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Judiciary Committee
February 23, 2007

[LB68 LB75 LB254 LB257 LB280 LB556]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 23, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB254, LB68, LB75, LB280, LB257, and LB556. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None.

SENATOR ASHFORD: Welcome everyone. We're obviously a little bit late; I'm sure it's my fault, but welcome. And I'd like to just go over, many of you are here a lot, so you know the rules about the speaking arrangements, so forth and so on. We have a little light system that tells you when there's a minute left, and then the red light, the yellow light. The red light, we ask you to sum up. We'd like you to confine your testimony to three minutes. And if you're with a group of other testifiers whom you're familiar with, if you can work with them to make sure that we keep the repetitious information out of the process so that we can move things along. If you have prepared statements and you get to the three-minute mark, just sum up, and we'll take the statements and take it from there. I don't want to cut anybody off, but I do want to make sure we get through the agenda. I'd like to introduce my colleagues. Senator Pirsch from Omaha is over here; Senator Pedersen from Elkhorn; Senator Lathrop from Omaha; and Senator McGill from Lincoln. With that, Senator Aguilar.

SENATOR AGUILAR: (Exhibits 1 and 2) Thank you, Chairman Ashford, members of the Judiciary Committee. My name is Ray Aguilar. That's spelled A-g-u-i-l-a-r, District 35, State Senator, representing the city of Grand Island. Thank you for taking the time to hear this bill today. It's a short and simple bill, but could have a very positive impact. Motor vehicle crashes continue to be the leading unintentional injury killer of Nebraska children ages 5 through 14, according to the Nebraska injury report of December 2005. The number of deaths is only the tip of the iceberg, because there are many more injuries than deaths occurring every year. Overall, injuries to Nebraska children due to motor vehicle crashes have decreased from 2,504 in 1999, to 1,722 in 2004. I think that's testament to the added safety of using child restraint systems. Today's Nebraska law says that a proper child restraint system is necessary up to age 6. The research shows, as you will hear today, that most children, up to age 8, are not big enough to use a lap and shoulder belt made for adults. Here's five questions to ask yourself considering if a child is large enough for the standard lap and shoulder belt restraints in your vehicle. Does the child sit all the way back against the auto seat? Do the child's knees bend comfortably at the edge of the auto seat? Does the shoulder strap belt cross at the shoulder, below the neck and yet above the arm? Is the lap belt as low as possible touching the thighs? Can the child stay seated like this for the whole trip? If any of these questions are answered with a no, the child needs a booster seat to ride safely in the car. LB254 raises the age to which a child restraint system is mandated to 8 years

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of age from the current 6 years of age. LB254 also adds language to define, correctly installed "and used," and language mandating usage of that correctly installed child restraint system. LB254 also allows a county or city attorney to dismiss any pending action against a person in violation of this section of statute if they provide evidence of attendance at a child passenger safety fitting station or checkup event, or has a child passenger safety technician done an inspection of their child restraint system. This educational component is supported by the whole network of health departments, law enforcement officers, and individuals that are trained to do these safety checks and advise parents on proper installment for their vehicle and proper use for their child. I have participated in the safety checkup events held in Grand Island. Parents willingly accept this information and are thankful for the added guidance. Any parent who cannot afford a safety seat or booster seat can obtain them free or at a reduced price through many agencies across the state. This bill does not make any seat belt or child restraint system violation a primary law; it does not. It remains a secondary offense, and it will not cost the state any money. In fact, it will make Nebraska eligible for an additional estimated \$75,000 in federal funds for highway safety education. I thank you for listening, and I ask that you support LB254. I'd be happy to answer any questions that any of you may have. I'd like to point out that it's my understanding that you all received a copy of this report yesterday. And I would remind you that the number one thing on the list of things to accomplish this year is to improve child occupant protection; that's exactly what LB254 does. Thank you. [LB254]

SENATOR ASHFORD: Thank you, Senator Aguilar. Any questions of Senator Aguilar? Yes, Senator Pirsch. [LB254]

SENATOR PIRSCH: Just one. I guess the purpose of the bill is education, which is why we have the kind of release mechanism that you cited, and you can get the child passenger...attend the child passenger safety fitting station, course, is that right? [LB254]

SENATOR AGUILAR: The main purpose is to raise the age from 6 years to 8 years as far as mandatory requirement to be used. [LB254]

SENATOR PIRSCH: But if you are cited, under the statute, you can attend a child passenger safety fitting station or checkup event? There's a way to have it... [LB254]

SENATOR AGUILAR: And have the charges waived. [LB254]

SENATOR PIRSCH: Okay. And that's permissive to a prosecutor, right? Is it "may" or is it "shall?" Do you know? [LB254]

SENATOR ASHFORD: Whoops, we have a "may" over here on the right. [LB254]

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SENATOR AGUILAR: I believe it's "may." [LB254]

SENATOR ASHFORD: (Laugh) We have a "shall" somewhere. We'll iron it out. [LB254]

SENATOR PIRSCH: Thank you very much. Okay. And are these type of, it says, attendance at a child passenger safety fitting station or checkup event, or if there's an inspection of the child restraint system that is done. What's the purpose of the inspection of the child restraint? So if they have an inspection, they can have...the prosecutor may be able to dismiss it, is that right? [LB254]

SENATOR AGUILAR: That's correct. And the purpose is to make sure everything is installed correctly and it is a proper, recommended safety seat. [LB254]

SENATOR PIRSCH: What if it's not a matter though of it being functionally not working, but just they didn't use it? [LB254]

SENATOR AGUILAR: In many cases, parents don't correctly install the units into their vehicles. And so they're not working at the level they should be working and protecting at the level they should be protecting, therefore they have these instructional things too. People can just drive in with their car and their seats, they will be inspected by a certified expert, and if there's anything wrong they will correct it and explain to you how they corrected it so that if you have to reinstall it again sometime, you can do it correctly. [LB254]

SENATOR PIRSCH: Okay. And are these available statewide, these type of options? [LB254]

SENATOR AGUILAR: Yes, they are. [LB254]

SENATOR PIRSCH: Okay, thank you. [LB254]

SENATOR ASHFORD: Thank you, Senator. Did you wish to close this afternoon? [LB254]

SENATOR AGUILAR: I have to get back to Executive Session. If it's necessary for me to close, my staff will come and get me, and I'll be happy to do that. [LB254]

SENATOR ASHFORD: All right. Well, if it looks like a problem, we'll call on you for clarification. [LB254]

SENATOR AGUILAR: Thank you. [LB254]

SENATOR ASHFORD: Jeff Beaty is my legal clerk, here to my right; and Jono Bradford

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is the clerk of the committee; and Senator McDonald has arrived, from District 41. So I think that's it. I think everybody else has been introduced. Go ahead. [LB254]

LAURA OSBORNE: (Exhibit 5) Good afternoon, Senators. I am Laura Osborne of Auburn, Nebraska, and I coordinate a childhood injury prevention organization called Southeast Safety for Kids Coalition, in rural areas of Nemaha, Richardson, and Otoe Counties. I've worked in the specific field of child passenger safety since 1999, and am currently a nationally certified child passenger safety technician instructor. Most importantly however, I am the mother of a 10-year-old son. I'm here today to tell you why I support LB254, an upgrade to our current child passenger safety law. In my work over the past eight years, the question I most commonly field from parents and caregivers is, how long does a child have to be in a car seat? Currently, my answer begins with these words: Well, that depends on whether you simply want to follow our law in Nebraska, or if you want to do everything you can to keep your child safe in your vehicle. You see, right now it's legal for a child who's only 6 or 7 years old to be secured in an adult seat belt. And seat belts are truly made for adult bodies. Most, if not all of you, have children, grandchildren, nieces, nephews, so you can easily understand the difference between the size of a 6- or 7-year-old body and that of an adult. The technology built into seat belts is not intended to protect those small bodies. Before I began to look into car seats, I had no clue about the importance of that fact. That, combined with my regular contact with parents, grandparents, and others, makes it possible for me to understand firsthand how our adult citizens, no matter how well-intended they may be, do not always know enough about belt positioning booster seats. Those are the car seats, the step between the seats used for toddlers and use of an adult seat belt, that can and do prevent injuries and save lives. They are the easiest type of child safety seat to use, the most portable, and the least costly, yet they are unfortunately not in use by nearly enough families. While many parents over the years have asked me about keeping children of this age group safe in crashes, I know I've only heard from the minority. There are too many parents who check to see what the law requires and then take no further steps to keep their child passengers safe. Our parents do need a law to guide them. We need a law that will guide them appropriately. I believe this law upgrade is needed, that it's vital, it's timely. Nebraska's 6- and 7-year-old citizens cannot decide for themselves how to secure themselves into a vehicle, so they need our elected officials to help them do that. So I ask that you support this bill. And I thank you for your time and your attention. [LB254]

SENATOR ASHFORD: Thank you, Laura. Any questions of Laura? Thank you, Laura. [LB254]

LAURA OSBORNE: Thank you. [LB254]

SENATOR ASHFORD: How many proponents do we have of this legislation? How about opponents? Any neutral testifiers? Okay, next witness. [LB254]

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TIM TICHY: (Exhibit 6) Members of the Judiciary Committee, I am Tim Tichy, community safety manager at the National Safety Council, Greater Omaha Chapter, and I'm here representing the council today. We are a not-for-profit, nongovernmental, community-based organization and an accredited chapter of the National Safety Council. The unique mission of our chapter is to promote safety and health by providing programs, resource services, and education to prevent and reduce both the personal and economic loss associated with injuries and accidents and health hazards. In other words, we are in the business of saving lives, preventing injuries, and saving money. Our organizations have been making progress toward these goals since the National Safety Council was first chartered in 1913. We are testifying for LB254, which would increase child passenger safety throughout our state. Despite our best efforts to date, the sad reality is that motor vehicle collision remains the number one killer in this country for young people under the age of 15. LB254 is quite simply a win-win for the people of the state of Nebraska, but especially so for the youngsters under the age of 8 who depend on their parents and this body to protect their very lives. If passed, this legislation will save young lives with little or no inconvenience, cost, strain on the state budget, nor will it place a strain on the state's ability to adjudicate crimes. Neighboring states already require children to be safety seated until age 8, and it would only help our citizens not to be ticketed while traveling into those states. How can LB254 be so effective? Simply because it asks parents and others who transport young children to do what many of them already are doing: using an appropriate child safety device to restrain their children when they are riding in a motor vehicle. LB254 is good legislation for the state because it allows parents and others who are found to be in noncompliance of our child passenger safety laws to have access to diversion, an inexpensive, nonjudicial alternative that has proven to educate and change behavior. We do have two issues we would like the committee to discuss. First, the issue of whether or not diversion is appropriate when a child has been injured or killed while not properly restrained. In that circumstance, while education is important, the state should remain fully able to pursue other remedies as well. Second, is the issue of diversion itself. We would ask that the committee recommend change to the legislation that would require a diversion option be available coupled with recordkeeping to ensure it is not abused. This language could be similar to other statewide diversion legislation such as the legislation passed a few years ago for traffic citation diversion programs. As child passenger safety advocates, we know from experience that our parents are confused by the choices they face when it comes to child passenger safety. We know from experience that most parents want to do the right thing for their children. We also know that parents look to the state for an unbiased guidance on this issue. For these reasons, we urge you to pass this bill onto the floor for further debate and passage. Thank you for your time today. [LB254]

SENATOR ASHFORD: Tim, thank you. Any questions of Tim? Thanks, Tim. Okay. [LB254]

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ANN KING: Okay. I was waiting just a second, because some of the pieces that she's handing are things I'm going to refer to you. [LB254]

SENATOR ASHFORD: Oh, okay. [LB254]

ANN KING: But that's okay. It will give me just a few seconds to say something before you turn your light on, on me. I'm probably more nervous about making three minutes than anything. [LB254]

SENATOR ASHFORD: Well, don't be nervous, don't be nervous about the three minutes. [LB254]

ANN KING: (Exhibits 7, 8, 9, 10, 11) I have a lot of information to share and I do plan to summarize it in my three minutes, but there's a substantial amount of information. And even the questions that Senator Pirsch was asking, that I certainly can address, probably more familiar with it than Senator Aguilar, but he has been to our events. The most important document you can actually review happens to be the one that Senator Aguilar did pass out up front, "The Forgotten Child," so I do want to put a plug in for that. Many of us will be referring to different things, but the scientific evidence is definitely present nowadays, and that's a great place. So if you've all got your information, we'll start. I'm Ann King. I'm a registered nurse, and I work at St. Francis Medical Center, and I'm the coalition coordinator for the Safe Kids Tri-Cities. I am a child passenger safety technician instructor. And I know firsthand, from working for 26 years in the field of pediatrics, what the trends are when you talk about watching children go from very poor restraint usage and enforcement issues that never happen, as well as engineering problems with car seats that weren't appropriate for children. I've been there in the emergency room and seen the progress that we've made through the years. I wish to address the fact...first of all, there is a Web site you can go to, it's well-marked on my written testimony, it's safekidsnebraska.org. There is a link for LB254, and in that link there are tons of very good scientific documentation of why we should be putting the booster seat age up to...the law up to age 8. The scientific evidence is just overwhelming to support that, and no organization with any good backing would dispute that. I wish to address the fact that in my opinion, this is the most effective attempt at making an impact in death and injuries by combining the extremely effective three E's of injury prevention that are well-documented everywhere: enforcement, education, and engineering. LB254 was crafted and designed with just that in mind. And I just want to talk about a few of the highlights of these three topics. Enforcement: There is no weight or height limits in our bill, although everything you read may say 8, 80, and 4 foot 9, there simply does not need to be. It is truly the fit of the child in that vehicle that will determine when they are ready for a booster seat. And law enforcement officers have told us over and over again they want the laws simple to enforce them best. They are not going to have a tape measure and a scales at their

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stops. And they do know that children will answer very correctly how old they are, even if a parent should decide to lie a little bit at that moment so that they don't get a ticket. So this makes enforcing the law very effective and easy for them to do. I've seen...I've been doing car seat child passenger safety since 1999. I've checked thousands of children and car seats, and I have never seen a 7-year-old that fits in a proper lap and shoulder belt. And remember, this law goes up to age 8. It does not include an 8-year-old, so it is up to their eighth birthday. So we're talking about 7-year-olds. Most definitely I've seen maybe an occasional 7-year-old who might have been close if he sat like a soldier, but that was the extent of it, and he would have been better protected in a booster seat. Where education is concerned, this is where I have a lot of passion. We definitely have a lot of potential to educate more people, to train people to do these proper fittings, build more child passenger safety inspection stations that will function across the state. And the education of a child passenger safety inspection is simply undisputable, and I encourage all of you to attend one if you have any grandchildren or children under the age of 10 even to be assessed. Parents are very thankful, as Senator Aguilar mentioned. And crashes, highway crashes do not discriminate. It is very important that you realize that they treat children equally vulnerable, whether they are Caucasian, Asian, Latino, African-American, or Native American, just because highway crashes do not discriminate. However, statistically, highway safety fatalities are more prevalent among African-American and Latino children, and we look forward to working further within those groups. We have strong Latino resources built, and we're trying to work within those to increase our chances. It also crosses all socioeconomic barriers and doesn't care about your bank statements. You're just as apt to have your child improperly restrained irregardless. When we look at engineering, it's important to think about the fact that there's never been a time when car seat manufacturers and vehicle manufacturers have come together to make products more effective. FMVSS 213 now covers restraints to 65 pounds, so we are seeing a lot better product out there. We see fewer and fewer lap belt-only vehicles, which was a problem two years ago when we introduced this bill and took it to 6; I was there for that. Now the products are there, the vehicles are improved, and even shoulder belts are present in the center seating position, making it possible to restrain booster seat kids much better. In closing, I just want to let you know that I am happy to provide any further information or any further discussion about any of the issues within LB254. And I fully believe that it has the best chance to save many children. I did just want to mention, in your handouts, just quickly so that you know how to utilize those, this happens to be a five-year report for child passenger safety that you have. Within it, it's all the activity that has happened and the latest statistics within Nebraska--some very valuable information specific to Nebraska. Within it you will find a poster or a graph that looks like this, and this is a very proud graph, because you always wonder if the program is effective. And this shows that the injuries went down as the seat belt use went up, so it's very effective. The other thing you have is a list of all of the child passenger safety technicians in Nebraska, literally by county. So if you were looking at trying to get a citation waived, literally, they could contact anyone on this list. And we do have in place methods, by an 800 phone number

