHOLT: (Exhibits 2 and 3) Good afternoon, Chairman Seiler and members of the committee. Spike Eickholt, first name S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys in opposition to the bill. It's not easy to come up here, after Ms. Sepich testified, and testify to this committee opposite what she asked this committee. Unfortunately, this committee cannot undo anything that's happened to her daughter, her family, or any other women and their families that she talked about when she testified. And we would submit that this bill as written would not do anything to prevent or protect any further women in the situations as she described them. First of all, and I'd ask the committee to consider this point carefully, when you hear from the proponents, not just the introducer but those testifying in support, they used this term that this bill only applies to felony arrestees. That is not the case. There are at least two misdemeanors listed as crimes of violence. On page 2, lines 18 and 19,

third-degree sexual assault, that's a Class I misdemeanor. It also references on page 3 crimes affiliated with the homicide of the Unborn Child Act. That includes misdemeanor offense of motor vehicle homicide of an unborn child. That matters because that's likely. One, it's inconsistent with our current statutory scheme because you don't have to give a DNA sample if you're convicted of a misdemeanor. This would provide that for a couple of misdemeanors you can give a DNA sample at arrest. It's also troubling, as Senator Seiler asked, because you've listed offenses pre-LB605. On attempt to commit these listed offenses, he has to...a person has to also give a DNA sample. Prior to LB605, many of these offenses, to commit an attempt of those, was a Class I misdemeanor. The bill makes no accommodation for the offense date or any kind of clarification whatsoever. There are three ways in current law that a person can give a DNA sample. One, they can do so voluntarily. I've done it before with multiple clients. A law enforcement officer or a prosecutor has contacted me saying, hey, we want to get that person's sample, he's suspected in a crime, will he give it? And many times my client has agreed to do so. Another way that a DNA sample can be collected is that the prosecutor can file a motion, as Mr. O'Brien referenced, to get identifying information under 29-3301 where they ask for a court order asking for it, like you do a search warrant. And then the court grants that authority and then the person has got to comply with the order. And this is important to what Mr. Senator Coash asked. If the person fails to comply with that order, they can be held in contempt. The court can jail them for up to 30 days for each instance they refuse, and also can tailor additional orders to basically get it from them. And the third way a DNA sample is collected in the state is if they're convicted of a felony. This would provide it for an arbitrary listing at the time of arrest. It's an arbitrary listing because, one, it does too much, we'd argue. It collects for misdemeanor offenses. Another argument, it does too little. It lists burglary as an offense because that's what Maryland had in their statutory scheme. But in Nebraska, a burglary is not necessarily a crime of violence. Senator Coash asked about the listing of these bad things. A person can commit burglary if they break into a storage unit. That's not necessarily a bad thing. It's not necessarily a crime of violence. But conversely, terroristic threats, which is clearly a crime of violence, is not listed as an offense. I have a handout. I detailed many other deficiencies in the bill. We'd urge the committee to not advance it and to indefinitely postpone it. [LB1054]

SENATOR SEILER: So you're asking, both your letter for Nebraska Criminal Defense Attorneys Association and the ACLU, all be made part of the record. [LB1054]

SPIKE EICKHOLT: Please. [LB1054]

SENATOR SEILER: Okay. They will be received. Any further questions? Senator Williams. [LB1054]

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Transcriber's Office

Judiciary Committee  
February 18, 2016

---

SENATOR WILLIAMS: Thank you, Senator Seiler. And, Spike, thank you for being here. There was discussion that went on with previous witnesses on the constitutionality and the protections of privacy. Would you like to address that issue for me? [LB1054]

SPIKE EICKHOLT: In the handout, I talk about Maryland v. King. This is where it gets a little bit complicated. The part where Ms. Sepich quoted that it's no more different than taking a photograph or a fingerprint for someone who's booked in, it's a little different than that. Maryland had a completely different statutory process, a different procedural process, and it's different in Maryland. A person gives a DNA sample at time of arrest but that is not submitted to the CODIS database. Nothing is done over there until after that person appears for what they call an arraignment in Maryland. And at that arraignment the court then makes a probable cause finding that this person has likely committed the felony offense that he was arrested for. That's significant, because in Nebraska it is collected at the time of arrest. And the example that Senator Chambers gave, if that person is not charged whatsoever or if the person just is not...the case does not proceed or prosecuted in any way, the DNA sample still goes into CODIS. That's one difference that the court didn't address in Maryland v. King and that's one difference that's going to need to be accommodated if this committee is serious about adopting something like this. It's going to have to be rewritten beyond this bill. That's one provision that we'd argue, and there was another point I was going to make, but I talk about some of the other differences in the statutory scheme in Maryland versus Nebraska. [LB1054]

