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COMMITTEE ON JUDICIARY  
February 25, 2005  
LB 218, 280, 632, 633, 724

The Committee on Judiciary met at 1:30 p.m. on Friday, February 25, 2005, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB 218, LB 280, LB 632, LB 633, and LB 724. Senators present: Patrick Bourne, Chairperson; Dwite Pedersen, Vice Chairperson; Jeanne Combs; Mike Flood; Mike Foley; and Mike Friend. Senators absent: Ray Aguilar and Ernie Chambers.

SENATOR BOURNE: Welcome to the Judiciary Committee. This is our sixteenth day of committee hearings. We have five bills on the agenda today. My name is Pat Bourne. I represent the 8th Legislative District in Omaha. To my left is Senator Flood from Norfolk; Senator Friend from Omaha; our committee clerk is Laurie Vollertsen; our committee counsel is Michaela Kubat; Senator Dwite Pedersen is on my far right, Dwite is from Elkhorn. I'll introduce the other members as they arrive. Please keep in mind that from time to time senators will be coming and going, introducing bills, conducting other business, so if they happen to leave while you are testifying, please don't take that personally; they're simply conducting other business. If you plan to testify on a bill, I'm going to ask that you sign in in advance where those two gentlemen are sitting. That's what we call our on-deck table. Please print your information accurately so that it can be entered into the permanent record. Following the introduction of each bill I'll ask for a show of hands to see how many people plan to testify on a particular measure. We will first hear proponent testimony, then opponent testimony, then we'll hear neutral testimony, and then the senator will have an opportunity to close. When you come forward to testify, please state and spell your name for the record. All of our hearings are transcribed. Your spelling of you last name, first and last name, will help our transcribers immensely. Due to the large number of bills heard here in the Judiciary Committee, we do utilize the timer lights which I refer to as the "Kermit Brashear Memorial Lighting System." Senators introducing bills get five minutes to open and three minutes to close should they choose to do so. All other testifiers get three minutes, exclusive of any questions that the committee may ask. The blue light will go on at three minutes; the yellow light is one-minute warning; and

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then when the light turns red we ask you to conclude your testimony. The rules of the Legislature state that cell phones are not allowed, so if you have a cell phone please disable it. Reading someone else's testimony is also not allowed. We will allow you to submit someone else's testimony but we won't let you read that into the record. With that, Senator Thompson to open on Legislative Bill 280. As he makes his way forward, could I get a show of hands of those here to testify in support of this bill? I see one. Those in opposition? I see none. Those neutral? Doug, welcome.

LB 280

DOUG KOEBERNICK: Thank you, Senator Bourne. For the record, my name is Doug Koeberrick, spelled K-o-e-b-e-r-n-i-c-k. I'm the legislative aide for Senator Thompson who is unable to make it today. LB 280 was brought to her by the Attorney General. Currently, physicians, medical institutions, nurses, school employees, and social workers are required to report that they have reasonable cause to believe that a child has been subjected to abuse or neglect or observes the child being subjected to conditions or circumstances which reasonably would result in abuse or neglect. LB 280 would add commercial film processors, photographic print processors, and computer service providers to this list of mandatory reporters. This bill would also require that those professions report the observation of child pornography or sexually explicit conduct involving a minor. That's all I have. I have Jeff Lux from the Attorney General's Office that will follow me.

SENATOR BOURNE: Thank you. Are there questions for Mr. Koeberrick? Seeing none, thank you. First testifier in support.

JEFF LUX: (Exhibit 7) Good afternoon, Chairman Bourne and members of the committee. My name is Jeff Lux, L-u-x, from the Attorney General's Office, speaking in support of LB 280 which basically amends the child abuse and reporting statutes in this state. It recognizes that child porn is evidence of child abuse and also includes those people in our society which would be most likely to discover that type of child abuse evidence. Child pornography in and of itself

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is illegal, but the image is also evidence of child abuse in and of itself. It's a memorialization of the sexual exploitation of that specific child, so it's not just a picture. Because it is evidence of child abuse it does fit under this statutory scheme for reporting of child abuse because the discovery of child pornography is just like the discovery of a bruise that a teacher might discover. It's discovery of evidence of child abuse. So it needs to be reported so that we can prosecute these types of crimes--child pornography, possession, manufacturing, and distribution--and also gives law enforcement the ability to forward those images to the National Center for Exploited and Missing Children for their victim database so that we can identify these children. With the advances in modern technology, the Internet, digital cameras, there are additional members of our society that are going to come across evidence of child abuse, and that's the film processors and computer tech people. Say, somebody brings a computer to Best Buy. That person at Best Buy who is supposed to fix their computer comes across child porn, that would be something that we want to get them involved in the process to report that. So we're going to give them criminal and civil immunity to have them report. And this will prevent the further exploitation of that child and prevent the spread of child pornography. That's all I have. In conclusion, there are other states that have similar laws on the books. Missouri and South Carolina almost have the same type of language that covers mandatory reporting. Texas doesn't have the same type of language but it covers the same issues. South Dakota has specific language which covers for computer tech people to mandatorily report. And there are other states which cover film and print processors; those are Colorado, California, Maine, and Washington. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Lux? Mr. Lux, in addition to...Dwite or Senator Pedersen do you have a question?

SENATOR Dw. PEDERSEN: Go ahead.

SENATOR BOURNE: Mr. Lux, in addition to providing an immunity, does it create an obligation to report in certain circumstances?