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or Internet, where parents can gain access to this information. And we'll create information for law enforcement at the time that they issue a citation, so parents understand how they can get access to a technician or an inspection station. So we have thought about those things. And that is a critical, critical point to get those people to that inspection station to get help. Can I answer any questions? [LB254]

SENATOR ASHFORD: Any questions? Yes, Senator Chambers. [LB254]

SENATOR CHAMBERS: One thing you said that really caught my attention, you said that if a parent tells a lie, the cop can ask the child, and the child will tell the truth. [LB254]

ANN KING: They usually do. As a rule of thumb, this is what law enforcement tell us. They usually don't ask the parent how old the child is. [LB254]

SENATOR CHAMBERS: But wait a minute, please. I'll ask the question, then you can answer that, if you will. The idea is to get the child to establish that the parent is a liar to another person, isn't it? [LB254]

ANN KING: No. [LB254]

SENATOR CHAMBERS: Then why would you ask the child something after the parent has answered the question? [LB254]

ANN KING: Because the parents will always tell. By statistics I'm just repeating to you what law enforcement tells me as they work with the children, sometimes. [LB254]

SENATOR CHAMBERS: And you think it's good to have children contradict their parents in front of somebody else, when to do so... [LB254]

ANN KING: No, I think everybody knows how old you children are. I don't think this is an important point of this bill. It's really not the focus of it. We definitely want the kids to be safe. [LB254]

SENATOR CHAMBERS: So then why would the cops ask the child a question, after the parent answered it? [LB254]

ANN KING: They wouldn't after a parent answered it. It's just that they usually ask the child first at the same time that they're asking the parent. So I feel like this isn't a point we would argue about. This is up to 7 years of age, and generally speaking you can pretty much tell those kids. And they're not going to use that as a point. They're trying to make a point. Their job is to enforce, and our job is to educate. And without combining those efforts, it's not nearly as effective, it's very well-proven across the United States.

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[LB254]

SENATOR CHAMBERS: That's all that I have, Mr. Chairman. [LB254]

SENATOR ASHFORD: Thank you, Senator Chambers. [LB254]

ANN KING: And, Senator Pirsch, especially, I wondered if I could clarify anything for you in regards to the inspection stations? I know you had that question. But it's basically so that if a parent, you know, were cited and there was a problem, they have that ability to go and get the resources. We feel over and over again, and we've even seen in our area they've started to use this a little bit, and it's been very effective. You know, parents are very thankful. If they didn't have a child restraint, they could then get access to one, and so the full correct cycle could be done. Law enforcement doesn't want to have that responsibility at the roadside, and should not, and neither should the court system. They aren't appropriately trained to make that decision. [LB254]

SENATOR PIRSCH: Thank you, appreciate it. [LB254]

SENATOR ASHFORD: Thanks very much for your comments. [LB254]

ANN KING: Thank you. My contact information is there, if you have any further questions. [LB254]

SENATOR ASHFORD: Thank you. Next proponent. [LB254]

KAREN TRIPLETT: Members of the Judiciary Committee, my name is Karen Triplett, and I am a certified child passenger safety technician, and employed by Good Samaritan Hospital in Kearney. And I have been the service coordinator for our Safe Kids Program at Good Sam. for six years, currently head up Safe Kids Platte Valley, which serves Lincoln, Buffalo, and Dawson Counties, as well as a number of the smaller counties in the south-central and southwest. And I'm just here to state the Good Samaritan Hospital strongly supports the advancement of LB254 as a result of what we see coming through our ER as a Level II trauma center, and also as it being consistent with Good Samaritan Hospital's mission statement, which is the well-being of patients and the prevention of death and injury. I'm just here to tell you that Good Samaritan Hospital is behind this bill, and we would like to see it advanced. Thank you. [LB254]

SENATOR ASHFORD: Thanks, Karen, very much. Thanks for coming over. [LB254]

LAURA JANA: (Exhibit 12) I'll go ahead and get started because I've actually written out my testimony for you, so you'll have it as well. [LB254]

SENATOR ASHFORD: Great. [LB254]

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LAURA JANA: My name is Dr. Laura Jana, and I am a pediatrician and live in Omaha, Nebraska. And I'm very grateful for the opportunity to come today and address you and offer testimony regarding LB254. As you will see, I've got a list of all the hats that I wear, but all of them relate to children, both professionally and personally. First and foremost, I'm the parent of three children, ages 10, 8, and 6. And I will tell you that all three of them, not two of them, not one of them, are all booster seat-aged children. We'll get to that point in just a moment. I'm also, as I said, a pediatrician and have practiced for three and a half years in Omaha, only recently having switched from the Methodist Health System to the Boys and Girls Town Institute for Child Health Improvement. I am also a child passenger safety technician and have spent many years as a child passenger safety technician instructor. To the best of my knowledge, there are about four of us in the country who are pediatricians and in this profession. I have dedicated myself to educating both myself and as many others as I can about the potential to save lives and also the risks that are posed to children due to child passenger safety issues. I also am the owner of a private school that services 200 children, and has actually served over 300 children and families in Omaha. In this role, I think I'm the only pediatrician I've ever heard of who's a child passenger safety instructor and has a CDL and drives a bus. So if you have any questions about child passenger safety, I think I'm the person to ask. I'm also a National Parenting Media spokesperson. And the reason I've included this for you is because I spend a good portion of my time trying to figure out how to convey health messages to parents and the children, and it can be a very uphill battle. Anyone who does research in the field of pediatrics, especially interventional research, knows that one of the hardest things you can do is try to change behavior, and especially trying to change the behavior of children; that's difficulty both with the children and with the parents. Three of the major issues that I wanted to define for you here, because there are many and you've got lots of good information, one is the phrase that I found was most effective when I helped to push forward a bill in another state that I lived in, and I used the phrase, the law of physics versus the law of the state. Having a law that has no relevance to very clearly defined best practices in child passenger safety does a huge disservice to parents trying to do the right thing for children in the state of Nebraska. In a perfect world, as Ann alluded or mentioned, we would have a law that required that enforcement involve measuring the seated height of children. It is a completely unrealistic idea or notion that officers would be able to do this, okay? But if you do want to have a simple, easy law, it is that you take, and I have written this out for you, it's important for you to know where the age 8 comes from. Because you take the age of 8, and children under the age of 8 is what we're discussing here. You take the age of 8. The age of 8 is the average age that the first child, out of 100 children, you line them up, one child out of 100 at the age of 8 is the appropriate height to get out of a booster seat and use the vehicle restraint alone. That's a fact that I found shocks more people than just about anything I have to say. We're talking the 99th percentile child here, so it's not an unreasonable thing to ask. It's a very safe law to pass because you're not going to be pulling over people unnecessarily and citing them

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for something that's not appropriate, okay? I will still have a huge task in front of me, because I will still have 99 out of 100 children who are ready to throw their booster seats out the window, or parents who think they're doing the right thing to protect their children and aren't, but from a legal standpoint it is the law that we need to pass. And finally, I will skip over the three E's--engineering, education, enforcement--except to say that to put this on the shoulder of parenting experts, pediatricians, to educate, it does not work alone. I can't tell you the uphill battle I have convincing people that 6 is not the appropriate age because we have a law that says so. And also, children are not small adults. In conclusion, I'll tell you this is a very different law than deciding about choice, because we're talking about protecting the lives of children, and they are unable to protect themselves. It is our responsibility to do so, and LB254 will do that. [LB254]

SENATOR LATHROP: Terrific. (Laughter) [LB254]

LAURA JANA: See, I saw the red light; I stopped. [LB254]

SENATOR LATHROP: I know. Everybody starts talking fast when that thing gets to red. [LR254]

LAURA JANA: Yes, I can talk fast with the best of them. [LR254]

SENATOR LATHROP: Thank you very much for your testimony. Does anyone have questions? [LR254]

SENATOR PIRSCH: Do you know how many children we're talking about now that would be affected by this law in terms of numbers, and for this population? Where does...you know, what's the frequency of when an accident occurs? You know, can you comment to the element of safety that would come about, using these type of restraints, as opposed to (inaudible)? [LB254]

LAURA JANA: Well, I can tell you some very useful, sort of big-picture information. And then I can also tell you that you've got some...and I've been in many states, I've trained in San Francisco, and in Denver, and all over the place, working on this issue. Some of the people who can tell you right off the top of their heads the exact statistics. I will tell you that a majority of children, booster seat age--it's called "The Forgotten Child" for a reason--are not restrained in booster seats. You can go to my children's elementary school, in an upscale west Omaha suburb, and I would tell you it's about 80 percent or 90 percent of elementary-age children who need a booster seat are not in one. I can also tell you that the effectiveness of booster seats are very, very well-defined. So that if you look at the number of children, and I don't look at absolutes, because to me it's all or nothing, it's a single child, you save their life and it's an easy way to do it. But again, I think probably in the information that Ann gave you, you've got the exact numbers as well. [LB254]

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ANN KING: In "The Forgotten Child," it's on page (inaudible). [LB254]

LAURA JANA: There's very specific...and I don't like to misquote percentages and things, but it's a very impressive set of number in terms of the benefits. [LB254]

SENATOR PIRSCH: You bet, and I'll look at that, definitely. I appreciate that. [LB254]

SENATOR LATHROP: Any other questions? Terrific. Thank you for your testimony. [LB254]

LAURA JANA: Thank you. [LB254]

SENATOR LATHROP: (See also Exhibits 3 and 4) Any other proponents? Do we have any opponents today? Anyone testifying in a neutral capacity? Okay, great. That will close our hearing on LB254. And with that we'll open on LB68, which is Senator Hudkins, who I don't see. Oh, yes, I do. [LB254]

SENATOR ASHFORD: Oh, we've got a whole new regimen going. Good afternoon, Senator Hudkins. [LB68]

SENATOR HUDKINS: Hello. Which bill do you want first? [LB68]

SENATOR ASHFORD: Which one would you like to do first? You're the boss. Well, actually you're the...LB68. Do you have LB68? That's the first one on the list. [LB68]

SENATOR HUDKINS: LB68, okay. [LB68]

SENATOR ASHFORD: Okay, LB68, Senator Hudkins. [LB68]

SENATOR HUDKINS: (Exhibit 13) Thank you, Senator Ashford. Good afternoon to all of the members of the Judiciary Committee. I'm Senator Carol Hudkins, H-u-d-k-i-n-s, and I represent the 21st Legislative District. I'm here today to ask you to take a fresh look at how the state currently protects abused and/or neglected children who are in the juvenile court system. LB68, while perhaps not the final word on the subject, is certainly a request to address an issue that has been the subject of studies and comments throughout the juvenile system. From foster care review reports to Governor task forces, to Supreme Court commissions, the issue of appointing guardian ad litem for abused and neglected children has come under discussion. The current statutes state that only attorneys may be appointed as guardian ad litem in juvenile court. The statutes then set out the minimum duties that the guardian ad litem is required to perform. Even with this guidance, the ongoing statements from children, foster parents, and CASA, and that's Court Appointed Special Advocates...and CASA volunteers, is that guardian ad litem

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are not adequately performing their duties. The one duty that seems to be the one most often neglected is to go to the residence in which a child is placed. Last week I attended a meeting of the Foster Care Review Board, and they had four young people. And perhaps you saw it in the World-Herald paper today on the front page. There was one young lady, Becky was her name. Her complaint was she was in the system for a number of years, didn't even know that she had a guardian ad litem, never seen one. Another young man said that, well, he had I think it was 16 caseworkers in the period of six months. How is anything supposed to get done with a complete turnover in people taking care of the case? Now I don't want to say that this is the case in every single time; it's not. We have some very good people out there doing the work of guardian ad litem, but we just want to make the system better. Further, the guardian ad litem report that is required to be filed, or the checklist the court may require the guardian ad litem to fill out, rarely provides any new information to the court. More often than not, the guardian ad litem report is just a regurgitation of the report of the CASA and the caseworker. A number of attorneys acting as guardian ad litem failed to perform the statutorily defined duties, but the courts continue to appoint them to these cases. And again, some judges do not appoint these people who are failing in their duties, new cases, but we want to make the system better. We want to make sure that they're all doing what they're supposed to be doing. LB68 creates a statewide Guardian Ad Litem Office under the Supreme Court Administrator's Office. This office will be responsible for the training, hiring, either by contract, or hiring as an employee, and disciplining or firing those attorneys who fail to perform the acts required under the law. Under this bill the office will try to create guardian ad litem teams. This concept works very well. And I would point to North Carolina as a prime example of the use of CASAs working in conjunction with attorneys to perform the full duties of a guardian ad litem. LB68 encourages a team approach when possible, but understands that we don't have enough CASA volunteers for each child and that there will be times that the attorney will have to perform all the duties of the guardian ad litem. This approach reduces the likelihood that an attorney will become a witness in the court...in the case, I'm sorry. The current system practically requires that the attorney perform certain duties that place that attorney in a position to observe acts that only the attorney may be able to testify to. This conflict can result in the attorney being unable to act as the guardian ad litem attorney for the child as envisioned in our current system. Our current system also places the attorney guardian ad litem in the position of being both the attorney for the child, and as counsel for the best interests of the child. This scenario can result in the child losing their guardian ad litem when a conflict between the child's personal wishes and the guardian ad litem's belief on what is in the best interest of the child. The studies are clear that stability in a child's life when they are in the juvenile system is of major importance for a successful conclusion of the case. This stability is most important when you're talking about the caseworker, the judge, the guardian ad litem, and, when available, the CASA volunteer. To maintain a system that would require the guardian ad litem to be removed when a conflict arises is contrary to the best interests of the child if the guardian ad litem is performing his or her duties. It's easier to come up to speed as

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an attorney than it is as a guardian ad litem. Thus, under LB68, in the event a conflict did come up, the guardian ad litem would remain and the court would appoint a separate attorney to act as the child's attorney. It's time for the Legislature to take action in this area. The executive branch and the judicial branch have both studied the issue and have found deficiencies in the area of guardian ad litem practice in the juvenile court regarding abused and neglected children. LB68 provides for a more responsive system, better trained advocates for the child's best interests, and takes advantage of both economies of scale and volunteers to better serve the children of our state. Thank you. [LB68]

SENATOR ASHFORD: Thank you, Senator Hudkins. [LB68]

SENATOR HUDKINS: Are there questions? [LB68]

SENATOR ASHFORD: Are there any questions of Senator Hudkins? Yes. [LB68]

SENATOR LATHROP: I was just going to ask one by way of background, if I can? It's been a long time since I was in juvenile court, and the CASA people have come along in the meantime. You have...in a typical juvenile court proceeding you're going to have...the parents will have a lawyer, the child will have a lawyer, the county attorney will be there, guardian ad litem, and now we have a CASA person. In that scenario, what is the CASA person doing, the court appointed special advocate? [LB68]

SENATOR HUDKINS: You know, if you don't mind, Senator Lathrop, I am going to defer that question to someone behind me. [LB68]

SENATOR LATHROP: Okay. [LB68]

SENATOR HUDKINS: If you read in today's paper, the person that wrote this bill is Jim Ruby. He is currently my legislative aide. But I'm going to have him testify as a complete, not for my office, but as... [LB68]

SENATOR LATHROP: Okay. [LB68]

SENATOR HUDKINS: ...as an expert in this area. All right? [LB68]

SENATOR LATHROP: That's good. I'd be happy to talk to him. Thanks. [LB68]