SENATOR WILLIAMS: My question to Mr. O'Brien about DNA and the evolving nature of that science, is there anything that gives you pause with that? [LB1054]

SPIKE EICKHOLT: You know, the dissent in Maryland v. King was written by Scalia and it was kind of an odd mixture of the majority. It was a 5-4 decision. Scalia wrote a very strong dissent, could have been written by any defense attorney in this country, and it was even stronger as many of his can be. He talked about the slippery slope. As people get more and more impressed with the technology and the ease of collecting it, we're going to move from arrest for certain offenses to arrest for all offenses to getting a driver's license you have to give a sample. And he gave the danger of the science, how it does it help but we simply can't--I'm summarizing--we simply can't lose track of what the Fourth Amendment requires. And that's, I guess, a response. And I don't know if it was responsive to your question at all. But DNA is a powerful thing. It does help innocent people stay from being prosecuted in the system. I've had clients do that, give samples and been spared the threat and the real risk of being convicted. [LB1054]

SENATOR WILLIAMS: I don't think anybody would argue in this room that if we can incarcerate guilty people and free innocent people, that's what justice is about. Knowing your

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Transcriber's Office

Judiciary Committee  
February 18, 2016

---

position on this and having studied this and with your extensive criminal defense background, is there a way to make this bill doable? [LB1054]

SPIKE EICKHOLT: There might be. Obviously, the membership...I mean ultimately our membership is not in agreement with the ultimate aims of the bill, and that is to collect DNA at the time of arrest. The problem here that is trying to be solved is what when someone is arrested but before they're convicted, that can take some time. And it's based on this assumption that because this person has been arrested for these kind of crimes, just simply arrested, they've probably committed other crimes out there we don't know about. That assumption, that position is just something that defense attorneys just are opposed to. We believe in the Fourth Amendment. There is a way that the government can obtain a sample from DNA, a DNA from them, without their consent. If the government can show the court probable cause, that balances the public's safety, that balances the private...privacy of its citizens. There might be a way to make it work. But this bill I don't think does it and which I would suggest to the committee respectfully is that what you don't want to do is do something that's going to end up being a mess in the courts. As Senator Coash asked, the bill is unclear. Who pays for these things? I mean under current law, if you're convicted, the defendant pays the \$30 or so when they're collected. It's unclear if it's going to be the police agency arresting the person, if it's going to be the correctional facility sort of that does the booking and stuff, if it's going to be someone else, if you're going to somehow...it's just silent on it. The bill is unclear for what happens and is likely going to happen when you arrest somebody. You take them off the streets. In Lincoln and Omaha, the arresting agency does not do the booking. So you have the Lincoln Police Department takes somebody to the jail. That person is probably agitated, mad and angry they got arrested, probably intoxicated to some degree. It's one thing to hold them up in front of the camera, and you've seen booking photos where they're holding somebody up there who doesn't want to be photographed. And it's another thing to somehow smash their palms on a card. Then altogether different, is somehow jamb their mouth open and have some jail guard put a finger in their mouth. The bill doesn't talk about that. It's different because current law allows you to go back to court, hold somebody in contempt, and that sort of thing. (Inaudible). [LB1054]

SENATOR WILLIAMS: Thank you. [LB1054]

SENATOR SEILER: Senator Krist. [LB1054]

SENATOR KRIST: I will not be intimidated and I will not be called a nonproducing member of this Legislature because I'm not a lawyer. I've spent too much damn time being in this body and listening and respectfully looking at the law and having debates. The debate that you just had with Senator Williams is admirable because you're pointing out the things that could or could not be fixed. What happened here (slams hand down on desk) is unforgivable. And he cannot rule



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

Judiciary Committee  
February 18, 2016

---

the roost by talking to us about the things that he has done and how we screwed it up in four years while he's been gone. I will, too, leave this committee in a little while because I don't want to say anything that I don't want to say. But I think it's despicable that we can't have a dialogue about something without hearing about the ploys and the praises of Ernie Chambers. I'm sorry you all have to go through it to come here. Spike, you said in no uncertain terms that keeping innocent people innocent, we've all said, innocent people innocent and guilty people guilty would be a goal, an admirable goal in making sure that DNA testing is part of our formula. I think this bill is a starting point that we need to look for. And if we have to bring it back again and again and again, just like I have done several years with different issues, but I guarantee you there will be some conversation about this and that we'll write the right kind of Nebraska bill. It's just unforgivable that we have to demonize anybody that doesn't either agree with us or put us on a pedestal. And I'm sorry you had to go through that. (Inaudible). [LB1054]