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JEFF LUX: The statutory scheme that's already set up does create an obligation. There is a violation if you willfully fail to report. So if you come across something that is child pornography in this situation there would be a...it's a Class III misdemeanor. But that's already in the statutory scheme which already covers doctors, nurses, teachers, for any type of child abuse that they uncover. So we didn't add anything with regard to violations; that was previously in the statute.

SENATOR BOURNE: Well, does...if the bill were to pass, doesn't a commercial film processor or a computer service provider now have an obligation to report?

JEFF LUX: Right now, it depends on how you read the statute. The statute has doctors, nurses, school people, and then it says "or anyone other." And that language is kind of ambiguous so that's why we wanted to specifically put these people in the statute. Commercial film and print processors already have civil and criminal immunity if they choose to partake and put themselves into an investigation, but they are not mandated to. So that's why we amended that section so that it's consistent throughout the bill. So under the statutory scheme for reporting, they receive immunity, criminal and civil immunity. We added them, and then under the print and processor statute that was already there we added the computer people to that so that it was consistent.

SENATOR BOURNE: If an employer had an IT department--I think that would meet the definition of a computer service provider--what if a representative from that IT department found through audit or simply happening upon an employee looking at pornography would they have an obligation to report?

JEFF LUX: Yes. That's kind of one of the examples that we were thinking about when this came about that if for whatever reason an employee leaving the company, the IT guy comes in to refurbish the computer for the next employee, happens to come across what he thinks is child pornography, yeah, we want those people involved; we want them to report that so that we can...

SENATOR BOURNE: But it's not just child pornography, it's

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sexually explicit conduct, as well, isn't it?

JEFF LUX: Well, that would be...that would...sexually explicit conduct then, like on a computer or print or a film processor, would be images, pictures, jaypegs, anything like that which would end up being pictures or film-type on a computer.

SENATOR BOURNE: I can understand giving a commercial film processor immunity, or even a computer service provider immunity, but I'm struggling as to why we would force an obligation on an employer to report its employees in this regard. And what if the individual...would it cause an employer to set up a mechanism by which they can document an employee's conduct?

JEFF LUX: I guess I am not understanding the question. Would they have to document the fact that they did discover this?

SENATOR BOURNE: What if you have a business, you have 20 employees, you have a big enough business that you have an IT department, and you don't have any mechanism by which to screen what your employees are looking at on the Internet. Would this bill, should it pass, put on you an obligation to set up such a mechanism for screening your employees' conduct?

JEFF LUX: No, it doesn't set up a mechanism where you have to proactively go out and search for what your employees are doing, but if you do happen come across it in your business in whatever duties you were doing as an employee, if you were to come across it then you would be obligated. But there is no mandate that you have to actually search out what your employees are looking at, what they have on their computer.

SENATOR BOURNE: Just reasonable cause to believe.

JEFF LUX: Right. So if you were to come across it, then we would expect you to report it but we don't expect you to actively search.

SENATOR BOURNE: Further questions for Mr. Lux? Senator Pedersen.

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SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. Lux, I'm going to stretch it away from this bill probably just a little bit but I was...when it comes to computers I am pretty ancient. I can turn one on and can type what I have to into one and do my own reports and stuff on it, but Internet I have but I... We just had a state employee not too long ago who was fired for having porn on a state computer, and the way I understand it it was some of this pop-up stuff. And I had to be shown what that pop-up stuff was the other day. This wouldn't touch anything like that, would it?

JEFF LUX: This is kind of more focused on child...first of all, child pornography. A lot of the pop-up stuff, even if it says teens or whatever, is actually legal pornography, and this doesn't cover that kind of pop-up of legal pornography that would pop up at a work setting for whatever reason. This is focused more on child pornography and actually on whether the stuff was actually on the computer.

SENATOR Dw. PEDERSEN: But if they, if somebody happens to get that through just searching or whatever on the Web and stuff and get that kind of stuff, doesn't it lock into the computer somewhere anyway that they even viewed that?

JEFF LUX: Well, yeah, and one of the reasons that...okay, that it's kind of let's err on the side of telling law enforcement, because then law enforcement can get that image and determine whether it is in fact child pornography. The National Center for Missing and Exploited Children, that's one of the things they do out in Washington. Law enforcement agencies will send them images and they have a different criteria to determine, number one, is this actually a child or not. And so they have a database out there that has a known series of child pornography so that if we come across something we can ask them, hey, have you seen this picture before, and then we can determine, yes, this is a known victim, this is child pornography. Or if it is something that maybe we know who the child is, we tell the National Center, but... So it might not end up being a case where we would prosecute somebody for child pornography, but the second half of it would be to put that in the database.

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SENATOR Dw. PEDERSEN: Back to this bill, this bill is more into reproduction of that kind of stuff that they would take off from the computer, is that right?

JEFF LUX: Yeah. I mean I guess this bill is kind of, when we were thinking about the child pornography is evidence of child abuse, when we were thinking about, well, we should fit this under this abuse reporting statute, we were thinking more in terms of, like when we were doing this we had three calls just out of Omaha. A guy from CompUSA called who was fixing someone's computer, came across what he believed was child pornography on this customer's computer, gave law enforcement a call. So we know that's kind of the situation we're talking about--come across something at work; you know, the IT guy comes across child pornography at work. It might be downloaded; it might be on the hard drive; that type of stuff. So that we can get those cases and see if there is a prosecution and inform the National Center about those images that we found.

SENATOR Dw. PEDERSEN: Thank you.

JEFF LUX: You're welcome.

SENATOR Dw. PEDERSEN: Appreciate your...