SENATOR ASHFORD: Senator Hudkins, I have an idea. Would you like to introduce LB75, as long as you're here? [LB75]

SENATOR HUDKINS: Sure. [LB75]

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SENATOR ASHFORD: Would that work? And then we can...when the witnesses come up, they can testify on either one or the other. Okay. I think we can follow the track by doing it that way. We do that once in a while for your convenience. [LB75]

SENATOR HUDKINS: Absolutely. Thank you. Then we will be opening for LB75. Again, thank you for this opportunity to be here. I am still Senator Carol Hudkins, and I still represent the 21st District. And today we're going to be talking about LB75. Under this particular bill, the juvenile courts in Nebraska will be required to recognize that in more and more cases in our state that the child brought to them in abuse or neglect cases may well be the subject of a separate custody order issued by either a county or a district court, or in some cases a court outside of Nebraska. When this occurs, it's important to the permanency of the child that the court take jurisdiction over both actions. The reason is very simple. If it becomes clear that the placement of the child with the noncustodial parent is in the best interest of the child, and upon such occurrence the court would terminate its juvenile court jurisdiction, then upon termination, the other custody order would trump the juvenile order, and custody would revert to the other parent, which is what you didn't want to happen. In order to avoid this result, the court must keep the case open until one of the parties to the prior case moves the prior court--and I'm sure glad most of you are attorneys in here, this makes it much easier--moves the prior court to transfer the case to the juvenile court. The custodial parent under that order is not going to be anxious to make that motion, and the noncustodial parent may not have the funds to hire counsel to achieve that result. It's not clear within our current statutes whether or not the court appointed counsel in the juvenile case can act on the party's behalf absent the party hiring the attorney, or whether the appointed counsel can be paid to perform this act at county expense. Either way, the delay in waiting until near the end of a case is not in the best interests of the child, nor is it a wise use of scarce judicial and state resources. Placing the responsibility on the court to request the transfer from the ordering court can be a simple paper process which can be handled by court personnel at much less expense than having attorneys request the transfer on behalf of a parent. Placing this with the court also takes away any delay-type tactics that the opposing party may desire to use in order to try and delay the court taking action. Thank you for your time. And I would ask that you advance this bill to the floor. [LB75]

SENATOR ASHFORD: Thank you, Senator Hudkins. Any questions on LB75 of Senator Hudkins? Why don't we take...and, Senator, do you wish to remain and close? [LB68 LB75]

SENATOR HUDKINS: I'll close. [LB68 LB75]

SENATOR ASHFORD: Great, all right. But I think what we'll do is take LB68 first, and then LB75. So if we could have the witnesses on LB68. Jim, for proponents. How many LB68 witnesses do we have? Okay. [LB68]

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JAMES RUBY: Good afternoon, Senator Ashford, members of the Judiciary Committee. I am Jim Ruby. I am here to testify in my individual capacity as the former Seward County attorney, as a practicing attorney in the area of guardian ad litem practice, as a member of the Supreme Court Commission on Children and the Courts, as a member of the Fifth Judicial District of the Through the Eyes of a Child Initiative, and as the chairperson of the Guardian Ad Litem Subcommittee of the Supreme Court Commission on Children and the Courts. LB68, I brought to Senator Hudkins. I brought it after about a year and a half of study with regards to the issue of how different states perform the distribution of guardian ad litem appointments and what seems to have generated and become kind of the best practice model. I concluded that the model generated through North Carolina is the one that makes the most sense, both from a public policy perspective, and from a best interest perspective for the child. The North Carolina model uses two things we have already here in the state of Nebraska, and that is the court appointed special advocate program, which is individuals who volunteer, who are trained, they receive an initial 30-hour training with regards to how to advocate. They aren't lawyers; they're just volunteers who are given educational training to advocate for what they believe is in the best interests of the child. Early on in their life they were considered friends of the court. They aren't necessarily in that position in today's world, but they are identified as people that the court can use to bring in another viewpoint. The special thing about CASA is generally, if possible, they are given one child and that's it. Unlike caseworkers, who may have upwards of 40, or attorneys who may be members of firms that have upwards of 40, they have one child, and they focus on that single, individual child. And they have, much like the guardian ad litem has statutory responsibilities, the CASA has, in their training manuals, responsibilities that are laid out that are very similar. And that's what both LB68 and the North Carolina model try and take into account. We have these volunteers out there who do great work, they do superior work. And they do work that many attorneys in the state of Nebraska don't want to do; it's because they call it social work. It's the going to the home and visiting with the child in the environment, analyzing the environment, gathering those factual issues, and determining whether or not that placement is in that child's best interest. It's going to the teachers and asking how the child is doing in school, it's going to the doctors and gathering medical files, if you need to, and reviewing those. A lot of attorneys don't want to do some of those things. They want to do the legal side of being a guardian ad litem, which is great because that's what our system is supposed to look like. We want both...Judge Johnson, out of Douglas County, one time I heard him analyze our guardian ad litem as super guardian ad litem, because they are not only guardian ad litem, but they are attorneys as well, so they practice both avenues. Understand that guardians ad litem were around long before we ever said they had to be attorneys. It wasn't only until about 1989, '99 that we said, guardian ad litem have to be attorneys. And LB68 recognized that we had these two groups. Attorneys and these CASA, if we have enough, when we have enough, when they are teamed together, they will make a great team for that child. Working together they can both...the CASA can do the, quote,

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the social side, those kind of going out and checking things out in the environment, while the attorney can work with the CASA on how best to present that evidence to the court, how best to prepare those reports. And when we don't have a CASA available, then the attorney has to step forward and perform all the functions under the statutes. I see I'm out of time. I would love to answer questions. [LB68]

SENATOR ASHFORD: Thanks, Jim. Yes, Senator Lathrop. [LB68]

SENATOR LATHROP: Can I just take a minute to have you give us the short course on the juvenile court? The situation where we have a guardian ad litem, typically, comes up with the juvenile is being taken into juvenile court because they are either uncontrollable, or they committed some type of an offense, something that would be a crime under the... [LB68]

JAMES RUBY: Those would be what they call 43-247(3)(b)'s, those are...they are...what we're talking about here are 43-247(3)(a)'s, which are the abuse/neglect. [LB68]

SENATOR LATHROP: Okay. [LB68]

JAMES RUBY: They come in, not because of their own fault. But (3)(b)'s are what we call by through their own fault; (3)(a)'s are what we call through no fault of their own. They are abused or neglected by their care keeper, generally. [LB68]

SENATOR LATHROP: Okay. Right now you were in Seward County? [LB68]

JAMES RUBY: Yes. [LB68]

SENATOR LATHROP: And so if those cases came to you, it's done by a county judge there, and not a juvenile court judge, right? [LB68]

JAMES RUBY: Right. [LB68]

SENATOR LATHROP: And when those cases come to you, the parents end up with an attorney, and there's the county attorney involved, and then the child is represented by a guardian ad litem, presently? [LB68]

JAMES RUBY: Right. [LB68]

SENATOR LATHROP: And is that just an appointment made by the county court right there? They just pick a lawyer from the community to serve as guardian ad litem? [LB68]

JAMES RUBY: Yes. [LB68]

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SENATOR LATHROP: CASA's role then is to kind of be an extension of the guardian ad litem? To go to the house, gather information, gather records, take a look around and make sure? [LB68]

JAMES RUBY: In the early...before we required guardian ad litem to be attorneys, Judge Rouse, in Seward County, did this, which is actually a small model of the North Carolina. He appointed the Seward County public defender to represent the CASA, and appointed the CASA as the guardian ad litem for the child. [LB68]

SENATOR LATHROP: Okay. Tell me, if it's being handled right now by the county court at the county court level, what are we going to accomplish with an agency--and I got to answer this question in a minute on my bill--but what are we going to accomplish by making a statewide agency? I mean, are we going to choose different lawyers? What's going to happen that's going to be an improvement over the way Judge Rouse is doing it down in Seward County? [LB68]

JAMES RUBY: Okay, I think it falls into two realms. One, under the proposed rules that the commission has advanced to the Supreme Court with regards to training on guardian ad litem, what you will also see with the state running it, it is quicker accountability on the part of guardian ad litem who fail to do their jobs. Right now, the only way a guardian ad litem is removed, and I have never heard of anyone being removed, I've heard of a lot of stories where attorneys have not been doing their job, but I've never heard of a story where a county attorney or a guardian ad litem has been removed. I've heard of stories where they weren't reappointed again because they did bad work,... [LB68]

SENATOR LATHROP: Right. [LB68]

JAMES RUBY: ...I've never heard of one removed in the middle of a case where they were doing bad work. And you heard earlier of the child who was a senior in high school and had never...and came into the system around their eighth grade, and had never seen a guardian ad litem. [LB68]

SENATOR LATHROP: Right. [LB68]

JAMES RUBY: That's atrocious. [LB68]

SENATOR LATHROP: Sure, sure. [LB68]

JAMES RUBY: And so what you achieve under this system is, one, we don't have judges acting. And you know something? In the small communities, like Seward and smaller, I can understand why they don't. [LB68]

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SENATOR LATHROP: Don't what? [LB68]

JAMES RUBY: You're living in that... [LB68]

SENATOR LATHROP: Don't cut somebody off in the middle of... [LB68]

JAMES RUBY: Yeah, because even though you hope for and struggle for getting them to do their job the best, you live in a small community. [LB68]

SENATOR LATHROP: Okay, let me stop you there. You live in a small community. Now we set up a statewide guardian ad litem. And... [LB68]

JAMES RUBY: The judge... [LB68]

SENATOR LATHROP: Wait a minute, let me make the example--Broken Bow, because I want to take this problem a long drive away from Lincoln, and we now have a juvenile court proceeding. Is the judge, if this goes through, is the judge in Broken Bow now going to choose a local lawyer, or is the judge going to pull somebody from Lincoln and have them drive all the way to Broken Bow to serve that function? [LB68]

JAMES RUBY: No. The vision in LB68 is not to have someone pulled. And you're going to hear a lot of people who are going to come up here, as opponents to LB68, who practice as guardian ad litem; two of them are on the subcommittee I chaired. They are good guardian ad litem as far as I know. And what will happen... [LB68]

SENATOR LATHROP: I appreciate that. What I'm looking for is,... [LB68]

JAMES RUBY: I'm going to give it right now. [LB68]

SENATOR LATHROP: ...where are we going to find the guardian ad litem with this? [LB68]

JAMES RUBY: I'm going to give it to you right this minute. What the administrators at the office would end up doing would be going into the communities at the county level, and looking and trying to find within those communities, attorneys, one, who are committed to doing guardian ad litem service in a way that is good for the juvenile, in their best interest. And either...in the Broken Bow area perhaps contracting with maybe one or two attorneys up in that area who may serve several counties. One of the... [LB68]

SENATOR LATHROP: What is it about those steps, if that's what's going to happen after this becomes law in Nebraska, what's stopping the county court judge from doing

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that right now? [LB68]

JAMES RUBY: What's stopping the county court judge from doing that right now is they are limited with regards to who they can appoint. A county court judge doesn't necessarily have the jurisdiction to go into another county and pull an attorney out of that county to come over into his county and be appointed as guardian ad litem without their permission. Now, within the local community, I believe that the court does have the authority to appoint an attorney in their county. I do not believe they have the authority to go outside of their county, unless they have been given some permission on the part of that attorney in that other county. [LB68]

SENATOR LATHROP: Okay. Okay. [LB68]

JAMES RUBY: And so what this hopes to do is, one...it will do three things. One, it will level the compensation for guardian ad litem statewide. Currently, county...why do I want to keep saying county attorneys, guardian ad litem, their pay ranges anywhere from...the Fifth Judicial District is around \$70 an hour, to the...Saline County pays around \$40 an hour, Lancaster County pays \$1,000 a case, whether it's a long case, a short case, it's a case, it's \$1,000. Douglas County has a contractual arrangement that I'm not clear on how it works, although I have been told that there are people that do not like the way the contractual relationships are entered into in Douglas County, that they feel like at times there's some favoritism played in that area. I don't know if that's true or not, I just have heard the anecdotal information. [LB68]

SENATOR LATHROP: All right. [LB68]

JAMES RUBY: So, one, you level across the field what people are being compensated for. In some areas, where you have a lot of drive time, there are judges that will not compensate you for your drive time. They will compensate you for the time that you are there doing your job, but not for the time you drive back and forth. You take that...say you're in Sidney and you have a child...and the other thing you got to remember here is you get west, placements aren't always real close. Down here it's a little easier. Most of you...you have a large variety of services here; further west you don't have them all. So you may have a child out of Sidney who is placed down here in Lincoln. That guardian ad litem is required, under the law, to come and visit. And they may end up having to come down here on their own accord, without really being compensated for it. And so that levels the compensation field. The third one is if there's a complaint about a guardian ad litem now, there...and if you read today's Omaha World-Herald, there's a story in there. And what was said in that article was...the comment was made, why don't they just...why doesn't the judge refer them to the Bar Association? Well, as you know, the Bar Association doesn't do discipline anymore; it would be the Supreme Court. Well, hmmm, if you place this in the Supreme Court and you create an office for it, one, you don't need to go through the discipline process of having an investigation. You have a

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person who's in an employee/employer relationship type, either contractually or directly, and you can immediately discipline, either through, you know, deductions in wages, you know, rejection of the contract, or whatever. And the third is you have uniform training throughout the state; everyone gets the same training. By entering into the contracts in western Nebraska, and even in Omaha and Lincoln, I mean this is not going...it is not envisioned that there are going to be a huge number of new state employees. There is an envisioning that there will be contracts issued. They will be the same throughout the state. They will be reviewed at a state level, authorized and approved at a state level, transferring funds from...transferring the costs of the process from the county property tax level up onto the state sales and income tax and their revenue generating arenas. And the bottom line is that the child in Scottsbluff and Crawford and Lisco, my home town, gets the same benefits of the training and the payment and the compensation of attorneys as the child in Omaha does. [LB68]

SENATOR LATHROP: Okay. I think you've answered my questions. But I appreciate it. Senator Pedersen. [LB68]

SENATOR PEDERSEN: I don't...my years of experience in being in the juvenile court, I would tell you, Jim, I would much rather see a kid charged as an adult than going to a juvenile court, because you don't...the kid himself is not near as scared in adult court than they are in juvenile court. The last case I went to in a juvenile court was two years ago, and it was not in Douglas County. There were 11 people in that courtroom who were all on state pay. [LB68]

JAMES RUBY: Probably county. [LB68]

SENATOR PEDERSEN: The guardian ad litem had met the young man 15 minutes before the hearing. CASA was there, more to...I don't remember exactly what. I was the only one in the courtroom who actually knew the kid personally. He asked me to be there for a friendly face. I was not...had anything to do with the hearing in any way, shape, or form. But by the time it got through, it convinced me that day that I'm sure glad I work with the kids that are being charged as adults instead of juvenile court, because the juvenile court, as I see it today, with that many people in the courtroom, including the guardian ad litem, is scaring the heck out of the kids. And I don't know that we're servicing them at all sometimes. Somebody from Omaha called me at noon today and said, don't support that bill. Okay. And I said, well, this guy being a friend of mine I said, why not? I would support a bill that did away, today, what I, with just the little bit of knowledge I have, I would support a bill to do away with guardians ad litem, because I don't know if they've been much good in my past. But I don't have much to deal with them anymore, and I'm hoping that this kind of a bill is going to improve some of that things with them. Senator Hudkins is offering a bill that is, as I see it, is going to try and improve that system. And I'm going to have to study this very close to see, you know, whether I'm for it or against it. Guardian ad litem, in my history, the little bit of work...I

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don't work with the courts, I work with the kids that are locked up in the correctional system. But you worked with one of my favorite judges in the state, and that's Judge Rouse, is a good friend of mine. [LB68]

JAMES RUBY: And I think we have another really good judge in the back of the room here, Judge Evans, from York, who also does really good work. [LB68]