SENATOR SEILER: We keep going, I might be the only one here. (Laughter) [LB1054]

SENATOR WILLIAMS: I ain't leaving. [LB1054]

SENATOR PANSING BROOKS: I'm not either. [LB1054]

SENATOR SEILER: Okay. Do you want a question? [LB1054]

SENATOR PANSING BROOKS: No. [LB1054]

SENATOR SEILER: Okay. Okay, thank you very much, Spike. Next for opponent. In the neutral? Senator, you may close. [LB1054]

SENATOR HILKEMANN: Well, thank you, members of this committee, for hearing this testimony today. Gets interesting in here. We will have those questions to you and those articles that were asked for within a very short period of time. They're available on the NCL...NCSL Web site. And it's always beneficial to hear both sides of an issue. The technical concerns that were brought by the opposition today present an excellent opportunity for us to make this bill even better. And I look forward to working with the committee to do just that. And I appreciate Senator Chambers' commitment to protecting people. And while he and I may disagree on this legislation, I still believe that this bill does protect people. It protects the Briannas, the Morgans, the Hannahs, and the many more that we've heard about here today. And I'll take any questions you may have. [LB1054]

SENATOR SEILER: Seeing none, thank you. [LB1054]

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Transcriber's Office

Judiciary Committee  
February 18, 2016

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SENATOR HILKEMANN: Thank you so much, Senator. [LB1054]

SENATOR SEILER: That closes the record on LB1054. Pansing...Senator Pansing Brooks, you open on LB920. [LB1054]

SENATOR PANSING BROOKS: Good afternoon. Good, happy afternoon, Senator Seiler and colleagues of the Judiciary Committee. My name is Patty Pansing Brooks and that's P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, and I represent Legislative District 28 right here in the heart of Lincoln. I'm here to introduce LB920. The Nebraska Police Standards Advisory Council, or PSAC, is a standing committee of the Nebraska Commission on Law Enforcement and Criminal Justice, commonly known as the Crime Commission. The Police Standards Advisory Council serves the commission by being responsible for establishing the standards, rules, and training governing the certification of law enforcement officers in Nebraska. The council is responsible for the revocation of law enforcement certificates of officers who have failed to meet such requirements. Council members are appointed by the Governor to four-year terms. The council currently consists of seven voting members as set forth in statute. Six of the voting members are law enforcement professionals and one member is a citizen at large or a member of the Jail Standards Board. LB920 proposes to add two members to the council who are officers ranked as sergeant or below to the council. The goal of the addition is to create a more diverse perspective for the council. With that, I can take any questions you may have but... [LB920]

SENATOR SEILER: Senator Coash. [LB920]

SENATOR COASH: Thank you. Thank you, Senator. [LB920]

SENATOR PANSING BROOKS: Thank you. [LB920]

SENATOR COASH: Couldn't the...you're proposing two members with very specific rank, right? [LB920]

SENATOR PANSING BROOKS: Um-hum, from that rank or under. [LB920]

SENATOR COASH: Sergeant or below. [LB920]

SENATOR PANSING BROOKS: Yes. [LB920]

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Transcriber's Office

Judiciary Committee  
February 18, 2016

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SENATOR COASH: Yeah. So couldn't the Governor under the current statute apply...is there anything that would keep the Governor under the current statute from appointing members of a rank sergeant or below? [LB920]

SENATOR PANSING BROOKS: In the other members? [LB920]

SENATOR COASH: Under the current law, without this bill, can't the Governor say one of the... [LB920]

SENATOR PANSING BROOKS: Of the ones that they have right now? [LB920]

SENATOR COASH: ...two of the six members are...I want a captain and I want an officer? I mean there's nothing prohibiting the Governor from appointing members with this rank or below. [LB920]

SENATOR PANSING BROOKS: No, but they just want more members on the council. [LB920]

SENATOR COASH: They want... [LB920]

SENATOR PANSING BROOKS: They want two more members on the council. [LB920]

SENATOR COASH: Two more members? [LB920]