SENATOR BOURNE: Thank you. Further questions? Mr. Lux, the individual working at Computer USA, was he processed or prosecuted in some way, or sued by the person he reported?

JEFF LUX: No, not that I know of. He just called Omaha Police and that's about as far as I was aware at the time.

SENATOR BOURNE: Do commercial film processors today, if they were to receive film to be developed, would they, do they report that now?

JEFF LUX: I'm not aware. I mean, under the statute and apparently this has come before the Legislature before so I'm certain that the industry does know that if they do come across that, under the current law they don't have the obligation to report but may report, and if they do report then they are given civil and criminal immunity. But I'm not aware of in the last year or so whether any of those film and print processors have made a report of discovering

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child pornography.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

JEFF LUX: Thank you very much.

SENATOR BOURNE: We've been joined by Senator Combs. Next testifier in support? First testifier in opposition? Are there any neutral testifiers? Closing is waived. That will conclude the hearing on LB 280. Senator Stuthman to open on LB 218.

LB 218

SENATOR STUTHMAN: Good afternoon, Senator Bourne and members of the Judiciary Committee. I'm Arnie Stuthman, S-t-u-t-h-m-a-n, and I serve the 22nd Legislative District. I'm here to introduce LB 218 which provides important clarifications of definitions of findings in the investigation of child abuse and neglect. Following my introduction of this bill you will hear from Nancy Montanez, director of Health and Human Services. Nancy will provide specifics about the bill and will be able to respond in more detail about the operation of the Child Abuse and Neglect Register. My reason for introducing LB 218 is a simple one. State law is sometimes confusing enough. We ought to make it as simple as possible to understand. With the best intentions, language was used in the introduction of our state's child abuse laws years ago, have been found over time to be confusing to staff who work in the area but, more importantly, confusing to the general public. Let me give you a few examples. The current statute uses the terms, central register and central registry. One is the listings of individuals who have abused and neglected children. The other is a system to track the status of investigations. Which is which? Clearly, the testimony won't tell you. And so why not call it what it is? Change the term central registry to tracking system and eliminate the confusion. Here's another example. Current statute, specifically outlines the terms to be used when an investigation of abuse and neglect is completed. The terms of court substantiated petition to be filed inconclusive and unfounded. If you're like most people, the term inconclusive means that you

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cannot conclude that enough of something has happened. However, this finding is used to identify agency substantiated cases. Those that have not been processed through the court system but where there is a preponderance of evidence that the abuse or neglect is more than likely than not to have occurred. And so why not call it what it is? Change the term, inconclusive to agency substantiated and eliminate the confusion. I believe the definitions and clarifications in this bill are simple yet needed changes. Again, Nancy will be following me and provide you with more detailed descriptions of child abuse and neglect systems. I will hope to try to answer any questions but I think if you have any questions I would appreciate if you would refer those to Nancy Montanez, our director.

SENATOR BOURNE: Thank you. Are there questions for Senator Stuthman? Seeing none, thank you.

SENATOR STUTHMAN: Thank you.

SENATOR BOURNE: Can I get a showing of hands of those here to testify in support of this bill? I see three. Those in opposition? I see one. Those neutral? I see none. First proponent? And then the other proponents, if you'd make...come forward. The other proponents to the bill, if you'd make your way to the on-deck area and sign in. So if you're in support of the bill, make your way forward and sign in. Welcome.

ROGER STORTENBECKER: Thank you. Chairman Bourne and members of the Judiciary Committee, my name is Roger Stortenbecker. I'm providing this testimony on behalf of the Nebraska Association...

SENATOR BOURNE: Excuse me. Sir?

ROGER STORTENBECKER: Yes.

SENATOR BOURNE: Could you spell your last name for us?

ROGER STORTENBECKER: I'm sorry. Of course. Stortenbecker is a tough one, S-t-o-r-t-e-n-b-e-c-k-e-r.

SENATOR BOURNE: Thank you.

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ROGER STORTENBECKER: You're welcome. I'm testifying on behalf of the Nebraska Association of Homes and Services for Children and its 15 members of...providers that offer outpatient and inpatient, residential services in Nebraska to children and their families. The association supports LB 218 with a recommendation that it be amended to specify that the tracking system alone does not constitute a preponderance of evidence to be used by the department to substantiate abuse and neglect. As written, the tracking system could include the names of people who have been reported but not determined to have committed abuse/neglect by the court or court pending or any previous departmental decision about preponderance. And we would like to guard against the volume of reports alone as being the preponderance of evidence as an indicator but not by itself a preponderance of evidence. I'd be happy to answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Stortenbecker? Seeing none, thank you.

ROGER STORTENBECKER: You're welcome.

SENATOR BOURNE: Next testifier in support?

