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Judiciary Committee
March 08, 2007

[LB47 LB76 LB413 LB535 LB554 LB682]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 8, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB554, LB413, LB47, LB76, LB682, and LB535. 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: (RECORDER MALFUNCTION--SOME RECORDING LOST)
...light system has a three minute limit. The yellow light will tell you when there's one minute left; and the red light, we'd ask you to sum up your testimony. I believe most of you are aware of the pass-out sheet. But there's a sheet that you can sign, if you don't wish to testify but want to be in the record, just sign the sheet, we'll keep the sheets with the bill. LB554, how many are here on LB554? Okay. What I would ask, and that's fine, what I would ask, and usually what works best, and I know there are a number of professionals here, many of whom I recognize, if you could think about it together, maybe combine your testimonies, if that's appropriate. If not, mind the fact that what's been said before you get up, so that we don't repeat what has been said. That will help us get through these hearings and still get the information out. Let me introduce my colleagues: Senator McDonald is just coming in, from St. Paul, District 41; Senator Pirsch from Omaha; Senator Schimek, well known to all of us; Senator Pedersen from Elkhorn; Senator Lathrop; and Senator McGill, and welcome back.

SENATOR MCGILL: Thank you.

SENATOR ASHFORD: We're glad to have you. We missed Senator McGill. She was in the hospital for a day or so, and we're glad to have her back. Stacey Trout is the legal council; and Chris is borrowed from...is on loan from Education to do our committee clerk work. Speaker Flood, LB554.

SENATOR FLOOD: (Exhibit 1) Thank you very much, Chairman Ashford. Members of the Judiciary Committee, for the record, my name is Mike Flood, F-I-o-o-d, and I represent District 19, which includes all of Madison County. I'm here today to introduce LB554. This bill rewrites the Parenting Act and requires mediation in contested cases involving child custody and/or parenting time issues. Last session I introduced LR399, a resolution that proposed the study of Nebraska's laws relating to divorce, child custody, child visitation, and protection orders. During the summer months, I worked with the Legislative Research Division and looked specifically at California law, which has required mediation in child custody and parenting time disputes for many years. I also looked at Douglas County, as they, too, run a very successful mediation program in these types of cases. Last December, the Judiciary Committee held a hearing on LR399, and we heard from many organizations, parents, lawyers who all agree the

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March 08, 2007

system we have in place now for resolving child custody and parenting time cases is simply not working. By way of reference, I was a member of this committee for two years, and in my short time as a member of the Judiciary Committee I grew increasingly frustrated at hearings when we discussed child custody because both sides seemed to be very much at odds, and it was a very adverse hearing. It was a very difficult thing to watch because we know in the middle are children that we want to have the best relationship they can with loving parents when that's possible. Last December, I started working closely with many of the folks who had testified at the LR399 hearing. I'd ask the page, if you could, to pass out this amendment which is hot off the press. LB554 and this amendment have been a collaborative effort. And before I go any further, I want to thank, truly thank the many groups and individuals who have taken the time to offer their comments and suggestions. They include: Voices for Children of Nebraska, Fathers Rights of Nebraska, various domestic violence organizations, the Supreme Court's Committee on Children, Douglas County's Conciliation and Mediation Office, the Supreme Court's Office of Dispute Resolution, the Children's Right's Council of Nebraska, The OTR Approved Mediation Centers of Nebraska, and the many parents, judges, and lawyers with experience in this area of law. I started this process to write this bill by doing the best job I could, to bring everybody to the table in an effort to have the most cohesive bill I could possibly draft and come to you with the amendment. With that, I'll summarize the framework of LB554 and the amendment you now have in front of you. I will be honest, I am considering this for my priority bill. And this is very important to me and I think to many people in this room. LB554 rewrites the Parenting Act. In doing so, I've tried to strike a balance between recognizing the importance of maintaining parent-child relationships, while at the same time protecting victims of abuse or neglect. Among other things, this rewrite retains the best interests of the child standard as that by which the child custody and parenting time issues will be resolved. The rewrite requires parents involved in custody and/or parenting time disputes to attend a parenting education course. The rewrite requires parents to develop a separate financial plan early in the process. This plan would set out who will pay certain expenses, such as healthcare, day care, and extracurricular activities. The financial plan will also include an initial calculation of child support obligations. In my own practice as a small town lawyer from Norfolk, oftentimes I've very reassured when I send my client, together with another lawyers client, to mediation and they can agree on almost everything. And then they come back to my office and I run the child support calculation, and everything breaks down. I'd like that calculation, at least a perfunctory run, of the calculation to happen at the mediation level. This rewrite also requires parenting plans to include considerable detail as to what will happen in the life of children after a divorce. These details include a determination of physical and legal custody, a specific division of parenting time with respect to holidays and other important family events, and a method of resolving disputes that may come up with a plan in the future. In those cases where abuse is not an issue, I want parents to be thinking about these things up front, and making decisions that are in the best interests of their kids. A lot of times divorces happen when kids are six and seven years old. Nobody asks the questions, at

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

Judiciary Committee
March 08, 2007

the time the divorce is being decided in the courts, as to what will happen when one of those kids goes to volleyball camp for the entire summer, or for six weeks, or for a week at a time, interrupting valuable parenting time for the noncustodial parent. In terms of process, here are how things will work: in cases that do not involve domestic violence, LB554 is designed to encourage parents to come up with their own parenting plan, either on their own, or through mediation. Assuming they do not create a plan, the court would then review it to ensure...assuming that they do create a plan, the court would then review it and make sure it's in the best interests of the child and that it satisfies the requirements of this act. If, however, the parents do not come up with their own plan, the court then would create a parenting plan for them. The idea again is to get parents to put their kids first, to be parents first, before they become divorced spouses, to get them to stop using their children as pawns in a game that sometimes is played in the court system. If we can get parents to sit down and talk with the knowledge that if they can't come up with a detailed parenting plan, the court will, I think we can get parents to shift their focus where it should be all the time and that is first and foremost on their kids. I need to talk specifically about what I mean by mandatory mediation. I have heard repeatedly you can't lead a horse to water...you can lead a horse to water, but you can't make i drink. I agree. So when I refer to mandatory mediation, I would be requiring two things: first, the initial, individual screening meeting, where the mediator will screen for abuse and unresolved parental conflict; and second, at least, and I say at least one session with the mediator. If the individual screening does indicate abuse or unresolved parental conflict, then this session would be (one) individual, and (two) conducted by a mediator trained to deal with such conflict, like specialized ADR. And if it's a case where, at the time of the screening, there is no indication of abuse or unresolved parental conflict, this session would be a joint session. After this post screening session, either parent would then be free to terminate the mediation process altogether. The idea is to get them to the table in cases where there is no unresolved parental conflict, or where there is a situation of alleged domestic violence abuse, and have them sit across from each other. I guess I just want to tell you about the magic moment that I've seen. These are terrible situations for families to go through. But I have seen parents sit across from each other and all it takes is for the mediator or one of the parents to look at the other side and say, I know our marriage doesn't work, but I'm okay with you having custody sometimes of our son because you're a good dad. And then mom looks back at the dad and says, well, and I agree, we don't get along, but you've been a great father. Those simple words at that moment can change the direction of the entire process. It allows something nice to come out of a process that is inherently troublesome. And that's the moment that I want to create, when possible, so that we don't get in separate camps and just fight. My amendment clarifies that this is what I mean by mandatory mediation. I know that this has been a sticking point with the DV community, and I'm sure they will testify to that further, and I respect their position. But I want you to know that that's the one thing I'm really interested in coming of this committee. Now, I know I'm running short on time, but I want to point out that LB554 also addresses a few issues that are not tied directly to the Parenting Act or mediation.

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

Judiciary Committee
March 08, 2007

In Section 39 of the green copy, you will see I am amending the section of law relating to the release or subordination of a support lien. Section 47 amends the law regarding a father's responsibilities to pay for the cost of this child's birth and the mother's pregnancy. And you'll see, in Sections 50 through 59, that I am proposing to move certain sections of law to a different part of the statute. This is being done at the Bill Drafter's request. The amendment you have in front of you is primarily technical in nature, but I do want to mention a few of the substantive changes. It addresses what I mean by mandatory mediation, it raises the filing fees for divorce and modification actions higher than what is currently in the green copy of LB554. And I want to tell you, it's a significant increase, it's a \$100 increase for divorces, and a \$100 increase for modifications. Where does that money go? That money goes into a separate fund, so that when you have people that can't afford the mediator, that you would have mediators available pro bono, throughout Nebraska. So that a couple that doesn't have the money to hire the mediator can get one through the Office of Dispute Resolution or other programs set up around the state. It also restores certain statutes that the green copy proposed to repeal. The statutes relate to the collection of delinquent child support orders, and we initially thought they duplicated what was in another section of law. After the bill was filed, we heard concerns that although there was overlap, it wasn't complete, so the amendment strikes that portion of LB554 as repeal language. I want to end by thanking everyone again for their involvement with this bill. I want to add that I know that there are several lawyers that came here today because my original green copy of the bill said that attorneys couldn't be present at mediations. I've taken that out. If the client wants the attorney to be there, the attorney can be at the mediation. I think that this is a good bill. Everyone has had to give up a little bit in the interest of improving this system. And I know there is still fine-tuning to do, and this work will continue, but I would really ask you to strongly consider this. I think it's important to families, and I think with the right fine-tuning, this can get us off on a start where we get people talking, before they start fighting, in a system that's built to be adverse. And I'd answer any questions that you have. And really, there will be a lot of people testifying, so you probably want to wait for them, I'm sure. [LB554]

SENATOR ASHFORD: Questions of Speaker Flood? Yes. [LB554]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Just one. Senator Flood, would you go into detail a little bit more about what is meant by unresolved parental conflict. [LB554]

SENATOR FLOOD: Well, and that's a good question. I have a definition here, it's in the amendment, on page 9, line 7, subsection (20) of Section 3. Unresolved parental conflict means persistent conflict in which parents are unable to resolve disputes about parenting functions which has a potentially harmful impact on a child, or conflicts between parents that create risk that may warrant limitation of the time spent between the child and a parent regarding temporary or permanent custody or parenting time,

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

Judiciary Committee
March 08, 2007

visitation, or other access with the child. My idea there is...(laughter)...you like that? My idea there is... [LB554]

SENATOR ASHFORD: Seemed to clear to me. I don't know. [LB554]

SENATOR FLOOD: Any questions? (Laughter) Sometimes you run into those situations where she says green, he says blue, it's just constant conflict. And the idea of having them in the same room at the same time to mediate something is a foreign hope, I mean it's just something that's not going happen because they are so adverse and there is so much hatred in the parties. And that hatred spills over into the way that they deal with the child custody situation. In those cases, I do think it's in the best interest that they be separate. So that we don't force them to be in the same room together when it's that intense. [LB554]

SENATOR SCHIMEK: Okay, thank you. [LB554]

SENATOR ASHFORD: Any other questions? Senator Floor, Speaker Flood, I do appreciate your mediating skills in bringing all these people together on this bill. And I'd also remark that you know you've reached a certain stage in your life, or years and otherwise, when a bill you introduced in the Legislature has to be rewritten 20 years later. So I don't know what...that says more about you than it does me, I think. (Laugh) [LB554]

SENATOR FLOOD: Well, you started this thing and I like the Parenting Act that you put in there. [LB554]

SENATOR ASHFORD: It seems like there are a lot of changes. I must have really goofed. (Laughter) [LB554]

SENATOR FLOOD: Well, you know, when you work with a pack of mediators, anytime there is a problem, you can have mediations, on mediations, on mediations. [LB554]

SENATOR ASHFORD: That's right, that's right. Thank you very much, Speaker Flood. And do you wish to stay around, or are you going to get up and go about your business? [LB554]

SENATOR FLOOD: I'll, because you got a big house today, I will pass on my closing. [LB554]

SENATOR ASHFORD: All right, thank you. Proponents on LB554. How many proponents do we have? Okay. Let's start with the proponents on LB554. Go ahead. [LB554]

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

Judiciary Committee
March 08, 2007

PAM BERANEK: Hi. My name is Pam Beranek, and I'm a proponent for LB554. Thank you all for your time. This is new to me, as going through a divorce situation and having to make a parental plan for my child. It was very, very helpful to have the Mediation Center there. And I think to be forced to do that, at first, I would rebel, as we all are to rebel when we are forced to do things. But I think if you're there, you get there, and it was a choice that we made. I wanted to go do this. We were a client of the Mediation Center, and it was an open choice of mine that I made to go there and have them assist in the communication skills to get a parenting plan together for the child. And that is what we focused on first is our child, our children, and that was very important to both of us to create that plan together. And they were there to help with some heated situations where, as when you're by yourselves and trying to deal with that, if you even get together to deal with that, that's not there. And they help refocus you and get you back to what you need to be doing, and so you know the child is first. We need to focus on them before we focus on the divorce issues as spouses. So they provided a very professional, caring environment. One thing that I wish they could have given us was a little bit more legal council to help us so we wouldn't have to retrace and go back to issues that needed more clarification. That would have helped if we could have had a little bit more of that. They are less expensive than having attorneys to give council all the time. And with the time that we did have to spend, I understood that it took a lot less time than it did if we just went through an attorney. They have flexible hours, they work with your schedule, whereas if you had to go through an attorney and their office, a lot of times they don't offer after office hours times. So that was very helpful, too. I really do believe that LB554 would be a very good plan in getting those people there to where they need to be, and at least give them a taste of what could be accomplished by attending the Mediation Center. And I thank you for your time. [LB554]

SENATOR ASHFORD: Thank you, Pam. Any questions of Pam? Thank you for coming down. Next proponent. Good afternoon. [LB554]

JERRY BERANEK: Good afternoon. My name is Jerry Beranek. I'm a proponent of LB554. I'm a client of the Mediation Center. I've been through the mediation process and the developing of a parenting plan. The Mediation Center has been very helpful. The mediators were very highly trained, they were very professional. And they assisted us in many ways. One of the things that really stuck out for me was that I felt that the mediators really cared and they wanted to help create the best parenting plan possible that fit our situation. Another thing that was very important to me with the mediation was that I felt like I had an active part in creating that plan, the parenting plan. My children are very important to me. And to be able to be a part of that and set up the guidelines that we both wanted was very, very important. It's a very difficult thing to go through a divorce. There aren't very many positives, but I felt that the whole mediation process was a positive, if you can find anything that's positive in a divorce. After being through the mediation process, my wife and I have sat down and actually talked and used the skills that we developed from the mediation process even to help modify our plan

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

Judiciary Committee
March 08, 2007

somewhat. I've even used the reality testing on my own kids when we're sitting around talking, just like the mediators would use on us, and I'm very thankful that I was able to go through that rather than just having to go seek legal counsel and go that route. I think that this is very important and it should be something that is passed. Thank you very much. [LB554]

SENATOR ASHFORD: Thank you, Jerry. Any questions of Jerry? Thank you. Thanks for coming down to testify. Kathy. Good afternoon, Kathy. [LB554]

KATHY BIGSBY MOORE: (Exhibit 2) Good afternoon. Since I was actually part of the, apparently, the problem when we wrote this legislation, I actually don't consider us... [LB554]

SENATOR ASHFORD: Problem? (Laughter) I didn't say that, I didn't go that far. [LB554]

KATHY BIGSBY MOORE: ...we were the solution. (Laugh) Oh, you didn't go that far. All right. Well, I think we did such a good job that people want more of it, that's my spin on it. [LB554]

SENATOR ASHFORD: Oh, that's so much better said. [LB554]

KATHY BIGSBY MOORE: Yes, exactly. And I really have...I've been working in this arena now with Senator Ashford and others for close to 20 years. When I first brought this issue to the Legislature, all of those years ago, it was based on my professional expertise regarding child development, child abuse, domestic violence, and the fact that parents in volatile situations couldn't always make decisions that were in the best interests of children. I think that the important aspects of LB554, and we've been working on this bill for over a year now, so hopefully we've got it right, finally. But I do think that the increased emphasis this bill will place on the best interests of children, the fact that it does include definitions of domestic violence and child abuse in the divorce statute, which it did not before, the addition of the special parenting education class, and the Level II, if you will, alternative dispute resolution process, and then finally the expansions of the parenting plan so that history of coercion and violence can be included in the provisions, safety provisions can be addressed, etcetera. Now, as I indicated when I first did this work, it was based on my experience as director of Voices for Children. Unfortunately, even though I tried to look at the situation through the eyes of children, which is what I do every day, for the last two years I've been looking at this very situation through the eyes of my preschool aged granddaughters, who actually moved in with us a little over two years ago when my daughter was fleeing a very troubled marriage. And so I have watched this process, and am sorry to say that in spite of the fact that her ex-husband has been arrested four times, jailed twice, had protection orders issued on numerous occasions, was placed on probation, she still has in effect a parenting plan awarding him regular him regular visitation and joint legal custody. She

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

Judiciary Committee
March 08, 2007

has spent over \$10,000 on legal fees. And in spite of some current activity that he's engaged in, her only recourse would be to spent yet more money and go back to court. He now has actually not seen the children for a year, that's not...it wasn't good for the children initially, because they didn't know this was going to happen and we didn't get a chance to prepare them. However, it's been more peaceful for the last year. So should she choose to spend more money and go back to court, she risks restarting, if you will, the volatility and still has no guarantee of the process. In the LB554 proposal, my daughter's case would have been screened. I can certainly give you more detail, and in my written transcript gave you a bit more detail, but she would have been screened as one of these high risk cases; she would have gone to the Level II parenting ed, and alternative dispute resolution, and would have a parenting plan that would have addressed the safety measures initially. I would like to add, and I know the light is on, I would be glad to... [LB554]

SENATOR ASHFORD: Well, add in a summing up fashion. [LB554]

KATHY BIGSBY MOORE: I would be glad to give some data about joint custody, because I know there were some folks who had hoped that this would favor joint custody. And I was interested to see that in Nebraska last year, about 21 percent of the divorce cases actually were awarded joint custody. Joint custody is not good for children, when you have this volatility. So I think the step LB554 takes really provides balance, favors no one, except perhaps children. [LB554]

SENATOR ASHFORD: Thank you, Kathy. [LB554]

KATHY BIGSBY MOORE: Any other questions? [LB554]

SENATOR ASHFORD: Any questions? Senator Pedersen. [LB554]

SENATOR PEDERSEN: Thank you, Senator Ashford. Ms. Moore, you've been in this business for a long time. And I know you have a lot of knowledge, and now some personal knowledge. What is the typical visitation schedule in most divorce cases? [LB554]

KATHY BIGSBY MOORE: It's Wilson v. Wilson, which was a Supreme Court decision that set that forth. And so it's typically every other weekend, and one overnight week night. And in many, many court rooms it takes a lot to depart from Wilson v. Wilson. And so even though in my daughter's case, on the very night that she left her husband, he went through the house, he destroyed all of the family photos, much of the memorabilia, wedding gifts, and even some of the children's toys, which should have been a real trigger, a real clear signal that he should not have regular visitation. Six weeks later... [LB554]

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

Judiciary Committee
March 08, 2007

SENATOR PEDERSEN: Is there any consideration given to the amount of kids? If you have four, five, six kids? If the spouse can't take all of them at once, can you have half of them one weekend, and half of them the next weekend? [LB554]

KATHY BIGSBY MOORE: Not that I'm aware of. There will be people testifying after me who might have more experience in that regard. I'm not aware of an inclination to do that. [LB554]

SENATOR PEDERSEN: How does someone learn about a protection order? [LB554]

KATHY BIGSBY MOORE: Wow. That is the great question. And again, I think there will be some domestic violence folks following me. It's hit and miss. Anything that my daughter learned, in spite of the fact that she was living in my house and I ought to have been helpful to her, it was hit and miss. Her attorney advised her against protection orders. She was actually told she couldn't get certain services from certain agencies. There are services out there that are wonderful services, but not everybody learns about them. And so what we're proposing is through this Level II parenting education course, people would be given all of that information, because you would know that those are folks who are likely to need it. [LB554]

SENATOR PEDERSEN: And does that happen after the divorce has been filed, or some times before? [LB554]

KATHY BIGSBY MOORE: Well, what this would require is that once the divorce is filed, there would be this packet of information. Actually, Senator Ashford and I began to establish that packet. But I found out in this process that it isn't being sent out the way I think you and I intended for it to be, and this would correct that. [LB554]

SENATOR PEDERSEN: Thank you. [LB554]

KATHY BIGSBY MOORE: Thanks. Any other questions? [LB554]

SENATOR ASHFORD: Thank you, Kathy. [LB554]

KATHY BIGSBY MOORE: Thank you. [LB554]

SENATOR ASHFORD: Kathy, thank you for all your years of helping children. [LB554]

KATHY BIGSBY MOORE: And you, too. Thanks. [LB554]

SERGEANT AT ARMS: Have additional copies of Senator Flood's amendment.
(Inaudible). [LB554]

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

Judiciary Committee
March 08, 2007

SENATOR ASHFORD: Yeah, we can just put those over there. Yeah, that will be good. [LB554]

PAM PERRY: Good afternoon. I'm Pam Perry, P-e-r-r-y, with the Nebraska Domestic Violence Sexual Assault Coalition. And I wanted to say, first of all, what a rewarding experience this has been. A good example of participatory democracy, I guess, and being able to work with a group of people toward a common goal. This bill does provide victims of domestic violence with access to a means of alternative dispute resolution that they have not had access to before because of our law, and because of our need to make sure that we can provide for their safety. But with all the work that's been done on LB554, I think people have done a very good job in trying to make provisions for the safety of victims of domestic violence. What I'd like to do is highlight a few of the real positive features that we appreciate from the DV community, and then just mention a couple of the other lingering concerns that we have that we hope we can continue to work on together. Primarily, one of the key things that we really appreciate is that there are provisions for safety throughout the bill. And that's something, again, we haven't seen in earlier versions of this. We appreciate the definition of domestic abuse, or intimate partner abuse in the bill. I think it recognizes how pervasive domestic abuse is, that it cuts across issues of how finances are managed and household...accounts for isolations, a lot of the coercive behavior patterns of an abuser, it isn't, you know, just acts of violence. Another thing that we really appreciate, of course, is that there is screening for domestic violence, as Kathy mentioned. This will allow some other measures for safety to kick in. And we also appreciate that the DV community is going to be able to be involved in providing information and guidance in that process of developing screening mechanisms. And then the alternative of the specialized alternative resolution...dispute resolution is really critical to us, of course. When folks from the DV community first started to get involved in this whole area, I'm sure they caught a lot of flak from our national organizations, because, you know, we're supposed to stay away from mediation. It certainly isn't anything we're supposed to advocate for. But that mediation in the traditional sense. So the format now that allows for separate sessions is protective. The fact that the mediators will have specialized training, and substantive training, you know, not just a couple of hours, really will be important to make that specialized ADR effective. And a couple of other things that I just wanted to mention that are just kind of guiding principles that as the bill moves forward, we hope, and as revisions are considered, what I would like you to be able to keep in mind are a couple of things, and one is that victims know what's best for their safety. When on the surface it might not seem to make sense to us, they know best. Another principle is that victims may not disclose, again, probably to protect their own safety. So that is a concern. Right now we're asking them to disclose in the affidavit for temporary custody, and we're asking them to disclose in the...or giving them the opportunity to disclose in the screening process. But I think we...yes. [LB554]

SENATOR ASHFORD: Pam, sum up. [LB554]

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

Judiciary Committee
March 08, 2007

PAM PERRY: Okay. I think we need to recognize that that may not happen. So again, just as we move forward, we need to keep those things in mind when we're looking at, you know, any potential changes in the bill. [LB554]

SENATOR ASHFORD: Any questions of Pam? Thank you very much. [LB554]

PAM PERRY: Okay, thank you. [LB554]

SENATOR ASHFORD: And let me say this is all great testimony. And I'm not cutting anybody off because we're not interested, it's just... [LB554]

PAM PERRY: We have lots of people here; I understand. [LB554]

SENATOR ASHFORD: ...we have lots of people, and I want to make sure everybody has a chance. Suzanne. [LB554]

SUZANNE CURRAN CARNEY: (Exhibit 3) Good afternoon, Senator Ashford. Members of the Judiciary Committee, thank you very much for the opportunity to speak. My name is Suzanne Curran Carney, that's C-a-r-n-e-y. I'm on staff at Central Mediation Center, located in Kearney, that's K-e-a-r-n-e-y. And I'm speaking on behalf of the six community mediation centers that come under the auspices of the Nebraska Office of Dispute Resolution. We strongly support this bill. We are grateful for Senator Ashford for starting the process back those many years ago. [LB554]

SENATOR ASHFORD: That's okay, that's all right. I didn't say that. I don't need everybody to say... [LB554]

SUZANNE CURRAN CARNEY: A valiant start, and has done a lot of good. And we do see this as the next step, the next evolution. And probably it's a good idea that this is coming in steps, even steps that are fairly far apart, because we're able to draw on 13 years of experience in doing parenting plans, to help try and create a system for, first of all, for the children of our state, and because of them, for their parents a system that maximizes the parent's ability to do good by their kids. Over the many years that I've been in this area one way or another, I've seen a lot of tragic situations, a lot of unbelievable situations. Even with all of that, I firmly believe that most parents really want to do the best for their kids. Most parents really want to know that they are operating in the best interests of their own children. But for a variety of reasons, and particularly during all of the storminess of a divorce or separation of a family, it's hard to focus on what that is. And one of the things that mediation can do is bring parents back, allow the parents to focus, to get some information on what's in the child's best interest, and then to create plans in a de-escalated atmosphere in order to meet the interests of their children. Obviously, we're strong believers in mediation, see what that will do for

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

Judiciary Committee
March 08, 2007

the families. We're particularly happy that the bill provides for parenting education. We see that as a very important first step when parents come into the mediation process, particularly that it recognizes that the great majority of parents can have a, if you will, garden variety education, but there are going to be some that need specialized education on reducing the conflict in their children's life. We are very happy with the sensitivity to domestic abuse; that's something that we have, in our practice, tried to do, struggled with. I am happy now that the law does not revictimize victims. Because as the law stands now, it could be read that someone who wants to go through mediation is prohibited from doing it if they've previously been a victim of domestic abuse. And this removes that what I see as revictimization. We're ready to...we have an infrastructure, thanks to the domestic...thanks to the Dispute Resolution Act, and infrastructure in place to make this an effective system for the people of the state of Nebraska. [LB554]

SENATOR ASHFORD: Thank you, Suzanne. Any questions? Yes, Senator Pirsch.
[LB554]

SENATOR PIRSCH: Yes, if I may. You said you now have the ability to offer mediation services to those members of a couple where there was abuse that was present. Could you just briefly and very succinctly kind of comment on that. [LB554]

SUZANNE CURRAN CARNEY: Well, the language in the statute as it stands now is that unless you find that there is abuse involved in the case, little tricky as to what that means, but involved in the case, only if you make that negative finding can you proceed with the mediation. And so again it's subject to interpretation, but under some interpretations would prohibit someone who's had an experience of domestic violence from going ahead and making their own parenting plan. I think that's very paternalistic. I agree that the person who has been in that situation knows their situation best and should be allowed to make that choice. [LB554]

SENATOR PIRSCH: Thank you. [LB554]

SENATOR ASHFORD: Thank you, Suzanne. [LB554]

SUZANNE CURRAN CARNEY: Thank you. [LB554]

SENATOR ASHFORD: Next proponent. [LB554]

SEAN BRADLEY: (Exhibit 4) Good afternoon, senators. My name is Sean Bradley, that's B-r-a-d-l-e-y. I'm an attorney working with the YWCA Omaha, and in that capacity I do cases that...serving domestic violence victims. I have been practicing law for nine years now. And I come to this committee having experience both working in an agency that is dedicated to the experiences of domestic violence victims, but also as an attorney who's done quite a bit of practicing law in Douglas County where we've had a

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

Judiciary Committee
March 08, 2007

mediation scheme in place for some time now. And even in my short career, I've seen a considerable evolution of how mediation is regarded, especially in domestic violence cases. So from that basis, I would encourage this committee to forward LB554 because of the way that it brings mediation into these cases. I have sent very many of my clients to mediation and have them come back with a plan that I would never have been able to get for them in front of a judge, and that I, frankly, wouldn't have had the capacity to negotiate for them on their behalf. I'll also say that sometimes there is a complete failure of mediation, and sometimes they come out of mediation, and when we discuss it later we realize that perhaps she didn't understand quite what she was agreeing to, and we are allowed to go back in and take another try at it. Frankly, as mediation is practiced in Douglas County, it oftentimes helps, and it really can't hurt, except for in a few situations. And that's why it's important that we keep in mind the language that allows mediation to be discontinued in certain cases of domestic violence. Another thing that I noticed as I read LB554 that I really took to as somebody who practices litigation on behalf of victims is the incredible detail that the statute goes into. That's sort of the guiding principle when you represent a domestic violence victim. And the reason for that is I can protect her while we're in litigation. But when litigation is over, it's very important that they have a parenting plan in terms of the decree that are very specific, so if the old dynamic starts to get going again, she can always refer back to her decree and say, well, the judge disagrees with you. And so this is a very important factor of LB554. And I thank you very much. [LB554]

SENATOR ASHFORD: Thank you, Sean. Any questions of Sean? Thank you. I might mention, too, that Denise, in Speaker Flood's Office, did a great deal of work on it. I don't know if she's here somewhere, but I know she did a wonderful job, and I failed to mention her name earlier. Good afternoon. [LB554]

ROBERT UHNG: Good afternoon. Thank you for the opportunity to be here today. My name is Robert Uhng. I'm from Norfolk, Nebraska. Born and raised in the state of Nebraska, been here all my life. And I'm here to talk about the child support lien law, the subordination. I want to start out with, I've heard all my life you're supposed to be innocent until proven guilty. Fraud has been in the dictionary for years, discrimination, that's always talked about in and out of the news and invasion of privacy in the last few years has gotten to be, you know, you can't get away from it. This child support lien law, as it exists, I don't know how it can be there? I am divorced. I went to refinance my house to pay some legal fees, and everything was going fine, until all of a sudden they hit a roadblock. I'm approved, ready to go, and all of a sudden now I need a signature from my ex-wife to let me conduct my business. It's none of her business what I'm doing. She absolutely refused to sign. She's got to sign the form saying that I'm up-to-date on my child support, and I was. I got forms from the state of Nebraska, the Child Support Payment Center, saying that I was up-to-date, I hadn't missed a one. She was supposed to sign it saying that I'm up-to-date, she would not sign it. After three months of crap, going through legal channels, calling Mike Flood and calling all kinds of

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

Judiciary Committee
March 08, 2007

people, going through district court to the judge, she still would not sign. She refused to sign that piece of paper. So now I've got three months of extra finance charges at the bank, hassle, time off work, phone calls, legal fees that I got to deal with because she's got to give her okay. She got to give her good grace. Well, it turned out she doesn't have any good graces. She was court ordered by district court, Stanton County, to sign this paper, she still did not sign the paper; she hasn't yet today. So the next step is I got to go through another process, because we had a court order, a copy of this court order, and a copy from the Child Support Payment Center saying that I was up-to-date, I hadn't missed anything, the bank and the title company was able to bypass this law, get around this law so I could finally conduct business and get my refinancing of my home taken care of. This law, the way I understand it, was put into effect in 1984 that any individual ordered to pay child support, if you own property, it is automatically...this lien is put on your property, the deed to your property, it was put on there. I didn't know about it. The state of Nebraska provides...this law puts it on there. I didn't know it, that's fraud. How can that be done? Next thing is I'm a homeowner, I got penalized. How about the guy that doesn't get penalized? The guy that don't own anything, or the person, the individual. I don't quite understand how they can pick me out because I own a home. And then why should she be able to know my business? I should be able to conduct business without her knowledge. [LB554]

SENATOR SCHIMEK: Mr. Chairman. [LB554]

SENATOR ASHFORD: Yes. [LB554]

SENATOR SCHIMEK: May I ask a questions? [LB554]

SENATOR ASHFORD: Yes, why don't we; yes, you may, Senator Schimek. [LB554]

SENATOR SCHIMEK: I'm having trouble following your testimony, because I'm trying to relate it to this bill that's under discussion. How would this... [LB554]

ROBERT UHING: Section 39. [LB554]

SENATOR SCHIMEK: Section 39 of this bill? [LB554]

ROBERT UHING: Yeah. [LB554]

SENATOR SCHIMEK: And do you like this part of the bill? [LB554]

ROBERT UHING: That is a revision to the bill, because the current bill...the law, the way it is, is what has that. It was set forth in 1984. And what it says in there now that she doesn't have to sign a copy of the Child Support Payment Center isn't adequate to get my business conducted. [LB554]

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

Judiciary Committee
March 08, 2007

SENATOR ASHFORD: I think there are some sections there that are not directly related to the mediation part... [LB554]

SENATOR SCHIMEK: Okay, thank you. [LB554]

ROBERT UHING: Yes, you're welcome. [LB554]

SENATOR ASHFORD: ...that Robert is referring to. [LB554]

ROBERT UHING: This is...I'm not paid to be here today. I'm talking...speaking totally on something that's happened to me, and it's really wrong. [LB554]

SENATOR ASHFORD: I appreciate that, Robert. There are a lot of people here probably aren't paid to be here either. (Laugh) But I appreciate your comment. So I'm not... [LB554]

ROBERT UHING: Yeah, well, I understand. What? [LB554]

SENATOR ASHFORD: We appreciate your comments. Next proponent. I guess I was thrown off just a little bit because we went to a new topic. I think, Robert, what we were getting at is that this testimony was just a little different; it was on a different topic, that's all. We're listening to you. [LB554]

ROBERT UHING: No, I understand. [LB554]

SENATOR ASHFORD: We're listening to you. Okay. We got you. [LB554]

KATHY JO PETERSON: (Exhibit 5) Hello. My name is Jo Peterson, it's P-e-t-e-r-s-o-n, Kathy Jo Peterson. I'm an associate professor of social work at Dana College. I'm also a trained mediator and from the Office of Dispute Resolution in Nebraska. I've been trained in basic mediation, family mediation, and in community problem solving. And I'm here to speak in support of this bill for a lot of reasons. And I'm glad to follow the gentleman previous to me because he is what...I want to speak from that position. I'm also here to support this bill from the position of the social workers in Nebraska. It's a lengthy bill, so I'm just going to limit my comments to the process of mediation, sort of the theory behind mediation. As we all know, conflict is inevitable. And I suppose you folks here see a bit of it yourselves. But we do have choices about how we respond to conflict. We may not have choices about about...conflict will exist, it is inevitable. In the court system, we often...it's adversarial, so there's a win-win proposition, somebody wins, somebody...I'm sorry, win-lose proposition. It's litigation procedure, so there's winners, and there's losers, and for families who are looking for a winner and looking for a loser, the only losers are the children. So mediation offers an option. During divorce

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

Judiciary Committee
March 08, 2007

intense conflicts arise. People respond to...ranges of responses to conflict range from avoidance to violence. And during divorce what people are most concerned about, things they care about the most are threatened--resources, as we just heard about before, a sense of belonging, the relationships they have with their children, and when those resources threatened people will go to any length sometimes to restore their sense of winning, their sense of power. And when individuals feel powerless over the expensive and confusing legal system that seems to hold control over their family and over their whole situation, their lives, in some of the worst case scenarios people resort to violence so that they can win the conflict. Some people feel, some men, mostly men feel so powerless that they may walk away from their family and away from their responsibilities. And the court gets overburdened with parties in the legal system with lengthy battles over custody, money, or parenting issues, when the real issues, the underlying issues are about control or retribution, and about power and grief. So when people do decide to end their marriages, they should not become violent, use their children as pawns or walk away from their responsibility as a parent. Mediation offers another type of conflict resolution and this model is a model where all sides are met, are heard and the power and the control in their relationship stays with the parties that are most involved, and that's the family members. So I want to thank you for letting me speak and we support the bill. [LB554]