SENATOR PANSING BROOKS: Yes. [LB920]

SENATOR COASH: And maybe I missed this in your opening, but what's...you mentioned to have more diversity, but can't we get diversity within the current membership? [LB920]

SENATOR PANSING BROOKS: I'd be happy to have you ask that of the people following me. [LB920]

SENATOR COASH: Okay. [LB920]

SENATOR PANSING BROOKS: But my understanding is that they want a larger number to be able to. And it doesn't...it isn't specific I guess on whether they are...what rank they are on the

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Transcriber's Office

Judiciary Committee  
February 18, 2016

---

other six people. But they want to make sure that at least two of the members have those ranks. [LB920]

SENATOR COASH: Well, I guess I'll just put this on the record. As the way I read this, the Governor could appoint as two of the six members who are of sergeant or below if the Governor wanted to. [LB920]

SENATOR PANSING BROOKS: They could but then you'd have two...they just want to make sure that two people are for sure that. [LB920]

SENATOR COASH: What about if...I'm just asking since it's your bill. What about if we kept it at seven members and two of the seven had that rank or below? [LB920]

SENATOR PANSING BROOKS: Would you please ask that question of the people that follow me? [LB920]

SENATOR COASH: I sure will. [LB920]

SENATOR SEILER: Any further questions? Thank you. [LB920]

SENATOR PANSING BROOKS: Thank you. [LB920]

SENATOR SEILER: First proponent. [LB920]

JIM MAGUIRE: (Exhibit 1) Good afternoon, Senators. My name is Jim Maguire, J-i-m M-a-g-u-i-r-e. I'm here representing the Nebraska Fraternal Order of Police. Just to give you a little background, I've been a 24-year deputy sheriff with Douglas County, so I'm a line officer. Currently under the PSAC you have seven persons and the majority of them are all administrators. All we're asking for is to have two additional persons that would guarantee that you would have some kind of line officer perspective. That's all we're asking. They go through training and everything else, so we're just...you know, when administrators are coming up with policies and everything else, and if they're talking about training, we can give them an additional perspective on what we think we should...what the commission should think or what they should just consider. All you're asking for is two additional persons. It's not going to overwhelm the board. It's not going to change, you know, dramatically change the outcome of any kind of training that is going to be coming up. So I'll...really, that's it in a nutshell for the actual bill. We're just asking for two specific people to be...you know, a sergeant or an officer to be on this commission...on the council. [LB920]

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Transcriber's Office

Judiciary Committee  
February 18, 2016

---

SENATOR SEILER: Sergeant or below. [LB920]

JIM MAGUIRE: Sergeant or below, yes. [LB920]

SENATOR SEILER: Any questions? Senator Coash. [LB920]

SENATOR COASH: Thank you, Senator Seiler. Couldn't we...could we get the same diversity that you're seeking within the same amount of membership? [LB920]

JIM MAGUIRE: If you're asking for my opinion, my opinion would be, no, you know, the way that the bill currently reads. Are you saying that...I don't...I never foresee the city of Omaha or the city of Lincoln suggesting that they should bypass a deputy chief, a captain, a lieutenant even, to sit on this council. [LB920]

SENATOR COASH: But the Governor appoints them. [LB920]

JIM MAGUIRE: The Governor appoints them, but it would be...it's just...it's my opinion that the rank would sway things. I mean the way that the current committee sits, you've got here's...you've got a lieutenant colonel, you've got a sheriff, a chief, and you've got a captain, there is another chief. The person public/at large, he's a professor. And then you've also got another sheriff. And all we're asking for is just to have two people, one that's a sergeant, or two people sergeant or below... [LB920]

SENATOR COASH: Right. [LB920]

JIM MAGUIRE: ...just to give their perspective on training and other matters that come up before the council. It's just a different way of thinking. [LB920]

SENATOR COASH: I'm not sure how the application process works. I mean the Governor appoints these members. [LB920]

JIM MAGUIRE: Yes. [LB920]

SENATOR COASH: Then I'm assuming that the members that he appoints have applied to be appointed. [LB920]

JIM MAGUIRE: Yes. [LB920]

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

Judiciary Committee  
February 18, 2016

---

SENATOR COASH: And there's nothing that prohibits an officer from applying,... [LB920]

JIM MAGUIRE: No, I... [LB920]

SENATOR COASH: ...correct, under the current law? [LB920]

JIM MAGUIRE: Correct--I mean, I've applied. [LB920]