NANCY MONTANEZ: (Exhibit 1) Good afternoon, Senator Bourne and members of the Judiciary Committee. My name is Nancy Montanez, M-o-n-t-a-n-e-z. I am the director of the Department of Health and Human Services. I would like to thank Senator Stuthman for introducing this bill on behalf of the Health and Service system. I'm here to testify in support of LB 218. LB 218 provides important clarification of definitions of finding in the department investigation of child abuse and neglect. Specifically, the bill addresses four key points. First, LB 218 adds definition to the term subject of a report of child abuse and neglect defining subject as the person or persons identified as responsible for the child abuse or neglect. Second, it strikes references to the special state abuse or neglected child registry and replaces it with the term tracking system and specifies the requirements for the system. Currently, the statute uses the term registry to refer to the tracking of cases investigated but also use the term register to refer the system containing the names of individuals who have been found to have abused or neglected children. Use of the two

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similar terms have caused confusion and LB 218 eliminates that confusion. Third, it provides for clarification and change to the statutory definition of findings of child abuse or neglect. Current statute defines four categories of finding: court substantiated, petition to be filed, investigation inconclusive, and unfounded. LB 218 adds descriptive language to the classification of court substantiated and replaces the petition to be filed with the classification of court pending. The bill also eliminates the term inconclusive as a finding and replaces it with agency substantiated. The current finding of inconclusive understandably implies that we were unable to determine whether or not abuse or neglect occurred. However, the current finding of unfounded is used in these situations. We define the current finding of inconclusive as a determination by preponderance of the evidence and the abuse or neglect was more likely than not to have occurred. Therefore, the proposed term of agency substantiated more clearly reflects our operational definition of this finding. LB 218 adds specific language providing the subject of a report may authorize individuals or organizations to receive information from central registry entries pertaining to that person. Information is limited to the date of the alleged abuse or neglect in the classification of the case. These changes may seem minor to some. However, they are important changes and will help our staff clearly understand their work and to help the general public understand the findings as we assess reports of abuse and neglect. And I appreciate Senator Stuthman's attention to this area and urge you to support this bill.

SENATOR BOURNE: Thank you. Are there questions for Ms. Montanez? Seeing none, thank you. Next testifier in support?

KATHY MOORE: (Exhibit 2) Senators, I'm Kathy Moore, director of Voices for Children in Nebraska. That's Moore, M-o-o-r-e. I'm here to urge you to support this bill and advance it quickly. This is an issue that has been of concern for years and I think it is almost such a simplistic or simple concept that it tends to not get enough legislative attention. It's advanced to General File a time or two. I hope it will advance quickly. I hope that I can persuade one of the senators to make this a priority bill and that we can see this problem solved this year. The

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issue of the central register is critical to employers as we see the increased attention that child abuse has gotten in our state. We need this step to be able to build the confidence in the central register and to enable employers and other folks to utilize it to truly determine safety of children who might be in the care of individuals that truly are on the register. I'd be happy to respond to any questions. I think that the concept of what this bill does has been very clearly laid out and you probably don't need me to do that again.

SENATOR BOURNE: Thank you. Are there questions for Ms. Moore? Seeing none, thank you.

KATHY MOORE: Thank you.

SENATOR BOURNE: Next testifier in support? First testifier in opposition? Are there other opponents to the bill? Are there any neutral testifiers?

TIM BUTZ: (Exhibits 3, 4) Senator Bourne, members of the committee, my name is Tim Butz, B-u-t-z. I'm executive director of American Civil Liberties Union Nebraska. We agree with the intent of this bill and think that, indeed, this whole child abuse registry needs clarification, needs streamlining. But we're concerned about the categorization that will remain following LB 218. And, unfortunately, the page isn't here. Attached to my written statement there's a case out of the Lancaster County district court where the ACLU represented a woman who had been found to be in the third category, where no court proceedings were initiated against her. The fact situation on it was that she had bathed her child and took the child to the emergency room following bathing because the skin was turning red. It was reported to CPS. CPS and the police came out. The police officer opened the water heater cabinet in her rented apartment and found out that the prior tenant had the water heater jacked up. He turned it down, case closed, no further action. Eight years later she's graduated from nursing school and tries to get a job and she can't get a job. Why can't a nurse not get a job in this environment where nurses are so needed and wanted? Finally, one of the employers tells her that she's on the child abuse register which she had not been aware of. Now that problem has already been cured. The department is now giving

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notification when they place people on the register. But we represented her in an attempt to get her removed from the registry through the department, was unsuccessful in doing that, took it to Lancaster County Court. The court decision is attached to our written statement there and it was, you know, judges are pretty restrained when they make decisions. But the language in this case I think is meaningful. The failings of the pitiful record on this case go on and on. It is not necessary to provide a laundry list. At best, this record is nonexistent. At worst, the series of events to which the plaintiff has been subjected exemplifies government at its worst. The executive branch may not have its way at all costs and without regard to the rights of the individual citizens to reason and fairness. And that's what we want through this bill is we want some reason and fairness in these classifications. I talked to Lori Stout from Senator Stuthman's office this morning. I think there will be some subsequent discussion between her and our legal director trying to work out some language that might be acceptable to HHS, to the ACLU, and to the bill's proponents. The second handout that you're getting is a draft of a brochure that's mentioned in my written testimony also. We did that because we feel CPS is not doing an adequate job of informing people of their rights in all cases. It's not a universal problem but I offer the exhibit simply because it helps explain the rights that people have when they're undergoing this investigation.

SENATOR BOURNE: Thank you. Are there questions for Mr. Butz? Senator Flood.

SENATOR FLOOD: Mr. Butz, thank you for your testimony today. I guess I would like to know a little bit more about what happened at the Health and Human Services hearing that you were required to have before you went to the Lancaster County district court.

TIM BUTZ: I can have my legal director call you and brief you on that. I wasn't present. I don't know. I know that the district court on looking at it felt that there were irregularities in how the...they didn't affect the fox was regarding the henhouse kind of approach. It was predetermined pro forma. There was no substantive due process. There was procedural due process but not substantive due process.

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SENATOR FLOOD: I'll look forward to that phone call. Thank you very much.

TIM BUTZ: And I'll make sure she does give you that call, sir.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you.

TIM BUTZ: Um-hum, thank you.