SENATOR ASHFORD: Thank you, Kathy. Any...wait a second. Hold on, Kathy. [LB554]

SENATOR LATHROP: I appreciate your testimony. It's interesting to have somebody here talking about mediation with your background. So I'd like to ask you a couple of questions. First of all, with respect to people who mediate to a conclusion, are they more likely to stand by the terms of their agreement in contrast to a decree? [LB554]

KATHY JO PETERSON: Yes. I don't have the numbers in front of me to support... [LB554]

SENATOR LATHROP: Do you have a sociological theory behind that? [LB554]

KATHY JO PETERSON: Yes, because they're empowered, it's their choices. The mediators are neutral, trained mediators. If I have one concern about this, which is already addressed in the bill, which I do appreciate, they talk about trained mediators coming from the Office of Dispute Resolution. My hope is that you stay very firm with that, that they are trained. Trained mediators remain neutral, they are not arbitrators, they are not lawyers, they are people who are well-versed and well-trained in the process of mediation. So they sit between two people. And what the mediator does is push away and it becomes their agreement. So both of the parties that have decided what their agreement are have discerned their underlying interests and their needs. They create their document, it's their power, their control, their document, they sign it. And if the mediator stays true to the principle of mediation, the mediator is only there as

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

Judiciary Committee
March 08, 2007

a conduit between the two parties to create their own document. And since it's their document, they're more likely to stay true to that. And the percentages, the statistics, the last time I looked, showed that out, that they are more likely to stay firm to those agreements. [LB554]

SENATOR LATHROP: Okay, good. Thank you. [LB554]

SENATOR ASHFORD: Thank you, Kathy, very much. It's 25 of 3 now, we're going to...how may opponents do we have? Okay. What we're going to do is go to about, let's say about ten of 3 on the proponents, which is 15 minutes from now. And then we'll go through the opponent testimony at that time. So next proponent. Proponent. Al. [LB554]

AL RISKOWSKI: Sorry, I raised my hand for opponent. [LB554]

SENATOR ASHFORD: Yes, you did. [LB554]

AL RISKOWSKI: I wasn't listening very well. [LB554]

SENATOR ASHFORD: I thought...Al, I thought for sure we had a bill here we could agree on. And then you raised your hand. (Laughter) [LB554]

AL RISKOWSKI: I know, I apologize. I totally repent. [LB554]

SENATOR ASHFORD: Okay. [LB554]

AL RISKOWSKI: (Exhibit 6) I am here as a proponent for LB554. Al Riskowski, it's R-i-s-k-o-w-s-k-i. And I pastored for a good 30 years, over 30 years, current executive director of Nebraska Family Council. And the last church that I was part of was a large congregation, actually right here in Lincoln. We started a divorce recovery class because of all the fallout from divorce. We also put on a part-time child psychologist because of the fallout of divorce. I had performed I don't know how many weddings, but I don't remember anyone walking down the aisle at the wedding ceremony thinking about divorce or dreams of custody battles or financial frustrations as they walked down into that romantic moment. Yet divorce comes and we've seen the fallout of that. I saw a very interesting study that revealed that 90 percent of children from divorced homes suffer from an acute sense of shock when the separation occurred, including profound grieving and irrational fears; 50 percent reported feeling rejected, abandoned and indeed half of the fathers never came to see their children three years after the divorce. One-third of the boys and girls feared abandonment by the remaining parent, 66 percent experienced yearning for the absent parent, with an intensity that researchers described as overwhelming. Most significant, I thought, by this research was 37 percent of the children were less happy and dissatisfied 5 years after the divorce than they had been at 18 months after the divorce. In other words, time did not really heal their wounds. So

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

Judiciary Committee
March 08, 2007

LB554, I believe, gives a better chance for children to travel through the journey of divorce with less emotional trauma, the ability for the court to order parties to attend a parenting education class, I believe, really can help the parents address the emotional issues involved with divorce. My hope is at a minimum biological parents who have divorced should contain their anger and conflict in order to cooperate and compromise on issues for children's welfare, but at a maximum parents can strive to enforce similar rules and standards of conduct in each of the children's homes. I believe this bill would also provide the court the additional opportunity to order a child to attend a child of divorce education class. A class of this type can help with adjustment to a home broken by divorce. So I encourage the Judiciary to vote this bill out of committee for the benefit of children. Thank you. [LB554]

SENATOR ASHFORD: Thanks, Al. Any questions of Al? Thank you. [LB554]

AL RISKOWSKI: All right, thank you. [LB554]

SENATOR ASHFORD: You're always welcome. Good afternoon. [LB554]

LORIN GALVIN: Good afternoon. Mr. Chairman and members of the committee, I'm Lorin Galvin. I'm the director of the Conciliation Court, Mediation Services, in Douglas County, Nebraska. I've been a lawyer for over 30 years. I've been a mediator for over 12 years. What I have to say today, though I'm speaking for myself, I'm not speaking on behalf of the court or of the judges in Douglas County. And I would like to commend Senator Ashford and Senator Flood for this legislation. I think it's really a golden opportunity to advance the interests of children through this very comprehensive change to the legal process for resolving custody and parenting disputes. The part particularly that requires mandatory education, and then the opportunity for a two-step process, mirrors very closely the experience that we've had in Douglas County in terms of dealing with parents that are low conflict, but also in terms of dealing with parents that are very high conflict. In Douglas County, we do about 1,200 new cases every year. And all of those parents attend an education class. About 600 of those cases are then resolved by the attorneys through parenting plans, another 450 of those cases are resolved through mediation. We have found, that since the second level of mediation was instituted in 2004, that we're reducing the caseload by over 200 cases a year, very high conflict cases that would otherwise have to go to trial. So I believe this program can assist all the courts of Nebraska to reduce their caseload, but more importantly I believe it replaces, in the Nebraska statutory scheme, the R word, and that R word, under this act, means responsibility--mother being responsible, father being responsible and replaces father's rights, replaces mother's rights. And I think, if this legislation is advanced, it will be very effective. The other thing that's very good about this act, I believe, is that it follows and complies very closely with the Uniform Mediation Act regarding confidentiality, regarding privilege, and the protections that people have that participate in the mediation process. And I'd be very happy to answer any questions that

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Transcriber's Office

Judiciary Committee
March 08, 2007

you might have. [LB554]

SENATOR ASHFORD: Any questions of Lorin? Senator Pirsch. [LB554]

SENATOR PIRSCH: Just briefly, thanks, Lorin, for your testimony here. How many cases, roughly, are there now that you're...that your office is handling? [LB554]

LORIN GALVIN: Well, we get 1,200 new divorce cases in Douglas County every year. And the modification cases run anywhere from a couple 100 to 500 a year. And one of the things we found, the modification cases that we get are primarily cases that are high conflict cases, and are cases that originally went to trial rather than being mediated. [LB554]

SENATOR PIRSCH: Twelve hundred new divorces, and 500, or approximately, modifications per year then? [LB554]

LORIN GALVIN: And that doesn't even touch on the several thousand paternity cases that are filed every year. [LB554]

SENATOR ASHFORD: Or the remediations. [LB554]

LORIN GALVIN: Right. [LB554]

SENATOR PIRSCH: Thank you. [LB554]

SENATOR LATHROP: Can I ask you just a couple of questions? [LB554]

LORIN GALVIN: Sure. [LB554]

SENATOR LATHROP: This bill has some provision for parenting classes. I know they have those up in Douglas County. Can you tell us a little bit about those parenting classes and why we need a level II class? [LB554]

LORIN GALVIN: Sure. The class that we do in Douglas County, and frankly I think we're probably the only county in the state of Nebraska that verifies that every parent actually attends the classes. But our class is entitled "What about the children?" And it's entitled that way because the class tries to reach out to the parents to get them to think about how their actions and behaviors towards each other impact the child. And frankly, we get people, after the class, some that come up just very shaken because they recognize the things that they've been doing to each other as parents is directly impacting their children. So it's kind of an attention getting class for the parents to understand that however much pain their feeling in the divorce, and they are, that their children are feeling the pain of both parents, and that these children want to love both parents, but

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

Judiciary Committee
March 08, 2007

sometimes it's not possible because of the acts of the parents towards each other. The second level classes, something that we've just developed, and that is more geared towards people that are very high conflict, that are back into court all the time. You might think of these people as the button-pushing people. They don't really have a conversation, they push each other's buttons and make each other angry. And so some of our process there is to stop talking. Some of these folks use e-mail to communicate, some of these folks use other methods of communication through the mediator rather than directly to each other. And we have very specific rules about how to keep the conversations, if they are occurring, on a businesslike manner. How to be able to say, stop, and the other parent respect that that's been done. So it's, again, it's modeled after trying to reduce that conflict and getting parents to respect each other's boundaries and respect each other's space. [LB554]

SENATOR LATHROP: Okay, thanks. [LB554]

SENATOR ASHFORD: Lorin, thanks for all your work. [LB554]

LORIN GALVIN: Thank you. [LB554]

CINDY STRASHEIM: (Exhibit 7) Senator Ashford and, Judiciary Committee, I'm Cindy Strasheim. I'm a University of Nebraska extension educator, and I have been working with "Parents Forever" and "Kids Talk About Divorce" since 1999. To date, we have had probably more than 3,000 parents that have completed our "Parents Forever" classes, they are located in 11 judicial districts across the state of Nebraska. They are taught by masters level educators, parent educators. And we also...the "Kids Talk About Divorce" class at the same time that parents attend those adult parenting classes. In the packet that I've given you, you will find a lot of pieces of information about the research base that we use behind these...for teaching these classes and working with the parents. As you might guess, many times parents are disgruntled when they are remanded to these classes by a judge. And what we find is that immediately after the class is over that 99 percent of the people who have attended these classes say that all parents should have to attend the class. The classes are based on the needs of the children. We focus totally on the needs of the children during and through the whole divorce process, which is a life-long process. And so the skills that we teach the parents, we also teach those same skills, at age appropriate levels, to children. We know that from our four-year follow up of the parents and of the adults that we have very high ratings, from 80 to 98 percent, as far as children and adults that are still using those skills four years after attending class. I would like to say that I think the parenting plan Level I...or the parenting classes, Level I and II are very important. We only have parents for six hours in our class. And we cannot teach everything that we possibly need to teach. We give them the basic idea of what a parenting plan is, and then we can refer them, if there is high conflict, or you know they are left to their own devices, basically, after our six hours is over with them. We do not do mediation. We are educators. And the university has always used

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

Judiciary Committee
March 08, 2007

its researched-based materials and impact proven curriculum. Do you have any questions for me? [LB554]

SENATOR ASHFORD: Thank you, Cindy. Any questions of Cindy? Are you in Omaha or Lincoln? [LB554]

CINDY STRASHEIM: Actually I'm located in Clay Center, but I work the statewide program. So we each have a different focus. [LB554]

SENATOR ASHFORD: Oh, okay. Very good. Thank you. Next proponent. David. It's old home week here. [LB554]

DAVID HUBBARD: Yeah. Dave Hubbard with the Mediation Center. I work in Omaha, so I've been a private mediator, and I've been a 4-3 mediator, still am an approved 4-3 mediator. I work at the Mediation Center. I've been affiliated with four of the community Mediation Centers throughout the state. And I just want to say, while I also teach mediation at the law school and for the ODR system, the Nebraska Mediation Association. I think one thing that's very important and that is in Douglas County there's this process of getting people to the table that's very, very helpful. And I've had many people come in, after attending the class in Douglas County, and talk about how, you know, we didn't realize what we were doing. And getting people to the table, kind of in essence giving them a little encouragement, was very, very beneficial. And I just want to say that getting people to the table would be one of the huge benefits of this. Because when I teach at the law school, or whether I'm teaching basic mediation training, or family mediation training, one of the things I talk about is that the hardest job, in my opinion, at the center is the person who's doing the intake, who gets the call from one parent who wants to find out more about mediations, thinks it sounds like a great idea, wants to do it, and then is asked to call the other parent and try and talk them into going through this process. And when that happens, it's a pretty difficult call to make, because it's kind of if one person really wants it, what do you think the other person's reaction normally is going to be, the other parent? They have an automatic defense mechanism that kicks in, and so they're automatically kind of put in the posture of being against it. So this would help get parties to the table and I think that's huge. Thank you. [LB554]

SENATOR ASHFORD: Thanks, David. Any questions of David? I think one of the key points that Lorin brought out is the number of high conflict cases that are being mediated that would of, out of the 200 cases, that would have otherwise been tried in the district court. And I think when we all started this, that was one of the big things, we convinced the court that this was going to clear their docket a little bit and they could go play golf or something. [LB554]

DAVID HUBBARD: Yes. Well, I see the success of it in Douglas County, after having...being under Lorin's tutelage. So I see the success and I thought that, gosh, it

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

Judiciary Committee
March 08, 2007

would just be great if this could happen statewide. And so I think it's a huge opportunity to give people who would benefit from having a parenting plan with a safety plan built into it would be hugely beneficial to, not only the kids, but to the parents. [LB554]

SENATOR ASHFORD: Good work. [LB554]

DAVID HUBBARD: Thanks. [LB554]

SENATOR ASHFORD: Next proponent. Any other proponents? Oh, okay. [LB554]

NADINE HAIN: My name is Nadine Hain, H-a-i-n, and I'm glad to be able to testify as far as on behalf of the new Parenting Act, because I believe that we have had so much one-sided custody battles that the mediation process, as far as the new Parenting Act, is going to be a good thing and hopefully it will be able to be taken care of also in some of the divorces that have been, not just the new divorces, I don't know for sure if that's, you know, how it will work. But I'm hoping that it will take care of it in that case. [LB554]

SENATOR ASHFORD: Nadine, thank you for that testimony. [LB554]

NADINE HAIN: Okay, thank you. [LB554]

SENATOR ASHFORD: Any other proponents? Opponents? How many opponents do we have? One, two, three, four. Okay. How many neutral testifiers? Good afternoon. [LB554]

ERNEST KUBR: (Exhibits 8, 9, 10) Good afternoon. My name is Ernest Kubr, K-u-b-r, father of three. I'm opposed to this. The handouts that she's handing out are numerous studies, statistics and other information regarding constitutional rights, domestic violence and so on. I'm going to read you a few quotes and then go on. The interest of the parents in the shared custody and control of their children is perhaps the oldest of the fundamental liberty interests recognized by this court. This is the U.S. Supreme Court, Troxol v. Granville (phonetic), 2000. Parents rights have been recognized as being essential to the orderly pursuit of happiness by free man, Meyer v. Nebraska, 1923. U.S. Supreme Court implied that a once married father who is separated or divorced from the mother and is no longer living with his child, and that's a quote, could not constitutionally be treated differently from a currently married father living with his child, that's Quillion v. Wolcott (phonetic), 1978. Parents rights have been ruled as a fundamental liberty by the U.S. Supreme Court on the same level as speech and religion, from Meyer v. Nebraska, 1923 through Troxol v. Granville (phonetic), in 2000, the court specifically states that raising your children as you see fit is a fundamental liberty. According to the U.S. Supreme Court, infringing on a fundamental liberty has five specific criteria that must be met through due process in a court of law before that right can be taken away or even infringed. You have to be either convicted of a felony,

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

Judiciary Committee
March 08, 2007

judged mentally incompetent, found to be a danger to yourself or others, the state has to show a state interest in removing the right greater than the individual's interest in preserving that right. And I would have to ask you, is this possible with you in regard to your children? Can the state show a greater interest in your children than you do? Or you voluntarily relinquish your right, if one of those five items doesn't apply, your rights cannot be infringed, if it's a fundamental liberty. Okay? Nebraska is no different. But the Supreme Court has been very clear on this. But I have a few questions. Do U.S. Supreme Court decisions have handing in the courts of the state of Nebraska? Three of the people on this committee are attorneys, I'm sure you can answer that. Do the Supreme Court provisions apply? Why do courts routinely ignore standing U.S. Supreme Court case law, and the Equal Protection Clauses of both the federal and state Constitutions when ruling in custody cases? Does one parent have more of a right than the other? Numerous studies, which I've given you a partial list of, have shown that joint shared parenting, specifically keeping fathers involved in children's lives, is in the children's best interests. But is that what the courts really are interested in? A father's involvement reduces drug use, teen pregnancy, crime, which is not good for the courts business, because divorce and custody is a multibillion dollar a year industry. And the children are better behaved, do better in school, and are more likely to go to college and more. Remember, the goal of any bureaucracy is to grow. This bill will do nothing to help children, but will go far to grow the bureaucracy and enrich the legal community at the very expense of those that are supposed to be the focus of the procedures. About 38 states have passed presumed joint shared parenting legislation. It's been proposed in Nebraska, but the Legislature balks and continues to allow the courts to destroy children's lives by removing one parent to the benefit of the other. I've given you several pages, including studies that go back almost 30 years on joint, physical or shared parenting, as well as statistics showing that shared parenting is best for children and will actually reduce crime, drug abuse, teen pregnancy, and numerous other plagues. It will reduce the backlog on the courts, it will help children. The American Psychological Association actually did a study, and it was approximately 2001, 2002, they said, where parents have virtually no communication, total animosity, children fare better and it forces parents to communicate. [LB554]

SENATOR ASHFORD: Thanks, Ernest. [LB554]

ERNEST KUBR: I urge you to kill this bill. [LB554]

SENATOR ASHFORD: Okay. Any questions of Ernest? The only comment I would make, and we certainly are hearing what you're saying, but the only comment I would make is it seems to me that we're sort of taking the state out of it a little bit here by bringing the parents into a mediation process. But that was sort of the idea behind it, initially. [LB554]

ERNEST KUBR: But one of the problems with mediation is it would be great if the

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Transcriber's Office

Judiciary Committee
March 08, 2007

parents agree and the mediation substantially recognizes the rights of both parents, that would go into voluntarily giving up your parental rights. If you agree, then you've voluntarily given up some of your time, or whatever. But if that mediation goes through and the parents have agreed on stuff, it must be binding on the court, because in many cases judges throw out the mediation and do what they decide for children that they do not know, have never met, and you know, what it does is it causes hate and discontent and induces more litigation. [LB554]

SENATOR ASHFORD: Fair enough. Any... Senator McDonald. [LB554]

SENATOR McDONALD: Yes, sir. Have you ever been divorced? [LB554]

ERNEST KUBR: Yes, mine will be final as of April 1, eight years ago. [LB554]

SENATOR McDONALD: Did you have children? [LB554]

ERNEST KUBR: I have three children, as I stated at the beginning. My ex- is very vindictive to the point of when we go together, I want to go to my daughter's orthodontist appointments. Walking in the door, I wait for my daughter and her to go through the door, and as she's going through, acting like she's holding the door, when I go to step through she pulls it shut to try to get it to hit me. But nobody sees it. And it's little things like that. When you put the power of physical possession of the children, and my children are in the legal custody of the court, but if I write a letter, regarding any problems, to the judge, they ignore it because they consider it an ex parte communication. When it should be no different than writing a letter to a foster parent or the Child Protective Services with regard to my children. But because the court has custody of the children, I cannot communicate with them without hiring an attorney, paying legal fees, paying court fees, because the court has custody. He said he didn't trust her, but he placed possession with her anyway. Why? If you have presumed joint physical custody from the beginning, there are laws that protect from domestic violence, and one of the things that I gave you is numerous studies on domestic violence showing that men are just as much victims. I was a victim of it. She made a false accusation against me, I made a true accusation against her, and had a gash on my head to prove it, and nothing was done. [LB554]

SENATOR McDONALD: Thank you. [LB554]

SENATOR ASHFORD: Senator Schimek. [LB554]

SENATOR SCHIMEK: Thank you, Mr. Chairman. I thank you for being here. I must ask, did you go through mediation? [LB554]

ERNEST KUBR: Mediation, there was a law on the books from the state that said, as of

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

Judiciary Committee
March 08, 2007

1995, if I remember right, the courts are to make people in divorce proceedings aware that mediation is available... [LB554]

SENATOR SCHIMEK: Did you go through mediation? [LB554]

ERNEST KUBR: No, I did not, and... [LB554]

SENATOR SCHIMEK: Thank you. [LB554]

ERNEST KUBR: ...neither the court nor any... [LB554]

SENATOR SCHIMEK: That's...that's...thank... [LB554]

ERNEST KUBR: ...attorneys involved in the case made us even aware of it, which was in violation of the law that was on the books. [LB554]

SENATOR SCHIMEK: Thank you. [LB554]

SENATOR ASHFORD: Which is kind of a good thing about this bill, because it goes to the next level and requires that you be made aware of it and have an opportunity. But I know the point you're making, and I respect that. Just to point that out. Thank you. Next opponent. [LB554]

RUFINO VILLARREAL: Hi. My name is Rufino Villarreal and I'm a victim of... [LB554]

SENATOR ASHFORD: Could you spell your last name for us. [LB554]

RUFINO VILLARREAL: Oh, V-i-l-l-a-r-r-e-a-l. And I'm a victim of the Douglas County mediation that was run by Lorin Galvin. And I think he's identified on the record. What happened, and I kind of...I have to put a little bit of history to this, is that... [LB554]

SENATOR ASHFORD: We have three minutes, so keep the history down to... [LB554]

RUFINO VILLARREAL: I know, I'm going to try to make it quick. When I graduated from law school, from Creighton, in '93, I had taken a dispute resolution course that described what a mediator did. So when I got...my wife filed for divorce and I went to a temporary hearing with the judge. And I practiced immigration law, I didn't know too much about family law. And so when I went to the temporary hearing, the judge said, okay, I can give you visitation regular, kind of like Wilson visitation. And everything was fine. But because it's mandatory that you take mediation in Douglas County, I had to go see Mr. Galvin, and he goes, you know, well, the order isn't signed yet, and so we're going to wait. But in the meantime, if you agree to one hour supervised visit, then that would fine. Because I hadn't seen my kids, my wife was hiding the kids for the last two

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

Judiciary Committee
March 08, 2007

months and I hadn't seen them, I really missed them, and so I just told them, okay, you know, if I get an hour with them, that would be great. So anyway, the judge signs the order and I agree to this mediation just so I could see the kids. And then you know I told Galvin, I go, well, the judge signed the order, so I can see the kids like he dictated, right? And he goes, well, no, you got to talk to her lawyer about it. So I talked to her lawyer, and her lawyer goes, no, you can't see the kids, because you agreed to that mediation. I said, well, the court...and I took that class in law school, that's why I thought the mediation was supposed to be a neutral party, and he was just trying to help me with the kids. Well, instead he just said, well it's not my ballpark anymore. So I talked to her lawyer. And he said, well, you're stuck to that mediation. And I go, what happened? And so since I didn't do too much family law, I got a lawyer and the lawyer we got subjected to a remediation. And the same thing happened. And at the mediation I was telling him that I don't want supervised visits, I don't want domestic violence classes, I don't want parenting, and that was everything that my wife was saying, and I didn't agree to that, of course. I mean I already had an order that said I could get regular visitation. And so then he...so I go to remediation with another lawyer, and it was just spending more money because of his goof up. Now the thing is at that point I went down to look at the law books and it said, I have 21 days to object to the mediation, and if I object then it's not binding and we can do a remediation. So I made it within that time. And I got it like the 19th day, you know, I was lucky that I did it. But anyway so on the remediation he takes the remediated agreement, hands it to the judge, I didn't even see it, I mean, so there again you violated the 21-day obligation, or you now window to object to the mediation. And so now, I mean this is three years ago, I'm still subjected to supervised visits. I'm on a real limited income. I see my kids maybe once a week because I can't afford to see them. There's hardly any facilities that do supervised visits. But my point is that we don't need abusive, biased mediators. Just like that lady said, there... [LB554]

SENATOR ASHFORD: Rufino, Rufino, let me ask you to...we get your point, I think. Are there any questions of Rufino? Thank you very much for your testimony. Further opponents? [LB554]

AMY SHERMAN GEREN: Good afternoon. My name is Amy Sherman Geren. I live at 2235 South 117th Circle in Omaha, Nebraska. I reside in District 20. I practiced law for 13 years, I have practiced divorce law for 8 years. I was divorced in 1997 and shared joint, legal and physical custody of my two sons with my former spouse since then. My children were 4 and 2 when I was divorced, and are 12 and 14 now. I currently practice primarily divorce law. In the past two to three years I've probably spent about 60 percent of my time representing fathers, and 40 percent of my time representing mothers. It's difficult to say whether you're an opponent or a proponent to a 112-page bill. I would note that there is in front of the Unicameral LB606, which would provide for referrals to mediation in any civil case. And the Unicameral might consider the benefit of the brevity of that bill versus the length of this bill. I'm concerned that a bill this lengthy will have

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

Judiciary Committee
March 08, 2007

unintended consequences. One is that if lawyers...if support issues, child support issues are going to be mediated, we're going to have to have lawyers to do those mediations, I would think. Right now in Douglas County they're using a lot of people who aren't trained in the law to mediate. And if we're now going to be including a child support calculation as part of mediation, we need to be sure that we're prepared with mediators who are trained to calculate child support. If not lawyers, then make sure our mediators are trained in how to do that calculation. The bill described joint legal custody as making fundamental decisions for the children. And our Supreme Court has, throughout a number of years, described joint legal custody as making major life decisions for the children. I think it would be better for those practicing in divorce law to have the law mirror what the Supreme Court has used to define joint legal custody, that being making major life decisions for the children. Further, one of the important elements set forth in statutory and case law regarding custody, I think, is missing from this law when it comes to deciding custody issues and a parenting plan, that being a child's interruption or maintaining of a child's existing relationships. A lot of children that are going to be the subject of these parenting plans have step siblings. And I think that that should be considered in drafting a parenting plan, the children either being away or with those other siblings. The bill says that under temporary orders there should be one primary residence designated in every temporary order. I think that's wrong. I think if parties want to have a dual residence, if they want to share joint physical custody of their children, they should be able to state that at on the temporary order as well. The bill makes some changes to 42-364, and that's the one issue I think I'm here as an opponent on. I think that Nebraska needs to seriously consider creating a presumption that parents should be given joint, legal and physical custody of their children, absent some showing that that's not in the child's best interest. For a while we had the Tender Year's Doctrine, and the Legislature acted and said that that should be abolished. The Legislature continued to act on this vein and said, that gender should not be a factor in determining custody. The Legislature continued to act in this vein and said that even when parents don't agree to joint, legal and physical custody a court has the ability to order it. It's still not enough. There is still a presumption, typically in favor of mothers for primary custody. And I think it's wrong. I think it's harmful to children. I don't think that we should legislate for the minority of situations, I think we should legislate for the majority of situations and provide protections for the minority. And so I'd ask this committee to seriously consider those changes that this bill makes to 42-364, specifically paragraph 5. And I would urge this committee to amend the bill to provide a presumption in Nebraska for joint, legal and physical custody. I appreciate your time. Are there any questions? [LB554]

SENATOR ASHFORD: Any questions? Yes. [LB554]

SENATOR LATHROP: Mind if I ask a few? Thank you. Amy, thanks for being here, and I appreciate your input. And you obviously have a lot of experience in this field, so I want to ask you a few questions. You said you had a concern about and thought the bill

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

Judiciary Committee
March 08, 2007

should create a presumption in favor of joint custody. And the question I have about joint custody is this, if we start out with a presumption and joint custody, the bill doesn't favor mom over dad, it just favors one of them being...running the show. [LB554]

AMY SHERMAN GEREN: Correct. [LB554]

SENATOR LATHROP: Okay. If we have two parents and they both make \$30,000 a year, and we create joint legal custody, in the child support calculations is just going to be a wash? [LB554]

AMY SHERMAN GEREN: If they make equal incomes and they share time with the children equally, then there would be no child support either direction. [LB554]

SENATOR LATHROP: Okay. Why buys the shoes, and who buys the shirts, and I mean ultimately isn't there kind of a problem? At some level you've got to have somebody that's going to be in charge of doing that, or they're going say, no, go ask your mom, no, go ask your dad; no, go ask your mom. And then the kid never gets clothes or... [LB554]

AMY SHERMAN GEREN: I think the trial courts are already handling that issue in joint legal custody situations. They're apportioning, okay, if there's a major expense associated with the child, it's not particular to one home or other. Like hockey gear, you know, you're not going to have two sets of that. Then the parties will split the costs associated with that. So I think our trial courts are already handling that issue and handling it pretty effectively by saying, okay, if there are expenses for the children that are not particular to one home, then those expenses should be divided. [LB554]

SENATOR LATHROP: Okay. Now my second question for you, and that is, when you have joint legal custody, are you seeing some people, and I'm not saying...I know you've said you do 60 percent fathers, and 40 percent mothers. I'm not talking about one gender or the other. But do you see some people say, I want joint legal custody, because they got their eye on the child support calculation? That's got to be a problem. [LB554]

AMY SHERMAN GEREN: With respect to physical custody, yes. I mean I think the bill is correct in that you got to tie discussions about custody with the discussion about the calculation together. People have to be able to talk about that all together. And it's occurring where one party, in order to maintain a lifestyle that they want, is demanding sole physical custody, even when it's not in the child's best interest. Of course it's going to be detrimental to one party to suddenly be, for instance in a marital home that he or she can't afford to maintain without a sufficient level of support. But there are ways that we could deal with that. Provide for some, you know, temporary time period so that there is, you know, basically you have to take two people say, okay, we have X-amount of money but now we have two houses. What's best for our kids? Well, we both want to

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

Judiciary Committee
March 08, 2007

see them as much as we possibly can. How can we keep you in this house to maintain the children's relationship with their friends and their school mates, and I can still live and provide a place where they can come and spend time with me, you know. You got to divide the money up, just like you're dividing the time up, so that everybody has the best situation available for the children in light of the bad situation, that being a divorce. [LB554]

SENATOR LATHROP: So you see it as an issue of one parent wanting sole custody so they can get more child support. The other side of that is that we could have somebody insisting on joint custody so they don't have to pay anything to the spouse that's buying the shoes, and buying the...spending most of the money. [LB554]

AMY SHERMAN GEREN: Without a doubt, both of those situations happen. And we need to provide an incentive for parents to give their children as much time as possible with both parents. And if that means being creative with the finances, then we have to be able to figure out a way to do that. [LB554]

SENATOR LATHROP: Okay, thank you. [LB554]

SENATOR ASHFORD: Amy, if I could just follow. And I do remember coming to your house. (Laugh) [LB554]

AMY SHERMAN GEREN: Stopped you in the driveway... [LB554]

SENATOR ASHFORD: Yeah, when your husband and kids, were your kids there, too? [LB554]

AMY SHERMAN GEREN: Yeah. [LB554]

SENATOR ASHFORD: Yeah, okay. Actually, this is helpful information. I know that you have some interest in LB76, and I think your comments on the financial part of this are important. And I thought in the mediations that I've done that that can be a stumbling block. If there is a way of getting into those issues through the process, it does make sense. So I think those are very helpful comments. And I've read through a lot of your comments that you've sent in, and it's very helpful. [LB554]

AMY SHERMAN GEREN: Thank you. [LB554]

SENATOR ASHFORD: So we'll be taking all those into consideration. Thank you very much. [LB554]

AMY SHERMAN GEREN: Thank you. I should say I am a proponent of mediation in divorce cases. [LB554]

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

Judiciary Committee
March 08, 2007

SENATOR ASHFORD: Yeah, you seemed like kind of a neutral opponent. [LB554]

AMY SHERMAN GEREN: And I wasn't sure how to fill out the form. But both LB76 and LB554 deal with shared, you know, with physical and joint custody. And I think those are important issues. Thank you. [LB554]

SENATOR ASHFORD: Right, right. Thank you very much. Any other opponents? [LB554]

JOHN CURLO: My name is John Curlo. I'm from Ashton, Sherman County, center part of the state. I do not agree with LB554 because I have been through mediation to try and get time with my children that was taken away from me in court. Every idea I had was excused by my ex-, as she said it would not fit into her schedule. The mediators were very one-sided and agreed with everything she said. When a parenting plan finally was agreed upon, my ex- refused to sign it or follow it. And I also would like to address the issue of how easy restraining orders are to obtain when false information is given. My ex- has now falsely placed five of them on me in our last four years since we've been divorced; uses them as a weapon to keep me from the children. And she brags to me and my children that her attorney gives her this advice to falsely create these restraining orders to take the courts eyes off of her. You've addressed that I need to be a responsible parent; I've tried, and I want to be, but the court and the state denies me. And I think there are lots of loopholes that need to be filled, to go back and get after these attorneys that are giving this kind of advice out just to benefit their client. This happens every day, day after day, just to benefit one parent, the one that's given custody, and it needs to stop. That's all I have. [LB554]

SENATOR ASHFORD: Thank you, John. Any questions of John? Thank you. How many opponents do we have? Okay. [LB554]

JEANELLE KLEVELAND: Thank you. My name is Jeanelle Kleveland and I'm an attorney here in Lincoln. And my primary work is in divorce and family law, and I've been practicing for about 23 years. I'm opposed to this particular bill. And I agree with some of the things that Mr. Kubr said as far as the growing of the bureaucracy. With all due respect, Senator Ashford, I don't see how it isn't growing the bureaucracy or giving people choices if we are saying that...if the state is going to say that you must go through this procedure, and you must pay double the filing fee for getting a divorce, if we are going to be passing this bill. The current filing fee for a divorce is \$104. As I understand this bill, we're now going to increase it another \$100. We're going to be asking that on a modification that it would be a \$100 filing fee, instead of \$15, it would increase 7 times. Those are small issues, really, because then we're going to be requiring that people go to the mediation and paying for that as well. Paying for extra parenting classes, paying for lots of things. The way I read this bill, it sounds more like

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

Judiciary Committee
March 08, 2007

we're trying to turn the district court into a juvenile court, where we are going to be micromanaging to such an extent people's private lives. And that's why I'm opposed to this. This bill seems to propose or presume that the parents are unable to make these decisions themselves. I heard a number of people that were proponents for this that were up here saying, we want people to have choices. And yet this bill says you don't have a choice, you must go through mediation; you will be court ordered to go through mediation, you will be court ordered to go through certain parenting classes because we think that that's going to be a good idea for you. With all due respect, I don't think that we should be presuming people aren't going to be able to make good decisions. The bulk of the cases that I handle people do make good decisions. Courts are able to manage and to deal with some of the issues on a daily basis that you see in this bill as the problems. We do have, I suppose, what you would be calling as a parenting plan. We sometimes have extremely structured agreements on what the visitation will be. Sometimes we have very loose arrangements because people can get along. Many times we have a loose agreement with, if you can't agree, then this is what it is. So we manage to do that. This bill also, and I thought this was kind of relevant on the support part, under this it says child support, day care would still be ordered under this, child support. Now parents are going to be ordered, I think, to pay for part of the education and extracurricular activities. And I think that that's even an extra burden than under the high amount of the child support guidelines for many people would cause even a further burden. I know this was modeled on California. And from what the other people said, my paralegal and her husband are both from California, have been through that kind of mediation, which they both regarded as a joke that was 15 minutes of mediation before going into court. [LB554]

SENATOR ASHFORD: Thank you, Jeanelle. Any questions of Jeanelle? [LB554]

SENATOR LATHROP: Can I ask you just a couple? You practice primarily in Lancaster County? [LB554]

JEANELLE KLEVELAND: Yes. However, I do practice in the surrounding counties, too, but primarily here. [LB554]

SENATOR LATHROP: Do you get up to Douglas County? [LB554]

JEANELLE KLEVELAND: Very rarely. [LB554]

SENATOR LATHROP: Okay. I would expect that's probably true, because most of the time we don't tread on one another's turf. [LB554]

JEANELLE KLEVELAND: No, we just don't want to have to go that far, or... [LB554]

SENATOR LATHROP: When it comes to divorce stuff, I'm sure that's true. It sounds like

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

Judiciary Committee
March 08, 2007

your opposition is with mediation, and you don't have any faith that it's going to resolve issues that couldn't have been resolved without it. [LB554]