SENATOR COASH: You've applied? [LB920]

JIM MAGUIRE: Sure. [LB920]

SENATOR COASH: And you're not on the Standards Board. [LB920]

JIM MAGUIRE: No. [LB920]

SENATOR COASH: Okay. But all...and you just listed the six members are all...it's pretty top heavy, the current membership? [LB920]

JIM MAGUIRE: Yeah. [LB920]

SENATOR COASH: So my question to Senator Pansing Brooks was, if we really want to drive some diversity within the six law enforcement members, could we do it within the six or do we really need to add two more? [LB920]

JIM MAGUIRE: In my... [LB920]

SENATOR COASH: So in other words, say two of the six need to be sergeant or below, rather than adding two more. [LB920]

JIM MAGUIRE: But then you would be essentially taking away the person at large. You would be specifically saying that person needs to be an officer of...you know, a police officer or a deputy sheriff or a sergeant or below. [LB920]

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Transcriber's Office

Judiciary Committee  
February 18, 2016

---

SENATOR COASH: I would keep the at-large member. There's seven total under the current law, six are law enforcement. I'm saying take two of the six and make them sergeant or below, rather than adding two extra members. [LB920]

JIM MAGUIRE: Our opinion would be that it would just be easier if it was specifically spelled out that just two additional persons had to be of the rank sergeant or below. [LB920]

SENATOR COASH: Okay. Thank you. [LB920]

JIM MAGUIRE: Yes. [LB920]

SENATOR SEILER: Any further questions? Officer, you did not give your whole testimony off here. Do you want to make this part of the record? [LB920]

JIM MAGUIRE: I will make that part of the record, yes, sir. [LB920]

SENATOR SEILER: Okay, so be received. Thank you for your testimony. [LB920]

JIM MAGUIRE: Thank you. [LB920]

SENATOR SEILER: Further proponent. Opponent. Neutral. Senator, you may close. Okay. Senator waives. That hearing on LB920 is closed. We're opening on Senator Chambers' LB839. [LB920]

SENATOR CHAMBERS: Mr. Chairman, members of the committee, I'm Ernie Chambers. I represent the 11th Legislative District. And I did hear everything that Senator Krist said. And since he said it for the record, I'm going to give a little response for the record. That bill dealt with an area of the law where I did a lot of work. And I gave that as a preliminary not to boast, but to show why I was so keenly aware of what the law says now, as opposed to what it said then and what it was before I got anything done on it. And when somebody from the Attorney General's Office had said that Senator...the gentleman who introduced the bill, Hilkemann, had brought a bill that was way too thick and he slimmed it down and with all his slimming he left the kind of things in it that upset me a great deal because he's a lawyer, that the new language talked about a person not being able to apply for his or her DNA until a statute of limitations had run and he knew there were offenses that had no statute of limitations. So whoever doesn't like what I say can leave. But I'm going to do my business the way I think I should. And I don't care what anybody thinks, how anybody feels. But when they make their statements, which they're entitled to do, then I'm going to respond. Now when I was attacked on the floor about that