SENATOR PEDERSEN: And I know the juvenile court bench in Omaha real well, and I think we've got some very dedicated people. But adding more people to the courtroom, or adding people that may not have any legal training, is a little bit scary. But CASA, I think, is a wonderful organization because they work with more than just the juvenile court. [LB68]

JAMES RUBY: Judge Johnson out of Omaha cochairs the Supreme Court Commission. [LB68]

SENATOR PEDERSEN: Thank you for your time. [LB68]

JAMES RUBY: Thank you. [LB68]

SENATOR LATHROP: Thanks a lot. Any other questions? Okay. [LB68]

JAMES RUBY: Thank you very much. [LB68]

SENATOR LATHROP: Appreciate it, thank you. Next proponent of LB68. Okay. How about opponents of LB68? Are we ready? [LB68]

CHRIS COSTANTAKOS: I'm ready. [LB68]

SENATOR LATHROP: Okay. [LB68]

CHRIS COSTANTAKOS: (Exhibit 16) Good afternoon, members of the Judiciary Committee. My name is Chris Costantakos. I'm an attorney; I've practiced in juvenile court in almost every capacity for about 28 years. I was, as Mr. Ruby was, a member of the guardian ad litem subcommittee, which was retired from active service in August of 2006. I am also the author of the only book on Nebraska juvenile court law, called Juvenile Court Law and Practice, which was published by Thomson West in the fall of 2006. I think everybody has or can think of a horror story with lawyers and courts, including the juvenile court. I know them; all of the people here know them. But I think the thing that you're being asked to do needs to be assessed carefully. CASAs, by statute, are defined as friend of the court, and that's what they are to be and have been. It's been my experience that CASAs can work and do work often hand-in-hand with guardians ad litem in juvenile court cases. In the handout that I've given you, it's rather

lengthy, but reducing the main concerns that I have about this bill are these: that LB68 would result in the creation of lay or volunteer guardians ad litem who cannot function as attorneys to protect the best interest or the legal interest of children. The Unicameral has stated repeatedly, and I realize that may be subject to change, but that the legal interests of the children in juvenile court proceedings are paramount, that the child is entitled to legal representation from the very beginning of the case, all the way through to the end of the case. If LB68 is passed, there is no provision in there for the legal representation of the juvenile. There is something about a local program attorney, but that's not clear that that particular person is legal counsel for the juvenile. There's a cost factor in terms of implementing this. If you have a core of volunteer guardians ad litem, then that certainly raises the issue that you still have the need for an attorney for the juvenile. Who will be paying that? And that is in addition to the anticipated cost predicted. Volunteer guardians ad litem mean to me unpaid. And if they're volunteers, what's their consistency, dedication, and commitment? That doesn't mean that we don't have good people who assist and help out in these cases. But volunteer guardians ad litem would not be appropriate in this particular case to represent the legal interests of the child. They can't file motions, they're not lawyers. In terms of the conflict of interest that's been portrayed to you, I don't think there are some. If a guardian ad litem goes into a home and sees something of concern to a juvenile, they can testify; that is, they can report that to the court. That's their job. That is not a conflict of interest. If the juvenile is older and disagrees with the guardian ad litem's recommendations, say the guardian ad litem says, I want you to be removed from the home, and the child, who's maybe 15 or 16 says, no, I want to stay in the home; it's very simple. Under existing law the guardian ad litem applies to the court to split the dual role and appoint separate legal counsel to litigate the juvenile's preferences in that regard. There are many, many things in the Juvenile Code that are required of a guardian ad litem that are not provided for in this bill. You're virtually engaging in an upheaval or an overthrow of the Nebraska Juvenile Court or Code in many, many respects. Currently, a guardian ad litem can terminate parental rights for...and that's just one example. I see my time is up. But that would not be something that could be provided...is provided for in LB68. All of these arguments are set forth in greater detail. [LB68]

SENATOR LATHROP: Very good. Thank you very much. [LB68]

CHRIS COSTANTAKOS: Thank you. [LB68]

SENATOR LATHROP: Hang on a second, let's see if anybody has any questions for you. Okay, now thank you very much. [LB68]

CHRIS COSTANTAKOS: Thank you. [LB68]

SENATOR LATHROP: Good afternoon. [LB68]

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LYNNETTE BOYLE: Good afternoon, y'all. [LB68]

SENATOR LATHROP: Good to see you. [LB68]

LYNNETTE BOYLE: Good to see you, too. I am Lynnette Boyle, with...Lynnette, L-y-n-n-e-t-t-e, last name Boyle, B-o-y-l-e, with Tietjen, T-i-e-t-j-e-n, Simon, S-i-m-o-n, and Boyle. And I'm an attorney who practices in Omaha. A great deal of my practice, for almost 20 years, has been in juvenile court. I fulfill all roles in juvenile court, from special prosecutor to defense counsel, to guardian ad litem for parents, as well as guardian ad litem for children. I have one of the contracts out of Douglas County for guardian ad litem work in Douglas County. I also not only was on the subcommittee, but I'm also on the Supreme Court's Commission for Children and the Law, that is the same group that Mr. Ruby recently referred to. And I also have the privilege of being on the advisory portion of the Through the Eyes of the Children Initiative that was started back in October. You know, I have to tell you all, sitting here and listening to Mr. Ruby was kind of like Groundhog Day, where you hear the same thing that you've heard, over and over and over. The issues relating to North Carolina and many of the proposals in this legislation are things that we worked through ad nauseam in the subcommittee. And that part of this bill that was set forth is not what we adopted, not what the consensus opinion out of the subcommittee was, and it is not the recommendations that the Supreme Court Commission on Children and the Law submitted to the Nebraska Supreme Court. The consensus was that we would make significant changes for children in this state and the juvenile court system by Supreme Court rule, because every attorney in this state is governed by Supreme Court rule. And so many of the things that is proposed in this piece of legislation we took care of. Now the training piece is done. The Supreme Court adopted the recommendations to have standardized training for all GALs throughout the state because there is a serious need in this state to have standardization. And if I get talking too fast, slow me down. I know Mr. Ruby has never heard of a GAL being removed, but I have. I am a successor GAL on a case where a judge, in Douglas County, on her own motion, removed the guardian ad litem because she did not believe that person was doing her job. The system works. There is no need to throw the baby out with the bath. Can we make things better? Yes, we can make them better. In terms of what guardians ad litem do, they go to schools, they go to foster homes, they review doctors' charts, and they do all those sorts of things already, in my opinion, that this bill is proposing a nonattorney do. In order for me to do my job as a guardian ad litem and file motions and do the attorney piece of it for the best interests of the children, I have to know what's going on with those children. That's why last night, at 9 p.m., I was coming home from Columbus, because I went to visit the child. So again, I'm open for any questions that any of you might have. [LB68]

SENATOR LATHROP: Any questions? Pete? Okay, thanks, Lynnette. [LB68]

LYNNETTE BOYLE: Thank you. [LB68]

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SENATOR LATHROP: Good to see you. [LB68]

THOMAS INCONTRO: Good to see you. Good afternoon. My name is Tom Incontro. I'm an attorney in Douglas County, Omaha, Nebraska. I currently have a contract with Douglas County, Nebraska, to provide guardian ad litem services. In my office there is myself, and I have seven other attorneys. There are eight guardian ad litem in my office. And at this point we specifically only do guardian ad litem work. I believe that my office is currently responsible for representing children as guardian ad litem more than any other person or entity in the state. I know that people in my office visit children. We represent their legal interest vigorously. And I believe that the reputation for my office and other guardian ad litem in Douglas County, I think the reputation is very good. My office began just over three years ago. So, Senator Pedersen, I believe your experience may go beyond that. And I would encourage you to maybe check with the judges that are your friends about the current situation of guardian ad litem, because I think you'll find that it has improved. Obviously, I can only speak to what my office does, when we visit, and what we do. But I do think we see the children...people in my office have visited children in Oklahoma, Missouri, Texas, Virginia, Indiana, Ohio, New Mexico, Colorado, New York, South Carolina, Illinois, and South Dakota. Again, those are people in my office visiting children outside the state of Nebraska. Obviously, we see kids in state. We see kids in foster homes, in schools, in hospitals. Unfortunately, I have had the horror of seeing a child pass away in a hospital as a result of abuse due to a parent. So I have been there, I have seen it, I have dealt with it, and that's what I'm trying to communicate to everyone here. As a guardian ad litem, I've filed motions to remove children from a home, filed motions to put a child back in a parental home. I have filed motions to terminate parental rights. I just recently, well I guess it was in August, spent six days in trial with 19 witnesses on my motion to terminate parental rights. That is something that I do as an attorney. LB68 takes that away from attorneys and gives my responsibilities to a volunteer, and possibly a nonattorney. I think supporting LB68 is lowering the level of representation. I don't see how you can see it any other way. And I think if you coupled that with a \$10 million price tag that was stated in today's news article, that LB68 is bad for the taxpayers, and even worse for children in the state of Nebraska. [LB68]

SENATOR PEDERSEN: Thank you. Any questions from the committee? I have one. How many people, young people do you represent that also have their own defense attorneys? Don't all of them? [LB68]

THOMAS INCONTRO: Well, no. Most of the cases, and maybe that's been kind of unclear today, most of the cases involving a guardian ad litem are (3)(a) cases, that is cases that come in where the children are abused and neglected. And in those cases they don't have what you would think of as a public defender representing them. That's mostly delinquency matters. [LB68]

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SENATOR PEDERSEN: But for the record, though, that's...those are the ones that are not being charged with criminal? [LB68]

THOMAS INCONTRO: Right. [LB68]

SENATOR PEDERSEN: But if they're charged with both criminal...I mean if they have criminal and they have the other side of being taken out of the family, then they would have both, is that right? [LB68]

THOMAS INCONTRO: Right. In some cases there is a public defender representing the child on the delinquency charge, and in some of those cases where a parent may not be available or there is already an ongoing (3)(a) abuse/neglect case, then a guardian ad litem may be appointed to, in that case, sit as the parent of the child, to work with that defense attorney. [LB68]

SENATOR PEDERSEN: Now do the...and then the parents have their own attorneys? [LB68]

THOMAS INCONTRO: Yes. [LB68]

SENATOR PEDERSEN: So is there any conflict between the guardian ad litem and the CASA? [LB68]

THOMAS INCONTRO: Well, I think...is there a conflict? Well, I think we work well with the CASAs that are involved with cases; there isn't a CASA on every case. [LB68]

SENATOR PEDERSEN: No. [LB68]

THOMAS INCONTRO: And so if there's a conflict, I don't see that as one. It's not the same office though, so it's different work. I mean, we're attorneys, we represent the child, we see the child and... [LB68]

SENATOR PEDERSEN: Now, do you contract under bid, or is just a...? [LB68]

THOMAS INCONTRO: It was a bid; right. [LB68]

SENATOR PEDERSEN: It is a bid and it's done through the juvenile court judges. [LB68]

THOMAS INCONTRO: Actually, through the county, through Douglas County, correct. Which I think is important to have that local control. [LB68]

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SENATOR PEDERSEN: Good. I need to read up more and more on this, because that's why I found this very interesting. [LB68]

THOMAS INCONTRO: My response to that is, please do. [LB68]

SENATOR PEDERSEN: Okay. Well,...and I will. [LB68]

THOMAS INCONTRO: Okay, thank you, sir. [LB68]

SENATOR PEDERSEN: Somebody from your office called me this afternoon that I've known for some time. So thank you. [LB68]

THOMAS INCONTRO: Anyone else? [LB68]

SENATOR PEDERSEN: Seeing no other questions, thank you. Next testifier, please. Opposition. [LB68]

JEFFREY WAGNER: Good afternoon. My name is Jeffrey Wagner. I have a little different perspective than some of the other opponents you've heard here today. While I'm an attorney, only about a third of my caseload is made up of juvenile court work, but it has been higher in the past. I have served in just about every capacity in the juvenile court, from special prosecutor, to guardian ad litem, to counsel for children. Primarily, I serve as counsel for the parent, the person accused of abusing or neglecting their child. I'm a very zealous advocate for my clients when I'm representing the parents. My job as the parent's attorney is not primarily to look out for the best interest of the children. If you want to make my job as a parent's attorney easier, move this bill on, because you're going to put inexperienced nonattorneys into the courtroom to deal with zealous and aggressive attorneys in representing the best interest of the children. I don't think that's where this should go. What you need is experienced attorneys that are trained and that are competent and follow the law as it's written now to represent these children. Those recommendations have already been made outside of this legislation of what needs to happen to get those attorneys the proper training and experience to zealously and effectively represent the best interest of these children in the courtroom. This is not how you're going to accomplish that. This is putting less experienced, in fact in reading the legislation, nonattorneys into the courtroom to protect the best interest of these children, and that's not where you want to go. Thank you. [LB68]

SENATOR PEDERSEN: Thank you. Are you...? Wait just a minute. Is there any questions from the committee? Are you aware that the Supreme Court has sent us a letter in support of this bill? (Exhibit 13) [LB68]

JEFFREY WAGNER: I am not. [LB68]

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SENATOR PEDERSEN: And I find that kind of interesting at this point with the testimony that you are bringing forward. [LB68]

SENATOR ASHFORD: Senator Pedersen, it's not in support. [LB68]

SENATOR PEDERSEN: Hmm? Pardon me [LB68]

SENATOR ASHFORD: The Supreme Court (inaudible) today is not in support. Read the second paragraph. [LB68]

SENATOR PEDERSEN: Oh, okay. I stand corrected. [LB68]

SENATOR ASHFORD: It's asking for more time to research through it, but as of today it would not be in support. [LB68]

SENATOR PEDERSEN: This is on LB68. I'm reading this wrong then, because I don't see... Thank you very much for your testimony. Sorry. [LB68]

JEFFREY WAGNER: Okay, thank you. [LB68]

SENATOR PEDERSEN: (See also Exhibits 14 and 15) Sorry. Do we have any other testimony in opposition? Any testimony neutral? Okay, we will now close the hearing on LB68, and we'll open the hearing on LB75. Senator Hudkins has already introduced it. Do we have any testimony in support of LB75? Seeing none, is there any testimony in opposition to LB75? Come forward, please. Good afternoon. Whenever you're ready. [LB75 LB68]

CHRIS COSTANTAKOS: (Exhibit 17) Good afternoon again. All right. I'm Chris Costantakos. I forgot to tell you when I was testifying on LB68, I was doing that in my individual capacity, and I was also asked by the Nebraska State Bar Association to testify in opposition. With regard to LB75, I am also testifying in opposition to that bill and also on behalf of the Nebraska State Bar Association legislation committee, which voted to oppose it as well. LB75, the biggest problem with LB75 is that the existing Juvenile Code handles situations where the abuse or neglect is so grave or so great that reasonable efforts should not be made to reunify the child. This bill is a disaster in terms of due process and in terms of equal protection and all kinds of other things. The bottom line on this is that if there are nothing more than allegations, that a parent who has a prior order of custody of the child has neglected or abused the child, the juvenile court can never place the child back with the same parent. The state is no longer required to make any reasonable efforts to reunify the child and the parent, and the juvenile court must place the child with the noncustodial parent, unless someone else can prove that the noncustodial parent is unfit. Then the juvenile court also will acquire jurisdiction over other courts who have issued prior custody orders, and change their