JEANELLE KLEVELAND: I think that sometimes these issues can be resolved without mediation. And I think that mediation is not an evil thing. But I do not think that it should be mandated. And I do not...you know, we are a conservative state. And we just don't like everybody telling everybody, you know, interfering even further on these private matters, and that's how I see it. [LB554]

SENATOR LATHROP: Do you have any mandatory mediation in Lancaster County right now? [LB554]

JEANELLE KLEVELAND: No, we do not. [LB554]

SENATOR LATHROP: Do you agree that if parties can agree on something without a mediator, they can arrive at the mediator's doorstep and say, we've worked it out? [LB554]

JEANELLE KLEVELAND: No, I don't. Because I don't think they should have to go to a mediator and pay that mediator to tell them, by the way, we've worked this out. It's an extra expense, it's an extra person that's involved in this whole process that I think is an unnecessary thing. And I think that we should be able to hire the attorneys, I am glad that the provisions say that we could have an attorney present when people are signing away their rights is good. [LB554]

SENATOR LATHROP: Well, then to summarize your testimony, you oppose the idea of mediation being required, and you also oppose the idea of the classes that are mandated? [LB554]

JEANELLE KLEVELAND: I oppose having extra burdens placed on people. Do I think that the classes or mediation are bad? No, I think they can be available and voluntary, and there's nobody that can't go to these classes without, you know, on a voluntary basis. But they should not be required to by the court. [LB554]

SENATOR LATHROP: Do you have them in Lincoln? [LB554]

JEANELLE KLEVELAND: Yes, we do. [LB554]

SENATOR LATHROP: Are they mandated in Lincoln? [LB554]

JEANELLE KLEVELAND: The parenting classes are mandated in Lincoln, if prior to the filing a motion to set the case for trial in a contested custody case. Do I think they're helpful? No. [LB554]

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

Judiciary Committee
March 08, 2007

SENATOR LATHROP: Okay. That's all I need to know. Thank you. [LB554]

SENATOR ASHFORD: Thank you, Senator Lathrop. Next opponent. [LB554]

LES VESKRNA: (Exhibit 11) Good afternoon. My name is Les Veskrna. I'm the executive director of the Nebraska Children's Right's Council. And I'm speaking on behalf of our organization, which includes mothers and fathers. I could easily have testified in favor of LB554. But there are a couple of things that are hurdles for me. My position on this legislation comes from the desire to see that each and every parent is treated fairly and that we must reduce or eliminate a lot of needless adversity and gamesmanship within our current child custody system. My first point is in regard to Section 15-1, which requires custody and parenting time to be made consistent with protective orders. I will absolutely admit that protective orders are without question an essential tool in domestic violence situations. But my concern here is that they are also a silver bullet or trump card, they are not uncommonly used by one parent to circumvent or sabotage shared parenting efforts by the other parent. The following is a quote about protective orders taken from "Family Law News", which is the official publication of the Family Law Section of the California bar, and I've given you a copy of this. Protective orders are increasingly being used in family law cases to help one side jockey for an advantage in child custody. Protective orders restricting personal conduct, stay away orders, and residence exclusions are almost routinely issued by the courts in family law proceedings, even when there is relatively meager evidence, and usually without notice to the estranged person. The "Illinois Bar Journal" calls protective orders part of the gamesmanship of divorce. In December 2005, the national media reported a story about a judge in New Mexico who issued a restraining order against TV talk show host David Letterman. And I've included a copy of The Albuquerque Tribune article, which this was reported in. A woman claimed that Letterman used code words and gestures during his broadcast to show her that he wanted to marry her and train her as cohost. Of course, the restraining order was eventually dismissed. It's a funny story, but this demonstrates a rarely discussed problem that it's very easy to get a protective order, based on false allegations. I'm particularly concerned about the extremely low or nonexistent standard of proof with ex parte residency exclusions. And I've got several stories to illustrate how this commonly is misused with the experience of several fathers. [LB554]

SENATOR ASHFORD: Les, let me tell you, we've got this information and it's helpful. So I would ask you to sum up, if you would. [LB554]

LES VESKRNA: Okay. Actually, my hope is that all this looks kind of onerous. And my hope is that once people see what hoops they have to jump through they might reconsider getting a divorce. (Laughter) But there are other people who are going to look at ways to circumvent the process. And I just urge your caution because protective orders can be used to circumvent the process. [LB554]

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

Judiciary Committee
March 08, 2007

SENATOR ASHFORD: Thank you very much. Okay. Last opponent, I think it's the last opponent. [LB554]

JEFF BETTENHAUSEN: Chairman Ashford, members of the Judiciary Committee, for the record, my name is Jeff Bettenhausen. I am codirector of Father's Right's of Nebraska. We are an organization that's trying to promote fathers maintaining a loving and consistent relationship with their children after separation and divorce. I'd like to say that I applaud Senator Flood for the effort that he's put into this bill. I think it's something that certainly needs to be looked at and I applaud him for that. But we don't believe that two parties can walk into a mediation process with one party having a great advantage, and that advantage is if there's no agreement in the mediation process, then the mediation process is likely to go back to the judge, of course, and in most cases with the judges discretion and past history of Nebraska sole custody will be granted, and the father will be left out as a weekend visitor. And I think this body owes it to the children of this state to do what we can to ensure that children have the love and support of both parents after separation and divorce, meaning active and continued involvement. When those parents are absent, they're not abusers, I think most people in Nebraska are good, honest people, they're not abusers, and those people, those children need those parents in their lives. Our prisons are flooded with kids that grew up without adult role models. We've created programs like mentoring programs and so on to alleviate some of that stress. But what better mentor than a parent. And I believe that we owe it to the children to ensure that. And the only way I believe we can do that fairly and equally is to make joint shared parenting the default. There will be plenty of other opportunity in cases where abuse exists to grant one party sole custody. But in the cases that that is not present, I believe you have to give the children the benefit of the doubt and allow them continued loving relationship with both parents. [LB554]

SENATOR ASHFORD: Thank you, Jeff. Any questions of Jeff? Thank you, Jeff. Do we have any neutral testifiers? Okay. Come on up. [LB554]

TRACY GRINSTEAD-EVERLY: Good afternoon, senators. My name is Tracy Grinstead-Everly, G-r-i-n-s-t-e-a-d - E-v-e-r-l-y, and I am an attorney who is the director of the Court Watch Program for the Domestic Violence Coordinating Council of Greater Omaha. The DVCC entails representatives from law enforcement, attorneys, prosecutors, survivors, advocates, probation officers, educators, elected officials, medical professionals, and others and it is in part that reason why we are giving neutral testimony. I am testifying to the mediation portion of LB554 and support many of those provisions, and yet have some reservations. We applaud Senator Flood's opportunity to give voice and concern to domestic violence victims and advocates and the infusion of domestic violence safety provisions within the bill. We also applaud the comprehensive definition of domestic intimate partner abuse that reflects the experience of victims, and is based on national best practice models, such as the Power and Control Wheel. We

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Transcriber's Office

Judiciary Committee
March 08, 2007

also appreciate the fact that the training and screening tools for mediators, attorneys, and judges will not only be present, but will have a part in creating those by domestic abuse experts. It is also important to remember that through that screening process victims may be educated and be able to put a name to the problems that they see in their relationship. Mediation has been known to empower some victims much more than traditional litigation. And this bill still focuses on the best interest of the children, recognizing that children are not safe if victims are not safe. I also support the amendments which would remove the mandatory reporting of domestic intimate partner abuse, that Social Security numbers not be disclosed publicly, and that attorneys and advocates can both be present in the mediation process. However, there are at least two options or two points of concern that we have. The joint custody definition has been brought to my attention, that can be a concern for some domestic violence victims. While they may agree to joint custody under some circumstances, mostly likely out of fear, they could later be coerced into all decision-making and then not have an opportunity for litigation. The other option would be the possible relitigation of every single issue because of the imbalance of power and control. Another concern that we have regards the opt out condition. The American Bar Association's Commission on Domestic Violence has made a resolution that recommends that court mandated mediation include an opt out prerogative in any action in which one party has perpetrated domestic violence upon the other. Recognizing the specialized ADR process that is in that, if the victim doesn't disclose or lead the mediation to have any indication that there is domestic violence in the educational meeting, they would be forced into a joint session, in which case they would either be terrified and sometimes coerced, or they would be too scared to even show up for the session, which under this bill would then be reported to the court. I believe in conclusion that this is a bill with good intention, that has some negative, unintended consequences for victims. And I appreciate the opportunity to voice our support and concerns and would entertain any questions. [LB554]

SENATOR ASHFORD: Thank you, Tracy, very much. Deborah, I see you're the last neutral testifier. [LB554]

DEBORA BROWNYARD: (Exhibit 12) Senator Ashford and members of the Judiciary Committee, my name is Debora Brownyard, B-r-o-w-n-y-a-r-d. I'm here to testify in a neutral position of the Nebraska Supreme Court. I'm the director of the Office of Dispute Resolution. What is being passed out are two documents. One is...the top document is called the "Child-Centered Family Justice Model." This has a list of six principles that the Office of Dispute Resolution Mediation Center's operate under in terms of providing mediation in parenting cases throughout the state. As you may know, the other document is the ODR Compendium Report. And if you were to look at the inside back page, on page 10, there is a map of Nebraska which shows how the state is served by the six ODR approved mediation centers. And these have been in place in 1992. It is...my office approves these centers, these are nonprofits. I also, my office provides

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

Judiciary Committee
March 08, 2007

annual infrastructure grants to each of those centers at \$45,000 per year per center. I'm here because in looking at this bill, LB554, part of my role was to assess what kind of fiscal impact this may have on the Supreme Court Administrative Office as well as the ODR approved centers. And according to court statistics, the number of dissolutions and modifications in the state is close to 10,000 filed per year. And guesstimating that if even 25 percent of those end up needing to go to ODR approved center mediations, there will be a fiscal impact, in order for those low-income and indigent parties to access a mediator. So according to my figures, the fiscal impact is around \$875,000. That's why the bill provision for the docket fee is one possible approach to help defray the cost, in order to provide access to the mediation for the indigent and low-income people. I'm here to answer any questions, be happy to do so. [LB554]

SENATOR ASHFORD: Thank you, Debora. Senator Lathrop. [LB554]

SENATOR LATHROP: Just a quick one. You said that the financial impact or the fiscal impact may be as high as \$800,000. When Mr. Galvin was here previously he told us that they were resolving like 1,000 out of 1,200 cases up in Douglas County. I mean, we could almost save a district court judge that way, couldn't we? And they're a lot more than \$800,000. [LB554]

DEBORA BROWNYARD: Yeah, right. And just talking, I remember one of the judges up there believed that, since that office started doing these kinds of cases, that most likely reduced the modifications by at least 50 percent. [LB554]

SENATOR LATHROP: So when we look at the cost, we really are netting a savings by mandating the mediation. [LB554]

DEBORA BROWNYARD: Right. That would be my belief. [LB554]

SENATOR LATHROP: Okay. Thank you. [LB554]

SENATOR ASHFORD: Senator Chambers. [LB554]

SENATOR CHAMBERS: I'm late, but I'm glad that I heard you say something that always causes my antenna to stand straight up. You mentioned something about fees. [LB554]

DEBORA BROWNYARD: Yes. [LB554]

SENATOR CHAMBERS: What kind of fees are in here? [LB554]

DEBORA BROWNYARD: If you were looking at the amendment, Senator,... [LB554]

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

Judiciary Committee
March 08, 2007

SENATOR CHAMBERS: You don't have to express...I mean... [LB554]

DEBORA BROWNYARD: Okay. My understanding is that there is a \$100 additional filing fee for filing of dissolutions and modifications. [LB554]

SENATOR CHAMBERS: And that's how they're going to fund this? [LB554]

DEBORA BROWNYARD: Yes. [LB554]

SENATOR CHAMBERS: (Laugh) Excuse me. I don't approve of increases in filing fees. If something is of societal benefit, it should come out of the General Fund. And the courts are not going to start providing cash register justice where you use fees attached to actions that people must place in order to get into the courtroom and the doors of the courthouse are supposed to always be open. Not having been here, I wasn't able to make this comment. But I want all those in the room not to be blindsided. I oppose bills that raise fees. So they're going to have to get this past me. [LB554]

SENATOR ASHFORD: Thank you, Debora. Thanks. [LB554]

DEBORA BROWNYARD: Thank you. [LB554]

SENATOR ASHFORD: Speaker Flood, do you wish to close? [LB554]

SENATOR FLOOD: I'll make this brief. Thank you, Mr. Chairman and members of the committee, for your consideration of this issue. Just to recap a number of the statements, I want to, first of all, thank the proponents and the opponents and those in a neutral capacity. I think everybody's come at this. And this has been a much better hearing than we've seen in the last couple of years. We're focused on solutions. The comment was made that, is this really a district court, or are we going back to a juvenile court standard here? And I think the standard in juvenile court is what's in the best interest of the child. I'd rather be focusing on our children than on fighting over the retirement account and the money transferred each month. Let's talk about how we're going to make things work. And what I think is nice about a mediation is that the guy that works overnights, on third shift, and the gal that works as a nurse from the 6 a.m. to 2 p.m. shift, they sit down to this mediation, and instead of talking about every other weekend, Friday at 7 to Sunday at 7, he says, well, you know what, my schedule is such that I could take him from Sunday, Monday, Tuesday, and you can have him Wednesday, Thursday, Friday; let's talk about a solution rather than a default schedule as we've seen in Wilson v. Wilson. The comment was made about classes, and you don't see any value in classes. I see a lot of value in classes. I see a lot of value in sitting there saying...with a teacher telling you that your kids are absorbing every time you say that nasty word or call your ex-spouse that nasty name, that has an impact on those children. I don't think there's anything wrong with that. Mediation does not force

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

Judiciary Committee
March 08, 2007

people to a decision. Under the Uniform Mediation Act, the mediators role is to get mother and to get father to agree on certain shared interests, and to go forward, and know where they disagree, and to have a safety plan, and a plan for their kids, and a plan for their education. So I'm not going to apologize for attempting to get parents to talk. There is some suggestion that this is court interference in the lives of Nebraskans. In my belief, the court is simply saying, one more time, you two parents need to see if you can work it out before you come to court, before we make a decision one way or the other. Dr. Veskrna mentioned protection orders. That's a sticky subject. They're not really on the table with this bill. I haven't done much with protection orders, and I know that's an interest of his. And finally I think, if you look at mediators across the state, and it seems there's a few that have had a bad experience. But a good mediator, and a lot of them are very good mediators, treat people fairly. And I think that is one of the key reasons we should look at this arrangement. Finally, with regard to the increased cost, yes, I did increase the docket fees, propose to increase the docket fees in the amendment. I did it because I didn't want somebody that was low-income or unable to afford to make the filing fee, I didn't (a) want them to not have a mediator. And I know Senator Chambers has a history of fighting very hard for making sure that people don't fund the justice system through the process. But in this case, people that don't have those funds can apply in forma pauperis to receive a waived court fee as a filing for divorce, there's a procedure for that, and this way I can guarantee them a mediator. And quite frankly, I want this bill to pass and I'm trying to navigate it through the waters to see that we can get from point A to point Z. It was not done intentionally and to try and subvert the process. But my interest here is making sure low-income families do get a mediator and someone that's trained. Thank you. [LB554]

SENATOR ASHFORD: Thank you. Oh. [LB554]

SENATOR CHAMBERS: Just one question, I think. Senator Flood, I'm sorry I wasn't able to make it here. We had an Exec Session of Judiciary Committee and it threw me late on something I had to do. Is this mediation voluntary? [LB554]

SENATOR FLOOD: You can...well, yes and no, if I may explain? [LB554]

SENATOR CHAMBERS: Sure. [LB554]

SENATOR FLOOD: The parents have to go to a class, mandated class that talk...it's "Parents Forever," and then they have to go to a session where they meet with the mediator, kind of share with them their side. And then they have to go to one session if there's no domestic violence presence in the screening. And at that point they can call it off. [LB554]

SENATOR CHAMBERS: And if a person does not participate, what happens? [LB554]

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

Judiciary Committee
March 08, 2007

SENATOR FLOOD: If a person does not participate, the judge, I'm sure...there's a provision in here where the mediator can say, they chose not to participate in mediation. [LB554]

SENATOR CHAMBERS: Then it's off the table. [LB554]

SENATOR FLOOD: Yes. [LB554]

SENATOR CHAMBERS: Okay. [LB554]

SENATOR ASHFORD: It's not a felony or anything. [LB554]

SENATOR CHAMBERS: Well, I didn't think (laughter). [LB554]

SENATOR FLOOD: They are not forced to go any further. [LB554]

SENATOR ASHFORD: Thank you, Speaker Flood. [LB554]

SENATOR FLOOD: Thank you very much for listening. [LB554]

SENATOR ASHFORD: That closes the hearing. Let's do a little housekeeping here, before we get going any further. This...we have five bills left, and it's 20 minutes of 4. LB...Thank you, Speaker Flood. The next bill is LB413, and that's also Speaker Flood's bill. I'm sorry. How many testifiers do we have on LB413? Okay. The next bill after that is LB47. How many do we have on LB47? All right. LB76. Okay. LB682. And then lastly, LB535. Okay. On the...that's not bad. Yeah, three or four on every bill. Well, that's not bad. We should be just fine on time then to just go through the normal process. So, Speaker Flood, I think we need him again. Let's wait a second, until everybody...LB413, Speaker Flood, welcome back. [LB554 LB413]

SENATOR FLOOD: All right, I'll be brief. Chairman Ashford, members of the committee, my name is Mike Flood, F-I-o-o-d, and I represent Legislative District 19. I want to start out with a hypothetical. Imagine learning that you're about to be a father with someone you've had a special relationship with, only to find out that the mother of the child has decided to give him or her up for adoption. Legally, you rely on your rights under our state statutes to protect your ability to raise the child, but yet that child is whisked away to another state by a set of adoptive parents. Despite doing what you were supposed to do, you were not able to stop these adoptive parents from leaving the state with your child, and you spend years trying to get your child back. Unfortunately, this is not a hypothetical. In my understanding, it is exactly what has happened in a case in Madison County. Matt Ashby, from Newman Grove, Nebraska, is here today. He can tell you his story about how in early 2004 his one time girlfriend had a child and decided to give the baby up for adoption. Mr. Ashby complied with the law and timely filed with the court his

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

Judiciary Committee
March 08, 2007

notice of intent to raise his infant son. But in his case the system failed him. Mr. Ashby's timely notice was met with resistance at every corner, and eventually a Health and Human Services worker in Lincoln gave the prospective adoptive parents the green light to take his son out of the state and abscond to the state of Alabama. In Alabama the prospective adoptive parents have used the legal system to evade Nebraska courts and, with the help of their attorney, essentially keep the child away from Mr. Ashby. Mr. Ashby has gone to court in Madison County, and a judge has issued an order demanding that the prospective adoptive parents bring the child back to the state of Nebraska and give that son back to Mr. Ashby. But thanks to legal wrangling, Mr. Ashby hasn't seen his child in several years and the matter is now in front of the Alabama Supreme Court. LB413 would do three things. First, it would expand the violation of custody offense to include someone who intentionally retains physical control over a child in violation of a Nebraska court order. Second, LB413 provides that if a putative father files a notice of intent to claim paternity with respect to a particular child, that child would not be allowed to leave the state for at least 30 days, which is the period of time during which that dad has to file a petition for custody. And third, LB413 provides that once the petition for custody is filed, the child cannot leave the state until either (one) the putative fathers rights are determined by the court, or (two) the person trying to remove the child submits to the jurisdiction of the court. Had it been the law in 2004, LB413 would have helped Mr. Ashby prevent the adoptive parents from removing his child from Nebraska. His is a sad, sad story that highlights loopholes in our current system. LB413 is intended to close those loopholes. With that, I will be happy to answer any questions that you may have. [LB413]

SENATOR ASHFORD: Senator Pirsch. [LB413]

SENATOR PIRSCH: Thank you, Senator. Now it's my understanding that the child was whisked to Alabama against state law? There was a court order that required the child to stay in Nebraska, stay with the parents? [LB413]

SENATOR FLOOD: There are some folks coming that have a better command of the facts. But it's my understanding that a Health and Human Services worker was advised that they did not know the location or identity or I'm not for sure of the birth father, and a form was signed, and the parents left the state of Nebraska. And the courts in Alabama, it's my understanding, have ruled in his favor, but it's been appealed at every level. And I think the child is well over three years old now, if I'm correct. [LB413]

SENATOR PIRSCH: But in going to Alabama was there a Nebraska law violated at that time or order of a judge in that case? [LB413]

SENATOR FLOOD: Technically, because Health and Human Services signed the form, a criminal provision...I think you could say a criminal act has occurred here. The county attorney of Madison County, to my knowledge, has not filed any type of charges against

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

Judiciary Committee
March 08, 2007

these parents in the state of Alabama. But I should let the folks that are more familiar with it answer. [LB413]

SENATOR PIRSCH: Okay. Well, I'll wait to ask them. [LB413]

SENATOR LATHROP: Senator Chambers. [LB413]

SENATOR CHAMBERS: I was going to wait until you close, but I'll go ahead and ask you. This could apply to a parent, a biological parent, couldn't it? [LB413]

SENATOR FLOOD: I believe this is in our adoption statutes. [LB413]

SENATOR CHAMBERS: The way it's phrased, anybody who deprives...I mean who does this,... [LB413]

SENATOR FLOOD: I guess, this would be...they could, if somebody failed to give the child over for other reasons, intrastate reasons where, you know, the health, safety, and welfare of the child, so maybe that needs to be looked at. But really this was written to...it's not...I did not intend this bill to have anything to do with the bill that was before. It's only intended to try and stop the adoption situation. [LB413]

SENATOR CHAMBERS: Here's what I...maybe I should ask the question this way, if the biological mother of the child were to do this, let's say that the father, the putative father had made it clear that he intended to file these papers, and at that point the mother took the child to another state. Would it apply to her? [LB413]

SENATOR FLOOD: That's not my intent. But reading this language here in subsection (1), I can see your concern. [LB413]

SENATOR CHAMBERS: And that's what I was going to say. I'll wait until you close, because maybe somebody will address it. But you don't have to linger on it, because we can talk later about that. [LB413]

SENATOR FLOOD: I might waive closing, so we might... [LB413]

SENATOR CHAMBERS: Okay, we can still talk later. [LB413]

SENATOR FLOOD: Thank you. [LB413]

SENATOR LATHROP: No further questions? (Laugh) Pardon me, I was reading the bill. [LB413]

SENATOR FLOOD: May I be excused? [LB413]

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

Judiciary Committee
March 08, 2007

SENATOR LATHROP: You may be excused. And forgive me. [LB413]

SENATOR FLOOD: And I would waive closing. Thank you. [LB413]

SENATOR LATHROP: Okay. Proponents? Just as a reminder, when you testify, will you tell us your name and spell your last name so that our clerk can... [LB413]

MATT ASHBY: Good afternoon. I'm Matt Ashby, it's A-s-h-b-y. [LB413]

SENATOR LATHROP: A little louder, if you wouldn't mind. [LB413]

MATT ASHBY: A-s-h-b-y. [LB413]

SENATOR LATHROP: Okay, if you could just talk a little bit louder, it will help me. [LB413]

MATT ASHBY: Okay. Well, I'll start with this. I was to be married in June of 2003, and things took a turn for the wrong. [LB413]

SENATOR SCHIMEK: We're still having trouble hearing you. I'm sorry. [LB413]

SENATOR PIRSCH: If you could speak up a little louder, please. Thank you. [LB413]

MATT ASHBY: Okay. Things took a turn for the wrong. And when I found out my ex-fiance was pregnant, I told her I wanted full custody and to raise him. After I heard of him being born in the news article, I contacted a lawyer to know what my rights were. I had done everything I had needed to under Nebraska law, and yet the Nebraska Department of Health and Human Services let my child be removed from Nebraska. I was awarded full custody back on April 21, 2004. To this day, I have never seen my son, let alone known what he looks like. And I have spent thousands of dollars in legal fees. So to me...and by doing everything right by the book, I should be able to have a relationship with my son and for him to be with me. And I believe that the law should not allow this to happen to another father who is wanting their child. Thank you. [LB413]

SENATOR LATHROP: Thank you. Are there any questions from the committee? Are you represented by these fellows sitting behind you? [LB413]

MATT ASHBY: Yes, I am. [LB413]

SENATOR LATHROP: And they're going to testify? You think so? [LB413]

MATT ASHBY: Yes. [LB413]

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Transcriber's Office

Judiciary Committee
March 08, 2007

SENATOR LATHROP: Okay, all right. I'll ask them the questions I had for you. Thank you very much, we appreciate you being here today. [LB413]

MATT ASHBY: Thank you. [LB413]

SENATOR LATHROP: Dan. [LB413]

DANIEL FRIEDMAN: (Exhibit 13) Thank you, members of the committee. My name is Daniel Friedman, F-r-i-e-d-m-a-n. I'm an attorney at Friedman Law Office, here in Lincoln, along with Melissa Wentlan (phonetic), we represent Mr. Matthew Ashby, the gentleman that just testified. I'm going to confine my comments to Sections 2 and 3 of the bill. As the law currently operates, the Department of Health and Human Services will allow a prospective adoptive couple to remove a child from Nebraska despite the fact that a putative father still has an opportunity to file notice of his intent to claim paternity and obtain custody. In fact, in Mr. Ashby's case he filed well within the time period permitted by the current statute, but the state negligently permitted a couple from Alabama to take Mr. Ashby's son from Nebraska. From what we have learned in representing Mr. Ashby, the state routinely allows at-risk placements in which the adoptive...prospective adoptive couple acknowledges that they may need to return the child to Nebraska. Unfortunately, this form, and I have copies for the committee right here, has proven to be worth nothing. Both Nebraska and Alabama have requested that Mr. Ashby's son be returned to Nebraska, but these requests have been ignored. As it stands now, the Department of Health and Human Services has no mechanism to protect putative fathers. LB413 would protect the fundamental liberties of putative fathers by requiring adoptive couples to wait until a putative fathers opportunity to assert his rights has expired. Without this bill, the Department of Health and Human Services will continue to be able to jeopardize the fundamental constitutional rights of putative fathers by allowing these so called at-risk placements. Be happy to take any questions. [LB413]

SENATOR LATHROP: Are there any questions for Mr. Friedman? Senator Schimek. [LB413]

SENATOR SCHIMEK: Yes, just a quick one. Thank you, Mr. Chairman. How long after this child was born was this paper signed? [LB413]

DANIEL FRIEDMAN: The paper was signed approximately nine days after the child was born. In fact, the paper was signed the day after, I believe, no, I beg your pardon. The paper was signed three days after the child was born, and Mr. Ashby filed his notice of intent to claim paternity and obtain custody, and then five days, I believe, passed in which the state should have known, should have looked to make sure that no one had filed. And then the department permitted the couple to leave Nebraska to go to

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

Judiciary Committee
March 08, 2007

Alabama, even though Mr. Ashby had already filed his notice, had complied with the law to a T. [LB413]

SENATOR SCHIMEK: Thank you. [LB413]

DANIEL FRIEDMAN: You're welcome. [LB413]

SENATOR LATHROP: Senator Pirsch. [LB413]

SENATOR PIRSCH: What is the current status of the case in the Alabama courts? [LB413]

DANIEL FRIEDMAN: The Alabama Supreme Court has agreed to review the case. The Alabama Court of Civil Appeals ruled essentially that Nebraska is the appropriate place to determine custody of the child, but that the Madison County order was not properly registered in Alabama, and that the couple, because they did not receive technical service and process of the Madison County proceedings, did not obtain notice due under Nebraska law. The problem with that position is that Nebraska's version of the applicable statute, this is a different statute, did not require technical service of process, it only required actual notice. When our client obtained his court order that he has custody, the adoptive couple, in Alabama, actually had an attorney in the courtroom that was well aware of the proceedings, yet chose not to enter an appearance. And now they're down in Alabama arguing that they were deprived of notice, when they weren't. That's really an aside to what this bill is designed to do, but it illustrates the problems that Mr. Ashby has had because of the state's negligence in this case. [LB413]

SENATOR LATHROP: Did that answer your question? [LB413]

SENATOR PIRSCH: Just to follow up. In what manner was the state then negligent? This was...could you just list some more (inaudible)? [LB413]

DANIEL FRIEDMAN: Certainly, Senator. In the simplest terms, Mr. Ashby filed the notice of intent to claim paternity and obtain custody that he was supposed to file pursuant to the current version of the statute, and that is in 43-104.02. He obtained notice of the birth of the child pursuant to publication, because what happened is they sent him a certified letter, but it was sent to the wrong address. And the attorney that ostensibly represented the biological mother did not get the green card. And so pursuant to the law, he tried to constructively notify Mr. Ashby of his rights. Mr. Ashby saw the notice in the Norfolk Daily News and promptly filed, well within the time period allowed. I think he had another nine days in which to file at the time he filed his notification. And Mr. Wentlan (phonetic), who is here today, got that filed for him. At least, I believe, five days passed. So the state of Nebraska, before the applicable office gave permission, failed to check the department where these are filed to see whether

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

Judiciary Committee
March 08, 2007

any putative father had even filed, and they just dropped the ball. And the state worker, who has been deposed and the lawsuit that has been filed, tried to collect some compensation from Mr. Ashby, she testified that she basically just didn't go to the Vital Statistics Department to check, and moreover that it wasn't her job to check. In fact, she testified that it's really the job of the attorney that is presenting the department with these packets for these adoptive children to represent whether notice has been given or not. And those people really are...they have a conflict of interest. And it shouldn't be their job. It's the state's job to make sure that people's rights are protected, and they just failed to protect Mr. Ashby's right, when they should have known that that he had filed his notice and wanted to raise his son. Now we have a situation where an adoption has tried to take place and a situation where there never should have been an adoption. You should only have an adoption if a parent can't raise a child or doesn't want to.

[LB413]

SENATOR PIRSCH: I would think that this is a fairly common occurrence. Being that that's the case, is that the system that they rely on then you're saying, the state of Nebraska? [LB413]

DANIEL FRIEDMAN: Well, I'm not sure I really understand your question, Senator?
[LB413]

SENATOR PIRSCH: Let me clarify it somewhat. Cases where there's a child born out of wedlock and where the mother of the child then decides that she wants to give the child up for adoption. So this issue of notice comes into play on a fairly frequent basis, I would think. [LB413]

DANIEL FRIEDMAN: Yes, it does come into play frequently. But as it stands, hardly any putative fathers actually intend to step forward and raise their children and father their children. So as a matter of practice, even though these putative fathers have these fundamental constitutional rights to father their children, most of them don't care. And so the state has never really gotten in trouble. And the state recognizes that these putative fathers still have an opportunity to come to the department and assert their rights and try and go before a court and get paternal rights. And that's why they developed this at-risk placement. But the at-risk placement is no good. This couple went to Alabama, they signed this document, their attorney signed the document. But there is no mechanism to enforce the document. [LB413]

SENATOR PIRSCH: I see. You've cleared up one of my questions. Thank you. [LB413]

SENATOR LATHROP: Any other questions? Dan, could I ask you one? It sounds like we have a bill, which happens from time to time, that is the result of somebody's particular misfortune. And here it's obviously a sad situation. But if there had not been carelessness, as you've described it, and I'm using your words and not making a

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

Judiciary Committee
March 08, 2007

judgment, but if HHS had done what they were supposed to do under existing law, would we need this? [LB413]

DANIEL FRIEDMAN: Well, I think so, because the HHS worker wasn't entirely clear. On the one hand, she testified that she didn't go to check Vital Statistics. But elsewhere in her deposition, she testified that it wasn't her job to go to Vital Statistics, that that was someone else's job. And the reason this bill is absolutely critical to prevent this from happening again is because of this at-risk placement procedure, wherein the state allows these children to be taken from Nebraska, even though a putative father has exercised his rights. So the state's institution... [LB413]

SENATOR LATHROP: But if they knew that he'd exercised his rights, according to the procedure that's in place today, they wouldn't have allowed him to do that, would they? [LB413]

DANIEL FRIEDMAN: Yes, if...the ICPC worker testified that, had she known that he had done what he did, then she wouldn't have allowed this to take place. However, you would think that based on the way the law is currently written that this wouldn't have happened. But what you have is HHS, through their own bureaucratic regulation, has created this at-risk placement. So this bill is really designed to eliminate the at-risk placement procedure and prohibit this type of thing from ever happening again, and prohibiting HHS from writing a regulation that tramples the constitutional rights of putative fathers. [LB413]

SENATOR LATHROP: How much more time...obviously, he wanted to raise his child according to the testimony we heard today. How much more time are we putting into the process for those people that don't have any interest in stepping up to the plate and being the father and perfectly willing to have their child be adopted by somebody else? [LB413]

DANIEL FRIEDMAN: Well, if...if...not much time at all. If they had waited... [LB413]

SENATOR LATHROP: Thirty days? [LB413]

DANIEL FRIEDMAN: Less. I think it's just... [LB413]

SENATOR LATHROP: Okay. [LB413]

DANIEL FRIEDMAN: It's just the amount of time after the last published notice. If they get a green card received, then it's just a few days after...the way the law is currently written, it's five days after receipt of the notice, or within five business days after the last date of any published notice. So if any known putative father actually returns a green card, and five days pass, then the statute would permit the department to allow the child

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Transcriber's Office

Judiciary Committee
March 08, 2007

to be taken from the state, because the putative fathers rights would have been extinguished. If no green card is received and they publish notice, it's just five days after the last notification. And Nebraska is a state with one of the shortest time periods for putative fathers to come forward and file; in a lot of states it's 30 days, in Nebraska it's 5 days after the last notice is received, either published or certified mail, whichever is later. [LB413]

SENATOR LATHROP: Okay, thank you. [LB413]

DANIEL FRIEDMAN: Thanks. Thank you. [LB413]

SENATOR LATHROP: This is proponents on LB413. Any other proponents? Any opponents? [LB413]

SEAN BRADLEY: (Exhibit 14) Good afternoon, senators. My name is Sean Bradley, B-r-a-d-l-e-y. I'll have to tell you, I was quite relieved actually to hear Senator Flood say that this bill is intended only for adoption cases. As I mentioned in my previous testimony, I am an attorney with the YWCA Omaha, so I tend to read everything in terms of how does it affect my client's, domestic violence victims? And I also heard Senator Chambers discuss a little bit about how...talking about perhaps some of the other consequences that had come from a bill like LB413. And I think there are some real concerns there. First of all, trying to piece together the story that I've been hearing from the back of the room, I'm not so sure that this statute would really do anything to correct the situation that we've heard about. Perhaps looking at some of the regulations of HHS, or perhaps something that is much more specific than this statute is. But as this statute stands, a woman who is unmarried and gives birth to a child in Nebraska, who is a domestic violence victim and needs to flee for her safety can't. Not only that, she can't go to court and ask the judge to allow her to flee, because this statute would not allow that to happen. Perhaps the most remarkable thing about this statute is it seems to try to carve out an exception to the general liberty that we all enjoy, which is that you're not going to be subject to a state court, or any court, you're not going to be subject under personal jurisdiction, unless you volunteer or perform some voluntary act that would submit you to that jurisdiction. This LB413 says to unmarried women who have a child in Nebraska and where some person says I think I'm the father of that child, again it hasn't been adjudicated yet, now she can't leave unless she submits to the personal jurisdiction of the court. She is coerced into submitted to the personal jurisdiction of the court. I've heard the testimony here before, and my heart goes out to the young man from Norfolk. I just don't think that LB413 would solve his problem, and certainly it would create so many other problems, especially for domestic violence victims, that it would be simply inappropriate to advance this bill. And I would be happy to take your questions. [LB413]

SENATOR ASHFORD: Any questions? I didn't know Suzanne was your mother, until

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

Judiciary Committee
March 08, 2007

she just told me. I can understand why you're in the field of work you're in. [LB413]

SEAN BRADLEY: Yeah, we just seem to meet up here, more often than family dinner. [LB413]

SENATOR ASHFORD: Okay, thank you. [LB413]