SENATOR BOURNE: Next testifier in opposition? First testifier neutral? Senator Stuthman to close.

SENATOR STUTHMAN: Thank you, Senator Bourne and members of the Judiciary Committee. The opposition that you have just heard, you know, I'm sure that we can hopefully work something out so we can get this bill to move on. So I'm willing to work with them and so that we can go through this process very smoothly. So that, I think, we can work out and, hopefully, you people will see fit after we come upon that agreement that you will be able to move this out.

SENATOR BOURNE: Thank you. Questions for Senator Stuthman? Seeing none, that will conclude the hearing on LB 218. And before Senator Stuthman opens on LB 724, could I have a show of hands of those here testifying in support of this next bill? I see three, four. Those in opposition? I see one, two, three, four. Those neutral? I see one. Would the proponents of this measure make your way to the on-deck area and sign in, please? Senator Stuthman.

LB 724

SENATOR STUTHMAN: Thank you, Senator Bourne and good afternoon again and members of the Judiciary Committee. I'm Arnie Stuthman, S-t-u-t-h-m-a-n, and I represent the 22nd Legislative District. And I'm here before you to introduce LB 724. As a member of the governor's task force in 2003, I have firsthand knowledge of some of the problems that face our state with child abuse and reporting and investigating. Last year Senator Landis introduced a bill that would make major changes to the current system by

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creating a statewide investigation and prosecution center under the authority of the Attorney General. Unfortunately, that bill did not pass last year. Instead, additional funds were invested in our current system in hopes of improving what we already have. LB 724 would create a pilot project modeled after last year's bill but in a much smaller scale and an experimental scale. Many of the folks that will testify in opposition of LB 724 will tell you that our current system is improving. I agree and I know it will take some time to see the effects of last year's legislation. That's why I'm encouraging this committee to look carefully at the improvements that are being made with the current system and to make sure that if LB 724 is enacted, that it will enhance our knowledge as a state and at the same time ensure that we are giving our current program enough time to work with the funding from last year.

SENATOR BOURNE: Thank you. Are there questions for Senator Stuthman? Seeing none, thank you. The committee has been joined by Senator Foley from Lincoln. First testifier in support?

SENATOR CORNETT: Good afternoon, Senator Bourne and members of the Judiciary Committee. I know it's a little unusual for a senator to come up and testify on behalf of another senator's bill but I had a number of people come to me as a former law enforcement officer and ask me to give my opinion on this bill and to testify. There is nothing more tragic than going to a call, a radio call, and finding a child that's been beaten to death except for finding out that that child has been in the system or abuse has been reported and they've fallen through the cracks. This happens too frequently in this state. Senator Stuthman testified that the system is improving and I agree with him. It is improving but it is not improving fast enough. Since the recommendations last year, five more children have died. Four of those had been reported in the system and fell through the cracks. This bill would give us somewhat of a double safety. We'd allow the reports to go to a central area so we would not have the problem of the children falling through the cracks. And I know that there's a small fiscal note with this but you have to remember, this is about the children and their safety in this state. Thank you. Do you have any questions?

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SENATOR BOURNE: Thank you. Questions for Senator Cornett?  
Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Senator Cornett, it is not unusual. I have done it many times for or against. If you have an issue, you're just as much of a citizen as anybody else in this whole state. And I appreciate your testimony. Thank you.

SENATOR CORNETT: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in support?

JIM GORDON: (Exhibit 5) Chairman Bourne and members of the Judiciary Committee, my name is Jim Gordon, G-o-r-d-o-n. I'm an attorney in private practice here in Lincoln and appear here today as a member of the Foster Care Review Board. I believe that I have been confirmed, although I'm not certain of that and that was yesterday. But I hope that I have and, in any event, I am on the board as a newly appointed member. I'd like to briefly describe the issues the Foster Care Review Board has identified with the process of receiving child abuse reports and with investigations. I will also briefly describe why these findings led the board to support the concept of a single managed lead agency for child protection. And that is at the heart of LB 724. The Governor's Task Force on Children echoed the need for this concept in its final report, in recommendation 4.2 of that report, a copy which has been provided for the members of the committee, I'd like to make this quotation or cite this quotation. "Well-trained prosecutors directing a joint response to reports of serious child abuse by a team of tenacious and experienced investigative professionals seems to be the answer to many of the problems the Task Force uncovered." The Foster Care Review Board agrees with that assessment. The Foster Care Review Board also has identified a consistent pattern of problems within individual agencies and with coordination between agencies. The following issues were identified: 1. When the board attempted to report safety concerns with the placement of children in out-of-home care; 2. When the board examined response to child abuse reports made prior to some children's deaths from abuse; 3. Last year when the board, at the governor's direction, examined the response to abuse

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reports received by Child Protective Services over a 12-month period; and, 4. When the Foster Care Review Board researches if there have been any child abuse reports against a foster home or group facility each reviewed child lives in as part of the case review process. The types of problems identified were these. The first was poor screening and investigation of child abuse or neglect reports. The second was communication failures between Child Protective Services and local law enforcement. The third, law enforcement officers responding to the child abuse cases having little training in a specialized type of investigation. And four, little or no supervision of the decisions. Many of the problems are due to the structure of the system itself. By this I mean that calls regarding children being abused and neglected go to Child Protective Services which is a division of the Department of Health and Human Services, but they are not the ones who are first to investigate. If the Child Protective Service worker correctly evaluates the call and forwards the report, then it is one of the 3,861 certified officers from one of over 200 city law enforcement agencies, 93 sheriffs' offices, or State Patrol who actually conducts the investigation. Few specialized officers are available and those who are available are mainly in Lincoln and Omaha. Each of these law enforcement agencies and CPS are managed independently. In addition to the difficulties with coordination there are also issues within each silo, each structure, segment of the structure. Serious issues with how Child Protective Services decides which calls should be investigated and what priority level. In my written testimony, I've pointed out several of the bullet points under that. May I be allowed to conclude, Senator?