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orders as well. LB75 is contrary to the entire spirit and purpose of juvenile court, which is rehabilitative and remedial. Juvenile court, as it now stands, even if a parent is adjudicated as having neglected or abused a child, there is still a possibility that they may be reunified with the child through a plan of rehabilitation. This bill would work on a de facto termination of parental rights based on nothing more than allegations. The 14th Amendment to the U.S. Constitution, Santosky v. Kramer, 43-292 of the Nebraska Statutes, are quite clear that before you terminate parental rights you have to have clear and convincing evidence, you also have to have a separate assessment by the court that it's in the best interest of the child to terminate parental rights. This would operate as a de facto termination of a parent's right to custody based upon nothing more than allegations. Ask yourself, what is the rationale for distinguishing between a parent who has a prior custody order versus a parent who does not? If I'm a parent with a prior custody order and I'm alleged to have neglected my child because I didn't have enough food in the refrigerator, what this bill says is that I lose custody immediately; it's transferred to the noncustodial parent, and there is no reason to have a disposition hearing because there are no more reasonable efforts. If I am a prostitute and I go into a meth lab and I do all these things, but I don't have a prior custody order, and I am charged with abuse or neglect of my child, I get the chance at reunification and rehabilitation with my child. This whole bill is repugnant to the concepts of due process, as well as equal protection of the law. There is no rational basis to treat parents who have a custody order differently from parents who have no custody order. The other things about this bill, it is unconstitutionally vague. Some of the language says that the judge can never place the child back with the parent whose prior acts brought the child before the court. What does that mean? Whose prior acts brought the child before the court? Does that mean they've been adjudicated? Is it just an allegation? Based on the other language of the bill, it appears that it's an allegation only. Finally, what kind of interjurisdictional mess will we create if this bill goes forward, if the juvenile court automatically has jurisdiction over the prior custody orders of the other court? What if the other court is in Connecticut or Florida or the Bahamas? This is simply an untenable bill, and I think it completely flies in the face of the spirit and intent of the Juvenile Code. Thank you. [LB75]

SENATOR PEDERSEN: Thank you, thank you. Are there any questions from the committee? I have none. I will try and read your handouts a little closer; read all this stuff at once. [LB75]

CHRIS COSTANTAKOS: All right. They are detailed. Thank you. [LB75]

SENATOR PEDERSEN: Next testifier in opposition? [LB75]

LYNNETTE BOYLE: Again, I'm Lynnette Boyle. And I agree with the comments made by Chris Costantakos. I think that this bill is very problematic. Those of us that do a lot of juvenile court work have seen an entire continuum of problems with parents. We've

seen the most horrific of child abuse situations. We have seen cases where a parent comes before the court because of a dirty house, and again, it's a really dirty house, but nevertheless, there are times when a home is uninhabitable because of filth and whatever, and a child is removed. What this bill means is that if you have a parent and there is a call made to the hot line and the children are removed because of a dirty house, that parent is going to lose custody if there is a prior custody ruling out there. It could be something that could very easily be fixed with the types of efforts that we so commonly do in juvenile court to reunify families. But because the way this is written, if there is a custody order, and a parent who is not part of the juvenile court proceedings, the custody changes. And once custody changes, guess what? There is no further efforts that are needed, and the juvenile case might as well end on that day because the parent has lost custody because of the dirty house. Well, what about a case that I had heard about where there was a child that had what appeared to be very serious injuries, and those injuries related to breaking of bones and so forth. And it was kind of labeled unexplained injuries; the charge was abuse and neglect by the parents. Under this bill you'd say it's probably a good idea that a mother or a father would lose custody of a child under those circumstances. Well, what happened in that particular case was, after an expert in pediatric medicine spent a number of months testing and doing what needed to be done with that child, it was determined that the child had a metabolic bone disease, and as a result of a medical condition, the breaks had occurred. There was no abuse, there was no neglect by this parent. But if this bill would have been in effect at that point in time, custody would have changed and that parent could never get custody back again. So again, when you start making changes to systems pre-adjudication, or even post-adjudication, where you say you can't...you're going to lose custody forever, I think that's a bad thing. What it means is if there is no custody order, if you're that parent that possibly had six or seven or eight potential fathers, so there's no paternity order entered, you can come to juvenile court, you can get all the services, you can be rehabilitated with your children. But someone who has a custody order because they were married, or because there was a paternity order entered, can't. So I think this is a very bad piece of legislation for that reason. Any questions? [LB75]

SENATOR PEDERSEN: Thank you, thank you. Are there any questions from the committee? [LB75]

LYNNETTE BOYLE: Thank you all. [LB75]

SENATOR PEDERSEN: Thank you. Next testifier in opposition. [LB75]

JEFFREY WAGNER: Again, my name is Jeffrey Wagner. And my approach to this is still a little different, as it was before. When I'm not working in juvenile court, which is about a third of what I do, another third of what I do is divorce and custody cases in the district court. What I envision, should this legislation pass the way it is written, is an onslaught of allegations being slung back and forth in very bitter and protracted custody

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and divorce cases. The legislation, as it's written now, states specifically, "Notwithstanding any other provision of law, if in such juvenile proceeding the custodial parent is alleged to have abused or neglected the juvenile, the court shall immediately order the juvenile placed with the noncustodial parent, unless there is a showing by a preponderance of the evidence that the noncustodial parent is unfit and such placement would not be in the best interest of the juvenile." So just by alleging or getting an allegation before the juvenile court, you can cause this change in placement, putting the child with the noncustodial parent. I would never advise a client to do it. But what you're going to see before clients get to attorneys, is this push to make allegations against the other parent, because allegations are all it's going to take to make this shift to swing the burden over to the parent who wants custody from the parent who has custody. There are already provisions in place to deal with these issues by transferring the case to the juvenile court. It's not a complicated process, nor is it an expensive process to file a motion to transfer a case from the district court to the juvenile court. And as a practitioner in both courts, I can tell you it happens almost automatically without fail when you file that motion in the district court, that the judge allows the juvenile court to take jurisdiction if the juvenile court will accept it. And then the custody and other issues are dealt with there. They are dealt with, with the proper safeguards, proper procedural due process being applied in that venue. You don't have that the way this is written, and you're going to create major problems in these cases. And I think you're just going to see an onslaught of allegations being slung back and forth in the hope of getting one to bite with the juvenile court. [LB75]

SENATOR PEDERSEN: Thank you, Mr. Wagner. Are there any questions from the committee? Seeing none, I apologize for not reading the paper right, and I thank you for making me (inaudible) handing them out, trying to read them as fast as I could. Any other testimony in opposition? Is there any testimony neutral? [LB75]

TODD RECKLING: (Exhibit 18) Good afternoon, senators, and members of the Judiciary. My name is Todd Reckling, and I'm the administrator for the Department of Health and Human Services, Office of Protection and Safety. I'm here today to testify... [LB75]

SENATOR PEDERSEN: Sir, would you spell your last name, please, for the record. [LB75]

TODD RECKLING: I'm sorry. R-e-c-k-l-i-n-g. I'm here today to testify in a neutral capacity on LB75. HHS is supportive of the concepts within LB75, but we have concerns about some of the issues within the bill. Presently, there is a dilemma in statute between juvenile and district courts as to the resolution of child custody matters. In 2003, the Nebraska Supreme Court decided Ponseigo v. Mary W. Courts have interpreted this case to mean that a district court cannot decide final custody issues, regardless of how the case is filed, if a child is already subject to a current juvenile court

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action. Often a juvenile court action could be dismissed if custody was either established or modified. The juvenile court cannot establish or modify district court custody orders, and the district court does not believe it can establish or modify custody orders when there is an active juvenile court case. Thus the children end up in limbo, remaining in the juvenile court's jurisdiction. Our agency does not believe the situation is in the children's best interest, nor is it cost-efficient to the state of Nebraska to have children languish in the system. However, we'd like to bring to your attention three areas of concern. Some of these have already been addressed, but I'd briefly like to point those out. Point one, on page 4, there is language that talks about the court immediately ordering the "juvenile placed with the noncustodial parent, unless there is a showing of preponderance of the evidence that the noncustodial parent is unfit." The language does not provide any direction to the court on how to establish and provide for that determination of unfit. However, there is some case law. Also, lines 7 through 11, state, "At the conclusion of the juvenile court matter, the court shall enter an order consistent with the results of the juvenile matter in the prior custodial matter." It's unclear from the language if the term "prior custodial matter" references the current juvenile matter, or the prior district court custodial matter. If the term "prior custodial matter" means the former order from the district court, then the juvenile court must follow that order regardless of the evidence before the juvenile court. This language appears to defeat the purpose of this bill. Point number two, on page 6, talks about the juvenile court shall not place a child with a noncustodial parent who has had a previous juvenile court action. As an example, a parent may have had a prior juvenile court action against him or her and successfully resolved all issues and be determined to be a fit parent, but this bill would not allow this parent an opportunity to have placement of their child in the future, if there was another juvenile court matter. And last, my point 3, on page 8, talks about the child being placed "with a parent who is not the subject of the juvenile petition, and the juvenile court has modified the custody order to name a new custodial parent." This language removes the ability of the juvenile court to make reasonable efforts to reunify the child with the noncustodial parent alleged to have committed abuse or neglect. It would allow the court to immediately identify a new custodial parent and close the juvenile court action, without affording the alleged parent the opportunity to rehabilitate or participate in services to correct the conditions that brought the matter before the juvenile court. Thank you. [LB75]

SENATOR PEDERSEN: Thank you, Mr. Reckling. Any questions from the committee? Seeing none, thank you for your testimony. [LB75]

TODD RECKLING: Thank you. [LB75]

SENATOR PEDERSEN: Is there any other testimony neutral, LB75? Senator Hudkins, to close. [LB75]

SENATOR HUDKINS: Thank you, Senator Pedersen. And if you don't mind, I will close

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on LB68 first. [LB68]

SENATOR PEDERSEN: Surely. [LB68]

SENATOR HUDKINS: You heard in some of the opposition testimony--and I'm sorry I didn't get the lady's name; Chris was her first name--that the children are entitled to have legal representation. We're not arguing that fact. And she also stated that if the child doesn't agree with what the guardian ad litem says, they can make that differentiation. I would hesitate to say that children know that they can disagree with the guardian ad litem. Now, a fourth grader or a 4-year-old, definitely not; and a 16-, 17-, 18-year-old, probably not. The one gentleman from Omaha that he says his firm is entirely...deals with guardian ad litem cases, and in the paper, in that same article that I quoted earlier, his firm took care of 500 cases. That's 40 a year. Now, if the paper is wrong, then you know I am just repeating what I heard...read. And that would be 40 cases per attorney. You know that seems to be quite a bit. And he also said they were in various states. You know, that's wonderful that we are able to have an attorney here be the guardian ad litem for children in other states. I would wonder how often that in this firm those guardian ad litem go to the other states to see the children, how often they read their medical records or their school charts. He also talked about this bill having a \$10 million price tag. That is absolutely wrong. That is a different bill. This particular bill has a fiscal note of 200 and...I'll take the highest figure, \$291,000. But if you take this bill and then you also compare that with what it is currently costing the counties to do this same thing, \$291,866 is cheap. The counties are paying a whole heck of a lot more than that. Mr. Wagner talked about these children would not have professional people looking out for their best interests. That's not what this bill does. Please, reread Section 1. You were handed an article that begins in July of 2006. I would refer you to that. There were over 7,800 children in the Nebraska foster care system, the largest number of children in out-of-home placement per capita in the nation. That is terrible. We are state legislators. Those state wards are our children. According to the National Conference of State Legislatures, four years, only four years after leaving foster care--and they age out at, what, 18, 19?--46 percent of former foster kids haven't finished high school; 25 percent have been homeless; 42 percent have become parents; 27 percent of the males are already in jail; 10 percent of the females are in jail; fewer than 20 percent are completely self-supporting. The average cost to house an inmate in a Nebraska state prison is over \$25,000 a year. If you house a juvenile in the...the one I'm familiar with is the one here in Lincoln, the Attention Center, I believe that figure is over \$40,000 a year. The average cost to shelter a homeless person is \$7,700 a year. So you take all these kids that are leaving foster care because they have not had the guardian ad litem, they have not had...I don't want to say proper because, as I said before, most of these attorneys are doing a great job, but you take a look at these kids that have not been getting the help, they have not had the person with them looking over their shoulder helping them. How many of these kids know how to fill out a bank account application? How many of them know how to fill out a budget? They

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don't know the mechanics of living on their own. The loss in productivity to our community is staggering. If these kids are already parents, chances are they're going to be on welfare. If they're in jail, you know who pays that: it's the county. Only 20 percent or less are self-supporting. They have lost their childhood and they have a pretty doggone lousy future. We can do better for our kids, our communities, and our state. And children are worth our investment. I did have a conversation with Chief Justice Heavican, from the Supreme Court, in whose hands this would be given. He told me that they are really tight on funding up there. Well, who isn't? And they are looking at a number of concepts and proposals regarding guardian ad litem issues, and they're looking forward to working with the various individuals. You all got a copy of this. What I am asking you to do on this particular bill is, if you choose not to advance it to the floor, that you would at least please hold it in committee. This way, if something does come out of the Supreme Court offices, we have a vehicle for it. We won't have to go through this same thing again next year. That would close LB68. And then I would close on LB75. That's going to be a little more difficult, but I'm going to try this way. The purpose of juvenile court is to protect children, not parents. That's why we have juvenile court. These are current open cases. There's a girl, age 7, she became a state ward at age 5 due to abuse and neglect. When she was removed from her mother's care, who was her custodial parent, she was placed with her biological, noncustodial father. She's lived with her father since that time, while her mother was working toward unification with her. It's been determined by the court and agreed upon by the mother that the father should have custody. Due to the fact that the district court has an order in place that gives the mother custody, the county judge doesn't have the power to change that order. Therefore, the father hired an attorney, in May of 2006, to file a motion in the district court to transfer the custody case to the county court. The attorney failed to complete the paperwork necessary, forcing the father to hire a new attorney. As of January of 2007, let's see this...okay, the father hired a new attorney in October of '06. As of January 29, '07--So what is that? October, November, December, three months--the new attorney hasn't accomplished the task either. This extreme delay is affecting permanency for this little girl. Delayed permanency has negative developmental effects on children. If LB75 were passed, this delay wouldn't have occurred. The young girl's case would be closed and she would have had permanency almost a year ago. I have one, two, three other examples. I won't read them to you in the interest of time, but in all of these four cases Health and Human Services is expending resources that aren't necessary. Taxpayer dollars are being unnecessarily spent. Most importantly, these children aren't finding permanency. They're in foster homes, being shuffled from one to the other. They don't know what their future holds. This is unsettling to them, to say the least; it causes undue stress. And each time a court hearing occurs, these kids have to wonder, now what's going to happen to me? They need permanence, and LB75 can provide that to them in a timely and efficient manner. Again, I will say that the purpose of juvenile court is to protect the child, and that's what we want to do. And I'm going to finish then with one final statement that Mr. Ruby talked about, but I'm going to expand on it just a little bit. You go into a courtroom and you see lawyers who know the law, and

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they have dozens of kids' files; or you have a social worker who knows the regulations, and they have dozens of kids' files. Forty cases per attorney, 40 cases per social worker who change jobs...not change jobs, burn out, it's a stressful job. The CASA volunteer is in the room, and she or he will have one file. They know that that one child is their responsibility. They can make all of the difference in a judge's decision regarding how the rest of that child's life is going to go on. They know that child, the child knows them. So I would urge you to think about what all has been said, the misinformation that you have received; I'm sure it wasn't deliberate. But we need to do the best thing for the kids. Thank you. [LB68 LB75]

SENATOR LATHROP: (See also Exhibit 19) Thanks so much, appreciate that. Questions? That will close the hearings on LB68 and LB75. We will move on to LB280 with Senator Stuthman. [LB68 LB75 LB280]

SENATOR STUTHMAN: Thank you, Senator Lathrop and members of the Judiciary Committee. For the record, my name is Arnie Stuthman, S-t-u-t-h-m-a-n, and I represent the 22nd Legislative District. I am here to introduce LB280 which would give juvenile courts the jurisdiction to enter permanent custody orders for children that are involved in juvenile cases. In 2003, the Nebraska Supreme Court handed down a decision, Ponseigo v. Mary W. That has been interpreted by the courts to mean that the district court has no jurisdiction to decide final custody of children when they are in an accompanying juvenile action. Juvenile courts have no statutory authority to determine custody. Under current statute and case law, the district court and juvenile courts are unable to address the necessary amendments regarding physical placement or custody of child support determinations to divorce modification cases, or paternity custody actions when the parents were never married; that may be necessary to achieve permanency for children who have been made wards of the state. Courts have interpreted Ponseigo to mean that a district court cannot decide final custody issues regardless of how the case is filed. If the child is subject to current juvenile court actions, in these cases there is nowhere to establish custody, even if there is a willing parent to care for this child. Some children, therefore, remain in limbo in juvenile court because custody cannot be established in juvenile court. Giving juvenile courts authority to enter final custody orders in cases in which the juvenile court is already involved would provide a timelier placement for the children in state custody. I do have individuals behind me from Health and Human Services that will be able to answer the more technical questions. So those are my opening comments. [LB280]