SEAN BRADLEY: Thank you. [LB413]

SENATOR ASHFORD: Any other opponents? Neutral? Good afternoon. [LB413]

TODD RECKLING: (Exhibit 15) Good afternoon, Senator Ashford and members of the committee. My name is Todd Reckling, R-e-c-k-l-i-n-g, and I'm the administrator for the Office of Protection and Safety for the Health and Human Services System. I am here today to testify in a neutral capacity in regard to LB413. I'm going to jump around to save some time. I'd like to just point out that by state statute, Nebraska is a member of the Interstate Compact on Placement of Children, commonly known as ICPC. The compact is between all 50 states. HHS thus has responsibility as well as authority to approve or deny compact requests for children placed into or out of Nebraska. And you can see on the page, examples of the activities that must occur for a child to enter or leave a state. Given existing Nebraska statute, current HHS practices denial of the request for removal of the child from Nebraska for purposes of adoption if (1) a legal fathers rights have not been relinquished or terminated by a court; or (2) the ICPC Office has knowledge that an alleged father has filed an intent to claim paternity and the 30 days in which he can file for custody have not expired. HHS would approve the adoption placement outside of Nebraska if HHS has no knowledge of a fathers filing a claim for paternity, and the adoption family completes the legal risk statement. That legal risk statement is a document in which the adoptive parents verify their awareness of the alleged fathers right to claim paternity and request for custody, and their agreement to return the child to Nebraska if the father should assert his rights and be given custody by the court. If LB413 becomes statute an alleged father were to file a claim of paternity and request for custody ICPC approval for placement of the child outside of Nebraska would not be given by HHS until the court decision, or until the adoptive family was to submit itself to jurisdiction of the Nebraska court. LB413 does not define what submitting itself to the jurisdiction of the Nebraska court means or how that would be done. On one hand LB413 could provide additional protections to the father, mother, adoptive parents and the child by avoiding a situation in which the court removes the child from adoptive parents and places with the father who is a stranger. However, on the other hand, given the time it takes to obtain a hearing date, the adoptive families residence in another state, the child likely would be in a temporary foster home for months until the custody decision is made. The cost of foster care would be borne by the private agency or adoptive family since the child would not be in HHS custody. A few children impacted by LB413 would be in HHS custody. The majority

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

Judiciary Committee
March 08, 2007

would be children placed by the mother for adoption in another state, including a child she is placing with a relative. Some would be children in custody of private adoption agencies. We estimate that the number of affected children would be approximately 50 a year. It should be noted that of the ICPC cases that HHS has been involved with over the last ten years, we know of only two situations in which the alleged father has filed a claim of paternity and petition for custody. Thank you for this opportunity and I look forward to answering any questions. [LB413]

SENATOR ASHFORD: Any questions? Yes, Senator Schimek. [LB413]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. The next to the last sentence here, where you said it should be noted that over the past ten years you know of only two situations like this. Is this one of those two? [LB413]

TODD RECKLING: Yes, it is. [LB413]

SENATOR SCHIMEK: How was the other one handled? [LB413]

TODD RECKLING: I don't have that information today, but I'd be more than happy to try to get additional information. [LB413]

SENATOR SCHIMEK: Did the child get taken across state lines to another state? [LB413]

TODD RECKLING: I honestly don't know at this time, Senator. But I'd be happy to try to find that out for you. [LB413]

SENATOR SCHIMEK: That's not very many cases. It's not very many cases that we're talking about here. [LB413]

TODD RECKLING: Just the two that we're aware of, yes. [LB413]

SENATOR SCHIMEK: Well, that's one too many, or two too many, I think, to have a situation like exists here. But thank you, thank you for your answers. [LB413]

SENATOR ASHFORD: Thanks, Todd. Let me see, Senator Flood...oh, neutral, I'm sorry. Excuse me. [LB413]

GAIL STEEN: One more. Senators, my name is Gail Steen, S-t-e-e-n. I'm one of the attorneys for the Department of Health and Human Services. I am testifying just to provide some additional information, some of the questions that you have asked. I would first note that the ICPC, the Interstate Compact Placement on Children is not designed to protect fathers rights, that is not the purpose of the act. The act is to ensure

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

Judiciary Committee
March 08, 2007

if a child leaves a state the child is being placed in an appropriate home. The state that is receiving the child knows that there is a child in its state, so that the child can be protected. It is not designed for the parents at all. For the facts of this specific case, permission was given for the child to be removed from the state, then Mr. Ashby filed the next day his intent, then the parents, the adoptive parents left. So at the time permission was given, there was no notice of claim of intent at the time that permission was given. Part of the requirements of the packet is that the attorney must verify that no claim had been entered at that time. He still had time to enter his claim, and he did file his claim in an appropriate time period, but at the time permission was given it was not...there was nothing on record. So the agency is resisting the current lawsuit that indicates the department is negligent. We do not feel that we've been negligent in this action. It's tragic how the situation happened, however, it wasn't due to negligence on behalf of the department. Senator Lathrop, to address your concern about how much more time is added, by my calculations it can add at least up to 60 days. Page 30, lines 13 through 18, indicates that the publication notice would have to run, plus any time for filing the petition, which would be approximately 60 days. For Senator Chambers question about a mother could not leave with a child, I believe that is true. Page 2, lines 7 through 11, and page 4, lines 18 through 22, indicate that the child may not leave, so that the parent cannot take the child out of state if the paternity action is still pending. Senator Schimek, the other case that we were referring to, the child did leave the state, the child was returned to the state, and then the custody was worked out from that point. So this is the only case in which the parent has filed a claim and the child has not been returned. I would be happy to answer any other questions that the senators may have. [LB413]

SENATOR ASHFORD: Yes. [LB413]

SENATOR LATHROP: Can I ask just a couple? So what happened was somebody at HHS apparently looked at the Registry and said, go ahead and take the child, we don't have a filing from the father? [LB413]

GAIL STEEN: The attorney...there's a packet that's presented to the department. In the packet must be a statement that says there is no one listed. So there is someone within Vital Statistics that checks to make sure nobody was listed, and then there is a second person that says, yes, it's okay to leave with the child. So, yes, somebody did look, and there was nothing on file at the time permission was given. [LB413]

SENATOR LATHROP: Okay. But the problem, it sounds like, is that permission was given before the time expired for dad to file the notice. [LB413]

GAIL STEEN: Correct. [LB413]

SENATOR LATHROP: Now, that shouldn't have happened, wasn't...I mean, would you

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

Judiciary Committee
March 08, 2007

agree that even under existing law, that they should not have given permission before the time for dad to file expired? [LB413]

GAIL STEEN: The statute does not address that at all. [LB413]

SENATOR LATHROP: Okay. [LB413]

GAIL STEEN: As I indicated, the statute is designed for placement of the child. It's not designed at all to deal with the fathers rights. [LB413]

SENATOR LATHROP: Okay. And I'm not trying to trick you, I'm just trying to get to the bottom of this bill. So is it a good idea now to make it clear that no one should be given that permission before dad's time to file has expired? [LB413]

GAIL STEEN: And the department has no opposition to that. That's why we're testifying neutral. [LB413]

SENATOR LATHROP: Okay. [LB413]

GAIL STEEN: We have no opposition to that position. [LB413]

SENATOR LATHROP: Okay, so this seems like a good idea, in effect. [LB413]

GAIL STEEN: This would be a solution to that sort of problem. [LB413]

SENATOR LATHROP: Okay, good, good, good. [LB413]

SENATOR ASHFORD: Thank you, that helps. Thanks. [LB413]

GAIL STEEN: Thank you. [LB413]

SENATOR ASHFORD: Senator Flood is not here. So let's go to Senator Hudkins, I believe is next. LB47. [LB413 LB47]

SENATOR HUDKINS: Good afternoon, Senator Ashford and members of the Judiciary Committee. I'm here this week almost as often as when I was on the committee. I'm Senator Carol Hudkins. [LB47]

SENATOR ASHFORD: Well, it's nice you're here. [LB47]

SENATOR HUDKINS: Thank you. H-u-d-k-i-n-s. I am here today to introduce LB47. LB47 provides for criminal prosecution of an individual who obstructs or interferes with the court ordered visitation of a child with the party granted such visitation by an order of

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

Judiciary Committee
March 08, 2007

a court of competent jurisdiction. This bill is an extension of the law prohibiting kidnapping and to some lesser degree the law on false imprisonment. Under both, kidnapping and false imprisonment, the actor restricts the lawful interaction of someone with the rest of the world. However, county attorneys are not interested in pursuing such charges when it is one parent or relative interfering in the parenting time of the other parent, even though the actors behavior is more detrimental to the child and the other parent than the current criminal act of nonsupport. Under the criminal nonsupport law, the government acts as a safety net to provide support for children when there are insufficient financial resources available for the welfare of the child. And we also go after the obligated parent to force payment of the support, as we should. But then when it comes to the emotional welfare of a child and the relationship of that child with its other parent, we sit back and say that it is not up to the government to aid the harmed child and parent. The current law provides for a finding of contempt for the willful refusal to comply with a court order on visitation, or what is becoming known as parenting time. This process is far too slow and ineffective to provide an adequate remedy for the loss that a child and parent experience when the other parent interferes with the relationship between the parent and child. The conduct prohibited in LB47 is detrimental to the well-being of children, and such conduct is of a type that the state routinely finds to be criminal. This extension of the law is reasonable and necessary. Thank you, and I ask that you move LB47 to General File. I would attempt to answer any questions. [LB47]

SENATOR ASHFORD: Senator Schimek. [LB47]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Senator Hudkins, one thing in here kind of puzzles me. I'm not exactly sure what it means. And it's on lines 19 and 20, on page 2, where it says, the person...first of all, it's talking about an affirmative defense to prosecution if the person acted with the mutual consent of all persons having a right to custody to visitation of the child. [LB47]

SENATOR HUDKINS: The way that I see that, Senator Schimek, is that if there is a disagreement on the parenting time, it should be an affirmative defense if everybody agreed originally. [LB47]

SENATOR SCHIMEK: By everybody you mean? [LB47]

SENATOR HUDKINS: Well, whichever parent was involved, maybe the...one parent had custody, a grandparent had visitation, and so everybody must agree. Or if they did agree, then the parent, later, couldn't come back and say, well, I didn't get my parenting time, or the grandparent couldn't say, I didn't get grandparenting time. [LB47]

SENATOR SCHIMEK: Thank you. [LB47]

SENATOR ASHFORD: Your introductions are always so well thought out and

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

Judiciary Committee
March 08, 2007

organized. [LB47]

SENATOR HUDKINS: Thank my staff for that. [LB47]

SENATOR ASHFORD: Well, I think it's the reader that gets the credit. Thank you, Senator Hudkins. Proponents? Do you wish to wait and... [LB47]

SENATOR HUDKINS: I'll be here. [LB47]

ERNEST KUBR: (Exhibits 16, 17, 18) Hello again, senators, Senator Ashford, committee members. Again, my name is Ernest Kubr, last name is spelled K-u-b-r. I'm from Papillion. What I'm having the page hand out are statistics and studies regarding the very issues this bill addresses. Most of the statistics are a little bit older, but the percentages quoted haven't changed much over the years, and in most cases they are slightly higher. If you look at the second section of the statistics titled handout, under "The State of Fatherhood," you'll see that the second item states that, quote, 40 percent of mothers reported that they had interfered with the noncustodial fathers visitation, and I hate that term, we're not visitors, we're parents, visitation on at least one occasion to punish the ex-spouse, unquote. The fifth item, under "The State of Fatherhood," states, the former spouse, the mother, was the greatest obstacle to having more frequent contact with the children. The last item in this section states that in a study titled, quote, Visitational Interference - A National Study, by Ms. J. Annette Vanini, M.S.W. and Edward Nichols, M.S.W., it was found that 77 percent of noncustodial fathers are not able to, quote, unquote, visit their children, as ordered by the court, as a result of visitation interference perpetuated by the custodial parent. In other words, noncompliance with court ordered visitation is three times the problem of noncompliance with court ordered child support and impacts the children of divorce even more. As you can see, there are numerous other studies I could quote, and there are numerous more that have been done since this list was put together that I didn't have time to include in preparing for today. If you go to the sheet titled "Effects on Children of removing a father," halfway down on page 3, you'll read from a study by Rebecca L. Drill, Ph.D., Harvard University, in the Journal of Divorce, quote, the continued involvement of the noncustodial parent in the child's life appears crucial in preventing an intense sense of loss in the child. The importance of the relationship with the noncustodial parent may also have implications for the legal issues of custodial arrangements and visitation. The results of this study indicate that arrangements where both parents are equally involved with the child are optimal. Again, here we go with equal shared parenting. When this type of arrangement is not possible, the child's continued relationship with the noncustodial parent remains essential. I'm sure opponents of this bill will talk about domestic violence, so I'll leave you with this quote from Linda Kelly, professor of law, Indiana University School of Law, from her study on, quote, the definition of domestic abuse, how women batter men and the role of the feminist state. Quote, the most gapping hole in today's response to batterers is the

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

Judiciary Committee
March 08, 2007

failure to consider the reality of female batterers. Under feminist control, today's treatment denies the possibility that women can be violent. Accordingly, it fails to provide any means of treating or otherwise responding to female intimate violence, even the few female offenders who do manage to end up in treatment despite the layers of social and legal bias are ultimately not required to assume the accountability demanded of male batterers. I have further documentation on domestic violence committed by women, which I've already submitted a list of numerous reports in my previous testimony and handout. The passage of LB47 is essential to the well-being of our children in that it will give them the opportunity to have interaction with both parents that necessary for a healthy childhood. I urge you to pass this bill. [LB47]

SENATOR ASHFORD: Thank you, Ernest. Any questions? Thank you, Ernest. Any other opponents? I'm sorry, proponents, excuse me. I was doing bill transference for a moment. [LB47]

NADINE HAIN: Mine is going to be short, Senator Ashford and all the other senators. I just would like to...oh, I' sorry. My name is Nadine Hain, H-a-i-n. And I would like to have you advance LB47 to the General File. And I'm going to give you just a couple of examples which I think should be sufficient for my reasoning. It's very stressful for a child when a mother or father comes to get them for parenting time and someone is holding the child back. They can see them in the window, the child is crying, and it's worse yet when there's a policeman involved with the parties that are holding back the crying child because he's part of the other family, and the child wants to see the dad who is at the door to pick him up for parenting time. Another example is when the father goes to pick up the child, the mother doesn't answer the door when he gets to her place, and she also does not answer her phone. What can daddy do, except try to check other family members places and try to find his son. Then finally, mother calls and says, oh, we were making too much noise and didn't hear you; you can come and get him. By that time, a good hour of parenting time has been cheated away from the dad. This type of thing would not happen if there were consequences for this type of action. And that's the end of my... [LB47]

SENATOR ASHFORD: Thank you. [LB47]

NADINE HAIN: You're welcome. [LB47]

SENATOR ASHFORD: Other proponents? [LB47]

SUSAN SMITH: My name is Susan Smith, that's S-u-s-a-n S-m-i-t-h. And I am in support of Senator Hudkins bill. And I'm grateful that she has introduced this. To withhold visitation from a parent is emotional abuse. It is absolutely a form of abuse, not only for the child, but for the parent who it's being withheld from. When I left my husband, he threatened that he would drag me through the mud, and he did. And I think

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

Judiciary Committee
March 08, 2007

it helped, and I think this might be a special case that he was able to get away with so much because he had an uncle who is a prominent judge on the Douglas County bench. What this is what I keep my divorce files in and my custody files. It's loaded to the brim, as you can see. It didn't matter what I did in court, it didn't matter how many attorneys I hired, it didn't matter how many psychological reports or medical reports that I had, it did not matter. I can tell you that I have beautiful twin daughters, well at least I had them. I do not have a relationship with them. I think my first mother's day gift from them was when they were 21-years-old, even though it was written into the decree. I was never a drug addict, an alcoholic, a whore or a prostitute. Every time that I was supposed to be there to pick up my children, I was there. Many times he'd have his mother come to the door and say, well, Susan, I'm sorry, but David has taken the kids to the park. He's taken them for pizza. And then you'd find out years later that those kids wanted to know why you weren't there, because they were dressed up, bundled up in their coats, waiting at the door for mom to show up. But mom supposedly never showed up. I can't tell you how painful it is. With Senator Hudkins bill something like this would not be allowed to happen. There are too many places for a parent to go if they feel that the child is being abused or something like that, that they can interfere and override. They should not be able to do that, because then the noncustodial parent not only has to pay for their overhead, the child support and time with the children, but then they have to go and pay for an attorney to represent them each and every time that visitation is withheld, in order to go back and see the children, because the police won't get involved in it. They tell you, you have to go back into court, it's a situation that they have to take care of. So you could go literally months trying to raise the money for your attorney, to pay for your attorney to go back in to finally see your kids. And it can be months. And in the meantime they're telling your kids you're not around, so you don't love them. It's absolutely abuse. And I would really ask that you give this consideration so that no other child has to go through this, or mother, or father. And I'd ask that you advance it to the floor. [LB47]

SENATOR ASHFORD: Thank you, Susan. Any questions of Susan? Thank you for your testimony. Next proponent. Do we have opponents? [LB47]

JOHN SOBY: My name is John Soby, last name is spelled S-o-b-y. I am in favor of this bill passing, LB47. I don't want it to be a redundancy, but I can sympathize with the lady, Susan, that was just here a minute ago. I've been in the same legal battle myself with my two sons. There's kind of a very grey area, I guess, in Nebraska as far as custody is concerned and visitation. I own my own contracting company. I've been in business for a year now. It's very hard being a single parent at the time, starting a company. And I'm very well known in the community, but I guess my thoughts are is that when you're denied visitation and you're doing everything right, you're sending the wrong message. And there has to be consequences. I mean my ex-wife has taken my kids out of the state of Nebraska. We've got several bills in here today that kind of correlate to a lot of the different things. And I am really in favor of this bill because denying visitation...if a

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Transcriber's Office

Judiciary Committee
March 08, 2007

father does that, usually, the contempt order goes so far. I've tied up, in the last six months, I've tied up over \$8,000 in legal fees. There's consequences for child support, they came and seized my bank account several times, my business bank account nevertheless, I still didn't get the visitation. So I think there needs to be some sort of check and balance in the system. There has to be consequences. We still today are in district court in Omaha over this same situation, and I've spent tons of money, and I still get visitation whenever. Like the snow came up, that's an event, but I still have to drive three hours, still pay the same amount of child support, and still have no visitation if she doesn't feel like it. And what's my repercussions? I'm out...she's out of the jurisdiction of the state. So there's of issues that pertain to this. And I think visitation is a key thing. If you want parents to be, even young parents today, we're looking for examples, we're looking for our children to be examples. My kids are 9 and 10, you know the 10-year-old is looking at me thinking, I don't want to come see him, I don't want to drive three hours to come see him. I drive over there sometimes, they're not there or they were hiding out in the shelter. Same domestic abuse type stuff. I'm three hours away, how can I domestically abuse you when I say, hey, let's go look at the video tape in that parking lot, because I know there's a camera there for discovery. And then the whole story changes in front of the judge. Oh, we're not...I didn't hit you, I didn't do nothing to you. Well, the camera is not going to lie. And that was kind of the same scenario I know a lot of parents go through it. I went to the class, "What about the children"? I did all that mediation stuff, and I just don't think we really got anywhere, we're still at the same boat. This bill needs to be there for parents, young parents out there. Anyone have any questions for me? [LB47]

SENATOR ASHFORD: Thank you, John. Any questions of John? Thank you, John, for your testimony. [LB47]

JOHN SOBY: Thanks, appreciate it. [LB47]

SENATOR ASHFORD: Let's see where are we? We're still on proponents. Do we have any more proponents? How about opponents? Mr. Bradley. [LB47]

SEAN BRADLEY: (Exhibit 19) Senators, hello again. My name is Sean Bradley, B-r-a-d-l-e-y. I've listed to the testimony in favor of this bill. Perhaps there's something that we can all agree on, that even in the best of circumstances co-parenting can raise some very difficult, complex, and sensitive issues. I can't imagine a worse solution than to send a cop to solve that problem. Police officers, they're charged with law enforcement. They evaluate problems in terms of law enforcement. They are not trained or authorized to weigh the best interests of the children. That's what we let judges do. And as you know, there's one thing that perhaps was misrepresented in prior testimony, there are options if a parent is not allowing visitation. You go back to your judge, and I've done this a long time and I've seen it, the judges will make modifications to the custody order, if this can be shown. We shouldn't let cops do it, we shouldn't let

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

Judiciary Committee
March 08, 2007

prosecutors do it. They're not in that business either. As a domestic violence advocate (sic) I'm concerned by bill because I have clients under the state of the law today who call me and say, I just got off the phone with him and he says if I don't agree with what he wants, he's going to have me arrested. And of course, I have to tell them, no, that's not something he can do. But if this bill were to pass, that's another arrow in his quiver, something he can say to...if there's any disagreement on visitation he can say, I'm going to have you arrested, and she's facing criminal penalties, including, if he's able to do it a second time, jail. Senator, you mentioned that my mother is actually here today, which is too bad, because I'm going to steal one of her ideas. Maybe another thing we can agree upon is that visitation is very important. I find it interesting that we're only going to criminalize the custodial parents' behavior in that. I do a lot of these cases. Visitation is often missed. It's very rare that it's missed because the custodial parent is denying it, more often it's because the noncustodial parent simply doesn't exercise his visitation rights. So let's play this fair, let's do this equally, let's criminalize...if we're going to criminalize the custodial parent, let's criminalize the failure to exercise visitation. If it's important for the children, if it's so important that we're going to call the police, let's make it fair across the board. If we are actually that concerned about the children and not about the noncustodial parents, then let's say that a dad who misses his visitation is going to jail. And I'd be happy to take your questions. [LB47]

SENATOR ASHFORD: Any questions of Sean? Thank you, Sean. Oh, I'm sorry, Senator Pirsch. [LB47]

SENATOR PIRSCH: Just really brief one. Class III misdemeanor is that zero to seven days in jail (inaudible)? [LB47]

SEAN BRADLEY: I believe so. My notes are back there. I think it was...yeah, it was a max of seven days,... [LB47]

SENATOR PIRSCH: Okay, thanks. [LB47]

SEAN BRADLEY: ...for the second offense (inaudible). [LB47]

SENATOR PIRSCH: Yeah, second. Thanks. [LB47]

SENATOR CHAMBERS: I have a question. [LB47]

SENATOR ASHFORD: Yes, Senator Chambers. [LB47]

SENATOR CHAMBERS: But the fact is, it is a criminal conviction. [LB47]

SEAN BRADLEY: Yes, Senator. And we have a statute already on the books that deals with this. [LB47]

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Transcriber's Office

Judiciary Committee
March 08, 2007

SENATOR CHAMBERS: And that's all that I had. Thank you. [LB47]

SEAN BRADLEY: Thank you, Senator. [LB47]

SENATOR ASHFORD: Thank you, Sean. Any other opponents? Lorin. [LB47]

LORIN GALVIN: Mr. Chairman, members of the committee, I'm very much opposed to this act. This act will do only one thing, it will take the domestic violence issues, it will take the regular domestic disputes about visitation out of the civil courtroom and put it into the criminal courtroom. It will heighten. [LB47]

SENATOR ASHFORD: Lorin, give us your name for the record. [LB47]

LORIN GALVIN: Oh, I'm sorry. Lorin Galvin, G-a-l-v-i-n. It will just take all of these issues and put them into the criminal court and will not solve any problems. If these parents that were here today, if they were using the mediation plans, if they were using the parenting plans under LB554 that's being proposed, they would have very specific days, very specific pickup times and return times, very objective standards that could be used to determine whether a parent is manipulating visitation or denying visitation. I'd be very willing to bet that most of the folks that have talked here today have rather broad guidelines regarding when they pick their children up and when they return them, probably a lot of words like "reasonable visitation". If you have very specific times in your parenting plans then the judges can address these issues in a civil matter, or as we do in Douglas County you address them, more likely, in mediation. We have mediated now well over 100 protection order cases where dads were being arrested when they would come for visitation and violate their protection order. And once they had a mediated parenting plan that set the time to pick up, the time to return, the date for the visitations, we're not having violations of those protection orders. We're not having fathers be arrested, and that's the key. The key is a mediated agreement. The key is a parenting plan that is very specific, and I think Senator Flood's bill and Senator Ashford's bill, LB554, will resolve those issues without putting these people into criminal court. And all the research tells us the worst thing for children--conflict. And what's my conflict, what's greater conflict for a child than to know that their parents are involved in a criminal matter where Mom or Dad may go to jail. I think it's a serious, serious mistake to enact this legislation. [LB47]

SENATOR ASHFORD: Thank you, Lorin. Any questions of Lorin? Senator Lathrop. [LB47]

SENATOR LATHROP: Maybe just briefly. Well, then what's the solution? Because this is not an uncommon problem that we're hearing about today. For people to come in and say, I went over to the house to pick the kids up and she won't let me have them. Which

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

Judiciary Committee
March 08, 2007

is...and I'm saying, she, because that's typical; but I also have heard women that go over to the guys house who has custody, same thing happens. And to say their solution is to come back to court, \$8,000 later, and he's still not getting his kids. [LB47]

LORIN GALVIN: And I think the answer is a very specific parenting plan that sets pickup and return times, so the judge has a very objective standard to judge whether someone is violating the plan or not. The more open the plan is, the more problems there are. We mediate agreements that say things like, whoever is picking the child up will be there at a certain time, will stay in the car, and the other parent will stay in the house, and the children will leave. Why? Because they've had problems with assaults on the...in the driveway or on the doorstep. Similarly if someone isn't permitting visitation, when we talk about that we set very specific guidelines as to how that will occur. In my experiences, if they mediate that and if they agree to it, they'll follow it. Most times when these cases are occurring dad is arguing one thing that the parenting plan means, and mom is arguing what it means in a different way, and you want that to go to criminal court? I don't think so. [LB47]

SENATOR LATHROP: No, I'm not suggesting that it should. But sometimes it isn't about an interpretation. It's like, you know, I didn't get my child support on time, or whatever the excuse is, and then they don't get to see their kids. But your answer is go back and mediate it again and then use the contempt proceeding. [LB47]

LORIN GALVIN: Go back to mediate, make your plan more specific, but don't go to criminal court with these kinds of cases. You're going to hurt children far more than you're going to help them. [LB47]

SENATOR LATHROP: Thank you. [LB47]

SENATOR ASHFORD: Thank you, Lorin. Any other...oh, I'm sorry, Senator Pirsch. I'm terrible. You got to kick me under the table,... [LB47]

SENATOR PIRSCH: No, no, don't worry about it. [LB47]

SENATOR ASHFORD: ...which would be a long kick from there, but...Senator...any neutral testifiers? Senator Hudkins. While Senator Hudkins is coming up, I'm struck by the fact that we've been taught by Senator Chambers, over 37 years, that every time we pass a law it creates new problems. Isn't that correct, Senator Chambers? Okay, Senator Hudkins. [LB47]

SENATOR HUDKINS: Thank you, Senator Ashford. I actually don't know where to start. I guess I will just refer to what some of the opposition said. Mr. Bradley said that we're going to be criminalizing the custodial parent. Well, that's not true. If you read the bill, it says, any person who is violating the visitation provisions of a court. This means if

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

Judiciary Committee
March 08, 2007

you're the dad and you go to the mom's, who has custody, and she won't give you the kids, or if you're the mother and you go to the dad's and they've gone to the park, that is a willful and contumacious refusal to comply with a court order. The word contumacious was in my introducer's statement of intent. And I also had it in my introduction and didn't use it. I have never used... [LB47]

SENATOR ASHFORD: Well, please use it now, because I don't know exactly... [LB47]

SENATOR HUDKINS: ...contumacious, I have never used this word in my life. But what it means is obstinately resisting authority, being disobedient, rebellious. And it comes from a Latin word meaning insolent. It is a willful, disobedience to a lawful court order. And it goes both ways. This is not a gender fight. It is not a custodial versus noncustodial fight, it is doing what is best for the children. If the kids are supposed to be with dad for the weekend and he comes to the door and mom says, well, we're going to go out for pizza, I don't want you to upset them, they're already in bed, you know, whatever the reason is, that is being contumacious. Mr. Galvin talked about, well, what we should do is have mediation and visitation plans. Fine, terrific, let's do it. But if you had parents that went through these mediation and visitation plans, probably this wouldn't be an issue. But if it is, there is a way to take care of it. And a parent doesn't drive three hours to see his child if he isn't going to see the child. And then to have the mother say, no, you can't have him or her or them, that is being contumacious. You'd love this word, Senator Chambers. Should we then, if don't want...and I know you don't any of you, and I don't either, like to criminalize everything. But should we then decriminalize a child support enforcement? I think not. This isn't any different. Visitation, parenting is a court ordered plan. Let's do it. These kids need to see their custodial and their noncustodial parents. I don't know what else to tell you. We should do what is best for the child. If there is a court ordered visitation and either side violates that order, the parent doesn't bring the kids back on time, he thinks, my gosh, I haven't seen these kids for a month, I'm just going to keep them for four days, and there is no agreement between both sets of parents, then that parent is going to be in violation of the order, too, because they were supposed to be back on a certain day at a certain time, unless there's imminent physical harm, and that's something else again. But if a court ordered visitation is violated, there have to be some consequences. Thank you, Mr...Senator Ashford, Mr. Senator. [LB47]

SENATOR ASHFORD: Thank you, Senator Hudkins. Thank you very much. Any questions? Now, Senator Hudkins, you have the next bill, I believe. Am I right? Yes, LB76. So we'll go to LB76. [LB47 LB76]

SENATOR HUDKINS: Again, good afternoon. I am Senator Carol Hudkins, H-u-d-k-i-n-s. And I am here today to tell you about LB76. LB76 provides for changing the presumption of custody of children in a dissolution action. Currently, the presumption is that the children will be placed in the legal and physical custody of one

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

Judiciary Committee
March 08, 2007

parent, and will only be placed in joint legal or physical custody if both parents agree and the court finds that such arrangement is in the best interest of the children. This is contrary to how the law looks at the relationship of children with their parents prior to the filing of an action of dissolution. Before a filing is made, the state looks at the family as though both parents have equal rights with regards to making decisions regarding how to meet the needs of a child. There is no reason for this presumption to change with the filing of the complaint for dissolution until such time as a finding is made that one of the parents is unfit. LB76 changes the presumption so that the children will be placed in the joint legal custody of the parents, both parents, unless one of the parents is shown to be unfit. The standard for joint physical, or shared physical custody is modified to the extent that the parents do not have to agree to this arrangement. For joint physical custody the court, after a hearing, would have to find that such an arrangement would be in the best interest of the child and that both parents are fit. The parents do not have to agree to the arrangement, because that is not the issue in a dissolution action. The issue is what is in the best interest of the children, not whether the parents agree or not. It doesn't mean that the court can't look to how the parents interact as one aspect of the best interest, but it is not the sole determining factor. Thank you. And I would ask that you again advance this bill to the full body. And I would answer any questions. [LB76]

SENATOR ASHFORD: Thank you, Senator. Any questions of Senator Hudkins? Thank you, Senator Hudkins. [LB76]

SENATOR HUDKINS: Thank you. [LB76]

SENATOR ASHFORD: Any proponents of LB76? How many proponents do we have? Okay. Welcome back. [LB76]

AMY SHERMAN GEREN: (Exhibits 20 and 21) Thank you. My name is Amy Sherman Geren, G-e-r-e-n. Again, I reside in District 20. I'm a divorce lawyer. I've been practicing divorce law for about eight to nine years. I've been an attorney for about 13 years. I share joint legal and physical custody of my two children with my former spouse, and have done so for the last ten years. I think Nebraska needs to create a presumption favoring joint legal and physical custody, and this bill takes at least one step necessary to do that. There is still an uneven playing field in Nebraska as between mothers and fathers, I believe. And this body has in the past abolished the tender years doctrine; this body has in the past indicated that the courts can award joint legal custody even if the parents don't agree to that arrangement. But in practicality, in the courtroom I think that the courts are still favoring the mothers as far as placement of custody. Fathers are at a disadvantage going into mediation because mothers know if they push the issue they'll probably be able to get sole physical custody and sole legal custody from the courts. Mediators should remain neutral on the issue joint legal and physical custody, and should allow parties who are at an equal bargaining position to come in and try and make the arrangements that are the best for their children. So I would really urge this

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Transcriber's Office

Judiciary Committee
March 08, 2007

committee to pass through LB76 and would urge this committee to even go further and make joint physical custody a presumption in the state of Nebraska. I appreciate your time. If there are any questions, I'd be happy to answer those. [LB76]

SENATOR ASHFORD: Thank you, appreciate your testimony. Any questions of Amy? Do you know how many states...is there a presumption in any other jurisdiction that you know of? [LB76]

AMY SHERMAN GEREN: I counted this morning on one web site, and I counted 12, I believe. [LB76]

SENATOR ASHFORD: Twelve that... [LB76]

AMY SHERMAN GEREN: In 12 other states there is a presumption that shared physical and legal custody is the best arrangement. And then one party needs to show some reason why that's not in the child's best interest. [LB76]

SENATOR ASHFORD: Okay, great. Can you share that with us? [LB76]

AMY SHERMAN GEREN: I can. I have that information, so I'll provide that. [LB76]

SENATOR ASHFORD: Okay, thanks, Amy. Any other...thank you. Any other questions? No. Thanks. Any more proponents? [LB76]

JODI SKIBINSKI: My name is Jodi Skibinski, S-k-i-b-i-n-s-k-i. Forgive me, I'm going to repeat a lot of what Ms. Geren said, without knowing her. I was here two years ago and testified on a similar bill. Unfortunately, it didn't get out of committee. I'm the mother of two children and agreed on joint legal and physical custody with my ex-husband also. This was five years ago, and we did it because it was in the best interest of our children. I don't believe this bill goes far enough. I agree with Ms. Geren that it needs to make legal and physical custody the norm in this state. Giving sole custody only gives the parent that gets it too much power and control, and they get to call too many shots when it comes to the children's well-being. I guess that's all I have to say. [LB76]

SENATOR ASHFORD: Okay. Any questions of Jodi? Thank you, Jodi. Further proponent testimony? [LB76]

JOHN CURLO: I'm John Curlo, C-u-r-l-o. And I'm for this bill. I see it as a start to give both parents, both divorced parents the right to equal parenting of their children. A lot of states have already adopted this. I think it would be a good bill. If this was in place four years ago, my two children and I would not have had to spend several countless nights away from each other without seeing each other for weeks. I've spent over \$50,000 on court fees just trying to get back...myself back into my childrens lives after a judge, for

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

Judiciary Committee
March 08, 2007

no reason, no reason at all told me I would be a visitor in my childrens lives and see them 52 days a year, for no reason. Didn't know me or my children. If this bill was in place, we wouldn't have had to do this. Sole custody gives one parent the right to manipulate anything they want to manipulate, and it's been done to me at my expense. This would be a start to what needs to be done. [LB76]

SENATOR ASHFORD: Thank you, John. [LB76]

JOHN CURLO: Thank you. [LB76]

SENATOR ASHFORD: Any questions of John? Thank you, sir. Next proponent. [LB76]