SENATOR BOURNE: Yeah, please.

JIM GORDON: Thank you. Children's lives depend on who answers the phone, whether they decide there should be an investigation and who knocks on the door. Investigation quality can not only make the difference between life and death for children and can also dramatically affect the children's quality of life and future productivity. The board has considered what is needed to solve the deficits with the structure of the child protection that I have just described. The board recommends the state Legislature designate a lead agency responsible for a consistent

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response to child abuse and neglect reports. A lead agency, with clear lines of authority and accountability, would ensure that each of these essential processes work with optimal efficiency. LB 724 provides a pilot project for that lead agency concept. Thank you.

SENATOR BOURNE: Thank you. Are there questions for Mr. Gordon? Seeing none, thank you.

JIM GORDON: Thank you, Senator.

SENATOR BOURNE: Appreciate your testimony.

JIM GORDON: Thank you.

SENATOR BOURNE: Next testifier in support? (See also Exhibit 6)

TAMMY PETERSON: Senator Bourne, members of the committee, my name is Tammy Peterson, P-e-t-e-r-s-o-n, and I'm the supervisor with the Foster Care Review Board. I'm here today to express my support for LB 724. For seven years prior to my employment with the Foster Care Review Board, I was a CPS worker for the state of Nebraska Department of Health and Human Services. In that capacity, I was responsible for investigating allegations of child abuse and neglect. In 2004, the governor granted permission for the Foster Care Review Board to review over 22,000 intakes over a one-year period. These intakes are the receipt of child abuse and neglect reports and the response following that receipt. I was the lead researcher on that project due to my experience with the Department of Health and Human Services computer system referred to as nFocus as well as my child welfare knowledge. This is what our current Child Protective Service system looks like. I believe you've been provided with a smaller copy of this chart for you to refer to. What we currently have is a two siloed system. On the left is the process involving the CPS system and the right represents law enforcement's possible responses to a child abuse or neglect report. In the center are the common breakdowns. As you can see, the system appears very confusing and because the two systems are not regularly communicating, there are frequent system breakdowns. CPS works with safety while law enforcement investigates whether or not a crime has occurred. While I believe both systems

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are trying to protect children, the two systems are not always working together. This is a system with which I worked for seven years as a CPS worker and, unfortunately, this is the system that has failed to keep many children in our state safe. Of the 32 children that were killed by a parent or a caretaker that was researched by the Foster Care Review Board, approximately 19 of those children were known to the system. One specific case involves a one-and-a-half-year-old child who died in early 2003 as a result of shaken baby syndrome. Her mother has been charged with her death. A CPS worker had been to the home and observed the child with blood on her nose, a fat lip, and a fading black eye. The worker did not feel that the injuries were consistent with the mother's explanation as to how the child received them. The child was sent to the hospital and when the hospital saw the child, they contacted law enforcement. Law enforcement originally placed the child in custody but this was later cancelled. Due to a shift change, the law enforcement officers did not have the history on the mother and the difficulties that she had been facing. The child was killed four days later. In 2004 and thus far in 2005, there have been seven more child deaths and five of those children have been known to the system. In one of those cases, there have been nine prior CPS reports on a family and in one of those cases law enforcement went out to the call and did not contact Child Protective Services. As Mr. Gordon previously stated, the consistent problems have been poor screening and investigation of child abuse and neglect reports, communication failures between CPS and local law enforcement, little or no supervision of decisions, and calls were made to the hotline. But it's the law enforcement officer who may have had less than two hours of training in child abuse and neglect that is the one responding. You may hear testimony today that changes...I'm sorry, may I continue, Senator Bourne?

SENATOR BOURNE: If you'd just conclude, that will be...

TAMMY PETERSON: Excellent. In conclusion, I applaud the efforts that are currently being used. I understand you may hear today testimony about coordinators, you may hear about 1184 teams. The problem is, these systems don't address the structural problems. Thank you.

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SENATOR BOURNE: Thank you. Are there questions for Ms. Peterson? Seeing none, thank you.

TAMMY PETERSON: Thank you.

SENATOR BOURNE: Next testifier in support?

CAROL STITT: I'm Carol Stitt, the executive director of the Foster Care Review Board and one of the things that I would like to point out is the volume of this problem. You know, when you hear the individual cases it's easy to be, you know, full of frustration and even some anger but there are over 22,000 calls that just HHS responds to. We don't even know how many calls law enforcement gets. And one of the things that we figured out is that cases fall through the cracks because there are different responders. As you heard, there's over 3,000 law enforcement officers and in many cases, with little training or the people who are first responders. So that's one of the things we would like to emphasize. And what we're really trying to, I guess, suggest is that a single tier where the calls go regionally to one place and then the investigations are coordinated from this hub. As opposed to the two silos, you go to one silo. And, you know, you could determine if it's a meth situation or domestic violence, if there's a very intense history you need to have two people go out. You need that CPS worker to have a law enforcement officer with him or her. So this is really what we're suggesting and you do have that information in your packets. But it's hard to, I think, emphasize or explain. We fail on both sides of this issue. There are children who are removed who shouldn't be and there are children left in dangerous situations that should be removed. It's not one problem in one area. It's not like we just have to fix training law enforcement. It's not, you know, it's more complex than that. It's very much a structural issue. With that, thank you.