SENATOR ASHFORD: Thank you, Senator Stuthman, thank you. Any questions of Senator Stuthman? Arnie, do you wish to close? [LB280]

SENATOR STUTHMAN: I'll probably stick around. [LB280]

SENATOR ASHFORD: Thank you. First proponent. [LB280]

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SENATOR LATHROP: Mr. Chair, do you think you can find out how many people are going to testify? I am the next person up and I also have somebody waiting for me in the hall. I just want a sense of whether I can wait for a minute or two. [LB280]

SENATOR ASHFORD: Sure. Oh, how many people are going to testify? One, two. [LB280]

SENATOR LATHROP: Two. Okay, I'll just stick around and (inaudible). [LB280]

SENATOR ASHFORD: Go ahead. I mean, we have a quorum, don't we? No, we don't have a quorum. You have to stay, you can't leave. [LB280]

SENATOR LATHROP: I'll wait around. [LB280]

CHRIS PETERSON: (Exhibit 20) Good afternoon, Chairman Ashford and members of the Health and Human Services Committee (sic). My name is Chris Peterson, P-e-t-e-r-s-o-n, and I'm the chief administrative officer of the Health and Human Service System. I'd like to thank Senator Stuthman for introducing this bill on behalf of the system. I'm here today to testify in support of LB280, which proposes to give juvenile courts jurisdiction to enter permanent custody orders for cases which already appear in juvenile court. In fact, the situation that Senator Hudkins just described to you, our bill will fix that situation, but does not have any of the opposition issues that are in the previous bill. Currently, district and county courts can enter final orders regarding custody matters through paternity and custody actions, original divorce actions, and in divorce modification actions. The juvenile court, however, cannot enter any final custody order. It is possible to transfer an original divorce action to juvenile court, and then for that juvenile court to enter a final order, but this transfer procedure does not exist for divorce modifications, or for paternity and custody actions in which parents were never married. In 2003, the Nebraska Supreme Court decided Ponseigo v. Mary W., 267 Neb. 72. Courts have interpreted this case to mean that a district court cannot decide final custody issues, regardless of how the case is filed, if the child is already subject to a current juvenile court action. Often, a juvenile court action could end if custody was either established or modified. But since the juvenile court cannot establish or modify, and the district court does not believe it can establish or modify while the juvenile case is pending, children end up in limbo, remaining under the jurisdiction of the juvenile court. The agency does not believe the situation is in the children's best interest, nor is it cost-efficient to the state of Nebraska to have cases languishing in court for years. LB280 gives the juvenile court the statutory authority to enter the final custody orders in cases in which the juvenile court is already involved with the child, whether it be through an original divorce action, a divorce modification, or a paternity/custody action where the parents were never married. We are in the process of doing case reviews, based upon the Governor's initiatives, and we have reviewed, in the last month, 2,200

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children's cases. And of those, 5 percent were identified that had barriers based upon the district versus juvenile court issue that we talked about here. Thank you for all your continued support of the permanency for children. I would be happy to answer any questions you may have. [LB280]

SENATOR ASHFORD: Thank you. This is an interesting idea. It's one we had before. [LB280]

CHRIS PETERSON: Yes. [LB280]

SENATOR ASHFORD: And I take it that it's basically custody. [LB280]

CHRIS PETERSON: Yes. [LB280]

SENATOR ASHFORD: So the district court would continue to handle the economic issues. [LB280]

CHRIS PETERSON: Yes, yes. [LB280]

SENATOR ASHFORD: And the reason the department is supporting this or vigorously... [LB280]

CHRIS PETERSON: There are two reasons. One is because of the recently decided Ponseigo case, which we have seen the reaction to that in the courts with our children in the...going into the juvenile court then. [LB280]

SENATOR ASHFORD: Well, the impact of that on children. [LB280]

CHRIS PETERSON: Yes, dragging it out. [LB280]

SENATOR ASHFORD: Okay. [LB280]

CHRIS PETERSON: And then secondly, we've got a lot closer collaboration with the courts. And this has been brought up in several of these committees and groups around the state, as well as conversations we've had with county attorneys. The other thing, Senator, is as we're tracking those original LB1184 kids, from the Governor's initiatives, we list...each week we go through and do a review, and then list what the barrier is to moving that child to permanency, and this is one that continues to come up. [LB280]

SENATOR ASHFORD: Is the barrier...is the...just the delay? [LB280]

CHRIS PETERSON: Yes, the juvenile court doesn't feel it can...well, it can't. [LB280]

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SENATOR ASHFORD: They cannot, they used to...they used to. [LB280]

CHRIS PETERSON: That I don't know of, Senator. And the district court, now some of them feel that they can't while the juvenile case is pending. [LB280]

SENATOR ASHFORD: I think it's interesting. Any questions? [LB280]

CHRIS PETERSON: Thank you. [LB280]

SENATOR ASHFORD: Thanks. [LB280]

KIM HAWEKOTTE: Good afternoon, Senator Ashford and members of the committee. I am Kim Hawekotte, and it's spelled H-a-w-e-k-o-t-t-e, and I'm a Deputy Douglas County Attorney currently. In my previous life, I was also an administrator for the Office of Juvenile Services, and then also ran the Juvenile Division for the Douglas County Attorneys Office. So needless to say, I've been involved with juvenile court issues for well over 15 years in that capacity. The issues that this bill would take care of... [LB280]

SENATOR ASHFORD: And you've done a good job. (Laugh) [LB280]

KIM HAWEKOTTE: Thank you. (Laugh) Thank you. The issues that this bill would take care of, Chris Peterson did a great job of explaining. The best thing that I feel that I can do at this point is maybe give you a classic example that we would see both as county attorney and that we would see as an administrator within HHS, would be children come into care due to some fault of the mother. And the mother is the custodial parent, say from a divorce decree or from a paternity action. It's filed within juvenile court. The mother does not get her act together, for lack of a better way to put it, or does not put herself in a position to parent these children, but you have a very viable noncustodial father that could take over custody of these children. But what is currently happening, based upon the statutory scheme, and based upon the Ponseigo decision is that neither court now has jurisdiction to give that father custody. So you're stuck in limbo, which means the children are stuck in limbo because the juvenile court doesn't have jurisdiction to determine custody under the statutes, and the district courts, under Ponseigo, do not. So one or the other has to give. Either it has to be given back to district court so that they can do it, or to the juvenile court. To me the logical situation would be to give it to juvenile court, because they are the ones that are dealing with the children in the situation today and are familiar with what is happening. But somebody has to have jurisdiction in order to determine that custody to get finality. Nobody wants state wards to remain state wards for longer than they absolutely have to. And if you have a viable parent, your child should be with the viable parent as soon as possible. And that's the whole purpose of LB280 is to make that occur in the fastest, most expedient way possible, handled by the appropriate court, which would be juvenile court. [LB280]

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SENATOR ASHFORD: And these are all children who are there by no fault of their own, correct? [LB280]

KIM HAWEKOTTE: Correct. These would...this does not deal with what we call (3)(b) and delinquency cases, under 43-247; this deals with what are (3)(a) neglect cases, either neglect cases due to the fault of the parent, or due to no fault of the parent. But that is the situation that would be covered by this. I am testifying today also on behalf here, members, of the Nebraska County Attorney Association, so that everybody understands the County Attorney Association has taken a careful look at this bill and is also in support of it in order to get permanency for these children. I will gladly entertain any questions. [LB280]

SENATOR ASHFORD: Any questions? [LB280]

SENATOR LATHROP: Just briefly. That's kind of a big deal that you're here with the county attorneys, because they could easily drop it on the district court and not have to show up to the trial. [LB280]

KIM HAWEKOTTE: Correct, correct. But the logical situation is that the district courts are not going to be familiar with the situation that is currently going on within that household, as compared to the juvenile court where those neglect actions are currently pending. [LB280]

SENATOR LATHROP: Do you think this is...you don't see any need to amend LB280? It's in... [LB280]

KIM HAWEKOTTE: I don't see any reason to amend LB280. It refers to custody, it refers back to the appropriate provisions within the Nebraska statutes dealing with both paternity and divorce situations. Because one thing you have to be very careful of is that in these custody matters you don't just refer to paternity cases or divorce cases; that you refer to both, and LB280 does do that. [LB280]

SENATOR LATHROP: We've covered all the bases. [LB280]

KIM HAWEKOTTE: Hopefully, yes. [LB280]

SENATOR LATHROP: Okay. Good. [LB280]

KIM HAWEKOTTE: I'm sure some higher court will gladly tell us if we haven't. [LB280]

SENATOR LATHROP: Thanks, Kim. [LB280]

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SENATOR ASHFORD: Senator Pirsch. [LB280]

SENATOR PIRSCH: Based on your experience there in Douglas County, do you think this will reach or affect a significant amount of kids who are in this situation? [LB280]

KIM HAWEKOTTE: I do. As Ms. Peterson stated, about 5 percent of the current state wards are stuck in this type of situation. And when you look at 5 percent, that's a number of state wards out of the number that there are. So, yes, there is a viable number. And of course, it varies from county to county, because some judges haven't taken the view of Ponseigo that some of the other have. But the difficulty becomes in your three largest areas, your three largest counties, the judges have taken that position, and that's where your largest state wardship is also. [LB280]

SENATOR ASHFORD: Thanks, Kim. Any other questions? Thank you, Kim. [LB280]

KIM HAWEKOTTE: Thank you. [LB280]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Senator Stuthman, do you wish to...? [LB280]

SENATOR STUTHMAN: Thank you. In closing, I just think we need to keep a very open mind on what people we're really going to affect with this bill, I mean the ones that we're really going to help. It's those kids that are, you know, no fault of their own that they're put in a situation like this and could be in limbo many, many days waiting for a placement, a permanent placement for their home. And I think we need to keep those children in mind. Thank you. [LB280]

SENATOR ASHFORD: Thank you, Senator Stuthman. And it is important that no one else...there's no opposition, which, I think as Senator Lathrop mentioned, is important. Thanks, Senator Stuthman. [LB280]

SENATOR STUTHMAN: Thank you. [LB280]

SENATOR ASHFORD: Okay. That concludes...we're now...LB...Senator Lathrop, LB257. Yes, sir. [LB280 LB257]

SENATOR LATHROP: Mr. Chairman and members of the Judiciary Committee, my name is Steve Lathrop, that's L-a-t-h-r-o-p. I represent District 12 in Omaha, and I'm here today to introduce LB257. LB257 proposes to establish the Public Guardianship Act. And before I tell you what LB257 does, let me give you a little bit of background on what a conservator and a guardianship is in the context that we are using it. When a person becomes unable to manage their own financial affairs, either through one infirmity or another, the county court is authorized to appoint a conservator. That person

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then acts in the place of or on behalf of a person who is not able to manage their own money. That can be because of minority, children are unable to manage their own money legally, or it can be because a person has become incompetent, because they have Alzheimer's for example, or it may be because they simply can't leave the house. The court can also establish a guardianship. And a guardianship is different. Conservatorships deal with money, guardianships deal with the person's...what's best for the person in terms of their care, in terms of their living situation, and making judgments about the person in their care. The bill that I've introduced today is an attempt to establish the Public Guardianship Act. And what that's going to do is to establish a statewide office. In those instances when there are no persons suitable and available to be appointed a guardian or a conservator--that happens frequently to the county court judges who are the ones that make these appointments. You will have situations, for example it happens in Omaha frequently with vets who have no family, but it can be other people who have no family, no one who is interested in their welfare, but nevertheless they're unable to manage their own money or take care and make judgments about their own health. The county court judges need to appoint someone to speak for these people. And when there is no family, then you have to resort to whatever means are available to you. It is particularly an acute problem in the more rural areas. You'll hear Judge Evans who will follow me, he's from York, and he'll tell you about the problems that he has. The solution is to develop a statewide guardianship program. That program will do a number of things. First, it will provide a resource for the county judge to draw from to have qualified people serve as guardians and conservators; the other thing it will do is establish standards; and then finally it will also provide education for conservators and guardians who will serve in that capacity for all of the appointments the county court may make when it comes to conservatorships and guardianships. The one...the last point I'll make with respect to this bill, and one thing that I think we oftentimes look at, is where is Nebraska at in relationship to the rest of the country on this idea? We are way behind on this one. We are one of only three states that do not offer some form of official public guardianship function. And that puts us in a critical position as we see the wave of baby boomers headed towards what will inevitably be for many of us the appointment of a conservator, some of us sooner than others. And perhaps this afternoon we may need some guardians appointed. And so I think it's important that we get that established before the system becomes overwhelmed with the need that will follow the baby boomers to the next few years ahead. So with that, I will turn it over to proponents, or answer any questions I can.
[LB257]

SENATOR ASHFORD: Thank you, Senator Lathrop. Any questions? Senator Pirsch.
[LB257]

SENATOR PIRSCH: I take it you anticipate having somebody testify here after you?
[LB257]

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SENATOR LATHROP: Yes. Judge Evans is here. [LB257]

SENATOR PIRSCH: I'll save the questions. [LB257]

SENATOR LATHROP: Yes, you'll hear from a county court judge. And he can explain that...answer some of the questions regarding the problem and the need. [LB257]

SENATOR ASHFORD: Thank you. Thanks, Senator Lathrop. [LB257]

SENATOR LATHROP: Okay, great. Thanks. [LB257]

SENATOR ASHFORD: Judge. [LB257]

CURTIS EVANS: (Exhibits 24, 25, 26) My name is Curtis Evans. I'm a county judge with the Fifth Judicial District, and I'm here on behalf of the County Judges Association. Members of the committee, thank you for the opportunity to be heard on this important piece of legislation. I am here today to testify on behalf of the Nebraska County Judges Association. LB257 is designed, first and foremost, to serve people who are in need of protections that a guardian can and should provide. It would be ideal if all people in need of guardians had a family member or close personal friend to come forward on their behalf, but this is not always the case. As many of you know, currently we rely on volunteers to come forward to fill the need. But the facts indicate that there are many new cases each year when there is no family, friend, volunteer, or others who come forward. In addition, there are more cases that occur when a guardian who has already been appointed fails to complete their duties and no replacement can be found. I have enclosed some data for your later review. The creation of the Office of Public Guardian would provide the beginnings of a solution to this large problem. It should be noted that the bill before you calls for the creation of this office in the Supreme Court. Recently, Chief Justice Heavican indicated that the court does not want this new office placed under the auspices of the Supreme Court. I believe the court is one of a number of appropriate locations, but I also appreciate his position. I have attached an executive summary of a nationwide survey to show where other states have located their Office of Public Guardian. It also includes recommendations that should be considered as we move forward. I have also taken the liberty of highlighting some of those important points. I believe it is imperative that the office be located so that the staff remain free to perform their duties as guardian. In a time when new tax expenditures are being questioned, I respectfully suggest that this is basic government. It is a problem that has been overlooked for more than 20 years. It provides a safety net for vulnerable citizens who have no one else. It is a service that is not reliably available from any other source at this time. It is designed so that it takes not...it does not take over for private guardians. It provides for volunteer guardians to be sought to replace the staff of the office, keeping the office as small as possible. It clearly provides judges with an option to remove or replace guardians who are not performing their duties at the expense of