NADINE HAIN: (Exhibit 22) Senator Ashford and the other senators, my name is Nadine Hain, H-a-i-n. And I'm here to ask you to please advance LB76 to the General File. There have been many states, I have been following this since Senator Beutler introduced a bill two years ago and so on, there have been many states working on shared or joint custody in the past year or two. And most people do not know what the good dads have to do to keep contact with their children, I didn't either until it happened to our family. Our son was basically the one who took care of our grandson, and was the one who put him to bed, got up during the night and so on. Mother moved out one day while he was gone and took the two year old boy with her. But even though she was the one who moved out, the judge gave the mother custody. There was no abuse or anything involved. After the custody hearing we found out that the judge was partial to mothers and also was partial to women attorneys, which she had. Judges are not going for the child's best interest. Fathers are just as capable as mothers to care for children, especially in today's society. My work takes me into homes, and I am amazed at the large number of fathers in the same situation. Also, I see quite a few fathers taking care of children while mothers work. Dads are being called deadbeat dads. Many of them are caused by mothers who have gotten custody and think that they have full control, and they try to alienate the children from the father. They want their support check and the father has to spend all of his time working to keep the support up. That's why the dads give up. It has been the case where the child cannot say where they would like to live until they are about at the age of ten. The new bill does state the age of reason is being the age where the child could say where they wanted to live. If they have to wait until they're ten years old, and not be without a father or with both parents, they could be in trouble by then. If you listen to the news, there are nine and ten year olds out there causing problems in the streets. Dads have as much right to their children as the mother, they are part of them also. A scenario such as mother deciding to take a vacation with her boyfriend and does not ask dad if he can take care of the child and does not let school or day-care know that she will be out of town, that's a problem. A bigger problem is that dad now finds out he's not even listed as emergency contact at the school or at day-care. A sister and a mother are on their contact. Dad did not even know if his son was going to start kindergarten. She would not tell him if he would start

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

Judiciary Committee
March 08, 2007

this year or next year, even though he was five. She moved all the way across town, enrolled him in day-care and school all the way across town so dad would have a harder time getting to see him. These are not just injustices against men but also to society. These issues are contributing to the destruction of marriage and the traditional family, it's also contributing to children in our society being raised fatherless and creating more juvenile delinquency. And I feel that this bill should be advanced to the file. [LB76]

SENATOR ASHFORD: Thank you, Nadine. [LB76]

NADINE HAIN: You're welcome. [LB76]

SENATOR ASHFORD: How many other proponents do we have? Opponents now then? Okay. When we're giving our opposition to...or any of the testimony now, could we try to make sure we don't repeat comments. Thank you. [LB76]

LORIN GALVIN: (Exhibits 23 and 24) Senator Ashford, members, my name is Lorin Galvin. I'm testifying here against the joint custody bill. The presumption of joint custody would be a serious mistake in Nebraska. Currently, I think everyone agrees that joint custody is only appropriate when parents voluntarily agree to such an agreement and they've demonstrated, in the past by their conduct, that they are able to reach mutual agreement together. You hear a lot of testimony by people saying that fathers don't have access to their children or that we don't have joint custody available to these families. I'm passing out some statistics for you from the Douglas County Conciliation Court for this year. In this year we've had attorney negotiated parenting plans where parents mutually agreed on custody. And in those agreements joint legal custody was in 62 percent of the cases. Mother got custody in 36 percent of those cases, and fathers got custody in 2 percent. But again those were people with lawyers who reached an agreement, a mutual agreement. In mediated plans, in the year 2007, in Douglas County, joint legal custody has been granted in 68 percent of those cases. Those are mutual agreement, they're mediated, mom agreed, dad agreed, 68 percent in Douglas County. Mother got custody in 32 percent, fathers got custody in 4 percent. But those are mutual agreements, those are moms and dads agreeing to make it work in the way that they have set it up in their parenting plan. On the other hand, in default parenting plans, where only one parent appeared and only one parent participated, mothers have gotten custody in 84 percent of those cases because dad didn't show, and dad got custody in 16 percent of those cases where mothers didn't show. So to say that custody, joint legal custody is not available in Nebraska through mutual agreement just doesn't seem to add up statistically. And we found that it does not work to force joint custody. California did it in 1979, California passed a joint custody presumption; in 1994 they repealed the law. And the reason they repealed the law was that it didn't work. A survey of California judges found that when you had forced joint custody there was a lack of parental cooperation, there was continuing parental conflict, there was inability to

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

Judiciary Committee
March 08, 2007

work between the two households, and the joint custody provisions were a mistake for children. And I think Nebraska would find exactly the same results if you force parents into these arrangements. You will just heighten the level of conflict and you'll have more disputes between the parents. [LB76]

SENATOR ASHFORD: Thank you, Lorin. Any questions of Lorin? Lorin, the only comment, and I don't want to get into a lot of questions on this, but I thought Amy Geren made a good point. I mean if there is a sense that the mother would tend to get custody on more occasions than the father, then there seems to be some statistical background...backing for that, that that could influence mediation. I think that's a point that... [LB76]

LORIN GALVIN: I think if you have mediation and if you have parenting plans in place, in the experience that isn't the case, we know it's now the case. [LB76]

SENATOR ASHFORD: Yeah. Okay, I mean I think there might be, but... [LB76]

LORIN GALVIN: ...maybe lawyers present that to their clients as a way of avoiding mediation or, you know, getting into litigation. But if you litigate those issues, yeah, they don't win if you litigate. But... [LB76]

SENATOR ASHFORD: And you have a lot more experience at this than I do. But I did sense that as an issue from time to time. And I just think it's got some...there's some point there. But anyway, thanks, Lorin. [LB76]

SENATOR CHAMBERS: Just one? [LB76]

SENATOR ASHFORD: Yes. [LB76]

SENATOR CHAMBERS: I was scanning the material you handed us. And you did make a cogent point when you discussed the situation where domestic violence was involved. The presumption would exist there also if it was there. [LB76]

LORIN GALVIN: It would. And it puts the burden on the victim to come in and prove that joint custody shouldn't be granted. That's wrong, and it should always be based on the demonstrated facts of the relationship. Can these people work together? Can they make mutual decisions? Can they act in the best interests of their children? Do they agree to do that after the divorce? Divorce means that it's a broken relationship. [LB76]

SENATOR CHAMBERS: And you answered me. Thank you very much. [LB76]

SENATOR ASHFORD: Thanks, Lorin. Sean. [LB76]

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

Judiciary Committee
March 08, 2007

SEAN BRADLEY: I'm back, Senator. [LB76]

SENATOR ASHFORD: Did you and your mother work your testimony out? [LB76]

SEAN BRADLEY: Yes, yes, we did, Senator. (Laugh) [LB76]

SENATOR ASHFORD: Okay. [LB76]

SEAN BRADLEY: (Exhibit 25) And just to pick up on the point that Senator Chambers made and that Mr. Galvin answered, under this act, to go in and prove, you'd have to prove the father...not that he hit her, not that he doesn't have the child's best interest in mind, because best interest is taken out. Remarkably, best interest is out of this bill. She would have to prove him unfit. If that's somewhat...then the closest I could interpret it is perhaps that's what they do in juvenile court when they're terminating parental rights, maybe it's that level of unfitness. I reference you to the case of interest of Eden K. and Allison L., where the Supreme Court remanded a case where mom was...terminated parental rights. And this mother, she used methamphetamine while pregnant, she was in jail quite often. Supreme Court said that her parental rights should not be terminated. So we have to wonder, would Eden and Allison's mother be entitled to joint custody? I believe under this bill she would be. There's also no exception for domestic violence here. That has to be added in. And finally, the glaring point whenever I'm talking to anybody about joint custody, or presumption of joint custody is let's take a step back. It was mentioned earlier that we should legislate for the majority. Well, if we're looking at parents in a custody dispute, if we can make one broad analysis about these people it's that they don't get along. Now maybe they do, maybe they are special. And if they're special, they can agree and get joint parenting. But if we're going to say that all people should be special, that we're going to assume that all people should have joint custody, it simply doesn't match reality. We know these people, as a rule, don't get alone. So why make them have to agree on the one thing, the most important thing in any of these cases, their children? It just doesn't make any sense. And I'd be happy to take your questions. [LB76]

SENATOR ASHFORD: If you did put the domestic violence exception in there, though, would that make a difference? I mean, I've tended to always, I personally supported the joint custody presumption, I did when I was here before. And I think when those bills were introduced they did have certain exceptions. But with those exceptions, doesn't it create a...well, to me it might create a better environment for mediation, or it could create a better environment for mediation if there isn't...if domestic violence is not an issue? [LB76]

SEAN BRADLEY: I guess... [LB76]

SENATOR ASHFORD: If domestic violence is not an issue in the marriage, and there is

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

Judiciary Committee
March 08, 2007

an exception for domestic violence? [LB76]

SEAN BRADLEY: I'm going to get a little bit more personal than maybe I should. I'm presently going through my own divorce at this point. My wife and I get along great, we just don't want to be married anymore. And we've been actually separated for some time and joint parenting. I wrote up the divorce papers, because that's my job. I'm giving her sole legal custody because it's best for the children. Because if, at some point in the future, we can't decide... [LB76]

SENATOR ASHFORD: But you could still do that if there was a court...I get your point. But I... [LB76]

SEAN BRADLEY: Joint custody is just a bad idea, it really is. [LB76]

SENATOR ASHFORD: Okay. [LB76]

SENATOR CHAMBERS: Just one point, so that people won't think the committee is totally tilted in the wrong direction towards mandatory joint custody, I've always opposed those bills. So Senator Ashford and I kind of balance out. [LB76]

SEAN BRADLEY: Thank you, Senator. [LB76]

SUZANNE CURRAN CARNEY: Hello again. My name is still Suzanne Curran Carney, C-a-r-n-e-y, but I am no longer speaking on behalf of the Mediation Center. I am still...I am here at this point speaking as an individual who's been interested in this issue for many, many years. I will rely on my experience both as an attorney, a juvenile prosecutor, private attorney, child support attorney and mediator, as well as a person who was at one point divorced. I would ask that the committee please not advance this bill for the reasons that have already been articulated that if you have people that...most people, at the time they are getting a divorce, are not getting along. And to require them to have a statutory presumption that they will have to come to agreements on all these fundamental things is very disruptive to their process. One of the things that I have found, though, as a mediator is that if you don't have that presumption, if people come in with a chance to talk about it, and in those very many cases where people are able to experience what Senator Flood referred to as the magic moment, and I have seen it repeatedly across the table where they recognize that, you know, I think you're a lousy husband, or I think you're a lousy wife, but you know, I do know that you care about the kids. If they can get to that point then they can voluntarily come to a point of joint legal custody. A lot of it is a question of understanding what legal custody means. Extending this to a presumption of joint physical custody sounds like an utter recipe for disaster. How are you going to reach a level, presume that all kids are going to spend roughly equal time with both parents when we've got difference in schools, I mean this is even if they're living in the same town. So I would urge you please not to create this as a

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

Judiciary Committee
March 08, 2007

statutory presumption, to let the state be neutral on the question of a presumption, and let the parties work it out. Ironically, it appears that the people who most advocate joint legal custody are the people who, by their own descriptions, are in the most volatile and disruptive divorce situations. So, I mean, in my mind there's a real disconnect on that. Again, I would ask that you not advance this. Happy to take questions, happy to let you go home, too. [LB76]

SENATOR LATHROP: Are there any questions? No. Thank you very much. [LB76]

SUZANNE CURRAN CARNEY: Thank you. [LB76]

SENATOR LATHROP: Opponents? Further opponents? Anybody in a neutral capacity on this? Senator Hudkins, would you like to close? You can't pass up the chance. [LB76]

SENATOR HUDKINS: Nope. Well, Senators, in a perfect world there wouldn't be divorce and there would be no children born out of wedlock. Well, unfortunately, we know that this isn't a perfect world. I've been married 42 years, have two children, I've never, ever thought of divorce. Now, murder on occasion. (Laughter) But our kids grew up in our household and are out on their own. But we worked together. Both parents should be involved in the medical decisions, they both should be involved in the parent-teacher conferences, they both should be doing the actual parenting, fixing meals, doing laundry, taking care of a sick child during the night. The bill says, on page 3, it says, after a hearing in open court, the court shall place legal custody of a minor child with both parents and may order physical custody on a shared or joint custody basis when both parents agree. One of the opponents said that when he and his wife went through a divorce one parent, in this case the father, said that really the mother should have custody, and the judge is going to take that into consideration. The bill goes on to say that the court shall place a minor child in joint legal custody after conducting a hearing in open court and finding that each parent is fit to parent the minor child. This all goes back to what is the best for the child. If one parent is, God forbid, a drug addict, or an alcoholic or whatever, or in the cases of domestic abuse, we know who is probably going to be the better parent and what is in the best interest of the child. One of the other opponents said that the, and if I heard this correctly, the father is given custody 16 percent of the time when the mother didn't show up. But the mother is given custody 84 percent of the time when the father didn't show up. Why such a difference? Why wouldn't it have been 100 percent in both cases? I don't know. Mr. Galvin said that the studies show that joint custody isn't in the best interest of children. Well, you know, you can get studies to show anything you want. I have studies that show joint custody is in the best interest of a child. What happens in court is an attorney for one of the parents will say, well, this is what's going to happen when you go to court. Unless you agree to a specific parenting time, somebody is going to be given sole custody. So maybe somebody isn't being given good advice from their attorneys, it's happened

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Transcriber's Office

Judiciary Committee
March 08, 2007

before. In a domestic violence case, you know, if my husband were beating me, that's the last thing he'd probably ever do, but I think that I could go to court and show the bruises, show the broken arm, show the black eyes. If you can't go to court to protect your children, then there is a problem. And heaven forbid that feuding parents can't be expected to do what is best for their kids. Joint parenting is not a 50-50 deal all the time, it could be a 60-40, it could be a 75-25, or some other percentage. But it's something that everyone has agreed with, and that's what we want to happen for these kids. Thank you. [LB76]

SENATOR LATHROP: Thank you, Senator. [LB76]

SENATOR CHAMBERS: Just one observation. [LB76]

SENATOR HUDKINS: Yes. [LB76]

SENATOR CHAMBERS: Senator Hudkins, there are women who will contact me from around the state when they have problems. One involved a State Trooper who was physically abusive to his wife, it was established. The judge and prosecutor agreed to let him plead to a lesser offense so he could keep his pistol. Because if he had been convicted of what he had done he couldn't have the right to carry a pistol or have possession anymore. And they made it clear that in order that his right to have that gun not be taken away, and he not be allowed maybe to be a cop again, they let him plead to a lesser offense. [LB76]

SENATOR HUDKINS: And I think that's wrong. [LB76]

SENATOR CHAMBERS: And that happened in Nebraska. [LB76]

SENATOR HUDKINS: Yeah, I think it's wrong. [LB76]

SENATOR CHAMBERS: Me, too. [LB76]

SENATOR HUDKINS: If he did it, he should be deprived of his right to carry a gun. [LB76]

SENATOR CHAMBERS: Just to indicate that showing the bruises is not enough for every judge, you know. [LB76]

SENATOR HUDKINS: Well, you're right. [LB76]

SENATOR CHAMBERS: Okay. [LB76]

SENATOR HUDKINS: We don't always have the best judges and attorneys either.

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Transcriber's Office

Judiciary Committee
March 08, 2007

[LB76]

SENATOR CHAMBERS: Amen. [LB76]

SENATOR LATHROP: Wait a minute, (laughter) did you just say, amen? [LB76]

SENATOR HUDKINS: I said, always. [LB76]

SENATOR LATHROP: Okay. All right. [LB76]

SENATOR HUDKINS: Thank you. [LB76]

SENATOR LATHROP: We'll assume you were allowing for an important exception.
[LB76]

SENATOR HUDKINS: Of course. Present company, up here, excepted. [LB76]

SENATOR LATHROP: Thank you, Senator. And Wightman is sitting here, we ought to except him, too. [LB76]

SENATOR HUDKINS: Yeah, we'll take him, too. [LB76]

SENATOR LATHROP: All right. Thank you, Senator. And now we're on to LB682, which is to be introduced by Senator Wightman. [LB76 LB682]

SENATOR WIGHTMAN: (Exhibit 26) Thank you, Senator Lathrop, members of the committee, Senator Ashford, if he comes back. My name is John Wightman, spelling John with an "h," Wightman, W-i-g-h-t-m-a-n, representing the 36th District. I'm here to introduce LB682, which would require the courts to consider incarceration as an involuntary reduction of income rather than a voluntary reduction of income, as it is now considered under Supreme Court guidelines. The change from voluntary to involuntary would allow an incarcerated judgment creditor to modify his court-ordered child support obligation in a way that reflects his or her reduced circumstances that are the direct result of incarceration. While it's not a part of the bill right now, we would propose an amendment to the bill that would make the bill inapplicable in all cases where the incarceration is a result of nonpayment of child support. I think that's fairly obvious. I understand that the Nebraska Supreme Court guidelines prohibit lowering a child support order because of the presumption that the reduction of income was due to circumstances under one's control. The position is that the incarcerated person could have foreseen that the loss of freedom would be the result of criminal activity. So I understand the rationale for the courts determination that incarceration is voluntary. But we think there are many inconsistencies, and that the justice is probably not being really well served by this. Chief Justice Krivosha, in his dissent in a 1985 case of Ohler v.

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

Judiciary Committee
March 08, 2007

Ohler, set out some of that thinking. And I would urge you to reconsider this law and hear what the proponents of LB682 have to say. I think we can have an honest discussion here on whether the current child support guidelines impose a nonrehabilitative effect on incarcerated persons when that person faces a huge child support debt and interest penalties upon his or her release. This bill would have no effect on an arrearage existing at the time of the incarceration, and that arrearage would continue to bear interest at the statutory rate during the full period of incarceration. The bill would have no effect upon the accrued arrearage at the time that the person was incarcerated. As a practical matter, if the arrearage continues to accrue, as it may well...it may well result in the parent being incarcerated to pay...not being able to pay any support. It seems to me far more likely, if that person is released and is faced with such a large arrearage that he considers his position hopeless--and I would suggest that that would be the case, probably a majority of people who are incarcerated--that his chance of recidivism is greatly increased, and the likelihood of paying more child support is diminished. The state has made a strong investment in today's emphasis on helping incarcerated persons make successful reentry into society, for good reason. As a result, I think it can easily be considered that a person getting out, particularly if he's been in a long period of time and there's been two or three years elapsed, during which time child support has continued to accrue, that his position is so hopeless that he may well be reincarcerated just because, number one, he can't pay his support, number two is that he looks at other means that may be criminal in nature to try to meet that child support obligation. So I urge the committee to reaffirm its commitment to the investment, and reconsider the state's position that allows a condition to exist for an incarcerated obligor to accrue large child support debt and penalty interest he or she faces upon the completion of the term of their sentence. And I realize there will be opposition to this bill. But I do think that as a practical matter, you're probably not costing the judgment creditor any money to speak of, or in most instances are not costing them any money, because if you make that amount too large, they're probably not going to pay any of it. I'll be glad to answer any questions you may have. [LB682]

SENATOR LATHROP: Terrific. Thanks. Does anybody have any questions for Senator Wightman? Yes, Senator Pirsch. [LB682]

SENATOR PIRSCH: Just in terms of numbers, how many people does this affect on a yearly basis, or whatever basis (inaudible)? [LB682]

SENATOR WIGHTMAN: I certainly, Senator Pirsch, don't have any figures to that, that would answer that. [LB682]

SENATOR PIRSCH: Well, it's kind of intriguing to me. Over a decade ago, I found myself as a student law clinician addressing this very issue up in the Supreme Court. [LB682]

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

Judiciary Committee
March 08, 2007

SENATOR WIGHTMAN: Thank you. [LB682]

SENATOR LATHROP: Anyone else? I do have one question,... [LB682]

SENATOR WIGHTMAN: Sure. [LB682]

SENATOR LATHROP: ...and that is, don't you...do you think that the bill ought to have some minimum sentence before we start forgiving that,... [LB682]

SENATOR WIGHTMAN: And I thought of that. [LB682]

SENATOR LATHROP: ...like a seven-day sentence? Somebody shouldn't be coming back and wasting the courts time over that. [LB682]

SENATOR WIGHTMAN: I thought of that, and I'm not even sure that a 90-day period might be in order, 60 or 90 days. [LB682]

SENATOR LATHROP: Maybe you can give that some thought and let us know. [LB682]

SENATOR WIGHTMAN: Seven days, he couldn't get into court anyway and ask for the reduction. So it seems to me that even 90 days would maybe not be too long. [LB682]

SENATOR LATHROP: Okay. Great. Thanks for answering that. Any other questions? Okay. Are there proponents? [LB682]

MEL BECKMAN: (Exhibit 27) Members of the Judiciary Committee, my name is Mel Beckman, and I live at 3636 Lafayette, in Omaha. I represent Omaha's Family and Friends of Inmates group. We provide support for family members of those who are in prison, and we also give attention to laws and public policies which affect those who are incarcerated. We support LB682 because we think it represents a first step toward correction of a bad situation. Nebraska prisoners who have court orders to pay child support are daily sinking deeper and deeper into debt. They're not allowed to request a modification to correspond to their reduced income while in prison. The arrears and the interest they are charged become a mountain of debt which plagues them when they are released from prison and trying to reconnect with family and friends. According to figures supplied by Nebraska Child Support Enforcement last fall, there were 1,659 inmates who had child support orders at that time. They owed an average of just over \$16,000 in child support arrears and interest. Together, they owed \$26 million, of which about \$6 million was interest. Recently, one inmate from Dawson County wrote to Family and Friends of Inmates and he said that his three children, he went to prison in 1995 with \$2,500 in child support arrears; he's still in prison and now owes \$72,000 to the Nebraska Child Support Center. He feels he'll never be able to pay that full amount. Nebraska has done little or nothing to prevent the accumulation of this kind of debt by

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Transcriber's Office

Judiciary Committee
March 08, 2007

prisoners. But unlike Nebraska, many other states have taken action--Oregon, for example, Iowa, and Minnesota, and there are many others, who allow downward modification of an inmate's order if it is needed. According to one source published in the June 2003 issue of Corrections Today, the journal of the American Correctional Association, only about one-fifth of the states do not allow downward modifications. And there's a lot of variations in how they do that. Nebraska is among the minority of states which do not allow it. If Nebraska were to adopt this bill, we would be in close agreement with the 2005 to 2009 Strategic Plan published by the National Child Support Enforcement Office. That plan, in a break with their strict enforcement strategies of the past, now recommends early intervention to ensure that a person's child support obligations are consistent with his or her ability to pay. The following is a quote from the 2005 to 2009 Strategic Plan: Early intervention to prevent the unnecessary buildup of arrears benefits families in numerous ways, from improving collection rates, to keeping noncustodial parents from running underground to avoid overwhelming and largely uncollectible arrears. [LB682]

SENATOR LATHROP: Sir, we're going to have you...see if there's any questions for us, okay? And you didn't spell your name for us. Let's have you do that, and then we'll see if anybody has any questions for you. [LB682]

MEL BECKMAN: It's Mel Beckman, M-e-l B-e-c-k-m-a-n. [LB682]

SENATOR LATHROP: Okay, terrific. We appreciate your input and your contribution today. Does anyone have any questions? Senator Chambers. [LB682]

SENATOR CHAMBERS: Mr. Beckman, you've been doing the work that you touched on for a good number of years, correct? [LB682]

MEL BECKMAN: Yes. [LB682]

SENATOR CHAMBERS: So you have a familiarity with what awaits a person who emerges from prison, in most instances. And would one of the things be difficulty in obtaining gainful employment? [LB682]

MEL BECKMAN: I would think so, because everyone who has over \$500 in arrears is reported to the credit reporting agencies by federal mandate, I guess. [LB682]

SENATOR CHAMBERS: And if a person can obtain employment after leaving prison, is it usually in what we would consider to be a low-paying job or a high-paying job? [LB682]

MEL BECKMAN: I understand that those in work release, those who are coming out of prison, often, if not most of the time, start out in the McDonald's, Burger King type of

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

Judiciary Committee
March 08, 2007

jobs, yes. [LB682]

SENATOR CHAMBERS: If a person were desirous of paying all arrearages, it might conceivably take the rest of that person's life, and still the arrearages not be paid, if he or she had been incarcerated for, say, 20 years, and the child support arrearages continue to mount up. [LB682]

MEL BECKMAN: That's my understanding. The...I understand from the Child Support Enforcement office that they don't put first priority on the debt, but it's still there. And I think those who are actually paying would have to testify as to how much pressure is put on them to... [LB682]

SENATOR CHAMBERS: Oh, that's all I will ask you, then. Thank you, Mr. Beckman. [LB682]

SENATOR LATHROP: Thank you very much. Are there any other questions? Okay. Thank you for coming down today. We appreciate it. [LB682]

AMY MILLER: (Exhibit 28) Good afternoon, Senators. My name is Amy Miller, my last name is spelled M-i-l-l-e-r, and I'm legal director for ACLU Nebraska. We support LB682 for the same reasons identified previously. So rather than going over the public policy issues, I will just summarize my testimony: You can't get blood from a stone. Individuals who are incarcerated in county correctional settings have no opportunity for employment. Individuals who are incarcerated at state prisons may have the opportunity to have a state prison job. But the last time I was on tour of the State Penitentiary here in Lincoln, I was told that approximately 2 percent of the prisoners are able to find employment. Of that 2 percent, only a handful are actually working at a job that pays a wage, at the Cornhusker Industries. The remainder are working prison jobs, and the maximum they can earn in a month is \$30 a month. So the state knows that we have put people into a situation where they either have no source of income, or they have, at maximum, \$30 a month. But child support obligations cannot be reduced beyond \$50 a month. We don't benefit children by racking up the arrearages, because as Senator Chambers' questions suggested, we almost are creating an incentive to prisoners who are released, are already facing many societal obstacles to obtaining gainful employment, it's almost as if we're encouraging them to go back into a life of crime where they're not going to have their wages garnished. As mentioned by an earlier testimony, as well, on page 2, I've given you some of the other states that do allow this sort of voluntary reduction. You'll see that Iowa, Missouri, Idaho, and Illinois, are states that I think are very similar to Nebraska's, that allow for this voluntary reduction. Finally, I've cited to you a report issued by the National Women's Law Center that has found that keeping incarcerated people's child support obligations continuing is not good for the families, not good for the children, not good for the incarcerated individual. I would have brought you a copy of the report, but it's huge, so I've simply referred you to the

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

Judiciary Committee
March 08, 2007

web site, if you want to go find that. Given the fact that we are in a situation where there is little or no benefit to children who will never see the child support awards that accumulated during the time that a parent was incarcerated, we think that the best policy is to allow reduction for inmates who do not have a source of income. We have existing Nebraska state law that says, if an inmate has, for example, a trust fund, he must draw upon that to satisfy his child support obligation. But for the average prisoner, this is going to be the only way that they may have a fair opportunity to return to society without an insuperable burden to face them. Are there any questions? [LB682]

SENATOR LATHROP: That's a good question. Are there any questions? Senator Pirsch. [LB682]

SENATOR PIRSCH: (Laugh) That's great. So when this incarceration occurs, a judge will...and I understand the incarceration moves forward is a change in condition such that support would be...the amount of payments would request to be modified. Are there...I take it the judge would have, at that point in time, a look at the full assets and full abilities to pay of the prisoner at that time (inaudible)? [LB682]

AMY MILLER: Right. I've got some anecdotal evidence from individuals who contacted the ACLU office that indicates that some judges are granting a reduction downward to the \$50 level, but that other judges feel bound by the Nebraska Supreme Court holdings that are cited in my testimony that say, in essence, you chose to do the crime, so we're not going to...it is a voluntary reduction, in the same way that some ill-intentioned fathers may choose to go work at McDonald's in order to try to not pay child support, in a moment of vindictiveness. The law doesn't allow that. That's considered a voluntary act. But I think we all know that deterrents, whether you're talking about the death penalty, whether you're talking about putting people away for long periods of time, or continuing child support obligations, when individuals commit crimes, they're not thinking about that, so that right now, although there may be some individual judges who have issued child support reduction orders, that unfortunately, it's technically not allowed. You cannot have your reduction based on the fact you're now serving time. And so individuals who are sitting in prison, child support orders are accruing at the same rate of employment income they had prior to their incarceration, and there's no accounting for the fact that they now are making \$1 a day. [LB682]

SENATOR PIRSCH: Very good. [LB682]

SENATOR LATHROP: Okay. Thank you. [LB682]

AMY MILLER: Thank you. [LB682]

JOHN SOBY: My name is John Soby. Thanks for letting the committee let me talk again. I'm in favor of this bill. I can relate to this bill on a personal level. I was

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

Judiciary Committee
March 08, 2007

incarcerated for four years. I went into prison, I had a zero balance; came out of prison, I owe \$28,000 to this day. It ruins your credit report. I took a job. I was well-educated. I went to college before I was incarcerated. I took a job. Sixty days after I was at that job, I was laid off. I still had to find a means of making money. While I was incarcerated, I was one of the...I'm the...not your average inmate. I worked for CSI, which is Cornhusker State Industries. The state of Nebraska builds homes, inmates build homes. I built 12 homes. I made \$1,500 while being incarcerated. The state of Nebraska made \$1.5 million on it. I wouldn't be in child support debt if I was...I came out of incarceration, and I went to frame for Infinity Homes, and I was making \$12 an hour. I would not be in \$28,000 debt if I was able to make the same wage that I made on the street. Yes, it is a voluntary act. I mean, we all make mistakes. All of us, we've been 19, 20, 21 years old, we've drank, maybe, beer under the age, we might have spun the tires out on the street somewhere. We've made mistakes. But hindering...I'm a...like I said, I'm not the average inmate. I came out. I've been out a year. I started my own business. I still make...I mean, I don't want to throw this out there, but I make 10 grand a month on sales, and I still cannot pay this \$28,000. The only thing I have to show for it is a truck that someone gave me, a friend of mine gave me, on a loan. I can't get any type of credit for a house. I can't get any type of business credit. So whatever I make in a given day reflects how my tomorrow is, realistically. And the real issue I guess I want to touch on is a social issue more than it is a dollar amount. Like I said earlier, I have two little boys. I spent a lot of money for attorneys in the last little while. But the issue...the child support issue is more of a social issue. It tears families apart. It's not...you're never going to recoup...I mean, we could say that we could try to recoup that dollar amount, but you're not really going to ever recoup it. You're going to build them relationships for the rest of your life, but if you try to recoup that dollar, you're going to have issues. Anyone have any questions? [LB682]

SENATOR ASHFORD: Thank you, John. [LB682]

PATRICK FORD: Thank you, members of the Judiciary. I'm Patrick Ford, F-o-r-d. I'm an attorney with the Legal Aid Society of Nebraska, and I'm the project manager for the homeless project of the Legal Aid Society. As such, I'm a frequent denizen of the shelters and the streets where my clients reside, and a significant number of those are gentlemen, and some ladies, who have been in prison, who have been incarcerated. And they come out, and they have this huge debt. They have to fight through all the stigma of being an ex-con to get a job. When they do get a job, they wind up having sometimes half their salary, sometimes more, being taken from them. They lose any kind of will to work, any point to work. They slip back into homelessness. They wind up in the underground economy. And some of them even wind up going back into drugs or crime. I've seen this happen over and over again among my clients. I, myself, go into court for them and get modifications as best I can. And what that does...I mean, that will reduce the amount they have to pay on arrearages. Most of them are no longer able to make the amount of money that they came...when they got out, that they were before

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

Judiciary Committee
March 08, 2007

they went in. The arrearages themselves stop them from getting any houses, any cars, and they just sink into hopelessness under this crushing debt. So I have nothing more than that to add to what the other people said. Any questions? [LB682]

SENATOR ASHFORD: Thanks, Mr. Ford. [LB682]

JOY SOBY: Good afternoon. My name is Joy Soby. I also have been on the other side as an inmate, did four years in prison, came out owing \$28,000 child support. I'm out three months from being out of prison, I get this letter in the mail saying I need to come to court to show cause why I haven't paid child support for four years. Child Support Enforcement has been aware of where my presence are the whole time. I go to court, I show cause. They tell me I'm capable of making the wage that I made when I had my modification in 2000. At that point in time, I was working for Qwest Wireless as a contract position, building their wireless technology at \$20 an hour. I had that job for a year and a half, until the contract ran out. I spent four years in prison. And you're telling me that I can capably make that amount of money again? I can't. As my husband told you earlier, the bank account just came and seized \$8,000 out of our business account. Child Support just took it. It wasn't even ours to have. It was money that a business customer had given us for cabinetry to purchase for his wife for Christmas. How do I go to a customer and explain to them, Child Support took \$8,000 out of my account for back child support? As hard as you fight, there's doors that keep getting slammed in your face. Not everyone is as strong in endurance as my husband and I are. And we fight the system, and we continue to go on, and with that fact, we are in negotiations. We just had our second meeting this morning with Department of Corrections, to go back in and help these inmates learn skilled trades in the construction field, so they can come back out and know, and have something to work with. Not everybody knows. Even the...I work at Compassion in Action as an outreach coordinator, which is a transitional home for women who come out of prison. You've got to know how to run a computer, even at McDonald's. These people don't even have the basic computer skills. Our community needs to step up and help those of the less fortunate. So I just ask that you help support and move this to the next session that it needs to go to. We're only trying to make a difference. That's all I have. [LB682]

SENATOR ASHFORD: Any questions? Would you get in touch with Stacey after the...? [LB682]

JOY SOBY: Yes. [LB682]

SENATOR ASHFORD: Because I'm very interested in the construction thing... [LB682]

JOY SOBY: Yes. [LB682]

SENATOR ASHFORD: ...in prisons, and I know a group of people that are working in

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Transcriber's Office

Judiciary Committee
March 08, 2007

Minnesota and Arizona on this very thing, and I'd love to put you in touch with them. So if you would get a hold of Stacey,... [LB682]

JOY SOBY: We would love that. Yes, I will. [LB682]

SENATOR ASHFORD: Great. Thank you. [LB682]

JOY SOBY: Thank you very much. [LB682]

TEELA MICKLES: (Exhibits 30, 31, 32) Good afternoon. My name is Teela Mickles. That's T-e-e-l-a, Mickles, M-i-c-k-l-e-s. I am the founder and the CEO for Compassion in Action, a faith-based organization which Joy was speaking of previously, and also she is on...a staff member of mine. I've been working with people incarcerated for about 24 years. Compassion in Action started in '94. We provide prerelease education and reentry preparation for men and women incarcerated. We have just been recently contracted by the Nebraska Department of Corrections to provide that prerelease education, which was originated with myself and Compassion in Action for the men on the SAVORI, on the Serious and Violent Offender Reentry Initiative, as well as the women. And since I've been able to see how people come in and how people go over the years, our position--we are a faith-based organization--our position is to provide hope, hope for them to have a successful transition back into the community. We have done it all. We have appealed bans from our ladies that were banned from the Omaha Housing Authority. We have appealed court mandates for children, and had reunification take place, because our ladies have proven to be successful in areas that they themselves weren't realistically expecting to accomplish certain things. And because of our history and because of our success rate, we have been recognized by the Nebraska Department of Corrections to assist in their Serious and Violent Offender Reentry Initiative. Just yesterday, I taught a group of 20 men at Omaha Correctional Center our prerelease piece, and I shared with them that we would be down here today trying to get this bill onto the next level. And it gave them hope. We're not trying to relieve people of their financial responsibility or excuse or make excuses for being financially irresponsible. However, we want to give them hope, for those that really want to make a difference in the lives of their children, that really want to make a difference and make up for what they have done in society. We want to give them hope and an opportunity to do so. And the men were very excited to know that this was on the plate, that this was going to give them an opportunity to come out and actually address that debt and actually have an opportunity to pay it off and show that they can be responsible people. We recognize, with Compassion in Action, we go to the cause of the crime. We don't go to, you know, the crime itself, but why individuals in their life decided to become self-destructive. That helps them disarm their reasons for the behavior that caused them to recidivate. And so this is a financial thing, that we want to assist the participants in our program and also the Serious and Violent Offender Reentry Initiative to come back and be productive citizens in the community, rather than

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

Judiciary Committee
March 08, 2007

continual tax burdens. And Joy Soby is on my staff. I've been working with her for 17 years. We're in for the long haul. So, any questions, I'm open. [LB682]

SENATOR ASHFORD: Nothing other than, you need to contact our congressional delegation and convince them that we can allow people who are offenders to get into public housing. [LB682]

TEELA MICKLES: Oh, really? [LB682]