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Transcriber's Office

Judiciary Committee  
February 18, 2016

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statement that was misconstrued about ISIS, I didn't leave the floor. I stayed there and I dealt with them. But here you had ordinary citizens, you had a lady who came from a long way, and I acknowledged that in the beginning. But when the man from the Attorney General's Office sat up here and gave the kind of testimony he did, I'm not going to let that kind of thing go. And if people's feelings are so tender, they just have to be tender; if they get hurt, they just get hurt. And I did talk to Bob outside, so I'm not talking behind his back. And if any of you all are very offended at what I said, tell me and we'll talk about it. But I'm not going to bite my tongue at all. I mean it when I say I'm concerned about innocent people and those who are considered throwaway people. I don't hear people on the floor of the Legislature talking about the people that I talk about, that I'm very concerned about, and I'm not going to apologize to anybody. And the only reason I'm explaining this now is because of the things he said when I was not here. And there were other things that I didn't want that nice lady, who is just doing what she think is right, to think that I'm talking about her. I believe that I said that she had a right to try to get laws passed, which anybody does. But we have an obligation and I want everybody here to know that I'm going to assume mine. And in order that you all won't get heartburn about this bill, I wouldn't even ask the committee to advance this bill. First of all, and Senator Williams and I had a little chat about it upstairs, there are problems with definitions. When you write a bill like this, it shouldn't even be introduced. This is the kind of bill I would eat alive. First of all, if you look in the 18th line, a high-capacity ammunition clip, clips are not high capacity, magazines are, but it didn't make any difference. There is no penalty, as was pointed out by counsel, by staff, there intentionally was no penalty, no enforcement mechanism, nothing, just the statement. But for the record, what this bill as written would do is to require passing the same type of federal background check to purchase what has been described as tactical gear that would be the case if firearms were being purchased. To try to write a bill like this where you're mentioning objects which can have differing definitions and descriptions is virtually impossible. And maybe that's why the room is not full of people in opposition, because they would know that I know that something like this would never get out of this committee. And at the time I offered it, I was interviewed and I explained why. At that time there was the occupation, armed occupation in Oregon of a United States government facility. It hadn't been too long ago that black people were demonstrating without weapons, no threat of imminent harm or death to anybody. And they brought out cops--and I don't know if some of their National Guard people were out--in military attire, military weapons, military vehicles against black people where a black man had been killed under circumstances that we saw as murder--and when I say "we," I mean black people, we see it all the time--and all of the show of force. Then here are these white men who some months before had run off some federal agents who were telling this guy, you're improperly using federal land, you're not paying the grazing fees, you shouldn't even be here. And he had people who came from all over the country, Cliven Bundy, and I talked about it at the time. The media didn't write about it because when I say something, or any black man says something, it's ignored. But I did talk about it. And I talked about it when I brought this bill. And I said, I'll tell you something else, and I said it when I made that statement about ISIS which was totally



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

Judiciary Committee  
February 18, 2016

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misconstrued. And if anybody read the transcript, they'd see what I said. I said these young people should not even talk about joining ISIS, they shouldn't talk about going somewhere, because they can be arrested and charged just for those words. That's in the transcript way back then. And you know what has happened? Young people who have talked about that have been rounded up. Some of them I think may have been entrapped, because young people will talk and say things that they don't mean. They're not going to go anywhere. They wouldn't even know how to get to Syria. Then they will send a federal agent to get that person to engage in additional conversation, suggest things that could be done, that ought to be done. Then when the youngster goes along with it, and they're always very young people, then they charge them with the intent to leave this country and go join a hostile force, and they go to prison. And I said that at the time I offered this bill, that if for expressing an opinion you can go to prison, then there is nothing unreasonable about bringing a bill that would put on the radar screen those people who purchase equipment and garb which bespeaks an intent to engage in violence. That's why I made this bill and introduced it. It's not the kind of bill that I would bring if I expected anything, and I said in the beginning I wouldn't have asked this committee to advance this, I wouldn't even go through the charade. And I believe I told "Brother" Williams today when we were talking that I don't intend to do anything with this, it wouldn't go anywhere, not necessary for anybody to do any work on it. And whether people in this Legislature like it or not, I live in a community and I live the kind of life that I don't think anybody in this Legislature could survive under. Do you know why? Because all I use here are words. I don't put anybody in jail. I don't use violence or threaten violence against anybody. And you see how upset they all get, you hear the kind of things they say. Well, you can see people getting upset with words. And I live in a community where these people are doing things to us, and I'm not supposed to get upset. I'm saner than anybody in this Legislature and it's a good thing that I am, because you know what I'd do if I was a white guy? I'd got get me some tactical gear like the guy did at the theater, the movie house in Colorado that he changed into a slaughterhouse. He had on tactical equipment. That was one of the things that made them say they knew he intended to do this, that he planned it. I don't do that. Words, and there's greater condemnation for my use of words than there is for these white people slaughtering men, women, and babies; and when people in Congress and other places, positions of responsibility, will say guns don't kill people, high-capacity magazines are not a problem, and as guns proliferate, there is more gun violence. I live in a community where there is more gun violence than anywhere else in the state. I can't say that there's more there than the whole state put together, maybe so. I don't move out of that community. I stay there. And the threats that I get would run some of you all out of this building. And when the Attorney General wanted to shut off exits and have one exit and metal detectors, I was the one who spoke most strongly against that. Who in here would somebody want to come and do anything to? They don't even know you all, with all due respect, because white people are white people are white people. But when there's one black guy, they could see a black guy who is not me and think it's me because some of them say we all look alike. I deal with very serious issues every day. When I leave here, that doesn't end my day. I come here earlier than a lot of people, I stay here later than a lot of