SENATOR BOURNE: Thank you.

CAROL STITT: Um-hum.

SENATOR BOURNE: Are there questions for Ms. Stitt? Senator Friend.

SENATOR FRIEND: Ms. Stitt, real briefly, and I know there's

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a lot of folks to speak on this. The evolution of this idea, I know it's been touched on just a little bit. Obviously, task force, other things, other elements that really brought this to the forefront. I mean, how...other states, other organizations...

CAROL STITT: Areas.

SENATOR FRIEND: ...can you give me just maybe a quick...

CAROL STITT: Actually, drug enforcement. A number of law enforcement officers recommended I speak with the U.S. attorney to figure out how he organized area responses. And the seed was sort of planted there. Gary Lacey, Doug Warner, Judge Icenogle, Dr. Poulton (phonetic), Beryl (phonetic) Williams who is a principal who has tried unsuccessfully to access the system all said we need a regional call center with trained directors of intake who take the calls and who dispatch the investigation rather than having the calls go into some open status which is what we found in the research the board did. So I think that was part of it. And there was, I think, an element of surprise in what we found in the research. We really didn't know that the system was underfunctioning at this level until the governor allowed us in to look at both the child death information as well as the CPS intake system. And then our experience, the board, we try to access the system for children and we have much the same experience. So Doug Warner out in Scottsbluff sort of sat down with me and he said, had a pile of intakes, and he said, weren't you a CPS worker? Let's go through some of these. Shouldn't somebody be responding to more of these, you know? He had gotten a pile from his department and he was trying to figure out how to, you know, keep his system moving. Unfortunately, he couldn't be with us today because he had a court emergency this morning. But Doug really started thinking of the idea regionally because he has so many little law enforcement agencies he works with. And that's sort of the evolution. We did look at other states. There is some national research that says the best child protective service system has a strong prosecutor lead. And that was really what we were trying to do so that was sort of how it evolved very briefly.

SENATOR FRIEND: Thanks.

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CAROL STITT: Okay.

SENATOR BOURNE: Further questions? Seeing none, thank you.

CAROL STITT: Thank you.

SENATOR BOURNE: Next testifier in support?

GARY LACEY: My name is Gary Lacey and I'm the county attorney here in Lincoln. And I was also the cochair of Governor Johanns' Commission on Child Deaths. And I come here because I think we have begun or at least in the last 20 years we're evolving into a different form of investigating child abuse cases just as we have evolved in a different form in investigating narcotics cases. I first became aware of the coordinated response or the team approach to these kinds of cases when a professor from Sacramento was brought here by the university and said, Child Advocacy Centers are really...they're sprouting up. One started in Huntsville, Alabama, and now they're popping up all over the United States. And the Child Advocacy Center puts in one location usually the prosecutor, the police investigators, and the social work investigators so located in one place and all trained to do the kinds of work that needs to be done leads to a better investigation. And I've seen this in the Child Advocacy Center here in Lincoln over and over and over again. Before we had the Child Advocacy Center in Lincoln, we had police officers and most of them, not all of them, but most of them didn't want to investigate this kind of case because it's not the pleasant kind of case to investigate. Social workers were more on the neglect aspect of the case and not the criminal aspect of the case so, and then you get people together and the prosecutor says, well, this is what I need from the police to prove the case in court. And this is what I need in a criminal case and this is what I need from the social workers to do an abuse and neglect petition. Why don't we get all these people together and get the police officers who want to do these kinds of investigations, get them trained to do forensic interviews or hire somebody that will do forensic interviews and we're all located in one location. It's worked very well here in Lincoln. And I'm glad that the task force recommended that we establish these advocacy centers across the state. Omaha has one; Lincoln

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has one, and Scottsbluff has one getting started. North Platte is getting one started. Norfolk is near or has one started and I can't remember, Grand Island. So I think this is a natural progression and it would be an interesting concept to research on as well as provide what I think is the right answer to the problem for rural areas, taking the entire western part of the Panhandle and doing this, I think. As a pilot project, if it doesn't work, it doesn't work but I think as a pilot project, I think it's a good beginning. And it draws all of the people together that are interested in these cases and provides kind of a natural, united front. And just one story that I think...

SENATOR BOURNE: If you could conclude.

GARY LACEY: Okay. Well, I'll just forget the story.

SENATOR BOURNE: Got a long afternoon. Okay. Questions? Hold on. Mr. Lacey, we have a...

GARY LACEY: Oh.

SENATOR BOURNE: Questions for Mr. Lacey? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Mr. Lacey, you've been a prosecutor for a long time for Lancaster County, is that right?

GARY LACEY: Thirty years.

SENATOR Dw. PEDERSEN: That's a long time. Gary, what I wanted to know basically just to dialogue with you a little bit on the...in the business of, do you think we're doing better?

GARY LACEY: I do.

SENATOR Dw. PEDERSEN: But we've got a long ways to go. In comparison to the drug wars that you and I are both aware of and probably quite a few of us in this room, how good are we doing in that area?

GARY LACEY: In drugs?

SENATOR Dw. PEDERSEN: Yeah. I see some comparison here is

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what I want to come to.