SENATOR ASHFORD: Because they now can't do that. But you said you worked on that? [LB682]

TEELA MICKLES: I did it twice. [LB682]

SENATOR ASHFORD: Then you know something I don't, and you ought to... [LB682]

TEELA MICKLES: I pray. No. (Laugh) [LB682]

SENATOR ASHFORD: Okay. Thank you. [LB682]

TEELA MICKLES: You're welcome. [LB682]

SENATOR ASHFORD: Thank you. Any other proponents? Opponents? [LB682]

WILLIAM MacKENZIE: (Exhibit 33) Good afternoon, or good evening. I'm William MacKenzie. It's M-a-c-K-e-n-z-i-e. I'm a deputy Sarpy County attorney, and I'm also here today on behalf of the Nebraska County Attorneys Association. We oppose LB682. I have prepared some written materials, and I won't go over all those, in the interest of time. But I do want to highlight some of my written materials. The County Attorneys Association believes this bill is a bad idea. Senator Ashford mentioned a little bit earlier this afternoon that one of the goals of lawmakers is to...in passing new bills, is not make something else worse. We believe that this bill, if passed in its present form, would make a situation worse. I've been a county attorney, or deputy county attorney, in Sarpy County for 14 years. I worked in...actually, for longer than that, for 22 years, but I've worked in child support for 14 years. And I'm very familiar with these types of cases. We handle child support cases; 5,000, 6,000 in our county are open at any one time. A small percentage of them involve people who are incarcerated. Senator Wightman indicated that he believed the bill would apply to people that serve as little as 90 days incarceration. I can tell you that's not true. That's not the way it would work. This bill, as drafted, affects Section 43-512.15, which involves duties of a county attorney or authorized attorney to file a modification action or complaint to modify in court, after the Department of Health and Human Services has reviewed the case and determined that there's a preliminary finding that the financial circumstances have changed. That

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Transcriber's Office

Judiciary Committee
March 08, 2007

process takes six to nine months before it even gets to my office. So the person, to apply for a review and a reduction of support under existing law, would have to be in that situation for at least 90 days to begin with. Then they could apply. It would be six to nine months before that application is completed and sent to the prosecutor's office for possible filing. Once we got that into court, it would be another six months or so. The only prisoners that this would affect are felons. It would not affect people who are serving less than a year or two incarceration. Those are the only ones that would stand to gain. And we believe that this would, certainly unintentionally, but create an incentive for some people to break the law, because those who feel that they are already in substantial child support debt may feel the only way they could get it...get their debt relieved would be to fall under the provisions of this law by being incarcerated. [LB682]

SENATOR ASHFORD: Let me just stop you for a second. I thought...you know, I thought of that, but we're talking about child support that accrues during the imprisonment, though. [LB682]

WILLIAM MacKENZIE: Yes. Yes. These are people... [LB682]

SENATOR ASHFORD: Not past in prison. [LB682]

WILLIAM MacKENZIE: Absolutely, because they would already have to have a support order before they were incarcerated, before they were convicted, before this law would apply to them. [LB682]

SENATOR ASHFORD: Right. Okay. Thank you. [LB682]

WILLIAM MacKENZIE: If they've already have a support order...excuse me, if they're already incarcerated and then the support order is set, it's going to probably be set at \$50 a month, because they have very little earning capacity while they're incarcerated. But the law in Nebraska has been cited by the Supreme Court in the Ohler case, back in 1985: Incarceration is certainly a foreseeable result of criminal activity. We find no sound reason to relieve one of a child support obligation by virtue of the fact that he or she engaged in criminal conduct. As we see it, the only ones that would benefit would be the felons. And I'm not unsympathetic to their position. They've had some very eloquent speakers this afternoon. But this law would work to their benefit, at the expense of the children of those families, and we do not feel that that is a just decision. We don't think that this law is just, for that reason. Among the other reasons indicated, there would be a cost to the court system, a cost to the prosecutors, to file more of these cases. [LB682]

SENATOR ASHFORD: Any questions? Thanks. [LB682]

WILLIAM MacKENZIE: Thank you. [LB682]

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

Judiciary Committee
March 08, 2007

SENATOR CHAMBERS: I have one. [LB682]

SENATOR ASHFORD: Senator Chambers. [LB682]

SENATOR CHAMBERS: Mr. MacKenzie, to whom does the money go which a formerly incarcerated person pays toward child support arrearages? Does it go to the children, or does it go to the state? [LB682]

WILLIAM MacKENZIE: Well, it depends. If the custodial parent had assigned their rights away to the state for receiving state aid, for instance, then it would go to the state. [LB682]

SENATOR CHAMBERS: Right, so then the children are not going to have any more when this person comes out. But here's what I want to ask you. Are you familiar with a case where a child was put into foster care or someplace and was brutalized, and the state wanted to blame the mother, because if she had conducted herself properly, the child would not have gone into that situation and would not have been brutalized? [LB682]

WILLIAM MacKENZIE: I'm not familiar with that. [LB682]

SENATOR CHAMBERS: That was an argument in court, and I took it on, on the floor of the Legislature. And before I got through reaming out the Attorney General for having made that argument, he was notified, because he was in another part of the state, of what I had said, and he immediately ordered that filing to be withdrawn, because it should never have been filed. But those are the kind of cruel, shameful things that prosecutors do. So you mentioned the eloquent speakers here. I've been here 37 years, and I've heard some prosecutors and the County Attorneys Association come in here with some of the most asinine, cruel, lamebrain stuff I've ever seen. And then there have been some prosecutors who got in trouble with the law, which you may not know. Had you ever heard of a prosecutor named Hohenstein? Was he a prosecutor? [LB682]

WILLIAM MacKENZIE: The name does not ring a bell with me. [LB682]

SENATOR CHAMBERS: Was he a prosecutor, Senator Pedersen? [LB682]

SENATOR PEDERSEN: Oh yes, he was. [LB682]

SENATOR ASHFORD: He was the county attorney in... [LB682]

SENATOR CHAMBERS: And he used to be... [LB682]

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

Judiciary Committee
March 08, 2007

SENATOR PEDERSEN: Dakota County. [LB682]

SENATOR CHAMBERS: And he used to be a state senator. And he went to prison. He cheated his family, he cheated clients, he cheated the county, and he cheated everybody. And he was a county attorney. But when he went to prison, he wanted some consideration. So I read something else that I think you had sent, and there were some comments about what is morally right. Do you remember using language like that in something you wrote with reference to this bill? [LB682]

WILLIAM MacKENZIE: Yes. Yes. [LB682]

SENATOR CHAMBERS: So what has morality got to do with what we're talking about as legislators? [LB682]

WILLIAM MacKENZIE: Well, my concern is, Senator, that we're taking from children. Not... [LB682]

SENATOR CHAMBERS: Are you a moral man? [LB682]

WILLIAM MacKENZIE: Well, I'll let others speak for that. [LB682]

SENATOR CHAMBERS: No, I want you to tell me. [LB682]

WILLIAM MacKENZIE: I hope I am. I try to be that way. [LB682]

SENATOR CHAMBERS: Not hope. Are you moral? Are you a moral man? [LB682]

WILLIAM MacKENZIE: I try to be. [LB682]

SENATOR CHAMBERS: But you can't say whether you are or not? [LB682]

WILLIAM MacKENZIE: I think I am. [LB682]

SENATOR CHAMBERS: But you're not sure? Why are you going to resort to an argument about morality, to put a heavy burden on somebody else, but you're not sure that you're moral yourself? [LB682]

WILLIAM MacKENZIE: Well, Senator, I believe that this law raises issues of justice and morality. If this... [LB682]

SENATOR CHAMBERS: Jesus was talking about some hypocrites. He said, they bind burdens grievous to be borne, and place them on other men's shoulders, and will not touch them with their little finger. So will you sleep better if we kill this bill and people

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

Judiciary Committee
March 08, 2007

come out with those crushing debts? Will you feel that all is well with the world then?
[LB682]

WILLIAM MacKENZIE: Well, it would be easier for my job if the bill was passed. [LB682]

SENATOR CHAMBERS: That's not what I asked you. Will you rest better if this bill is killed? [LB682]

WILLIAM MacKENZIE: I don't know whether I'll rest better or not, but I...my job would be easier if these child support arrears were dropped off the system, because it's one of my duties to enforce these orders. So if I was looking at it for my own personal interests, I might support the bill. [LB682]

SENATOR CHAMBERS: That's not even what I asked you. That has nothing to do with what I asked you. So I'll ask you another question you might can answer. You've been a prosecutor for how many years? [LB682]

WILLIAM MacKENZIE: Since 1983. [LB682]

SENATOR CHAMBERS: Have you prosecuted cases, or have you always been in child support enforcement? [LB682]

WILLIAM MacKENZIE: No, I've done other prosecutions. [LB682]

SENATOR CHAMBERS: You've sent people to prison, correct? [LB682]

WILLIAM MacKENZIE: Yes, sir. [LB682]

SENATOR CHAMBERS: And you know that when those people come out of prison, they many times don't have any skills when they come out. Are you aware of that? [LB682]

WILLIAM MacKENZIE: Many of them didn't have them when they went in, either. [LB682]

SENATOR CHAMBERS: Are you aware that when they come out, they don't have many skills? [LB682]

WILLIAM MacKENZIE: Oftentimes that's true. [LB682]

SENATOR CHAMBERS: Okay. Are you aware that many of them are very poorly educated, and some can scarcely read, others cannot read at all? Are you aware of that? [LB682]

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Transcriber's Office

Judiciary Committee
March 08, 2007

WILLIAM MacKENZIE: That's too sadly true. [LB682]

SENATOR CHAMBERS: What kind of job are they going to be able to get when they get out, if any job? [LB682]

WILLIAM MacKENZIE: That's a...that raises a different issue, though, Senator. [LB682]

SENATOR CHAMBERS: No, I'm asking you if you have an opinion. If you have no opinion, just tell me. [LB682]

WILLIAM MacKENZIE: I have an opinion. [LB682]

SENATOR CHAMBERS: What kind of job are they likely to be able to get? [LB682]

WILLIAM MacKENZIE: If they're low...have low education, they're going to end up in a \$6- or \$8-an-hour job. [LB682]

SENATOR CHAMBERS: And how long will it take them to pay back these arrearages, do you think? [LB682]

WILLIAM MacKENZIE: There are other options, though, Senator, which my letter to the committee... [LB682]

SENATOR CHAMBERS: Rob a bank? [LB682]

WILLIAM MacKENZIE: No, sir. No, sir. [LB682]

SENATOR CHAMBERS: That's what a coach did. [LB682]

WILLIAM MacKENZIE: They can ask the other parent to forgive any or all of the arrears that are owed to the other parent. [LB682]

SENATOR CHAMBERS: And the parent says, "h" no, I'm glad you went to prison; they should have kept you there forever. [LB682]

WILLIAM MacKENZIE: Okay. If the money is owed to the state, they can petition the state of Nebraska to forgive any or all of the arrears. [LB682]

SENATOR CHAMBERS: How many times has the state forgiven? [LB682]

WILLIAM MacKENZIE: Not often, in my experience. [LB682]

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

Judiciary Committee
March 08, 2007

SENATOR CHAMBERS: Okay, so that's out. I want you to be practical. Don't treat me like I'm a child in grade school. You're supposed to be a man of the world who is dealing with reality. Now, you've mentioned two alternatives which really are totally impractical. Tell me something practical. You said there are other options. The two you mentioned are nonsensical and preposterous. [LB682]

WILLIAM MacKENZIE: Well, I don't agree that they're always nonsensical or preposterous. They may not apply to most cases, but they do...they would apply to some cases. There are... [LB682]

SENATOR CHAMBERS: So tell me something that applies in most cases. [LB682]

WILLIAM MacKENZIE: When someone leaves incarceration, if they still owe child support and the children are still minors, they can petition at that time to have the child support order modified, based upon a change of financial circumstances. [LB682]

SENATOR CHAMBERS: To whom do they petition? [LB682]

WILLIAM MacKENZIE: To the court. [LB682]

SENATOR CHAMBERS: Now, how is their situation going to be such to get a modification when they're out and can make some money, when it's not sufficient to get a modification when they're in and they're making no money? [LB682]

WILLIAM MacKENZIE: They can show when they're out that they have the ability to earn income, but not...perhaps not what they did...what they earned before they were incarcerated. [LB682]

SENATOR CHAMBERS: That's all I have. Thank you very much. [LB682]

WILLIAM MacKENZIE: Okay. Thank you. Any other questions? [LB682]

SENATOR ASHFORD: Thank you, Bill. Any other questions? [LB682]

WILLIAM MacKENZIE: Thank you. [LB682]

SENATOR ASHFORD: Sean. [LB682]

SEAN BRADLEY: (Exhibit 34) This is it, Senator. Senators, my name is Sean Bradley. That's B-r-a-d-l-e-y. I'm here representing the YWCA Omaha. We are in opposition to LB682 for the very simple reason that while the payor may have committed a crime that has resulted in his incarceration, somebody is picking up that tab. Sometimes it's the state. Very often, it's people who are like my clients. Very often, it's because the person

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

Judiciary Committee
March 08, 2007

is in jail for having beaten my clients. It is patently unfair then to say to that person that we're going to lower your child support obligation because of the crime that you've committed and the results of that. The cost of shoes don't go down when the payor goes to prison. The cost of food doesn't go down. Rent stays the same. And who's paying that? Either the state or the custodial parent. The question has been asked: Well, what do we do about these arrearages? What is he ever going to do? Is he ever going to work that off? That's a very, very difficult question, almost as difficult a question as a custodial parent faces when rent is due. There aren't very many good options in these situations, but I think it is inappropriate to say, well, I guess we have to put it on mom and the children. That's just inappropriate. And I will be happy to take your questions. [LB682]

SENATOR CHAMBERS: Mr. Bradley,... [LB682]

SEAN BRADLEY: Yes, sir. [LB682]

SENATOR CHAMBERS: ...you all are not making sense to me. I'm...and here's what I give as the excuse for my problem--I was educated by OPS. (Laughter) So you geniuses understand these things that I don't. If somebody is in prison, making no money, what can he or she pay to the custodial parent? [LB682]

SEAN BRADLEY: While in prison? [LB682]

SENATOR CHAMBERS: Yes. [LB682]

SEAN BRADLEY: He's going to pay nothing. He's going to earn an arrearage, going to develop an arrearage. [LB682]

SENATOR CHAMBERS: So how is that going to help...you said it's on mom, it's going to be on mom, or dad. [LB682]

SEAN BRADLEY: Right. [LB682]

SENATOR CHAMBERS: And that's not going to change, when the person is locked up. [LB682]

SEAN BRADLEY: He'll owe her when he gets out. [LB682]

SENATOR CHAMBERS: And suppose she's dead. Then he owes the state? [LB682]

SEAN BRADLEY: I'm not a probate attorney. I really don't know. [LB682]

SENATOR CHAMBERS: Oh, you don't know? [LB682]

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

Judiciary Committee
March 08, 2007

SEAN BRADLEY: No, sir. [LB682]

SENATOR CHAMBERS: But he owes somebody. You want the person to pay as a part of the punishment, right? [LB682]

SEAN BRADLEY: No, I want somebody to pay either at the time that it's owed, and if not then, if they cannot because they're paying a debt to society, I want them to pay later? [LB682]

SENATOR CHAMBERS: What debt is owed to society, and why? [LB682]

SEAN BRADLEY: I'm assuming if he's incarcerated, he's incarcerated because he's not...because he's been convicted of a crime. [LB682]

SENATOR CHAMBERS: And how does that make a debt to society? What does he owe to society for that? The time that he spends in prison, is that how he pays off his debt to society? [LB682]

SEAN BRADLEY: That's my understanding. [LB682]

SENATOR CHAMBERS: If I hit you in the nose, what do I owe society for having hit you in the nose? [LB682]

SEAN BRADLEY: Whatever the criminal statutes would say. [LB682]

SENATOR CHAMBERS: And you're being very theoretical, but I want to be realistic now. Do you know how...do you have any clients that the YWCA deals with who have been incarcerated themselves--women, in other words? [LB682]

SEAN BRADLEY: I don't think right...I have had clients who have been incarcerated, but I don't think I have any right now. [LB682]

SENATOR CHAMBERS: Does the YWCA...is that what this organization is you're talking about empowering...eliminating racism, empowering women? Is that the YWCA's motto? [LB682]

SEAN BRADLEY: Yes, Senator. [LB682]

SENATOR CHAMBERS: So you're here representing the YWCA? [LB682]

SEAN BRADLEY: Yes, Senator. [LB682]

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

Judiciary Committee
March 08, 2007

SENATOR CHAMBERS: Do they service, provide services for women who have been incarcerated? [LB682]

SEAN BRADLEY: We don't have any plans specific...programs specifically for women who have been incarcerated, no. [LB682]

SENATOR CHAMBERS: So then a woman who had been incarcerated, as had been mentioned earlier, who comes out and has those arrearages and can't get a decent job, the YWCA doesn't care about them? She must be punished further by having anything she makes taken, because of arrearages that grew up while she was in prison, right? [LB682]

SEAN BRADLEY: There's three things that are wrong about that statement, Senator. [LB682]

SENATOR CHAMBERS: So tell me quickly. [LB682]

SEAN BRADLEY: The things that are wrong about that statement is, first of all, "the YWCA doesn't care." In fact, that's wrong. We would care if she came to us and applied for services. The second... [LB682]

SENATOR CHAMBERS: Well, that's...you're just saying that. That doesn't mean anything to me. That's wrong. So let's get to something concrete. [LB682]

SEAN BRADLEY: Senator, the things I say do mean something. [LB682]

SENATOR CHAMBERS: You said three of mine are wrong. I say that's wrong. [LB682]

SEAN BRADLEY: The second thing that you said that was wrong was that she should pay because she should be punished. That is not why she should pay. She should pay because somebody else was paying for her while she was serving her time. [LB682]

SENATOR CHAMBERS: You know what you said when you were speaking? That the person is in jail for having hit...beat your client. [LB682]

SEAN BRADLEY: I'm saying that can be a situation. [LB682]

SENATOR CHAMBERS: So that means the additional payment was to punish him for having beaten your client. That's the way I interpreted it. What's the third one? [LB682]

SEAN BRADLEY: I'm saying that would be a gross injustice in those situations. [LB682]

SENATOR CHAMBERS: What's the third one? [LB682]

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

Judiciary Committee
March 08, 2007

SEAN BRADLEY: At this point, Senator, I've forgotten. (Laughter) It was awhile ago.
[LB682]

SENATOR CHAMBERS: Mr. Bradley, what is the YWCA doing to eliminate racism?
[LB682]

SEAN BRADLEY: Well, that's a very good question. [LB682]

SENATOR CHAMBERS: Okay. I won't...if it takes you awhile to come up with an answer, I withdraw the question. [LB682]

SEAN BRADLEY: Thank you, Senator. [LB682]

SENATOR CHAMBERS: That's all I have. [LB682]

SENATOR ASHFORD: Thanks, Senator Chambers. Thank you, Sean. [LB682]

SEAN BRADLEY: Thank you, gentlemen, and ladies. [LB682]

SENATOR SCHIMEK: Thank you. (Laugh) [LB682]

SENATOR ASHFORD: Anyone else like to...any neutral testifiers? Senator Wightman.
[LB682]

SENATOR WIGHTMAN: Thank you, Chairman Ashford. I think that I can be very short. I think that in many instances a spouse will actually get as much, and perhaps more, if this bill becomes law, than they will otherwise, because you've heard the story of hopelessness that comes about as a result of this accruing child support while these people were incarcerated. Hopelessness is not a friend, I suggest, of child support collectors. It's not a question of putting...as one of the testifiers said, putting it on mom's shoulder. Usually...and I think Senator Chambers is absolutely right in that, that if there's been any lengthy period of time of incarceration, that's almost always an obligation going to the state of Nebraska and not the mom. So I think that's an argument that doesn't hold a lot of water. And the state has an interest in seeing these people rehabilitated, and the chances of rehabilitation are much, much less if they're faced with this child support. And you've heard testimony to that effect. So as to whether it goes into effect in 90 days or whether it goes into effect in six months, or even longer period, but I wouldn't suggest that it be much longer than that, I still think it's a good bill. And it's not going to cost the state much money, because they're not going to collect it anyway, and it's probably not going to help mom at all. So I would ask that you please advance LB682 to General File. Thank you. [LB682]

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

Judiciary Committee
March 08, 2007

SENATOR ASHFORD: I don't want to belabor this. Could I make a comment? I appreciate this bill, and I'm proud to be a cosponsor of it. I mean, in the ten years I've spent working with...at the Omaha Housing Authority with people in poverty, there is no greater problem than men and women, mostly men, who come out of prison and don't have any hope for a job, and don't have any ability, certainly, to pay child support. But I absolutely, totally agree with you that if you give these people an opportunity to move forward, and don't saddle them with something they've already paid a price for, that you're going to find a way out for those people. I absolutely am convinced of this. I think it's one of the most important bills that I've seen come through this committee, and I applaud you for bringing it to us. [LB682]

SENATOR WIGHTMAN: Thank you. [LB682]

SENATOR CHAMBERS: Just to clarify something for the record, Senator Wightman, if somebody has assets when he or she gets out, we're not saying that people who can pay ought not pay. Is that correct? [LB682]

SENATOR WIGHTMAN: I think that's absolutely correct, because all they can do...all the court can do is take that into account and remove the presumption that it was a voluntary reduction of income. If he has other sources to pay it out of, he may reduce the child support, but he certainly would not have to reduce that child support to zero, by any means. [LB682]

SENATOR CHAMBERS: And that was clear, but I just wanted it stated. That's all I would have. Thank you. [LB682]

SENATOR WIGHTMAN: Thank you. [LB682]

SENATOR ASHFORD: Thank you, Senator Wightman. (See also Exhibits 49-51) Okay. Senator Schimek. How many...well, never mind. (Laughter) I don't want to know. [LB682 LB535]

SENATOR SCHIMEK: I was really hoping we'd see the room just clear out, Senator. (Laughter) [LB535]

SENATOR ASHFORD: Just clear out. (Laugh) That wouldn't happen with one of your bills, Senator Schimek. [LB535]

SENATOR SCHIMEK: That's true. (Laugh) [LB535]

SENATOR CHAMBERS: Senator Schimek, there are more now than before; they're still coming in. (Laughter) [LB535]

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

Judiciary Committee
March 08, 2007

SENATOR SCHIMEK: (Exhibits 35, 36, 37) I'm not looking. Thank you. Mr. Chairman and members of the Judiciary Committee, I am here to introduce LB535. And for the record, my name is DiAnna Schimek. I represent the 27th Legislative District, the "Historic District." LB535 seeks to create a Division of Juvenile Legal Services within the Commission on Public Advocacy to provide state level funding and administration of the attorneys and guardians ad litem representing children, youth, and parents in juvenile court. The majority of the people in this room are here, I believe, because they feel strongly about the importance of providing quality legal representation to juveniles in Nebraska. And I would like to commend all those people for providing the kinds of services they are and for doing it well. The purpose of LB535 is to allow the courts to continue using these quality legal services, provide resources to other attorneys, and meeting a higher standard of representation, and address some of the systematic issues that currently inhibit the system from functioning properly. Today or tonight, maybe I should say, you will hear testimony regarding the areas for improvement regarding the representation of juveniles in Nebraska, the fact that Nebraska statutes do not currently provide for the representation of juveniles, why standards are need, and why state implementation of standards is necessary, the social and fiscal benefits that improved legal representation for juveniles will provide to the state of Nebraska, the property tax relief this bill provides to counties, and how a division within the Commission on Public Advocacy will administer state level funding and provide oversight of attorneys and guardians ad litem representing children, youth, and parents in juvenile court. You will hear opposition to this bill. There are a number of mechanisms providing services, and we are not trying to discourage or inhibit those providing quality legal services from doing so. We are trying to put in place a comprehensive statewide policy to encourage and support the kind of legal practice that gives juveniles consistently excellent representation. Why was the Commission on Public Advocacy chosen as the home for a state-administered system? Other options proposed included the State Court Administrators Office and the Nebraska Crime Commission, but we believe that the Commission on Public Advocacy is the most appropriate for several reasons. First, the commission is currently the recipient of the only state funding designated for legal representation for indigent citizens. Second, the commissioners must be lawyers who have demonstrated a commitment to providing effective assistance of council for those citizens who cannot afford to pay these costs. The Governor may only appoint commissioners whose names have been forwarded to him by the Executive Council of the Nebraska Bar Association. Don't hold that against them, Senator Chambers, which means that those names being forwarded to the Governor have the support of the entire State Bar. Third, given the fact that the commission is a state agency already designated to provide legal services, it possesses the working knowledge of the types of legal representation systems that are currently used and would be able to provide the efficiencies necessary to keep the costs down, while at the same time improving legal representation for juveniles. LB535 amends the current statutory framework for the Commission on Public Advocacy to expand the commission's responsibilities to include the administration of legal services to youth,

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

Judiciary Committee
March 08, 2007

children, and parents in juvenile court, to include a commitment to juvenile legal services as a requirement for commission membership, and to transfer the funding of juvenile legal services from the counties to the state. The language is flexible to allow the commission to administer services in several ways, be it through contracts, providing judges with lists of qualified attorneys to appoint, or by arrangement with public defender offices willing to go beyond their current statutory mandate for adult indigent defense, and to participate in a framework to handle juvenile cases. A state-funded and administered system would be better to ensure that all Nebraska children, youth, and parents are provided timely and quality legal representation in juvenile court proceedings. That system would also provide equitable funding, uniform training, and a system for monitoring, to ensure manageable caseloads, compliance with training requirements, and qualification for appointment. Over half of the states have implemented statewide systems for juvenile defense services, and a growing number of states have implemented such systems for guardian ad litem services. Studies have indicated that the transition from locally funded and controlled system to state systems typically results in consistent, high quality legal services. National research, unfortunately, shows that Nebraska ranks 46th in the amount of state funding provided for legal representation to indigents, including juveniles. LB535 is intended to assist the courts in assuring that highly trained, dedicated attorneys are available for appointment. Further, the intent is to relieve the counties of the burden of funding legal representation for children, youth, and parents in juvenile court. The bill fosters a great partnership between the state and the counties in providing these services. And, Mr. Chairman, I do have some handouts. Kathy Moore, from the Voices for Children, had to leave her testimony because she had to leave. There is kind of a briefing thing here from the Spangenburg Group, actually a letter, and there is a letter from NACO, from the County Officials Association in support. [LB535]

SENATOR ASHFORD: Thank you, Senator. Any questions of Senator Schimek? Thank you, Senator Schimek. Proponents. [LB535]

ROBERTA STICK: (Exhibits 38 and 39) My name is Roberta Stick, last name is S-t-i-c-k. I'm an attorney in Lincoln. I was formerly the executive director of the Lincoln Legal Aid Program and then director of Advocacy for the statewide legal services program. I've represented parents and children in juvenile court abuse and neglect cases since 1979. I'm currently a member of the Nebraska Supreme Court Commission on Children in the Courts. Our task is to look at how children fare in the legal system, and make recommendations to the Supreme Court on how to make improvements, if improvements are needed. And I've been an active participant in the commission's guardian ad litem subcommittee. What we have learned through studies, such as the Nebraska court improvement projects 2005 reassessment of the legal system as it impacts children in the abuse, neglect, and foster care system is that although the quality of representation by attorneys who represent parents or a guardian ad litem for children has improved since an original assessment was done, in 1996, further

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

Judiciary Committee
March 08, 2007

improvements in the quality of legal services provide are needed in order to ensure that parents and children receive effective and meaningful advocacy. Our state law requires that we provide indigent parents and children with attorneys. We have an obligation to ensure that quality representation is uniformly provided. There are many very talented attorneys working in this area. There are an equal number of well-meaning attorneys who need assistance in order to improve their advocacy in this area. We know that attorneys in this area do not always meet with the children they represent, something they would probably do if their clients were adults. They may not conduct an independent investigation of their juvenile client's cases as they would if they were representing an adult. And often their written reports are rubber stamps for what the Department of Health and Human Services has recommended. We need to take action to alter the dynamics of a system that is the highest in the country per capita for children in foster care. The subcommittee has recommended to the Supreme Court comprehensive training for attorneys handling these cases, and the standard should be adopted governing the procedures attorneys use in representing their juvenile court clients. I think that a state administered system for representation of juveniles would go far to improve the quality of representation for children. It will provide centralized oversight to ensure that attorneys have manageable caseloads, it will ensure compliance with training requirements, it will ensure that attorneys representing parents and children are qualified to do so, and that they have access to resources necessary for them to do a good job. A state administered system of juvenile representation is likely to be more cost-effective than running 93 separate systems. By increasing the ability of attorneys to provide meaningful advocacy there will likely be a cost saving because of the time...because the time children spend in foster care will be reduced. I have brought with me two reports that I would like to provide to you. One is a copy of the Court Improvement Project's "2005 Reassessment of the Court and Legal System for Child Abuse and Neglect and Foster Care," and then another study done for the Supreme Court Commission on "Legal Representation in Delinquency and Status Offense Cases," and that was completed in August of 2006. [LB535]

SENATOR LATHROP: Oh, I guess I'm chairing this. (Laugh) Forgive me. I'm asleep at the switch. Questions? Senator Pirsch. [LB535]

SENATOR PIRSCH: Just a question as far as how you envision it will function if and when there would be a centralized type of administration. Would the salaries that would be paid under this new entity, would they be commensurate with essentially the salaries that are being offered now through the various 93 separate systems? [LB535]

ROBERTA STICK: Well, I mean, I can't answer that question. One problem that we did identify through looking at the separate systems that we have now is that there is a vast disparity in what attorneys who are providing this type of representation receive through each county. I mean, it can be as low as \$40 or \$45 an hour, to \$75 an hour. So one of the hopes is to equalize the system. [LB535]

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

Judiciary Committee
March 08, 2007

SENATOR PIRSCH: Okay. Would the overall cost of the system, albeit centralized, do you envision that remaining the same? I noted from the fiscal note, and I'm not sure if you've had a chance to see it, that it is estimated to be about \$10 million next year. Is that...and that they foresee the cost for this program to be about the same. Is that something that's so hard predict at this point that you don't have any kind of knowledge about that? [LB535]

ROBERTA STICK: I don't, I'm sorry. [LB535]

SENATOR PIRSCH: Okay, very good. [LB535]

SENATOR LATHROP: I do have a few questions for you. You said you're...are you a public defender now in Lancaster? [LB535]

ROBERTA STICK: No, actually I'm... [LB535]

SENATOR LATHROP: What's your position? [LB535]

ROBERTA STICK: Pardon? [LB535]

SENATOR LATHROP: What's your position now? [LB535]

ROBERTA STICK: Now I am a private attorney. When I worked for Legal Aid, beginning in 1979, the Lincoln office contracted with Lancaster County, and began representing parents and children in juvenile court cases. So we functioned like a public defender office. [LB535]

SENATOR LATHROP: Okay. You've suggested that we have the highest number of kids in foster care. That's not a function of the public defender system, is it? I mean, is that going to change if we pass this? [LB535]

ROBERTA STICK: Meaningful advocacy on behalf of children can move their cases forward, and hopefully...I mean, our mandate now is to provide children with permanency. And permanency is not remaining in foster care. So if a child has an attorney representing him or her and that attorney is doing their job well, then they are going to push the case forward. They are going to be sure that parents have appropriate services provided to them to help them correct their problems or, if their problems can't be corrected, that another method of permanency be adopted for the child. But it really has to do with attorneys who know what they're doing, who know what children need, making sure that they get those services, and their parents get their services. And that's why I would conjecture that kids will get through foster care faster. [LB535]

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

Judiciary Committee
March 08, 2007

SENATOR LATHROP: Okay. I think we have a couple of public defenders here, and we'll talk to them about it. Thank you. Are there any other questions? All right. Thanks for your testimony. [LB535]

DENNIS KEEFE: Mr. Chairman, and members of the Judiciary Committee, my name is Dennis Keefe, K-e-e-f-e, and I've been the elected public defender for Lancaster County for the past 28 years. I appreciate the opportunity to appear in support of this bill which I think can improve the quality of legal services for children and their families in the Nebraska Juvenile Justice System. In my opinion, we're here today, at least in part, because the state of Nebraska has yet to establish a system for providing legal services to juveniles. Under the Nebraska Juvenile Code currently, judges are instructed to appoint attorneys, and the counties are ordered to pay what the judges determine to be fair and reasonable fees. Given the general nature of these instructions, it's not surprising that the counties have developed a hodgepodge of systems with no consistency in the methods of providing the services or the quality of the services. In some counties, judges appoint whichever private attorneys they choose for whatever reasons they choose. Other counties use contracts which, without standards, can result in a low bid winner with no quality assurance. Some public defender offices agree to accept some of the juvenile cases and others do not. Because a number of these cases require multiple attorneys, many counties have a combination of these three types of systems. And with the exception of the institutional defender offices, there really isn't any accountability. What can be done to remedy some of the problems you've heard described with the current system? All of the nations experts in providing legal services to indigents recommend the adoption of mandatory and enforceable standards. Other states have adopted standards in response to the need for increased specialization in areas such as juvenile practice, staggering caseloads, lack of training, gross underfunding among other reasons. Traditional government funding processes and marketplace incentives have not operated effectively to improve or moderate these problems. Unlike the private sector, clients of public defense, including wards and guardians ad litem do not choose their attorneys and they can't fire their attorneys if the services they receive are unsatisfactory. Those who fund and choose the type of system...delivery system do not directly oversee, receive, or use the services that the system provides. Further, those who do use the services lack the political influence to voice their concerns to lawmakers. My experience tells me that the key to a system that provides quality legal services for juveniles is adequate funding, so that competent attorneys who are dedicated to the mission can be recruited, retained, trained, mentored, and evaluated and their caseloads can be kept reasonable. This brings me to the question that's been raised regarding why state implementation of a juvenile legal services plan would be more effective than a county based plan. I would say first that it's much easier and much more efficient to implement and enforce mandatory standards at the state level than to try to do so in each of Nebraska's 93 counties. Moreover, many of the counties today are struggling with the state imposed lid at a time when the costs of juvenile legal services in particular are skyrocketing. In short, the counties can't afford to

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

Judiciary Committee
March 08, 2007

continue to go it alone in this ever-increasing area of indigent defense services if we want to see improvements in the system. [LB535]

SENATOR ASHFORD: Dennis, I'm going to ask you to sum up. We do have...we do have...I'm going to ask you to sum up. [LB535]

DENNIS KEEFE: Sorry. I just have...Senator, that's really my major point. I know that change is coming. This provides major change, it makes a shift. I'm willing to deal with it as a county public defender. I think it's the best thing for the system. [LB535]

SENATOR ASHFORD: Thank you. Any questions? Dennis, thank you. Senator Pirsch. [LB535]

SENATOR PIRSCH: No, not's that quite all right. [LB535]

SENATOR ASHFORD: No, no, please if you have a question, this is...I know this has got to be difficult for you to understand why I can never call on you. I don't understand. [LB535]

LINDA CRUMP: I guess I have to start by saying good evening, because that's where we are right now. [LB535]

SENATOR ASHFORD: Well, it's the twilight, anyway. [LB535]

LINDA CRUMP: My name is Linda Crump, C-r-u-m-p, and I'm the president of the Nebraska State Bar Association. I want to begin by thanking Senator Schimek for introducing this bill. There have been several committees from the bar and from the state that have been studying issues of indigent defense and what should be done. And you've already heard a lot of the reasons why we think this might be a better way to look at this particular issue. It's about the kids, and we have to do something to make sure that every single one of them gets the best representation we can. When we appoint an attorney to a case, the state is saying, we are giving you someone to take care of the issues that you brought forward. We should make sure we have standards that we're going to say everyone has to meet. I want to acknowledge the great attorneys in this state who do a fantastic job of helping many of the juveniles through this system. Not every kid in the state of Nebraska ends up with the same experience. And we need to step up and do something. This is one system that we think might work. We asked the Commission on Public Advocacy to go ahead and step forward because we didn't want to create a new bureaucracy to try to figure out how to get it up and running when we knew we had the expertise that already existed in a state agency. So we said, let's look at what we have and see if we can act now and make this system better for the kids of the state of Nebraska. That's what this is all about. And if we're going to say there have to be standards, we have to monitor them. And you cannot monitor them in 93 different