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the ward and his or her estate. Discussions have outlined a beginning budget that would allow the office to be established and begin operation the first year. By the end of the second year, in addition to the administrative staff, there would be a total of four associate guardians located across the state. I feel this is a minimum plan to allow the office to open and properly support the people they serve. Any less of a beginning may overwhelm the staff of the office and not allow for the creation of the quality service that is necessary. There are many people from many different perspectives that support this effort. Neither the county judges nor any of the others who want this bill to pass stand to gain anything for themselves, except the knowledge that people they have watched struggle for adequate representation for years will now have someone to speak on their behalf. Senators, I respectfully ask you to support LB257 and stand with us to help those who cannot be here today to ask you for your help. Thank you. Are there any questions? [LB257]

SENATOR ASHFORD: Thank you, Judge. Any questions? Yes, Senator Pirsch. [LB257]

SENATOR PIRSCH: Just wondering, Judge, how do you treat the cases then, currently without this, where you can't locate a family member, or you can't locate a good friend, or in the cases where you've located one and they have failed to perform their duties? How is that being treated now where the void is present? [LB257]

CURTIS EVANS: Well, some areas you simply can't find anybody. One example, and you have that; it's not...you won't be able to notice it from your example in there. The attorney became so frustrated with trying, and I kept asking the attorneys to find (inaudible) and appoint a guardian ad litemship, saying, well, we ought to have another hearing, we have to appoint somebody. Finally, the attorney just took over the position. And now it's sort of a problematic person, and it's difficult for that person to continue. I'm sure he would like out of it immediately, but he's a good person and he's sticking with it. But these are...and we're not talking about...when I talk to you about this situation, this isn't...this is a small percentage, but it's an important percentage and it will grow. The whole law is based on volunteer. I can't go out and make any attorney do it, although judges...and I did with this attorney, too. I kept leaning on him until he finally did it. But you can't keep doing that. We have more and more people that need this. And so you have to have someone that you can go and take care of this. Now, we have other problems where families come in, and when a loved one begins to fail, all the old things come back up, and people start to fight over it. If you could have a public guardian take that for a month, two months, until they can settle their issues, many times that goes away and someone from that family...they can reach agreement, settle their issues, and take over. That's a big problem. Then there are the people who simply nobody wants. They are difficult people; you would not want them to be here today. They will cause you a problem, and they will continue to cause problems. They go off their medications and become despondent, they go out in the community and the police find them. These

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are people, once they get back on their medication, with a little bit of help and a responsible guardian, they can function quite well, and that person can keep after them. I've gotten off the hook. I'm sorry, I got a little carried away there, apologize. [LB257]

SENATOR PIRSCH: No, no. I appreciate your... [LB257]

CURTIS EVANS: But those are the problems, and I don't have anybody for those people. The judge can take it for a little while, but we're not...we can do something...but our situation is set up that everybody has to come in and agree that the judge has jurisdiction to do one thing. And then we can do one more thing. But I can't go out every day and look at these people and see if they haven't taken their meds, I can't direct them to go to...I can direct them to go to a home, but I can't show up at that home to see if that home is properly caring for them. Homes will call a person now. They're required by law to call and say, this person fell, this person has a bruise or something like that. It's the job of the guardian to be there and look at that and figure out what's going on. I can't do that. So we have to have someone do that. And there are people who simply don't have...we're in an age where...it's been true all along, not everybody has children. And not everybody has children who like them, okay? Now that's a hard thing to say here, but it's true. So there we are. We have no way. Now, if you have a person who takes over, say you find out this person is not doing their job, what do we do now? We keep threatening them, we keep calling up, trying to use the power of the court. Well, they know it (inaudible) after a little while. You can only bluff so far and it doesn't work. But we have nobody else to replace them. Here we can. We can say, do your job or you're out, because we got somebody we know that can step in and they're professional, they will clean it up, they know how to look for where the money should be, they know how to hold these people responsible who may have been sucking...taking the money from these people. And we've had those problems. They'll walk in and all of a sudden everything is gone. They take over the checking account and it's theirs; it's not the ward's anymore, it's theirs; they're buying their toys. Okay. Give me a chance to do my job, that's what I'm asking you to do. I care about these people, and I think every county judge cares about these people. They are in these positions and they feel strongly about their job. And you, as the Legislature, have given us a bill, or you've given us a statute that says protect these people. And the people come in and expect it, and I can't do it under the present law. Please let me do my job. Please help me do my job. I'm sorry, I got on my soap box, I apologize. [LB257]

SENATOR LATHROP: It's all right. We don't mind, I don't think. [LB257]

CURTIS EVANS: Anything else? I'm sorry. I guess, after that I guess you would probably like to see me leave. [LB257]

SENATOR PIRSCH: I just have one quick follow-up. Does this problem affect the urban areas of the state? [LB257]

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CURTIS EVANS: Yes. [LB258]

SENATOR PIRSCH: Is Douglas and Lancaster experiencing this problem? [LB258]

CURTIS EVANS: Yes. If you'll look in the notes that we've given you, there are circumstances where Douglas County does, because of its metropolitan area, they are able to organize more things to help them. That is always true. But if you'll look, you will find that there are certain people they can't find a match for. There are certain...and I'm talking about the people that you wouldn't want in the room because they're going to be bizarre in behavior, they may smell to high heaven, and they're going to call you every day and chew you out because you're against them and you're trying to do things to them, and they do. And these are not easy people. People will not do it for them, but they need a guardian more than anybody else. And it's our duty as state government to do it. It's our job. It's basic government. I'm sorry, I guess you're going to throw me out of here pretty soon. I keep going. [LB257]

SENATOR PIRSCH: No, no, I appreciate it. Thank you very much. [LB257]

SENATOR LATHROP: No, you did a nice job. [LB257]

SENATOR ASHFORD: No, you're very helpful. [LB257]

CURTIS EVANS: Anything else? You're probably afraid to ask if there's anything else. I'm sorry. [LB257]

SENATOR ASHFORD: Yeah, we're done. No, no, that's fine, Judge. [LB257]

CURTIS EVANS: Okay. Anything else? [LB257]

SENATOR ASHFORD: Those are good questions. [LB257]

SENATOR LATHROP: Thanks, Judge. [LB257]

CURTIS EVANS: Thank you. [LB257]

SENATOR ASHFORD: And we'll look through the written information, too. Thank you. Next proponent. How many proponents do we have? Okay. [LB257]

JOHN LYNCH: (Exhibit 27) My name is John Lynch. I've been an attorney in the Omaha area for about 27 years; almost exclusively, the last 15 or 20, dealing with probate or guardianship issues. If you see me in the Douglas County courthouse and I'm not in probate court, I'm lost, please point me there. So I'm intimately familiar with all the

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situations that Judge Evans was testifying to. About 12 years ago, maybe 14, some of the local attorneys that were gathered by some of the judges to say, how do we solve this problem, because nobody is solving it? So Judge Prochaska, Reverend Menyweather-Woods, half a dozen lawyers, case workers, social workers, nursing home attendants, we started getting together and we formed an organization to help address the issue. It's small, we can't handle much, we're self-supported. I think some of the information that was in Judge Evans' information, last year we have 55 referrals. We have about 50 volunteers on board with us. We recruit those volunteers desperately out of the community, and they're nice enough to come on board. Some of those volunteers have one, some of those volunteers have a dozen. Some of the lawyers that donate their time to our Metropolitan Area Volunteer Guardians and Conservators, that's our group: Mary Wilson is the head one on that, she must have 30; I've got a dozen and a half. Sometimes you're blessed with those when you're...the question was, what does the judge do when you can't find anybody? The most dangerous place to be in Douglas County Court is in the hallway. Right after you have one of those cases come before him, you're the next guy in the door, you get the case. And we take it, and we try to do the best we can with it. Our volunteers are servicing, at this point in time, close to 100 wards in the community--have no family, have no friends, typically have no money. It's a desperate need. And I sat here, I've never been here before, so I apologize in advance if I'm not following procedure, but I'm listening to all this testimony about some big laws, and you guys are tweaking it to make it a little bit better. That's great. With the seat belt law, with the guardian ad litem things for juvenile court, right now we don't have this, we've got nothing; we don't have a little bit. So if you guys can give us something to start with, we may need to tweak it. When I handed in my sheet, I said proponent, but then I thought, well, there's a few things on there that maybe could use a little tweaking. But we desperately need something. We need to get the ball rolling. And you realize 47 other states are ahead of us. That's embarrassing. And if it wasn't for very kind volunteers on the streets of Omaha, Sarpy County, and the metropolitan area, there's 100 other people that would be wandering the street or being taken advantage of. We get our referrals from Adult Protective Service, hospitals, nursing homes, people on the street, neighbors. We've got our referral forms out there everywhere that we can possibly think of to be found, and they filter into us. We probably get ten referrals a month. We're able to place probably 60 or 70 percent of those. We've given up telling people to refer mental health people to us because it's just plain impossible to find anybody. It's hard enough to get somebody to volunteer to take the grandma or the grandpa that's destined to go into the nursing home for the rest of their days and provide a good support system for them. But you know, on mental health issues they're a whole other thing that somebody needs to take care of. Those people are out there too, and they're on a treadmill, and they're in the revolving door, in and out of other systems, if we don't do something about them. I had three goals in mind. One was to let you know we need something, let you know we need something soon, and to not completely embarrass myself here today. I'll sacrifice the third if I can get the first two. Any questions? [LB257]

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SENATOR LATHROP: You did real well. There is no protocol here. You get three minutes, and you did well with it, if I can say so. [LB257]

JOHN LYNCH: And I or my group or anybody else is available for input, if you want it. [LB257]

SENATOR ASHFORD: The only quick question I have is, and very quickly, the volunteers that you organize, you go out and find them yourself... [LB257]

JOHN LYNCH: Basically, friends of friends. Um-hum. [LB257]

SENATOR ASHFORD: ...or just people that wish to do it? [LB257]

JOHN LYNCH: We go to the churches, we go to other things, and we present our deal, we ask for donations, and we ask for volunteers. [LB257]

SENATOR ASHFORD: Okay. [LB257]

JOHN LYNCH: Rarely do we get volunteers, rarely do we get donations. We have a once-a-year fund-raiser and the golf tournament. That keeps us going another year. [LB257]

SENATOR ASHFORD: Okay. Thank you. [LB257]

JOHN LYNCH: Thank you. [LB257]

SENATOR ASHFORD: Next proponent. [LB257]

KELLY HENRY-TURNER: Hi, my name is Kelly Henry-Turner. I'm an attorney who also works with John Lynch, with the Metro Area Volunteer Guardians and Conservators, and I work as an attorney with them, and I also work as a guardian. I don't want to go over what he's already reiterated, and also with what the judge had previously said. I share in their comments. And there is a desperate need for this. We have wonderful volunteers who will take on...they're happy to take on the little old lady in the nursing home, 80 years old, who needs someone. They may have 12 people. John has, like he said, a half a dozen. Within the community we can kind of line people up if there is a need. But sadly, we did just lose an attorney who was the guardian for about 40 people, and it left us all scrambling to find a new guardian for each of these people. Some of them had mental health issues, and they're very hard to find guardians for, and volunteers often are not willing to address their specific issues. As well, if there's any money or there's been abuse or exploitation, they're often uncomfortable or they don't have the expertise to deal with that. So a lot of times you end up, John, can you take on

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one more? There is a need for this. I don't know that this bill will get us where we need to be, but it's certainly a start. I previously practiced in Chicago, before moving back home to Nebraska. And there is a Cook County guardian in place there, they've been there for many years, and it's a wonderful service. There's people that are very well-protected now because there is someone out there when there is no one. And you know, I share in John's invitation to discuss this further with anyone that will be working on this further. But basically I support that something is being done, and we just need to do something. [LB257]

SENATOR ASHFORD: Thank you very much. Any questions? Thank you. Did you work in this field in Chicago? [LB257]

KELLY HENRY-TURNER: I did. I worked for a city probate judge who only handled guardianship cases. And then I practiced, after law school, in the same area. [LB257]

SENATOR ASHFORD: And they did it? They had the same sort of issues or...? [LB257]

KELLY HENRY-TURNER: They did. They split their system for people that had some money and people that didn't have any money. And so they handled it by county though; it was Cook County that dealt with it. And they had, I can't even tell you how many attorneys on their staff, and then they also had kind of case workers that assisted with it as well. [LB257]

SENATOR ASHFORD: Thank you. [LB257]

KELLY HENRY-TURNER: You're welcome. [LB257]

SENATOR ASHFORD: Joe. [LB257]

JOE KOHOUT: Mr. Chairman, members of the committee, Joe Kohout, K-o-h-o-u-t, registered lobbyist, appearing before you today on behalf of the Eastern Nebraska Human Services Agency, which is a governing body which oversees the Eastern Nebraska Office on Aging, Region VI, Behavioral Health, and also ENCOR. When we looked at LB257, the specific support came out of the Eastern Nebraska Office on Aging for the reason that I think you've already heard, and that is that our agency, from time to time, has a very difficult time finding guardians. And so we think that LB257 is a solid step in the right direction towards easing those concerns with that population that we serve. Be happy to answer any questions you might have. [LB257]

SENATOR ASHFORD: Thanks, Joe. Any questions? Thank you. [LB257]

BRUCE CUDLY: Hi, I'm Bruce Cudly. I'm director of organizational support for Region V Services, here in Lincoln. We serve a little over 800 people with developmental

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disabilities in southeast Nebraska. I'm also representing the Nebraska Providers Network, which is the four public regions in the state: I, II, V, and VI. Together we serve over 2,000 people with developmental disabilities. I guess I'm just here fairly briefly to agree with everyone else. I can give you 29 years' worth of perspective on guardianship issues. I could spend most of my afternoon giving you an occasional horror story of very poor guardianship issues. I can tell you of people who have literally never met their guardians or certainly have no involvement with them. I could even give you examples of guardians who no longer even live in the United States, but there is no one else available to do that, so they continue to serve in that function. This is just an incredibly crying need for a lot of the people that we support. This is our most vulnerable citizens. These are people with disabilities, these are people who are elderly, these are people with no families. And I was here two years ago when we presented this same bill. There was literally no opposition at that time, but this bill didn't get out of committee. I think it's really time for this thing to be recognized and to be moved on to the full Legislature. I have always been terribly interested in the topic of guardianship and the fact that it is absolutely elemental to the exercise of and the protection of the rights of our most vulnerable citizens. So I would strongly encourage you to move this bill along. I know there's a lot of demand. I know Judge Evans has provided you with some information as to what we certainly predict would be the demand for it. And I think it's sort of interesting that apparently some time in the past, it's like, one of the rationales is, well, we can't necessarily do this because there's too many people that need it, and that would cost too much. Well, the fact that so many people need it, I think, is an absolutely compelling reason for this bill to be moved into law. So thank you for the time. [LB257]

SENATOR ASHFORD: Thanks, Bruce. Thanks for your testimony. Just as an aside, I agree with you. When I worked at running the Housing Authority, we had numbers of people, elderly people living in public housing. And it's a very, very acute problem, and the need is really there. So I understand your...I understand. The most elemental kinds of things that need to be done, those people can't do them. [LB257]

BRUCE CUDLY: And I should have possibly mentioned it too, it's not just people with disabilities, it's not just people with mental health... [LB257]

SENATOR ASHFORD: No, no, these are just people that happen to be elderly, in that case. [LB257]

BRUCE CUDLY: It's kind of like if you live long enough, you're going to need a guardian. [LB257]

SENATOR ASHFORD: Right. Well, I appreciate your comments. I know what you're talking about. Thanks. [LB257]

BRUCE CUDLY: Thank you. [LB257]

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SENATOR ASHFORD: Next proponent. [LB257]