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Transcriber's Office

Judiciary Committee  
February 18, 2016

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people, and I know during the day I work harder than people. What I ought to do but I can't, because of my conscience, is let the trash legislation that comes here just go across the board, let it all go. It takes time, it takes persistence and determination. And even though Senator Krist gets upset, I'm still going to mention that if I don't stand and continue to talk and talk and talk, this bad legislation would go across. But as the talking goes on, you all are not perceptive enough to realize and recognize the fact, because you don't like the way I say it. I must think you got some brain cells working or I wouldn't spend all that time talking to you. I must believe that you can be reasoned with or I wouldn't spend so much time trying to reason with you. But we are not children and I don't have time to wet nurse and feed people with sugar-tits to avoid hurting their feelings. There is a job I have to do and I don't get a lot of help on it and I'm not pleading for that. But you all saw two men today in this room react. I reacted to what I heard being said and the presentation of legislation; and the other one reacted to me, which doesn't bother me at all. But you all were kind of the spectators, so I'm letting you see some of the inside. And I will do again exactly what I did today if a similar situation arises. And now, for the benefit of the lawyers who have heard long presentations of evidence and then a summing up where you try to make the point, if I presented this to you all seriously, you all are too nice to say what you'd be thinking. But if one of you presented something like this, I would tell you what that is--it's not worth the paper it's written on. But if I wanted to and just be a bad guy, I could have acted like I'm serious about this, pointed out the flaws and said, well, there are some corrections I have to make, I have to tighten up the definitions section, I have to point out that a clip is not a magazine, that there has got to be a penalty or else it's of no consequence, and I'll prepare an amendment. And then we'd have an Exec Session. Then I'd try to persuade you all why you ought to do this: advance it so that the issues that are underlying it can be discussed on the floor. That's what I could have done. Whether you did it or not, I could have taken the time if that was my intent. But if I do something that makes me seem like a madman, I assure you, there is method to my madness. And I'm going to do things my way, as I expect everybody here to do things their way. Let me not say "expect," I'm not surprised if they do things their way. But since we all are in this together on this committee, I did feel that I owed you all an explanation. Whether you accept it or not is of no moment to me. I have to do what I think is necessary for me to do. This is an explanation, not an apology, because I have no regrets whatsoever. And if that bill goes out on the floor, I will fight it, tooth and nail. And I will bring portions of transcripts to show you all the work that I did in that area. The Beatrice Six would not have been exonerated but for my law. And you think somebody here would do something like that and not mention it when that very portion of the law is being twisted and perverted and undermined? I don't know what kind of people would be here if that was the case. But we've got more days in the session. There will be more bad legislation and I will have to do as I did. But this is not going to be on your desks in terms of something that you have to consider or do anything with in an Exec Session because, if the Chairman wants, I will either just say let it be deep-sixed, however you want to do it. Or to show how willing I am, I will withdraw the bill. You want me to withdraw it from the Legislature? [LB839]

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

Judiciary Committee  
February 18, 2016

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SENATOR SEILER: I was going to give you your choice. You can either withdraw it or IPP it. [LB839]

SENATOR CHAMBERS: This is for the Chair. I'm putting myself in you all's hands. Do with me what you will. "Brother" Williams, what do you say? [LB839]

SENATOR WILLIAMS: I'll make a motion to IPP the bill. [LB839]

SENATOR CHAMBERS: Second. [LB839]

SENATOR SEILER: All in favor say aye. [LB839]

SENATORS: Aye. [LB839]

SENATOR SEILER: Thank you. [LB839]

SENATOR CHAMBERS: I don't think...I think I'm finished here. [LB839]

SENATOR SEILER: You took all my fun away. I wanted to hear you describe those. The hearing is over. [LB839]

DIANE AMDOR: But you still have to hear the proponents, opponents. [LB839]

SENATOR COASH: I think we still need to hear some... [LB839]

SENATOR SEILER: Oh, why? [LB839]

DIANE AMDOR: It's still a public hearing. [LB839]

SENATOR SEILER: If it's withdrawn? Or is it... [LB839]

DIANE AMDOR: It's not actually withdrawn or IPPed. [LB839]

SENATOR SEILER: ...it's IPPed? [LB839]

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

Judiciary Committee  
February 18, 2016

---

DIANE AMDOR: We're not in an Exec Session. We're in a public hearing. You have to hear the opponents and other testimony. [LB839]

SENATOR SEILER: Oh, really? Okay. Anybody wants to testify in favor of the bill? Anybody opposed to the bill or ex-bill? [LB839]