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

Judiciary Committee
March 08, 2007

ways; you need to have some uniformity in what you're doing. I'll stand for any questions. [LB535]

SENATOR ASHFORD: Yes, Senator Chambers. [LB535]

SENATOR CHAMBERS: Not long ago, Douglas County did some finagling in granting contracts to some people who were supposed to look out for juveniles. The whole process was wrong. I even filed a complaint with the Attorney General's Office, I believe. And there is so much in the way of inbreeding, politically, in Douglas County that, although I took my name off the bill, I owe Senator Schimek an apology and I went over and told her. She didn't know I was going to say this on the record, but if she'll forgive me, I might come back home and put my name on the bill. But I want to listen a little bit more to be completely persuaded. I'm persuadable, my mind is open, and I'm heeding what I'm hearing. [LB535]

LINDA CRUMP: Thank you. Like I said, we do have to step up. If I could put one thing on the record, I'd appreciate it, and it's a point of personal privilege. I have never made a statement saying, as the bar president, that we are creating a statewide public defender office. I don't know who decided to credit me with that comment. I wish they would stop. And I wish you would know that we're looking at legal services statewide for juveniles. That's what this bill is about. Thank you. [LB535]

SENATOR ASHFORD: Oh, go ahead. [LB535]

SENATOR LATHROP: Can I ask just a few questions? Thanks for being here, it's a pleasure to have you here. Does the state bar, from time to time, establish standards for those that practice law in different areas? [LB535]

LINDA CRUMP: There are general professionalism issues and ethical issues that are already in place. But when it comes to looking at appointed counsel, we're saying, for not just juveniles, but for all, there should be a higher standard in place saying that at a minimum we're going to expect you all to have done this. We also are about to go forward on saying there has to be mandatory continuing legal education. There is a petition before the court now... [LB535]

SENATOR LATHROP: Okay. [LB535]

LINDA CRUMP: ...to say that there are some standards. [LB535]

SENATOR LATHROP: Maybe let me ask the question a little different. If this becomes law, how is it going to change anything in Valentine, Nebraska? Are we going to have somebody from Lincoln drive up to Valentine to represent juveniles,... [LB535]

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

Judiciary Committee
March 08, 2007

LINDA CRUMP: No. [LB535]

SENATOR LATHROP: ...or are we going to appoint lawyers from the same pool to represent children in juvenile court? [LB535]

LINDA CRUMP: We're going to appoint lawyers who make sure that they've met the standards to represent juveniles wherever they are. So a judge can say, if Mr. Chambers is an attorney who stepped up to the plate and is ready to do that, I'll appoint you, Senator Chambers, to this representation. If Senator Ashford were to be a lawyer and step up to the plate and do it, that's what we'd do. So it's not going to be just the pool of attorneys... [LB535]

SENATOR ASHFORD: I am a lawyer, but...(laughter) [LB535]

LINDA CRUMP: ...in Lincoln driving other places to do this. (Laughter) You'd still be appointed in the areas you're in. [LB535]

SENATOR LATHROP: Okay. We are...there's a lot of different facets to this, one of which it goes from being a county responsibility to a state responsibility. And it has a pretty big price tag. [LB535]

LINDA CRUMP: Right. I don't think it's a difference in what we're paying as a state, it's just a shift in where it's coming from. Because these are expenses that are borne now by the citizens of this state. [LB535]

SENATOR LATHROP: County by county. [LB535]

LINDA CRUMP: Right. The fiscal note was the closest we could get to what does it cost. [LB535]

SENATOR LATHROP: Okay. And maybe you bring up a good point, and that is it's not going to cost any more or less to represent the children if this passes, it's just going to become a state obligation rather than a county obligation. [LB535]

LINDA CRUMP: With the one exception that if we could front-load some things, there's a possibility in areas like detention there could be some reduction in court costs. If we look at having the kind of expertise that could enable someone to handle the case as efficiently as possible, there's the potential for a reduction in cost. We can't prove that at this moment. [LB535]

SENATOR LATHROP: Okay. So besides shifting the cost from the county to the state, we will do what? Set some standards so that we have a required level of competency in the subject matter of juvenile court advocacy? [LB535]

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

Judiciary Committee
March 08, 2007

LINDA CRUMP: Correct, it's going to be a little bit more complex. The court has some things that are proposed, those will go forward. And in order to monitor those, we have to make sure that we can look at how you monitor whether or not people are meeting those standards. [LB535]

SENATOR LATHROP: Okay. So we'll set the standards for the practitioner, which is the lawyer representing the juvenile. And then... [LB535]

LINDA CRUMP: Judges would know from a list that they have people who have already met these standards and they can appoint them. If they're someone who wants to contract, to say that we have a whole group of attorneys that have met them, a judge would have the ability to do that, too. [LB535]

SENATOR LATHROP: Okay. Let me ask the question this way, great idea. If we say, this is a heck of an idea, we pass the bill, and the Governor or whoever is going to be in charge of the appropriations, and they say, no, we're not going to take on the \$10 million a year obligation. Okay? [LB535]

LINDA CRUMP: Um-hum, okay. [LB535]

SENATOR LATHROP: I want you to assume that we run into that hurdle... [LB535]

LINDA CRUMP: All right. [LB535]

SENATOR LATHROP: ...with your...with this proposal. Can we accomplish the same thing by continuing to make it a county responsibility? In other words, can we set the standards, can we impose the standards and accomplish the same thing without turning it into a \$10 million a year state responsibility? [LB535]

LINDA CRUMP: I don't think you'd have a mechanism for making sure that people are monitored and accountable. You can't put that burden on a judge to say that I'm going to now micromanage what's happening for an attorney. You can't put it on a county official to say they're going to do it. So there is no county by county mechanism. And what you'd end up with is 93 different mechanisms trying to look at it. [LB535]

SENATOR LATHROP: So setting that standards we could probably do. We'd probably be hiring the same people. Wouldn't you agree? I mean most likely... [LB535]

LINDA CRUMP: If they step up and do it, right. [LB535]

SENATOR LATHROP: ...if we disbanded the public defender's office with the folks in the juvenile court in Lancaster County, they would end up probably just going to this

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

Judiciary Committee
March 08, 2007

new state agency to work, in all likelihood? [LB535]

LINDA CRUMP: It's possible. [LB535]

SENATOR LATHROP: Okay. The problem is with who's going to oversee that people are meeting the standards, and that really is what's behind making this a state obligation versus a county obligation. [LB535]

LINDA CRUMP: Correct. And also if you look at the state of Nebraska as being one of the few states that has stepped up and said our juveniles are important enough to us that we know we should be doing something to create a system to give them the best representation we can, we are amongst the minority in that. Very few states do not provide direct state aid for juvenile defense. [LB535]

SENATOR LATHROP: Now, let me ask just a couple more questions. And I appreciate your patience with me. Do we have any reason to think that Lancaster County Public Defender's Office, for example, isn't already practicing at the level that we hope to establish as the standard? [LB535]

LINDA CRUMP: When you pick a public defender's office, it's probably not the best example, because they do have supervisors for the other public defenders, they do try to monitor what their attorneys are doing, they are, on a voluntary basis, doing some of the things that we think should happen across the entire state. Not every juvenile is going to be represented by a public defender's office that has that model that you're talking about. Lancaster County may have that model in place right now. We're saying everyone should have it. [LB535]

SENATOR LATHROP: Thank you very much. I appreciate your answers to my questions. [LB535]

LINDA CRUMP: Thank you. [LB535]

SENATOR ASHFORD: Next proponent. [LB535]

AMY PRENDA: (Exhibit 40) Hi, Senator Ashford, and members of the Judiciary Committee. My name is Amy Prenda, it's P-r-e-n-d-a. I'm president and registered lobbyist for the Nebraska CASA Association. And I also was a member of the Supreme Court Commission on Children and the Courts, and the subcommittee, the guardian ad litem subcommittee. For the sake of brevity, I just wanted to let you know that we appreciate being considered as a partner in the statewide system. That has a potential for truly making a difference in how we can become better advocates for our abused and neglected children. Part of my testimony, I've also attached some information on Nebraska CASA and the counties that we're in across the state. And any other

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

Judiciary Committee
March 08, 2007

questions that you might have about the CASA program, but also would be willing to answer your questions here this evening. [LB535]

SENATOR ASHFORD: Any questions? Yes. [LB535]

SENATOR LATHROP: Maybe just one. Would this new state agency, or this new...if this passes, would CASA then become part of that organization? [LB535]

AMY PRENDA: It's...the vision of what we're looking at, LB535, allows for the flexibility of, yes, CASA being part of that partnership that would work with the guardian ad litem for advocating for abused and neglected children. [LB535]

SENATOR LATHROP: I have to ask, we went through this before. But when we have a juvenile in juvenile court, we have a lawyer for the juvenile. Okay? [LB535]

AMY PRENDA: Correct. [LB535]

SENATOR LATHROP: That's...and that's who we're talking about today. That's the public defender that represents the juvenile, is that true? [LB535]

AMY PRENDA: Yes. [LB535]

SENATOR LATHROP: Then we have a guardian ad litem that helps them make adult decisions about their representation? [LB535]

AMY PRENDA: When we're talking about abuse and neglect, they might not be a juvenile delinquent. And CASA is only abuse and neglect, children no fault of their own have the guardian ad litem. [LB535]

SENATOR LATHROP: Okay. So they get a guardian ad litem. And CASA becomes an extension of the guardian ad litem? [LB535]

AMY PRENDA: Yes. [LB535]

SENATOR LATHROP: Do I have that right? [LB535]

AMY PRENDA: Yes. [LB535]

SENATOR LATHROP: Do you guys end up with a conflict? I mean if we're going to have you in the same place, are we putting people that really may not have the same interests of the juvenile in the same organization? [LB535]

AMY PRENDA: Oftentimes, I didn't mean to interrupt. Often, yes, you very well could

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

Judiciary Committee
March 08, 2007

have a guardian ad litem who has a very different view from what the CASA has. However, my perspective in dealing with this and my experience over the years is when you have a juvenile court judge trying to make a decision about what's the best interests of the child, it's another set of eyes, ears, and hands as far as making the most informed decision that they have. So even if there is a conflict between the CASA, the GAL, and maybe the parent's attorneys, and also Health and Human Services, it's just one more set of information that the judge has to use to make the best decision. [LB535]

SENATOR LATHROP: Okay. I don't know that I've met you before, and I don't mean to ask this and don't take it the wrong way, but you're an attorney, are you not? [LB535]

AMY PRENDA: Yes, I am. [LB535]

SENATOR LATHROP: Okay. So you understand conflicts of interest and the difficulty of folding one group of people into another organization when the two of them might be adverse. So if that happens, now we got to go and appoint somebody else to do something, because the two of you are now in an adverse position. [LB535]

AMY PRENDA: Except for the fact that we're talking about, and part of the problem I think with guardian ad litems, they are attorneys appointed to do guardian ad litem work. And so what I...the example I gave is what's going on today. However, the partnership here would allow the guardian ad litem to be the attorney, and then allow the CASA volunteer to do the other parts that the guardian ad litem is supposed to be or expected to do beyond being the attorney. [LB535]

SENATOR LATHROP: Okay. [LB535]

AMY PRENDA: So there's the partnership that allows us the flexibility to do it. [LB535]

SENATOR LATHROP: And we had this discussion, I don't know if you were here for it, but when we were talking about a statewide guardian. Didn't we have a discussion on guardian ad litems? [LB535]

AMY PRENDA: Oh, guardianship? [LB535]

SENATOR LATHROP: But anyway, I think so. [LB535]

AMY PRENDA: You might have. But there, that's the beauty of being able to work a partnership between the GAL attorney and the CASA volunteer. [LB535]

SENATOR LATHROP: Very good. Thank you so much for your helping. [LB535]

SENATOR ASHFORD: Thank you. [LB535]

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

Judiciary Committee
March 08, 2007

SARAH HELVEY: (Exhibit 41) Good evening. My name is Sarah Helvey, that's H-e-l-v-e-y, and I'm a staff attorney at Nebraska Appleseed. A couple of recent studies have indicated that in too many cases guardians ad litem are not making contact with children, as statutorily required. A recently released report from the Foster Care Review Board indicated that in just over 3,000 cases reviewed, 15 percent of children had no contact with their GAL. The Nebraska Court Improvement Project 2005 Reassessment, which Ms. Stick provided to you, indicates that only about half the time where guardians ad litem reported to talk with the child before the day of the hearing. We can and must do better for our children. We believe LB535 attempts to do so and accomplishes several positive things. First, LB535 provides for the adoption of guidelines and standards for juvenile legal services, such as providing maximum caseloads, compensation rates and training. We think such standards are critical to the goal of improving the availability and consistency of GAL services across the state. Second, while several local groups have been working to develop standards and national standards already exist, this bill goes an important step further by creating a centralized office to oversee the standards. This centralized office would provide a level of accountability currently absent from the system. Third, LB535 makes use of an already existing infrastructure to provide these services. The commission has experience, offering legal services across the state, and is an appropriate entity to administer the provision of juvenile legal services. However, in light of our support for these aspects of LB535, we nevertheless urge the committee to take a comprehensive look at the problems plaguing our child welfare system, and in particular ways to ensure that guardians ad litem can be enabled, through our statutes, policies, and governmental structures to provide high quality representation to children. As this committee is well aware, several bills have been introduced this session offering a number of different approaches to improving the system. This underscores the fact that our child welfare system is in acute need of reform, and suggests that there is a certain level of disagreement about what that reform should look like. Therefore we call on this committee and the entire Legislature to take a close and careful look at these issues. At Nebraska Appleseed we have had the pleasure of working with countless dedicated, passionate and hardworking guardians ad litem across the state. These lawyers work day in and day out, addressing complex issues, making difficult decisions and advocating for our states most vulnerable children. We support this bill because we think it could create systems to ensure that all children are consistently receiving such high quality of advocacy. We thank Senator Schimek for introducing this legislation and the committee for their thoughtful consideration of this important matter. [LB535]

SENATOR ASHFORD: Thank you, Sarah. Any questions of Sarah? Thank you. [LB535]

SARAH HELVEY: Thanks. [LB535]

SENATOR ASHFORD: The next proponent. Okay. Opponent? Do we have an

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

Judiciary Committee
March 08, 2007

opponent here? How many opponents do we have? Okay. [LB535]

SENATOR CHAMBERS: You don't have to rush. We're not going anywhere. (Laughter) [LB535]

CHRIS COSTANTAKOS: Sorry, I just saw the green light. [LB535]

SENATOR ASHFORD: No, but that...the time is not running, though. (Laughter) [LB535]

SENATOR LATHROP: We appreciate your concern for us, nevertheless. [LB535]

SENATOR ASHFORD: And we have total control over these lights over here. [LB535]

CHRIS COSTANTAKOS: I'm hungry and you are, too. [LB535]

SENATOR SCHIMEK: Yeah, why don't we have pizza? [LB535]

SENATOR ASHFORD: Pizza? Oh, yes, yeah, yeah. [LB535]

SENATOR CHAMBERS: You mean, you all eat more than once a day? (Laugh) [LB535]

SENATOR ASHFORD: No, I mean, eventually. Yeah. Eventually, you can start. (Laughter) [LB535]

CHRIS COSTANTAKOS: (Exhibits 42 and 43) All right, thank you. Members of the Judiciary Committee, thank you for letting me oppose LB535. My name is Chris Costantakos, C-o-s-t-a-n-t-a-k-o-s. For those of you who I have not talked to, or who have not seen me before, and there's a few here, I'd like you to know juvenile court law is not just a passing interest for me. I've not only practiced in it for 28 years, but my interest in juvenile court law systems and philosophy have led me to actually produce a book on the work. I don't intend to be self-serving, but Nebraska Juvenile Court Law and Practice was published last fall by Thompson West as a means for me to deepen my understanding of juvenile court law and systems, and also, hopefully, to assist other practitioners in better practicing their law, including guardians ad litem. I was also a member of the guardian ad litem subcommittee. The passion to help children, like any other passion, must be tempered by facts and by reason, or it's not going to help anyone. When you look at LB535 ask yourself two questions: (1) Does LB535 represent good law? (2) Is this law necessary? LB535 is not good law. When it comes to state agencies and rolling up all the lawyers for juvenile court cases into one mega-bureaucracy, bigger is not necessarily better. There are substantial legal problems with LB535 as drafted, and those are in the handout that I've passed out. Is this law necessary? There's been some publicity promoting this bill--letters, documents, things like that, and perhaps some of you have seen those. I would like to address three

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

Judiciary Committee
March 08, 2007

propositions, or what I call misrepresentations that have been used as arguments to support the necessity for LB535. The first one is this, that LB535 is supported by the Nebraska Supreme Court Commission on Children and the Court. That has appeared in several documents. That is simply false. I have spoken, personally, with seven members of the commission, including one cochair who emphatically stated, the commission never voted or agreed to endorse this legislation. The second concern I have is that you have heard today at least three witnesses who have relied upon the 2005 "Reassessment of Court and Legal System for Child Abuse, Neglect and Foster Care." In that report there's two key points that keep being repeated: guardians ad litem are doing a bad job all across the state of Nebraska; and children and parents do not have zealous representation. This report paints the picture that this is a statewide problem. I would call your attention to the fact that Patricia M. Sullivan, Ph.D., a psychologist and a National Institutes of Health researcher, has reviewed this report that you all received, and has concluded that the findings in this assessment are bad science. Specifically, she has determined that the report...its findings in the report are critically flawed because they are not based upon reliable data. Certainly, this Legislature deserves valid research and more reliable data before enacting the sweeping changes that are contemplated by LB535. The witnesses you have heard rely on this report. The question for the Legislature is, should you rely on the data in this report? I have with me copies of Dr. Sullivan's analysis of the report. This is more in the nature of bullet points putting forth what the flaws are with this research. Finally, the third misrepresentation that's been circulated underlying LB535, and I think you heard it with the first speaker, is by placing all juvenile court lawyers into one bureaucracy, less children will be placed in foster care and children will spend less time in foster care. There is simply no empirical evidence for this proposition. I'm sure you are all aware that the reasons that any given child goes into foster care are different, and the length of time that a child spends in foster care are the result of a complex of variables. You can be the most aggressive advocate for a child and ask that they be removed from foster care, but it is still up to the judge, it is still up to the judge to decide. So my time is up, but those are my main... [LB535]

SENATOR ASHFORD: Oh, just go ahead and sum up, Chris. [LB535]

CHRIS COSTANTAKOS: That's my summary. I think it's a bad law, and I think, unfortunately, it's predicated...the need for the state system is predicated on the findings in this 2005 court reassessment report that you all have before you. And I think there are serious flaws and problems with the statistics and the data in that. And before the Legislature proceeds with these sweeping changes, I think it's worth your while to really find out if these are true conclusions or not. I do have a more in depth analysis of LB535, if any of the other senators...I know Senator Chambers has one, if anyone else is interested, I do have one. Thank you. [LB535]

SENATOR ASHFORD: Thank you, Chris. Any questions of Chris? Yes, Senator

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

Judiciary Committee
March 08, 2007

Chambers. [LB535]

SENATOR CHAMBERS: Miss Costantakos, I'm looking at this analysis of LB535 that was handed out. What I would like you to do, if you don't mind, because you did it succinctly, if you don't have a copy, I can bring mine to you. People always talk about giving back to the community, I will give back what you gave...oh, you have one. [LB535]

CHRIS COSTANTAKOS: I do have one. Thank you, I didn't know I did. [LB535]

SENATOR CHAMBERS: Now, the first item says, "The bill will breed inefficiency, if not the outright failure in the delivery of legal services in juvenile court, because of the imposition of a new layer a governmental bureaucracy between families and the active protection of their rights. Children and poor families will be the ones adversely affected." You heard the testimony that was presented this evening, and nothing that was said would suggest that your number one point will occur. So could you elaborate a bit on why you concluded that? [LB535]

CHRIS COSTANTAKOS: It is elaborated in the longer report. If you look at the wording of LB535, every decision and representation is subjugated to the quote, unquote, guidelines and standards that are to be promulgated by the commission. If you look at, I apologize,... [LB535]

SENATOR CHAMBERS: No, you don't have to...you can just say, you can just free-wheel it. And this is to get some things into the record. [LB535]

CHRIS COSTANTAKOS: Some of the concerns here are that the policies and guidelines govern the use and expenditure of the funds. The courts are...it's obligatory. The courts shall appoint, shall follow the guidelines and procedures when appointing. Courts have an inherent authority to appoint, and they may wish to appoint someone who is not on the approved list, or the eligible list for very, very good reasons. What I think the problem is with this law as it's presented worded, Senator, is that every decision, whether it's a fiscal decision, or whether it's a representation decision, is tied to these as yet inchoate guidelines and standards of the Commission on Public Advocacy. I'm going to translate in blunt English. I don't want to see a situation where an indigent parent has his parental rights terminated, and his commission attorney goes to the appellate division of the commission and finds out that they're in the fourth quarter of the fiscal year, there aren't sufficient funds to handle it, or because of some internal guideline and policy they don't think, the commission doesn't think it prevents a viable appeal, so you have a fundamental liberty interest sacrificed because of the commission policy. I don't want to see that parent be told, well, we can't afford it, or we don't think it presents a meritorious or a viable cause of action, but you know what, you can go hire an attorney. They can't hire an attorney. [LB535]

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

Judiciary Committee
March 08, 2007

SENATOR CHAMBERS: Okay. [LB535]

CHRIS COSTANTAKOS: That's my main concern for number one. [LB535]

SENATOR CHAMBERS: Now, number two says, "The bill will result in diminished advocacy for all children and for indigent parents, due to the myriad of conflicts of interest that are bound to result from the system". Senator Lathrop was kind of paddling around in that water. What are you referring to here? [LB535]

CHRIS COSTANTAKOS: I am referring to the fact that all of the attorneys will, if they're not per se commission attorneys, they will be ultimately commission attorneys; whether it's through a contract, or whether they're directly employed. Here is an example--if you have a man who is convicted of sexual abuse of his child in the criminal court, and a commission attorney represents him, he's an indigent father, and represents him in the appeal of his conviction. And the same father has his rights terminated in the juvenile court. And another commission or the same commission attorney represents him in that appeal, the commission guardian ad litem who is opposing his appeal of the termination also represents him. You have all of these people who are commission attorneys, selected by the commission from the approved list. The judge can only appoint from the approved list, you have this whole micro managed system where, basically, you're going to have two or three commission attorneys arguing against one another regarding...internally within the same case. [LB535]

SENATOR CHAMBERS: Now, I'm going to proceed,... [LB535]

CHRIS COSTANTAKOS: I think that's a serious conflict of interest. [LB535]

SENATOR CHAMBERS: ...because I think what your view is was clearly stated. Number the three, and the reason I'm taking this time, there were a number of proponents of this bill. So you are the one who has made available written opinions, so I want the benefit of your thinking in the record of this hearing. [LB535]

CHRIS COSTANTAKOS: Thank you. [LB535]

SENATOR CHAMBERS: So I hope you don't feel that I'm dumping on you or being unfair, because this is mild grilling, compared to what I usually do. You're not even simmering yet. So don't take it personally what I'm doing to you here. [LB535]

CHRIS COSTANTAKOS: I am not, Senator. [LB535]

SENATOR CHAMBERS: All right. Number three, "The bill singles out lawyers who practice or desire to practice in juvenile court, and imposes added requirements upon

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

Judiciary Committee
March 08, 2007

them above and beyond a law license, before they can be regarded as "eligible" or "approved" to be appointed to practice in juvenile court". Does that mean they cannot practice in juvenile court at all? Is that what you're saying? And before you answer that, something that I would like to have done when the death penalty was still in this state, I'm hoping after this year it won't be, that there be a certain standard set for any attorney appointed to represent a capital defendant, and that would be above what a lawyer is required to have right now, because any lawyer, a lawyer who deals in real estate or contracts can be appointed to represent a capital defendant. I haven't been able to get anything like that into the law. Some states do have it. And I think that could be analogized to this where you're saying merely having a law degree and being in good standing does not qualify you to give the kind of representation a capital defendant should have. Do you see a difference? [LB535]

CHRIS COSTANTAKOS: I can't speak to the capital defendant, because I don't practice there. But I hear your example and my response would be this, that the Nebraska Supreme Court has already passed, as a court rule, mandatory training for guardians ad litem. It has not become effective yet. And I think I heard someone say today that the date for the effectiveness of that annual mandatory training would be January of 2008. The second thing that's happening is the proposed rules of practice for guardians ad litem, basically a handbook to tell a guardian ad litem how do you do it, what should you do? Should you go out and visit the child? Do you need to attend the court hearings? Do you need to write a report? What should be in that report? That is the product of the guardian ad litem subcommittee, and that is currently pending before the Nebraska Supreme Court for consideration at this point. Those things, to me, seem...we haven't had these before. [LB535]

SENATOR CHAMBERS: Do you think... [LB535]

CHRIS COSTANTAKOS: These aim to improve the law license or the ability to practice law without LB535, which creates this mega bureaucracy where, first of all, the Commission on Public Advocacy sets the standards of who will be eligible, who's going to be on the list, and then ties the courts hands and says the court shall appoint only in accordance with that. What... [LB535]

SENATOR CHAMBERS: If instead of looking at it as requirements above and beyond a law license, could it be looked at as setting standards below which a person who wants to represent these juveniles cannot fall when it comes to expertise and knowledge? [LB535]

CHRIS COSTANTAKOS: In terms of the court rules and the training standards, yes. [LB535]

SENATOR CHAMBERS: And in that area of guardians ad litem and appointed

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

Judiciary Committee
March 08, 2007

attorneys, do you challenge the validity of what has been said about the percentage of times that these appointed attorneys do not see or talk to the juvenile until the day of the hearing? [LB535]

CHRIS COSTANTAKOS: I think that happens in some cases. I do challenge the validity of that as a sweeping conclusion that accurately portrays the state of Nebraska as a whole, yes. [LB535]

SENATOR CHAMBERS: What about those instances, though, and what about the welfare of the child, in terms of representation, when there is no contact between the lawyer and the child or the child's parents until the day of court? [LB535]

CHRIS COSTANTAKOS: That is a problem, Senator. [LB535]

SENATOR CHAMBERS: And what can be done about that? [LB535]

CHRIS COSTANTAKOS: The guardian ad litem can be removed. The bar... [LB535]

SENATOR CHAMBERS: But that's not being done, is it? [LB535]

CHRIS COSTANTAKOS: Well, I... [LB535]

SENATOR CHAMBERS: If a guardian ad litem or, pardon for cutting you. I'm not trying to be rude, but trying to get through with what I'm trying to get into the record. Have you ever heard of a lawyer being removed from the case of a juvenile because the lawyer had not met with the parents or the juvenile until the day of court? [LB535]

CHRIS COSTANTAKOS: I have in Douglas County, your honor, and I have seen that happen and I've been... [LB535]

SENATOR CHAMBERS: Please don't call me, your honor,... [LB535]

CHRIS COSTANTAKOS: Oh, I'm sorry. [LB535]

SENATOR CHAMBERS: ...not that I'm not honorable (laughter), I don't want to be mistaken for a judge. [LB535]

CHRIS COSTANTAKOS: You're honorable, Senator. [LB535]

SENATOR CHAMBERS: My standards are too high. [LB535]

CHRIS COSTANTAKOS: Yes, I have heard of that happen. And I've been in cases where the guardian ad litem has been removed for basically not even understanding the

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

Judiciary Committee
March 08, 2007

issues of the case or not being experienced enough. [LB535]

SENATOR CHAMBERS: Okay. I wanted a chance...to give somebody a chance to address that. Do you think that is a serious enough problem, or it happens often enough for us as policymakers to take note of it and be concerned? [LB535]

CHRIS COSTANTAKOS: I do. [LB535]

SENATOR CHAMBERS: Okay. And I'm not going to go into asking you, well, what should we do, so... [LB535]

CHRIS COSTANTAKOS: Okay. [LB535]

SENATOR CHAMBERS: ...okay. Number four, "The bill sanctions", and this is troubling to me, if this is what is envisioned, "the unauthorized practice of law, to the extent that it constitutes CASA volunteers as providers of 'legal services for juvenile court cases in Nebraska'". Is that quote, that language you enclosed in quotes taken from the bill in terms of what it authorizes CASA to do? [LB535]

CHRIS COSTANTAKOS: It is, Senator. It refers to the juvenile legal services will be provided through the divisions in section...I don't want to get into the numbers. But basically, this section refers to this section, and the juvenile legal services will be provided through the divisions. And then within one of the divisions there were lawyers, guardians ad litem, and CASA. CASA are not lawyers. [LB535]

SENATOR CHAMBERS: But it doesn't...what I want to know is, is that verbiage connected to CASA somewhere in the bill directly, where it says, CASA volunteers shall provide legal services for all juvenile court cases in Nebraska? In other words, is it stated in the bill that one of the charges of CASA, under this bill, is to provide legal services for all juvenile court cases? [LB535]

CHRIS COSTANTAKOS: CASA is listed as a provider of legal services for juvenile court cases,... [LB535]

SENATOR CHAMBERS: Okay. [LB535]

CHRIS COSTANTAKOS: ...the way the bill is presently worded. [LB535]

SENATOR CHAMBERS: Okay, okay. And the reason I'm doing this, I don't want it to seem that you're ascribing something to the bill which may not be there. [LB535]

CHRIS COSTANTAKOS: Correct. [LB535]

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

Judiciary Committee
March 08, 2007

SENATOR CHAMBERS: Okay? Number five, and I'm not arguing with you. I hope you see that. [LB535]

CHRIS COSTANTAKOS: I do see that. [LB535]

SENATOR CHAMBERS: It's difficult. (Laugh) Okay, number five, "The bill violates the separation of powers between the branches of government by making judicial appointments of attorneys for children and parents and guardians ad litem subject to the 'guidelines and standards' to be adopted by a state administrative agency". Courts make those appointments now. [LB535]

CHRIS COSTANTAKOS: Correct. [LB535]

SENATOR CHAMBERS: Okay. So it's not in the appointing that the violation of the separation of powers would occur that you're mentioning here. You're saying that because the court...are you saying it would be because the court is going to be bound by guidelines and standards adopted by a state administrative agency which would be a part of the executive branch? Are you saying that the court is being restricted in what it can do by guidelines and standards set by a nonjudicial entity? Or let me let you say it in your own words what you mean. But by asking these questions, I hope you can see what I'm hoping you will address. [LB535]

CHRIS COSTANTAKOS: The bill says that all courts, juvenile courts shall follow the guidelines and standards in appointing attorneys. And then the guidelines and standards, of course, don't exist yet, but those will relate to attorney eligibility and qualifications in matters of appointment. If the court...someone close to the bill, I will not name that person, said to me, it's this simple, if you are not on the list, you will not be practicing in juvenile court. What concerns me is who's compiling that list, who's assembling that list, by what standards is that list put together? If the judge knows of a specific guardian ad litem that would be excellent on a case and for whatever reason that person is not on the approved list by whoever is determining who's approved, yes, I think that's an impedance of the separation of powers. [LB535]

SENATOR CHAMBERS: Suppose the list were recommendations, but the court was not bound to pick somebody from the list? [LB535]

CHRIS COSTANTAKOS: I can live with that. [LB535]

SENATOR CHAMBERS: Okay. Because what I'm interested in, now I'll get to the nub of it, but I wanted to give you a chance to address what you gave us, and then give context for what I will say. I want standards. I don't believe counties are setting those standards. I don't remember whether it was the presiding judge of the Douglas County District Court or County Court, but a couple of years or so ago the per hour amount, or

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

Judiciary Committee
March 08, 2007

the total amount that could be given to a lawyer appointed to defend certain people was cut drastically. Lawyers had objected. But until I made the threat that if judges feel that the lawyers should get no more than this for providing defense, when it comes time for judges salaries I'm going to keep that in mind. Then a day after that appeared in the paper, the judge changed his mind, and they were not going to reduce the amount. How can I trust these judges to maintain adequate standards for the representation of these children? And how can I be sure that right now judges are not playing favorites or having favorites make recommendations from which the judge will make appointments? If I were to examine the appointments made in a year by certain judges, would I be able to detect that some favor certain attorneys, or certain types of attorneys, or attorneys with certain connections to certain entities or interests? If I did enough research, could I perhaps come up with something like that? And an informal list, which does not exist in writing, but in practice there might be such a list. In other words, how do you get away from that? But currently, there are no standards that any lawyer has to meet. In Douglas County, what judge do you know who appoints a lawyer to represent a juvenile who has standards which those lawyers are expected to meet and the lawyers are aware of it? [LB535]

CHRIS COSTANTAKOS: Which...when the judge has standards? [LB535]

SENATOR CHAMBERS: Any judge...no, standards that the judge is going to require that these lawyers meet in terms of knowledge, experience, competency? [LB535]

CHRIS COSTANTAKOS: I don't know what standards they do use, Senator. [LB535]

SENATOR CHAMBERS: They may not have any. [LB535]

CHRIS COSTANTAKOS: That's correct. [LB535]

SENATOR CHAMBERS: Would this bill set some standards that are articulable, that can be used to measure whether the standards themselves are being met when judges make appointments? [LB535]

CHRIS COSTANTAKOS: I think these standards are already in progress; they are before the Supreme Court. This bill refers to standards, not necessarily the same standards. I think the assumption is they might be the same standards. But standards are the not the same as the creation of a mega bureaucracy run by two or three people to...how are they going to monitor? [LB535]

SENATOR CHAMBERS: Suppose they were the same standards that the Supreme Court would adopt? [LB535]

CHRIS COSTANTAKOS: I still don't see the viability of one centralized organization. I

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

Judiciary Committee
March 08, 2007

think you are getting into the same types of problem of HHS and the lack of responsiveness and the slow "movingness" of all of that. [LB535]

SENATOR CHAMBERS: My final question, there might be subsets, depending on how you answer it. Senator Lathrop mentioned Valentine. What is existing right now in terms of the representation of juveniles in Valentine that you feel requires no improvement? And this is by way of example, let me not give the name of an area, "Ooblahdai," the county of "Ooblahdai," which is in a sparsely populated area where not many lawyers are located. Would you say that generally speaking the same quality of representation of juveniles would be available there as would be available in Lancaster or Douglas County, where they have a developed public defender system? [LB535]

CHRIS COSTANTAKOS: I don't know, my guess is no. [LB535]

SENATOR CHAMBERS: And what is to be done in those cases? [LB535]

CHRIS COSTANTAKOS: I don't know that a state takeover is the answer, Senator. Why can't... [LB535]

SENATOR CHAMBERS: I'm asking, what is then? Because those children are not getting the kind of representation, in my view, that they should get. [LB535]

CHRIS COSTANTAKOS: State contribution, perhaps, to each counties juvenile court budget. [LB535]

SENATOR CHAMBERS: And how do we know that there are going to be standards set rather than the judges giving more money to incompetent lawyers? [LB535]

CHRIS COSTANTAKOS: Oh, I think we don't know that. But we do know that the standards that are pending before the Supreme Court may provide guidance in terms of better representation. [LB535]

SENATOR CHAMBERS: Now, although I won't be here much longer, if the Supreme Court makes the wrong decision on term limits, (laughter) which I hope it doesn't, but if it is under a state plan I, as a member of the Legislature, would have far more ability to exercise oversight than I would have what's happening in these counties. Would you agree with that? [LB535]

CHRIS COSTANTAKOS: I do agree with that. [LB535]

SENATOR CHAMBERS: Okay. And that's all I'll ask you. And thank you for your patience. [LB535]