BRAD MEURRENS: (Exhibit 28) Good afternoon, Senator Ashford, members of the Judiciary Committee. For the record, my name is Brad Meurrens, M-e-u-r-r-e-n-s, and I am the public policy specialist and registered lobbyist for Nebraska Advocacy Services, Incorporated. I'm here today to offer our strong support for LB257. As the protection and advocacy organization for the state of Nebraska, frequently we are involved with representing individuals seeking to create or change guardians. We understand the need to find individuals to be guardians, and recognize the difficulties encountered in developing appropriate guardianships for some individuals. We are pleased to see a stated commitment to limiting the application and extent of guardianships in Nebraska. A full guardianship should not be instituted where a limited guardianship would suffice. We recommend that the public guardian consult with current and former guardians, individuals with disabilities, and relevant advocacy groups in the development of the training curricula for the state's guardians. We also recommend adding a component to this training, emphasizing the personal dignity and valued social roles of persons with disabilities. Finally, we suggest that Section 6 of LB257 be revised to require the inclusion of people with disabilities, family members, and a representative of the disability advocacy community and organizations in the prescribed membership of the Advisory Council on Public Guardianships. However, since Nebraska Advocacy Services, Inc., is often asked to assist in the removal of guardianships, we would not be in a position to serve as a member of the advisory council. This concludes my testimony. I would be happy to entertain any questions the committee may have. [LB257]

SENATOR ASHFORD: Thanks, Brad. Any questions of Brad? Thank you. [LB257]

BRAD MEURRENS: Thank you. [LB257]

SENATOR ASHFORD: Next proponent. Senator McGill, never leaves. I don't know what to do. (Laugh) [LB257]

DEBORAH WESTON: (Exhibit 29) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Deborah Weston. I'm executive director of The Arc of Nebraska, registered lobbyist for The Arc of Nebraska, which is a statewide support and advocacy organization with and for people with developmental disabilities and their families. I'm also the parent of three children, one of whom is an adult with a developmental disability. Now The Arc of Nebraska is a state-affiliated chapter of The Arc of the United States. We have 17 chapters across the state of Nebraska, with approximately 2,500 members. We thank you for the opportunity to testify in strong support of LB257 today, and ask you to adopt the act. Now, you've...really we would concur with all the proponents who have appeared. And in order not to duplicate, I want

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to just briefly state our concerns, and that is that this is and has been a serious issue for a long time. The Arc of Nebraska has been contacted, and our local chapters have been contacted when guardians, conservators, are not available. And we do our very best to assist. And as you've heard in Omaha, they have an organized group. But this is a problem that we have known about for a very long time. As Mr. Cudly said, we often run into a problem of a guardian who is in place by name only, and not by act and deed, and actually looking out for the welfare of that person. This act, we believe, because we really support self-advocacy, self-determination, and choice, we think this act is very well-written because it really uses the least restrictive option. So it really will avoid misuse or any overuse, because we don't want to do that. We don't want to limit or take away people's rights when it's unnecessary. But this bill is written very soundly to avoid that issue. We, like Nebraska Advocacy Services, would ask you and recommend that a category of representation for any advisory committee or any council also include people with developmental disabilities, their families and advocates, because those are people who live this experience and live the disability experience, and have a vast array of firsthand experience and knowledge that many of the disability professionals do not. So overall, we believe that there isn't a current system in place. And what we're asking for is the beginning. This is not going to fix the entire problem as it exists across the state. But it begins us in the right direction. And I agree that it is embarrassing for Nebraska to be one of the last three states in the nation to address this issue. So thank you for your time, and I would be glad to answer any questions. [LB257]

SENATOR ASHFORD: Any questions? Thank you very much for your testimony. Next proponent. [LB257]

TERRI HOLMAN: (Exhibit 30) Good afternoon. My name is Terri Holman, it's T-e-r-r-i H-o-l-m-a-n, and I'm testifying this afternoon on behalf of the Nebraska Planning Council on Developmental Disabilities. Although the council is appointed by the Governor and administered by Health and Human Services, it is a federally mandated independent council. Therefore, the position of the council is not necessarily that of the Governor's administration. The council is comprised of individuals and families of persons with developmental disabilities, community providers, and agency representatives that advocate for system change and quality services. The council does support LB257, the Public Guardianship Act. Although not everyone with a developmental disability needs a guardian, a recent sample survey of developmental disability community providers estimated 57 to 72 individuals were in need on an annual basis. These individuals must rely on family members, relatives, friends, attorneys, or volunteers to serve as guardians. It has become increasingly more difficult to find people willing to serve in this capacity. Unfortunately, the difficulty in finding a guardian is worsened for a person without financial resources. It can result in individuals having guardians who do not know them and have no interest in their lives. These uninvolved guardians often do not advocate in the best interests of the individual or increased independence for them. You've already heard a lot of statements very similar to that. The council does support a

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centralized entity in Nebraska with resources and expertise on guardianship. LB257 would offer an option to those individuals who need guardianship on a temporary or permanent basis. We recognize that any guardianship removes some of the rights of an individual. It is a serious responsibility to be granted only when needed and to the level necessary. A centralized Office of the Public Guardian would provide consistency and oversight in training, in addition to expertise when questions arise from family members, volunteers, service providers, and the individuals themselves. Thank you for your consideration. [LB257]

SENATOR ASHFORD: Thank you. Any questions? Thank you. [LB257]

TERRI HOLMAN: Thank you. [LB257]

SENATOR ASHFORD: Next proponent. How many other proponents do we have? [LB257]

BILL MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in support of the concept behind LB257. The bar does very much recognize the need for the creation of some type of an office of public guardian. We are sympathetic to the Supreme Court's concern about putting this agency within the court, both from a budgetary and a supervision standpoint. We offer our assistance to work with the committee and other interested parties in trying to find the right place to put a program such as this. Be happy to answer any questions you may have. [LB257]

SENATOR ASHFORD: Any questions of Bill? Thank you. Any other proponents, opponents? Neutral testifiers? Senator Lathrop. [LB257]

SENATOR LATHROP: Thank you once again. I appreciate the testimony. I've been to a lot of hearings in the last two months now, and this was very well-done in terms of the witnesses that came in, and I think they really did a good job in establishing. A lot of times we say these people have fallen through the cracks. We got a lot of people that are falling through something a lot wider than a crack, and we need some help. And I think this is a great approach, and I appreciate Judge Evans' commitment to this cause. And I'd ask you to advance the bill to the floor for full consideration. [LB257]

SENATOR ASHFORD: Thanks. I agree. I did not realize, I guess, the extent of the problem. And I think it has been very well-identified for us. I appreciate the testimony, and we'll certainly take a hard look at it. Thanks. [LB257]

SENATOR LATHROP: Thank you. [LB257]

SENATOR ASHFORD: (Also see Exhibits 21-23) That concludes the hearing on LB257.

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LB556. Do I have any...it's me, I know it's me, but do we have anybody to testify? (Laughter) I lost Senator Lathrop on that one. Now we have a quorum. This is a very simple bill. Brad Ashford, Legislative District 20. I'm introducing LB556. And it's a very straightforward piece of legislation, proposal relating to the Nebraska Juvenile Code to change provisions relating to counsel and guardians ad litem. The amendment would provide that if the court determines a conflict of interest exists or may arise in the guardian ad litem's dual role on behalf of a juvenile, that court shall appoint a replacement guardian ad litem for the juvenile, and appoint the guardian ad litem as a separate counsel for the juvenile. This again is something else in the guardian ad litem law that I did not realize was not available to the courts, but apparently it is not. And there are instances where, quite frequently, I would imagine, where there would be conflicts. Most importantly, I suppose, would be a case where a guardian ad litem would become a witness in a proceeding involving a juvenile. And there are others where a guardian would get access to privileged information and would be in some way conflicted. So I would ask the committee to advance this bill which would provide the court with the option of appointing a guardian ad litem in these cases. [LB257 LB556]

SENATOR PEDERSEN: Thank you, Senator Ashford. Are there any questions from the committee? Seeing none, first proponent, please take the stand. Seeing no proponents, first opponent, please take the stand. Got a lot of support here, Senator Ashford. [LB556]

SENATOR ASHFORD: No support. It's a heck of a bill. [LB556]

CHRIS COSTANTAKOS: (Exhibit 32) Good afternoon. My name is Chris Costantakos. I'm a lawyer from Omaha, and this is somewhat daunting to take on a bill introduced by the presiding officer of the Judiciary Committee. But here I will try... [LB556]

SENATOR ASHFORD: Give it a shot, Chris. (Laugh) [LB556]

CHRIS COSTANTAKOS: With all due respect, 43-272(3) already allows the court to address conflicts of interest by splitting the dual role of the guardian ad litem and appointing separate legal counsel for the juvenile or for the guardian ad litem where necessary. The court also has inherent authority, under case law and under the Nebraska Juvenile Code, to appoint as many guardians ad litem for as many children involved in the case as the court sees fit. Not every communication disclosed to a guardian ad litem by a minor child is entitled to confidentiality. For example, someone five years of age tells the guardian ad litem, my momma's boyfriend touched me in my private places, that is not a confidential communication, even if the child were to say, I don't want you to tell. There are ethical guidelines that probably shed more light on this, under the Nebraska Rules of Professional Conduct. Rules 1.6 and 1.14 talk about where a lawyer represents a client with diminished capacity, the lawyer really has a duty, when they receive this type of information, to take steps for protective action.

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Because the juvenile court proceeding is one where the primary purpose is protection of the juvenile with due observance of the constitutional rights of the litigants, the guardian ad litem would have to disclose that information, either in a court report, or even if called to testify. And by the way, I might just diverge just a second here. This business about guardians ad litem testifying happens so rarely. It was overblown as an issue in the guardian ad litem subcommittee, in my opinion, primarily because of some of the unique experiences of a couple members there. But for the most part, it rarely happens that a guardian ad litem is put on the witness stand to testify. But let's change the example. If the child is 15 or 16 years of age, and says, my mother's boyfriend sexually abused me and I don't want you to tell, the same duties would apply. This is a child protection proceeding. And if you transform the guardian ad litem into the lawyer, why are you doing that, other than to try and seal that communication under the attorney-client privilege? Yet under the ethical rules, the attorney-client privilege wouldn't have to yield. In all other respects where the information disclosed is confidential and doesn't relate to a protection or safety or health issue, the attorney-client privilege does apply. So I don't think you gain anything, because even if the guardian ad litem becomes the attorney, under the ethical rules, whether you're wearing the hat of the guardian ad litem or the hat of a separate attorney, you still are under at least a duty to disclose any information that is necessary for the court to take action to protect the health, safety, and welfare of the child. Bottom line, the existing Juvenile Code, I think, is very flexible and sufficient to handle these types of situations. Thank you. [LB556]

SENATOR ASHFORD: Are there any questions of Chris? Thank you. Next opponent. Any other opponents, other than...that's it. Okay. Good afternoon. [LB556]

LYNNETTE BOYLE: Nice to see you all again. I'm Lynnette Boyle. And again, I concur with the remarks that Chris Costantakos made. And I agree that this is one of those situations that really just doesn't occur very often. And I, as a guardian ad litem, have had an attorney appointed for me when I've had to testify in certain types of proceedings. And again, this is an area that we talked about at length in the subcommittee for the Supreme Court's Commission on Children and the Law. And again, in the recommendations that we made through the commission to the Supreme Court, that are pending, did address some issues relating, say, to GALs being witnesses, we tweaked the ethics rules, and so forth. But again, in terms of who you have to replace, if you have to replace, split the dual role, in my opinion, it makes more sense to appoint an attorney for the child because I, as the guardian ad litem, am the one that have talked to the teachers, I'm the one that has gone to the hospital and read the charts, I'm the one that has met with foster parents, talked to the Foster Care Review Board, done all of those things that the attorney typically doesn't. And just to give you an example, there was a question relating to another bill in terms of kids that are before the court for law violations. And in those types of cases, I have been appointed as guardian ad litem, and they have an attorney. I'm GAL because they have a nonfunctioning parent, either because there is a concurrent (3)(a) case, or they have a

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parent that doesn't even bother to show up in court, and so I will be appointed, oftentimes on the spot, to be GAL for that child. In that case, they have an attorney, and they have a guardian ad litem, and so I don't do any of those traditional attorney-type things that I do as part of the dual role in front of an abuse and neglect case, but I do all the GAL-type functions for my child under that docket. So to me it just makes more sense. If you're going to split the role, in those extremely rare cases, keep the GAL, appoint an attorney. And I'm happy to answer any questions. [LB556]

SENATOR ASHFORD: Thanks, Lynnette. Thank you for your testimony. Any other testifiers? That concludes the hearing. I'm sorry, I'm sorry, excuse me. [LB556]

SARAH HELVEY: I have neutral testimony. [LB556]

SENATOR ASHFORD: Oh, good. It's not quite a proponent, but...(laughter) but, I'll take a neutral, if I can. [LB556]

SARAH HELVEY: (Exhibit 33) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Sarah Helvey, S-a-r-a-h, last name H-e-l-v-e-y, and I'm a staff attorney on the child welfare project at the Nebraska Appleseed Center for Law in the Public Interest. I just want to go on the record outlining our main points and refer the committee to my more detailed, written testimony, of which copies are currently being made, I think. Overall, our position is that we have larger concerns about the guardian ad litem statute, overall, and specifically the dual role. However, within that problematic context, and assuming that dual role isn't going anywhere away any time soon, or at least not this session, we think this bill makes some general progress. In light of that position, we make the following comments. First, LB556 must make clear that guardians ad litem ethically cannot testify in a proceeding. One of the intentions of this bill seems to be to resolve all the conflict created when the child's attorney is called to testify, by splitting the dual role into a separate GAL and counsel for the child. While this doesn't wholly solve the problem, it protects the legal counsel's ability to advocate for the child's wishes. But as long as the GAL is still...the replacement GAL is still allowed to testify, the advocate for the child's best interests is still compromised. Second, LB556 must clarify the existence of attorney-client privilege. The dual role, in which GALs are deemed both the child's parent and counsel for the juvenile, creates a mixed message as to whether attorney-client privilege exists between the GAL and the child, and the proposed legislation does little to clarify this issue. The bill seems to be seeking to protect information revealed to the GAL by appointing the GAL a separate counsel for the juvenile. However, at the very least, this bill should be amended to clarify that as to the replacement GAL, communications may not be confidential and may, in some cases, be disclosed in order to protect the best interests of the child. Third and finally, LB556 must place the determination of a conflict of interest with the attorney, not with the court. Under both the Nebraska Rules of Professional Conduct and the American Bar Association's Standards of Practice for Lawyers who Represent Children

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in Child Abuse and Neglect Cases, a lawyer must withdraw from the case when a conflict arises. To place this determination, as does LB556, in the hands of the court, places the attorney in the improper position of either having to communicate to the court that the attorney's position differs from the child and/or revealing to the court potentially privileged information. So therefore, LB556 should be amended to state that the lawyer must withdraw when a conflict of interest exists or may arise. In conclusion, we believe this bill is a step in the right direction. The language of the proposed legislation generally tracks the ABA standards, and we applaud the fact that LB556 attempts to resolve potential conflicts of interest in a way that is consistent with national standards. However, we call on the committee to consider this bill within the context of a host of Nebraska-specific changes and clarifications needed to fully improve our system of representation for children. We thank Senator Ashford for introducing this legislation and thank the Judiciary Committee for their time and careful consideration of this important issue. Happy to take any questions. [LB556]

SENATOR ASHFORD: Thank you, Sarah. Any questions of Sarah? Thank you. [LB556]

SENATOR PIRSCH: So you said you are with the Appleseed or advocacy (inaudible)? [LB556]

SARAH HELVEY: Nebraska Appleseed. [LB556]

SENATOR PIRSCH: Okay. [LB556]

SENATOR ASHFORD: Thanks, Sarah. [LB556]

SARAH HELVEY: Thanks. [LB556]

SENATOR ASHFORD: (Also see Exhibit 31) That concludes the hearing and it concludes all the hearings for the day. Thank you all very much. [LB556]

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Disposition of Bills:

LB68 - Held in committee.
LB75 - Held in committee.
LB254 - Held in committee.
LB257 - Held in committee.
LB280 - Advanced to General File.
LB556 - Held in committee.

Chairperson

Committee Clerk