SENATOR WILLIAMS: Been here a long time. You were successful--we IPPed it already. [LB839]

ROD MOELLER: (Laugh) Thank you. [LB839]

SENATOR COASH: We saw you coming and got so scared. [LB839]

ROD MOELLER: (Exhibit 1) I can tell. The nonverbal language really said a lot there. And I do appreciate Senator Chambers explaining the intention behind the bill and some of the background there. For the record, my name is Rod Moeller, R-o-d M-o-e-l-l-e-r. I am speaking on behalf of the Nebraska Firearms Owners Association. Even though this is IPPed, just for the simple fact that this is a matter of record, I do have to go and continue on with my concerns with the bill as presented. As Senator Chambers has already acknowledged, the bill is so vague that it's not really enforceable. We had some concerns about the background check. It doesn't spell out by what channels, what mechanisms, what are the disqualifying factors. Are we using a Nebraska standard, a Lincoln standard, or an Omaha standard? Obviously we don't have a statewide standard. FBI NICS check, we going to use the FBI NICS check for this or concealed handgun permit purchase certificate? I mean, what all is going to be usable? And I passed out the NICS check firearms licensee manual, didn't print the whole thing off, just the... [LB839]

SENATOR SEILER: We'll make it part of the record. [LB839]

ROD MOELLER: Okay. Wanted to call attention to Section 7 talking about authorized use and unauthorized use. Basically it says that unless you are using this for the purchase of a firearm at that time, that NICS may not be used for any other purpose. Now, looking at some of the other stuff, looking at the financial impact, statement of intent, it looks like the intention was maybe to use the sheriff's office to get a purchase certificate and use that. Also kind of concerned about the financial impact statement, why only two counties were referenced. And the responses between those two counties was so wildly different I'm not sure that we can really extrapolate what true costs would be. And then of course we had very...we had concerns about the lack of definitions. There is a picture on the very last page about the difference between a clip and a magazine. We didn't specify what the capacity would be, what is considered high capacity versus standard

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

Judiciary Committee  
February 18, 2016

---

capacity, because that varies by model of firearm. Anyway, I guess that's about all we're going to get to on this today, but I at least needed to go on the record as opposing the bill. [LB839]

SENATOR SEILER: Any further questions? No. [LB839]

SENATOR CHAMBERS: Just...you've been here before when I was criticizing some gun bills, haven't you? [LB839]

ROD MOELLER: I have been here a few times, yeah, yeah. [LB839]

SENATOR CHAMBERS: Now, could you imagine what I would have done if somebody had brought a bill like that and I was sitting on this side of the table? [LB839]

ROD MOELLER: Oh, absolutely. [LB839]

SENATOR CHAMBERS: And that doesn't measure up to anybody's standard of a good bill, does it? [LB839]

ROD MOELLER: Well, Senator, that's why when I first read this bill, I'm scratching my head, going, who brought this to you? This is not a Chambers bill, because of the lack of detail within it. [LB839]

SENATOR CHAMBERS: And all the other things that I mentioned that should have been in the bill if it was serious... [LB839]

ROD MOELLER: Right. [LB839]

SENATOR CHAMBERS: ...were not there, and I'm sure you picked them all up. [LB839]

ROD MOELLER: Oh, absolutely. [LB839]

SENATOR CHAMBERS: So I was trying to keep everybody from not having any heartburn by knowing that this is not going anywhere. But I appreciate your coming anyway. [LB839]

ROD MOELLER: Thank you. [LB839]

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

Judiciary Committee  
February 18, 2016

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SENATOR SEILER: Thank you very much for your testimony. Any further opponents?  
[LB839]

SENATOR EBKE: Can I just make one comment? Thank you for coming and sitting through all of this all day, because you did stick it out for the day and we do appreciate that. [LB839]

ROD MOELLER: It gets really warm in this room... [LB839]

SENATOR EBKE: It does. [LB839]

ROD MOELLER: ...when you spend several hours waiting. [LB839]

SENATOR EBKE: Sometimes it's cold and sometimes it's warm, so you get to pick. [LB839]

SENATOR SEILER: Get a north wind and find out what it's like (laugh). Any further opponents? Anybody in the neutral? Senator Chambers, you may close. [LB839]

SENATOR CHAMBERS: I did already. Oh, one comment. You know why I really bailed out? I knew he was coming. [LB839]

SENATOR SEILER: Oh, okay. Thank you very much, committee, for your... [LB839]