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

Judiciary Committee
March 08, 2007

CHRIS COSTANTAKOS: Okay. Thank you. Thank you, Senator. [LB535]

SENATOR ASHFORD: Senator Schimek. [LB535]

SENATOR SCHIMEK: Yes, thank you. Miss Costantakos, I have just one question. I am troubled by the statement that you made early on this analysis and about a falsehood surrounding this bill. I'm not aware of the documents that you're talking about, and I'm not even aware who's made any kind of allegations, one way or the other, on that. [LB535]

CHRIS COSTANTAKOS: Senator, that may be true. I am aware of some other senators who may have been provided with different documents that explicitly stated that the legislation was being introduced on behalf of the Commission on Children and the Courts. And I believe there was another letter that I had seen to the county commissioners which detailed different financial options for the funding of legal representation of children on option 1(b), the bottom line said, the Commission on Children and the Courts supports this option. My concern is that the commission as a whole never voted to do that. And if you did not see that, that may be the case. But I was aware of a couple of senators who had. [LB535]

SENATOR SCHIMEK: Thank you. [LB535]

SENATOR ASHFORD: Thank you, Chris. [LB535]

CHRIS COSTANTAKOS: Thank you, thank you. [LB535]

SENATOR ASHFORD: Any further opponents? [LB535]

SENATOR CHAMBERS: Since I kept you here, you want me to come help you gather your papers together? [LB535]

CHRIS COSTANTAKOS: I can do it. Thank you. [LB535]

KIM HAWEKOTTE: Good evening, senators. I'm Kim Hawekotte; it's spelled H-a-w-e-k-o-t-t-e. I'm a deputy Douglas County attorney. Little bit of history with regards to myself. I was in private practice for 15 years, did a lot of juvenile work, both defense work and guardian ad litem work. I was head of the juvenile division at the county attorneys office for eight years, I then ran the Office of Juvenile Services for the state, and am now back in the County Attorneys Office. I'm testifying today in opposition of LB535 on behalf of the Nebraska County Attorneys Association. I think anybody testifying today, whether it's a proponent, an opponent, cannot in good conscience say we don't need standards. You definitely need standards in juvenile court. I've been there for over 20 years, you need adequate representation. I don't care which side of the

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

Judiciary Committee
March 08, 2007

fence you're on. I don't care if you're the prosecutor, I don't care if you're the defense counsel, or if you're the guardian ad litem, there has to be standards, and there has to be some type of continuing legal education to ensure that those standards are met. The issue with regards to LB535 deals more with some of the language within the bill, and it goes further than just standards. And that's where some of the issues that the County Attorney Association has, and in particular I do with regards to the bill. First, when you look at the bill, there are numerous sections that refer to quote, juvenile legal services. It really doesn't define what those are. It does later. But when you read the definition, it includes every type of juvenile services within juvenile court. And for all of you that are in juvenile court, you know there's four types of cases that can be filed in juvenile court: there's abuse/neglect cases, and in those type of cases you have parents that are entitled to attorneys, they're entitled to guardian ad litems if they're incompetent, you have guardian ad litems for the children, and you also have the prosecutor. When it comes to status offense cases, those are cases that are filed against youth that are uncontrollable, with regards to those, those youth are entitled to attorneys at that point. When it comes to delinquency cases, again attorneys are appointed to represent the delinquent youth at that time, there can also be guardian ad litems if it's needed. And then your fourth type is any combination. One of the problems with the way that this bill is currently written is it lumps all of those juvenile services together. And I guess it goes to Senator Lathrop's concern, and also Senator Chambers' with the conflict of interest, what are you going to do in those type of situations under this bill, if you have two parents that are in a case does the commission represent one of the parents, but not the other parent, or does the county pick up the tab on the one that it isn't? It doesn't designate which part of the system that this bill is going to work with. I can just give you an example, I quick pulled some of the figures from Douglas County with regards to Douglas County just in the year 2006. There were over 2,000 new filings within juvenile court, about 500 of those were abuse/neglect cases, about 1,200 of those were delinquency cases. So when you look at it, it's a huge volume of cases. But if you're going to have some statewide representation, you have to know how you're going to handle it. Second issue with regards to LB535 is I didn't read, as my reading of it, that there is any requirement for the commission to get involved when it involves indigency. Is this only strictly in the case of indigency, or is it not? And if it is in the situation with regards to indigency, who needs to be indigent? Is it the youth? All youth are indigent. I don't know too many youth that are independently wealthy. Is it based upon parents income? Or what is it based upon? I believe there has to be some rework of the bill with regards to a definition, does it apply to indigency or not. Third issue is with regards to conceptually. I don't quite understand from the reading of the bill, as I read it, is it going to involve statewide contracts with regards to juvenile court work? Is it going to involve more that everything is going to be based out of Lincoln and they will go out to different places? Senator, you had mentioned in Valentine. I can state when I was with the...
[LB535]

SENATOR CHAMBERS: He did, (inaudible). [LB535]

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

Judiciary Committee
March 08, 2007

SENATOR LATHROP: I mentioned (inaudible). [LB535]

KIM HAWEKOTTE: Sorry, sorry. He said, I can't remember, Senator, whether you said "ooblahgooba" or whatever. (Laugh) [LB535]

SENATOR CHAMBERS: I touched on it, too. [LB535]

KIM HAWEKOTTE: But with regards to that, when I was with Health and Human Services, we had major difficulty finding representation in some of the smaller communities due to the fact that the attorneys did not want to contract strictly because of the conflict of interest situation, because it would take them off of too many other cases. So we have to be very sensitive to the smaller communities and whether this is directly a benefit to them, or if it isn't. Or in the end, we are harming those smaller communities because they just don't have the legal staff available. [LB535]

SENATOR ASHFORD: Kim, could I ask you to sum up? [LB535]

KIM HAWEKOTTE: Sure. Last but not least, of course, is the cost, it's a cost shift. And you are taking it from the county to the state. The reality is, though, that I'm not convinced, with the current writing of this bill, until those standards are developed, that you are going to be getting better, more effective legal representation. And I can take any questions. [LB535]

SENATOR ASHFORD: Senator Lathrop, first. [LB535]

SENATOR LATHROP: Kim, you've done...kind of done it all, in Douglas County, in the juvenile court. And you're telling us you see a need for standards? [LB535]

KIM HAWEKOTTE: There's...standards are never bad, as long as the guidelines are what they are and that everybody follows. [LB535]

SENATOR LATHROP: Okay. So regardless of whether we can make this go or not go, it's probably a good idea to make sure that juveniles are well represented that we have some kind of standard? [LB535]

KIM HAWEKOTTE: There's no question. I think that's why the commission of the Supreme Court and some of the other groups have been working so hard to get those standards done, because we need some basic level with representation. [LB535]

SENATOR LATHROP: Is there somebody working on those standards right now? [LB535]

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Transcriber's Office

Judiciary Committee
March 08, 2007

KIM HAWEKOTTE: Yes. [LB535]

SENATOR LATHROP: And is that the Supreme Court? [LB535]

KIM HAWEKOTTE: Yes. [LB535]

SENATOR LATHROP: And they regulate the practice of law for all lawyers? [LB535]

KIM HAWEKOTTE: Yes. [LB535]

SENATOR LATHROP: That's all I have. [LB535]

KIM HAWEKOTTE: All right. [LB535]

SENATOR ASHFORD: Yes, Senator Chambers. [LB535]

SENATOR CHAMBERS: Can the Supreme Court oversee whether or not these standards are being complied with in all 93 counties? [LB535]

KIM HAWEKOTTE: No, I do not believe they can, unless you set up some type of bureaucratic network that would be able to oversee it. [LB535]

SENATOR CHAMBERS: So if we're going to do anything comprehensive, we're going to have to have some entity charged with overseeing it, an umbrella, if you will. [LB535]

KIM HAWEKOTTE: It's either that, or you rely on the court system, as some of your previous questions were, and rely on the judges to ensure that those standards and guidelines are being enforced. [LB535]

SENATOR CHAMBERS: Well, Empson is out there. And when he told a female employee to stand up and turn around so he can look at her, the Supreme Court of this state said, that's not the kind of thing he ought to be punished for. When he sighed, well, I love you, to one of his female employees, that was not wrong. When he talked about when her hair is wet, and all kind of comments with sexual innuendo, that was not considered bad. That's the kind of judge out there, Empson, Paul Empson. I filed a complaint against him. Now, if those are the kind of judges making appointments, and they're incompetent themselves, what kind of appointments are they going to make? That's a rhetorical question. But now I'm going to ask you something that bears directly on your representation here. I don't know of many instances when the interests represented by the public defender and those of the county attorneys coalesce or "conflute", if there's such a word. Why is it that you're speaking for the County Attorneys Association? [LB535]

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

Judiciary Committee
March 08, 2007

KIM HAWEKOTTE: In opposition of this bill? [LB535]

SENATOR CHAMBERS: Yes. [LB535]

KIM HAWEKOTTE: Because from the standpoint that it is not going to accomplish what is in the best interests of the youth within juvenile court. If I felt, and the County Attorneys Association felt that this bill would accomplish that the way it is currently written, we would be supporting it, but it doesn't do that. [LB535]

SENATOR CHAMBERS: Are you a member of the County Attorneys Association? [LB535]

KIM HAWEKOTTE: Yes. [LB535]

SENATOR CHAMBERS: I thought you said...oh, you used to work for the public defender's office. [LB535]

KIM HAWEKOTTE: No, I used to work for the state, I was the administrator for the Office of Juvenile Services, for OJS. [LB535]

SENATOR CHAMBERS: You never worked for the public defender's office? [LB535]

KIM HAWEKOTTE: I never have. [LB535]

SENATOR CHAMBERS: I thought...then I misunderstood what you said. [LB535]

KIM HAWEKOTTE: No, no. [LB535]

SENATOR CHAMBERS: So you're speaking for the county attorneys. [LB535]

KIM HAWEKOTTE: Correct. [LB535]

SENATOR CHAMBERS: So the county attorneys are not interested in having competent people oppose them. [LB535]

KIM HAWEKOTTE: Oh, no, we're very much...and that's why it isn't the standards portion of LB535 that the County Attorneys Association is having the difficulty with, Senator. It's the other portions of it that we are having the difficulty with, with regards to the indigency requirement, and with regards to how we're going to handle all the conflicts of interests that will occur, because then you're just causing delays within the court system if that situation happens. [LB535]

SENATOR CHAMBERS: I'm sure glad I asked that you question and you clarified for

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

Judiciary Committee
March 08, 2007

me that you are speaking for the County Attorneys Association. [LB535]

KIM HAWEKOTTE: Yes. [LB535]

SENATOR CHAMBERS: Okay. I don't have any other questions, so thank you. [LB535]

KIM HAWEKOTTE: All right, all right. [LB535]

SENATOR ASHFORD: Thank you, Kim. [LB535]

KIM HAWEKOTTE: Thank you. [LB535]

SENATOR ASHFORD: Okay. How many other opponents do we have? Tom and okay. [LB535]

GARY LACEY: My name is Gary Lacey. I'm the county attorney in Lancaster County, Nebraska. And I'm here because I have a very keen interest in the welfare of children, and that has been one of the things in my practice, as Lancaster County, to make sure that we protect children. And it's my feeling that this bill will never see the light of day because it will get vetoed. Even if you pass it, I think it will get vetoed, because the price tag is too high. And I'm wondering if we can't accomplish the same things. I agree that there ought to be standards. And I agree that at least when I was head of the commission that was appointed by Governor Johanns to look into the deaths of 30 children in Nebraska, we found, through our hearings, that guardian ad litem were one of the things that people who came to the hearings were dissatisfied with. I don't think we need to spend \$10 million to get guardian ad litem up to snuff. One of the people that was at this hearing that we had said that her daughter had been in the juvenile court system for...it was like 12 or 13 years. And when her daughter first came into that system a public defender was appointed, a guardian ad litem was appointed. The prosecutor was there and the judge was there. At the end of this period of time the public defender was the same person still representing the child. The prosecuting attorney was the same person who was still prosecuting the case. The guardian ad litem was the same person. And the judge was the same person. In that 12-year period of time the child had 20 caseworkers. They had caseworkers that they'd never even met. So, I guess, what my point is that if you're going to spend \$10 million, I think you could better spend it in other areas that would help children and not \$10 million to make sure that guardian ad litem are trained. There are standards somewhat that regulate the practice of law. You have to be a zealous advocate for your client. You can't go to court unprepared. You're supposed to go to court prepared to know what the witnesses will say and what the law is, and that's your responsibility. And it's a violation of the disciplinary regulation, disciplinary rules to do that. It seems to me that the Nebraska State Bar Association could propose, or the Supreme Court commission could propose regulations or standards; those could be adopted by the Supreme Court. It seems to

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

Judiciary Committee
March 08, 2007

me, although I know that Senator Chambers has some reservations about judges in the western portion of the state, and probably in the eastern portion of the state, all over the state,... [LB535]

SENATOR CHAMBERS: Yes. [LB535]

GARY LACEY: But I think we can depend upon those judges. I think we should depend upon those judges to appoint the person that will best...who will competently represent the child as a guardian ad litem. It's great to have a bureaucracy back in Lincoln. I know that Health and Human Services has a huge bureaucracy that has a budget of \$1 billion. But I don't think the bureaucracy in Lincoln is going to be able to go out and determine whether those people that are appointed as guardians ad litem are doing a good job or not. I think there has to be emphasis from the Chief Justice and the Nebraska Supreme Court that judges will ensure that these people that they appoint are competent to represent the people. And if they see that they are not, there's a mechanism already established in the bar association to take action against a lawyer who goes in unprepared, or who goes in incompetent. [LB535]

SENATOR CHAMBERS: But, Mr. Lacey, and the red light is on, so your formal presentation time is over, but I want to ask you a question or two. You mentioned the requirements that lawyers must meet. I probably have read that code of professional responsibility more than anybody in this state, bar none. And all of those fine sounding principles, the disciplinary rules, the commentaries, they're all good, but they're not enforced. The only way there's going to be an enforcement is if somebody files what they call a grievance now, they used to call it a complaint. People are not going to do that. Judges are not routinely going to say anything to lawyers who are not prepared, guardians ad litem who are not doing their job. These are things that are said... [LB535]

GARY LACEY: I think they ought to be, they ought to be kicked out of the judgeship if they let some incompetent person come in and represent a child. [LB535]

SENATOR CHAMBERS: But what I'm saying, it's not being done. So what enforcement mechanism is there? It doesn't exist now, because down through the years we've seen problems just continue going, and going, they have legs of their own. There is no enforcement agency anywhere. Even though the Chief Justice, under the Constitution, is charged with being the administrator of the courts, the Chief Justice can't do that alone. Warren Buffett doesn't make the decisions for whatever that company is that he operates. There are tentacles and fingers everywhere, he's just the figurehead. The Chief Justice is a figurehead. The code of professional responsibility, the code that the judges are to comply with are nice, but they are not enforced. Children... [LB535]

GARY LACEY: What makes you think that somebody back in Lincoln is going to enforce what standards that are proposed by this legislation? [LB535]

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

Judiciary Committee
March 08, 2007

SENATOR CHAMBERS: This discussion has caused a lot of things to come out in the open, admissions are being elicited here about the inadequacies. But nobody is going to say how we can put an enforcement mechanism in place, what it ought to be. Nobody yet has said how we can effectively ensure proper representation of juveniles in sparsely populated areas of the state. We've even had a representative of the county attorneys say that some lawyers don't want to be appointed in these cases because it would cause them to have a conflict in numerous other cases, so they're looking at the bottom line for themselves, not representation for these children, but how much money am I going to lose by doing it. So those are realities. I'm glad she presented it. So how are we going to address it? We're the policymakers. Are we to leave here with an empty sack, being told that there are problems everywhere, but don't do anything to solve it, leave status quo as it is, because anything else would make it worse. Now is that what you're saying, that any change would make things worse than they are now? [LB535]

GARY LACEY: Well, I don't share your view about all judges being incompetent.
[LB535]

SENATOR CHAMBERS: Well, I don't think all judges are bad, no, not by a long shot. Well, not by a short shot. (Laugh) [LB535]

GARY LACEY: The judges like...I mean Judge Johnson, in Omaha, is a fine person. There are judges that have been associated with me, on committees that I've been, one from Sidney in particular. [LB535]

SENATOR CHAMBERS: Okay. So let me stipulate that every judge in the state is competent. What are we going to do, even though we have all these competent judges, to ensure proper representation to juveniles, which they're not receiving all over the...
[LB535]

GARY LACEY: The judge is there. If the guardian ad litem hasn't been out to talk to his or her client, or if they present no evidence, or if they just say, oh yeah, I go along with what the prosecutor said, well, the judge can ask questions. The judges is there. He has a very important responsibility to make sure that these people are properly represented.
[LB535]

SENATOR CHAMBERS: Okay. I've got... [LB535]

GARY LACEY: And my experience has been that juvenile court judges are the very epitome of the judges who want to make sure that juveniles get proper representation.
[LB535]

SENATOR CHAMBERS: Was a woman named Buckley a juvenile court judge? [LB535]

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

Judiciary Committee
March 08, 2007

GARY LACEY: I don't know Buckley. [LB535]

SENATOR CHAMBERS: Well, not right now, because she decided not to run, because I was going after her, because she was not a good judge. [LB535]

GARY LACEY: I'll tell you, you've got some hellishly good judges up there now. [LB535]

SENATOR CHAMBERS: There was a judge removed, I think, in Sarpy County, a juvenile court judge. Maybe you're not aware of any of those things happening. But I've gotten into the record what I think would be a fair representation of your views. I didn't want, because the time ran out, for you to have had a lot of other things you wanted to get into the record but couldn't. So I think during our exchange you were able to get additional views of yours into the record. So I don't have anything else. Thank you. [LB535]

GARY LACEY: Okay. I'd just say let's just make the lawyers pay for... [LB535]

SENATOR LATHROP: Wait, wait on second. The fact of the matter is that if you're a juvenile court judge, your courtroom is going to operate more smoothly if you have competent lawyers. Is that true? [LB535]

GARY LACEY: Well, that's true of any court. [LB535]

SENATOR LATHROP: And you're not going to appoint people that are time and again coming in unprepared. Is that your point? [LB535]

GARY LACEY: Yes. [LB535]

SENATOR LATHROP: All right. Just wanted to give you a chance to make that... [LB535]

SENATOR ASHFORD: Thank you, Gary. Any other questions? Gary, thank you. Tom. [LB535]

THOMAS RILEY: Members of the committee, my name is Thomas Riley. I'm the public defender in Douglas County. I speak in opposition to this bill for several reasons. I don't...we don't represent cases that are GALs, except for a very, very small amount from years gone by that we still have clients. I would say it's a dozen. But we do represent parents in neglect/dependency situations, or termination of parental right cases, and we represent the vast majority of children who are accused of being delinquents, which is basically criminal law in juvenile court, at least until the adjudication. The disposition, of course, is much more of a speciality because of the

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

Judiciary Committee
March 08, 2007

nature of the court. So while the statement that this is about the kids has some general accuracy to it, this bill isn't just about the kids. It also deals with representation of parents and kids, of course, in delinquency cases are included in that group. Probably the thing that spurred my interest in this the most was reading some of the statements made in bar association releases that were in support of this bill, and some of the studies. One of the things that was probably the most aggravating to me was a statement that approximately half of the lawyers in the state don't meet with their client before the detention hearing, and therefore they don't give zealous representation at one of the most important times of representation. Well, the fact of the matter is in indigent cases you don't get appointed until the detention hearing occurs. So there's no opportunity to speak with the kids before hand. That's the subject of something that legislatively you could address. As a matter of fact, you did long ago with regard to felonies. We are allowed to interview detainees before they are charged, and we do every day. We could do the same thing in juvenile court. But that's the type of problem that I was somewhat distressed by. Senator, one of the things that you mentioned about the contract on GALs up in Douglas County, you said you filed a lawsuit about it.

[LB535]

SENATOR CHAMBERS: A complaint, not a lawsuit. [LB535]

THOMAS RILEY: Oh, I'm sorry. That is a problem that I agree with you on. And basically what the point is was the contract given to the best group of lawyers, or was there some less than forward, straightforward reason for granting it? If we set the standards that you suggest are necessary and five applicants all meet the standards, the same thing could happen. I don't think that this bill really addresses that problem. It will certainly address the problem of a group of people that are not qualified to get it. But if three, or four, or five groups still apply, and they all meet the standard, that problem can still exist. I think that this bill is somewhat of a Trojan Horse, because there is a...you know, the talk about... [LB535]

SENATOR CHAMBERS: Mr. Riley, in order to legitimatize you and what you're saying, your time is up, I want to ask you a question or two. [LB535]

SENATOR ASHFORD: Your time is up. So, Senator Chambers. (Laughter) [LB535]

SENATOR CHAMBERS: You had mentioned several specific problems you had with the bill. So I would like you to run through those. And it's only 7:35 p.m. You can run through them quickly? [LB535]

THOMAS RILEY: Sure. The basic premise of the bill, as I understand it, is that there is a belief that a statewide system will eliminate the problems that exist, and the current system does not satisfactorily address it. I don't have a dispute, per se, with that. The examples that you've given and spoken about certainly exist. But to me there is no

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

Judiciary Committee
March 08, 2007

question but that the vast majority of cases in juvenile court are in Douglas, Lancaster, Sarpy, and probably Hall, I would say. And the problem areas seem to be unanimously in the areas...in rural areas where there is a paucity of lawyers. I don't know how this will respond to that problem. There...I think everyone is in agreement that some set of standards is necessary. The question is, how are they administered, and can they be administered by the court? Maybe not. Can they be administered by an entity like the Commission on Public Advocacy who, as I understand it, don't even handle juvenile court cases? How they can do it, I suppose you just give them the power and say, all right, enforce it, and hopefully you'll do what you need to do. I don't have an answer for all of the problems, other than to say that I don't think that unless we can say this...not likely to do a better job but will do a better job. If you leave it at standards and we find out who is going to set them, I think it seems to me it would be the consensus right now that the Supreme Court has been submitted a group...a number of standards, at least with regard to GAL. I'm not sure that that's true on delinquency or on parent cases, as we call them. But assuming that that is done, as I understand it, they are going to approve or disapprove of the standards. Can you set standards as a legislative entity? Sure. I don't think that's part of the bill. The bill presupposes that some standards are in existence, and they are. If you don't agree with what the standards are, and the Supreme Court does,... [LB535]

SENATOR CHAMBERS: You're going longer than I thought you would when I asked that question. Is there another point you have against the bill, or have you just about... [LB535]

THOMAS RILEY: That's it, that's my main concern. [LB535]

SENATOR CHAMBERS: Okay, now I'm going to ask you a question. Pardon me when I interrupt. I'm not trying to be rude. [LB535]

THOMAS RILEY: No, that's all right. [LB535]

SENATOR CHAMBERS: Okay. Would this be worthy of studying, to see if a notion like this would work? [LB535]

THOMAS RILEY: Yes, absolutely. I have no problem. I agree with Chris Costantakos about the inadequacy of the reports that you've received. And for instance, one of the things in there is they're making some statements based on 67 responses from lawyers, 15 of whom were from Douglas and Lancaster County combined, the other 50 were from outstate or Greater Nebraska, whatever term you want to use. That can give a certainly skewed view of what occurs. What I think needs to be done is, if they're going to be a study, and that's a good idea, but we have representatives from all across the state. I don't think it's really fair, in some ways, for us from eastern Nebraska saying, hey, all you people out in Valentine, or wherever, you're a bunch of knuckleheads and

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

Judiciary Committee
March 08, 2007

you don't know what you're doing. [LB535]

SENATOR CHAMBERS: Even if they are. [LB535]

THOMAS RILEY: Well, even if there are some. [LB535]

SENATOR CHAMBERS: We shouldn't be the ones to say it. I know what you're saying. But, Mr. Riley, the things I see as problems are chronic, they have been ongoing. And I don't see anything being done to address them comprehensively. And when I touched on that GAL problem in Douglas County, I haven't gotten over that to this day. [LB535]

THOMAS RILEY: Understood. [LB535]

SENATOR CHAMBERS: What can be done about it? Because they...well, Mike Kelly's wife is being, in my mind, given a position, because of him, and the two of them get consideration for political reasons strictly. And I'm saying it on the record. And that's how some of that stuff was done. And they protect some of these people in their incompetency, in their skewed, biased, meaning unduly favoring, and prejudicial, meaning unduly against individuals. But nobody in Douglas County is going to touch it. The county board is not going to do anything, the judges are not. So maybe all we can look for out of this is a compiling of what has been said here by both sides to show the need to examine this area, and maybe not try to enact what could be viewed as a comprehensive bill which is doing a variety of things, a myriad. I took my name off the bill because I had problems with it. I liked some of the things that I heard the supporters of the bill say, because they were acknowledging the existence of problems, the fact that something needed to be done about it. But I had said I am persuadable. [LB535]

THOMAS RILEY: Right. [LB535]

SENATOR CHAMBERS: I didn't say I was persuaded. I'm persuaded that we need to do something, and I think we need to do something beyond and maybe different from what the bill as written is offering. Now here's what the question is, is there anything, is there any way in your opinion that this bill can be salvaged and ought to be enacted into law? [LB535]

THOMAS RILEY: I think not because exactly what you just said. It's such an omnibus type piece of legislation and it has so many holes in it that I'm not sure it's going to address the problems that we want to address. I think your suggestion that a study that is overseen by this entity, that is a fairly representative group across the state, that is not...either is not yet biased, or all biases are represented, then I think we could maybe come up with something that is feasible. I don't dispute with you at all. First of all, politics, with a small P, is involved in all of this stuff. You know, who's going to appoint the Commission for Public Advocacy? The Governor. Politics is involved in that. You

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

Judiciary Committee
March 08, 2007

can't stop it, unless you change the statute, obviously. You can say the Legislature will appoint. And there is something... [LB535]

SENATOR CHAMBERS: Well, you know what, and then I'm going to let you go, I don't trust this Governor because the Constitution says it's his job to see that the laws are fairly and efficiently administered, and he's not even going to see that LB1024, which is the law, is enforced. He's asking the court not to do anything. The Attorney General is not seeing that that law is enacted...is taken care of. Then a Douglas County district judge is sitting on the case, doing nothing. How much value is it to the public and to the image of the judiciary when a matter is of that import, a law that was properly enacted, that involved millions of dollars to be distributed in school aid is just sitting in limbo with nothing being done by Judge Coffey. Now those are the things happening, and the judge, the Attorney General, and the Governor are all guilty in this. And nothing is there to correct it. People get nervous when I say these things. Nobody else will say it. [LB535]

SENATOR ASHFORD: I'm not nervous, I just... [LB535]

SENATOR LATHROP: I'm not nervous. [LB535]

SENATOR CHAMBERS: I didn't call you. (Laughter) [LB535]

SENATOR LATHROP: We start to take it personally after a while. [LB535]

SENATOR SCHIMEK: I'm nervous, I'm nervous that we're not going to get out of here until midnight. (Laughter) [LB535]

SENATOR CHAMBERS: The first (inaudible). [LB535]

SENATOR ASHFORD: I'm past that, I think we're going to be here all night. [LB535]

SENATOR CHAMBERS: Okay, I will leave it at that, but to let you know why I don't trust the judges, I don't trust the Governor, I don't trust the Attorney General. They are all political creatures. And I can look at what they are doing. These are not just opinions off the top of my head. When a judge says he's going to determine the constitutionality of a law, because Buffett money may not be contributed if the law stays there, he's nuts. And especially when 40 percent of his cases are sent back because they're defective. That's Judge Coffey from 2000 up to the present. That's okay. I don't have anything else for you. I don't want to get you in the middle of this. [LB535]

SENATOR ASHFORD: Thanks, Tom. [LB535]

THOMAS RILEY: You're welcome. The only thing I want to add is don't forget... [LB535]

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

Judiciary Committee
March 08, 2007

SENATOR ASHFORD: You may add one thing. [LB535]

THOMAS RILEY: ...term limits, you guys aren't going to be here. So if you set standards, they can be changed, too. [LB535]

SENATOR ASHFORD: Well, I'm not sure that's absolutely true. [LB535]

THOMAS RILEY: Unless you win your suit. (Laugh) Thank you. [LB535]

SENATOR LATHROP: He'll be here forever. [LB535]

SENATOR ASHFORD: Yeah, he will be here forever. All right. [LB535]

JACKIE MADARA-CAMPBELL: Good evening, senators. I'm attorney Jackie Madara-Campbell of Family and Juvenile Law, Omaha, Leslie Ann Christensen and Jackie Madara-Campbell. Between me and my law partner, Leslie Christensen, who is also here tonight, we have practiced law in the separate juvenile court of Douglas County, Nebraska for the past seven years. In our court appointed capacity we serve as guardians ad litem for children and parents, we represent parents accused of abuse and neglect, as well as children under delinquency and status dockets. We are not contracted attorneys. Before becoming an attorney, I was a news reporter in Omaha. After law school, I worked for Girls and Boys Town. I've seen our juvenile justice system from many angles. I'm here to tell you that LB535 is an ethical and constitutional calamity. LB535 has been spun as a mechanism to help children and families involved in Nebraska's juvenile justice system. I don't see how that's going to happen. Seems to me that it will cause further damage. You know I could spend quite a bit of time talking about the problems inherent in this bill which in practice would simply create another HHS, this one filled with lawyers instead of social workers. But because of my limited time, I'm going to focus on one case in point that would have had serious ethical and legal implications if it had occurred under the bureaucracy created by LB535. It's a personal case. I recently filed and prosecuted a termination of parental rights as guardian ad litem in a case on which I was appointed by the separate juvenile court of Douglas County. I did so because after more than two years of the children at interest being in out-of-home placement, and little, if any progress on the part of the parents, the county attorney had not moved for termination of parental rights, and apparently had no plans to do so in the immediate future. In my independent judgment as an attorney acting as guardian ad litem for the children, who I had met with multiple times, I believed that termination of parental rights was in the children's best interest, so I filed the petition pursuant to my duties as guardian ad litem under Nebraska statute. My effort in that case was successful and the juvenile court terminated the parents rights. The mother's attorney filed an appeal to the Nebraska Court of Appeals at the direction of her client. When that was unsuccessful, she filed a petition for further review by the

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

Judiciary Committee
March 08, 2007

Nebraska Supreme Court. Although unsuccessful in the end, that tireless advocacy by her attorney was the mother's right pursuant to her constitutionally protected liberty interests in raising her children. My actions as guardian ad litem were pursuant to the protected rights of the children, which are two separate functions. Today these children, in fact tomorrow, are about to be adopted into a safe, loving, and stable home. I know because I've been there on many, many occasions. I cannot fathom a situation like that one where the guardian ad litem for the children and the attorney for the mother, who are conflicting parties, are both provided by and/or funded by this commission. That is a law school text book example of conflict of interest; worse, it is a law school text book example of a violation of constitutional rights of both parents and the children. It's unethical, it's unconstitutional. Now, that's only one example. But if we look at it through the eyes of those children who were involved in that case, who are now looking forward to a safe, stable, and loving future, it's a compelling example of why LB535 is a bad idea. [LB535]

SENATOR ASHFORD: Thank you. Any questions? Senator Schimek. [LB535]

SENATOR SCHIMEK: How do you really feel about this bill? (Laughter) I have never had a bill of mine called unethical and unconstitutional before in my whole life. And I think that was a bit over the edge. [LB535]

JACKIE MADARA-CAMPBELL: It creates...the bill is not unethical, it creates an unethical situation. And I don't...I believe there are constitutional problems with the bill because of the situations it creates. [LB535]

SENATOR SCHIMEK: I appreciate the way you say it this time. [LB535]

JACKIE MADARA-CAMPBELL: Thank you. [LB535]

SENATOR SCHIMEK: Thank you. [LB535]

SENATOR ASHFORD: Jim. [LB535]

JAMES MOWBRAY: (Exhibit 44) I'm really going to be fast, I promise. Mr. Chairman, Jim Mowbray, M-o-w-b-r-a-y. I am chief counsel for the Nebraska Commission on Public Advocacy. I've got a couple of things to say, and then I'll be quiet if you all promise to meet with me over the next day or two as I come around and visit you, so I don't have to waste your time now. I have heard all the... [LB535]

SENATOR ASHFORD: How about next week? [LB535]

JAMES MOWBRAY: That would be great; Saturday and Sunday, no. Anyway, a couple of things though for the record. Linda Crump pointed this out. This bill was not my idea,

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Transcriber's Office

Judiciary Committee
March 08, 2007

it was not my doing. The bar and other entities came to me and said, we're going...we think the commission is the proper place to put it; we're going to draft legislation, and asked if I wanted to participate; naturally, if it's going to affect the agency, I did. I also have again a similar amendment to the one I did yesterday regarding the issue of my cash fund that I would like to make part of the record. And one other thing at least on the record, I've heard a lot of talk about the standards that are in the Supreme Court. There are standards in the Supreme Court. I met with the Supreme Court with a number of other people about January 26. They're very concerned of implementing any standards because it would be an unfunded mandate. I think they are looking for the Legislature to do something and provide state funding, so they aren't thrusting unfunded mandates on the county. I'll be in touch with all of you and get appointments set up. [LB535]

SENATOR ASHFORD: Thanks, Jim. Senator Lathrop. [LB535]

SENATOR LATHROP: I do want to ask a question. If we set a standard and said somebody had to have so many hours of CLE, and they had to go out to the house before the hearing, how is that an unfunded mandate? [LB535]

JAMES MOWBRAY: Because, first of all, you've got training involved, which means either the county is going to have to pay for it, or the individual lawyers. This provides for training for those lawyers. It's also unfunded because it has to do with fees. As you heard one witness testify, it's from \$45, to \$75, to \$80 an hour. And so part of the standards would be, that the Supreme Court is looking at, is at a rate of, for example, \$75 an hour. So the counties that are paying \$45, such as Dodge, that's a \$30 an hour increase they're going to have to pay out of tax dollars. [LB535]

SENATOR LATHROP: Okay, I can appreciate if the standards set the hourly rate for these attorneys or these guardian ad litem items that could be, to the extent it's an increase, an unfunded mandate. So I appreciate the answer, Jim. [LB535]

JAMES MOWBRAY: Right. That's one of...there's some others, but I mean that is one of their concerns. [LB535]

SENATOR LATHROP: Okay. [LB535]

SENATOR ASHFORD: Thanks, Jim. [LB535]

JIM MOWBRAY: Thank you. [LB535]

SENATOR ASHFORD: Senator Schimek, do you wish to close? [LB535]

SENATOR SCHIMEK: Only thing I wish to say is, thank you all for being here and for

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Transcriber's Office

Judiciary Committee
March 08, 2007

staying to this very late hour of the day and... [LB535]

SENATOR ASHFORD: Yeah, let me add to that, Senator Schimek, that I think what...you brought us an important bill. And I am very...I think the testimony, it's late and you don't want to hear me. But the testimony was... [LB535]

SENATOR CHAMBERS: But we're going to hear you anyway. (Laughter) [LB535]

SENATOR ASHFORD: But you're going to because I didn't say much. I said very little. I do pay my bar dues, though, and I am a lawyer. But anyway, not a lot of dues, I need to get...but I do want to thank everyone. This is a very motivated group of people. And as Senator Schimek normally does and has done for all her years here is she's brought good people together. And I'm convinced we need to do something, we need to do something and study it, and look at this carefully, and I'm committed to doing that, my staff is, and I'm sure the committee is. And whether or not we get a bill out in the next week or so, Jim, but I think that this is very worthy of not just study, study, but intense study, because the issue raised are critical, critical to our state. So thank you all very much for your time. [LB535]

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Judiciary Committee
March 08, 2007

Disposition of Bills:

- LB47 - Held in committee.
- LB76 - Held in committee.
- LB413 - Held in committee.
- LB535 - Held in committee.
- LB554 - Advanced to General File, as amended.
- LB682 - Advanced to General File, as amended.

Chairperson

Committee Clerk