GARY LACEY: Well, when I first came, I came actually became a prosecutor because somebody had about 1,500 cases backed up in the county court and they were just sitting there. And they weren't being acted on and they were being fluffed over. And when I got here, when I got to the county attorney's office, these were mostly officer stops of vehicles or undercover buys made by police officers of the Lincoln Police Department. And there was...that was all. They just busted people locally with the task forces and the money that was available under the Burn (phonetic) funds. We have a task force in Omaha, it's big. We have a task force in Lincoln. It's also large. And what the sheriff and police and FBI and DEA and two prosecutors from my office are assigned to the federal court. They prosecute cases based on information provided by low-level drug dealers or low-level people and they make these cases and they're filed in federal court. And Nebraska laws, frankly, and Nebraska judges, you know, don't...I mean, I don't want to say that they don't take the cases seriously but there are so many of them that they just, you know, pretty soon you're just overwhelmed. If you can devote your resources to getting higher level people and then prosecute them in federal court, you know, you can sell methamphetamine in Nebraska and you'll probably get probation. You'll probably get diversion once. Then you'll get probation twice and then you'll...

SENATOR Dw. PEDERSEN: Okay. Well, you've made your case but wouldn't you think and at least to me that this child abuse is more important than the drug business?

GARY LACEY: Oh, I see them as being combined actually.

SENATOR Dw. PEDERSEN: Why are we not spending more money...

GARY LACEY: The person that...

SENATOR Dw. PEDERSEN: ...and more time on something that I think is far more important than the life of these children?

GARY LACEY: Why aren't we what?

SENATOR Dw. PEDERSEN: I don't know why we're not taking it

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more serious, what you're trying to sell here to us as a whole society. I mean if it's just starting to move a little bit and we've got that much further to go and we're not...the drug stuff is, you know, has taken emphasis away from, I think, some of our child abuse stuff.

GARY LACEY: Well, I don't know. I think meth is the hugest problem right now, you know that as well as I do. And the biggest case that we've had in the last six months in Lincoln was a mom who was out tweaking meth and leaving the baby up in the upstairs. She was just convicted and the baby didn't have anything to eat or drink. It was dehydrated, it was locked in a room. Nobody paid any attention to it and it died.

SENATOR Dw. PEDERSEN: Now can we bring it together that we can spend a...you would suggest, and I'm sure support the fact that we do a little more in this area and that's why we need this bill, is that right?

GARY LACEY: Well, I think so. I think we need this pilot project. I also think that the Legislature was extremely wise when it's established, these regional centers, these regional advocacy centers. They're just barely getting started and I've already, at least in the center here in Lincoln, which covers all of southeast Nebraska, just having one coordinator to cover all those counties isn't enough. So I think I get drug forfeiture money from the federal drug forfeitures and I had some money in that account. And yesterday I took over \$50,000 to the Child Advocacy Center so they could spend additional money to beef up the \$50,000 coordinator that the state is paying for because one coordinator can't keep up.

SENATOR Dw. PEDERSEN: You're allowed to do that.

GARY LACEY: Well, I don't know why drug dealers shouldn't pay for child abuse cases...

SENATOR Dw. PEDERSEN: I agree. I agree. That's what I'm trying to get to that we've got to bring this together because a lot of this abuse is coming from drugs and some alcohol. But the meth is terrible...

GARY LACEY: Well, all that money came from seizures on

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Interstate 80 of people trekking back and forth across Nebraska with, you know, everything from heroin to meth to marijuana.

SENATOR Dw. PEDERSEN: I would hope that we, across the state would be able to do more of what you just did with that \$50,000. Thank you, Gary. I appreciate what you do.

GARY LACEY: You're welcome.

SENATOR BOURNE: Further questions for Mr. Lacey? Seeing none, thank you, appreciate your testimony. Next testifier in support? Support?

BOB HEATH: Yes.

SENATOR BOURNE: If the opponents would make their way forward to the on-deck area while this gentleman is testifying. Welcome.

BOB HEATH: Bob Heath, H-e-a-t-h from Columbus. And I don't represent anybody. I'm concerned because I don't want to go through another year like this year or anybody else. I had two grandchildren that got lost in the system. Their father didn't know where they were. We didn't know where they were for 31 days. Health and Human Services was getting his child support check but yet they claimed they did not know where he was. Thirty-one days later they finally notified him where his children were and then we went to work and he got them. He has custody of them now. Our grandson was sexually abused and our granddaughter was abused. A half...you know, the son, their stepfather, was also abused. They were all taken away. Four or five months later, the son was gave back to them. This past fall the child advocate visited the school. Jacob's grades were back down again. My grandson was in a special school in Scottsbluff and McKenzie is in a regular school in Scottsbluff and their grades are good. But yet Health and Human Services recommended that they go back to their mother. And luckily, the temporary custody went to my son. Hopefully, next month he'll get permanent custody but I just don't want to go through it again. I think we should have an agency, one agency with just the...I understand is for to sort of put everything under one roof and another thing that I'm in favor of, nothing against the ombudsman but I think the

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person in charge of domestic child abuse, foster homes, should be an elected official, somebody that has to answer to the people. And thank you.

SENATOR BOURNE: Thank you. Questions for Mr. Heath? Seeing none, thank you. Appreciate you coming down and telling your story.

BOB HEATH: Thank you.

SENATOR BOURNE: Very much. Are there other testifiers in support? First testifier in opposition? If there are other opponents to the bill, please make your way forward and sign in. Welcome.

GENE KLEIN: Good afternoon. I'm Gene Klein. I'm from Omaha, executive director of Project Harmony which is a child advocacy center. And I'm here today representing the Nebraska state chapter of Child Advocacy Centers.

SENATOR BOURNE: Would you spell your...

GENE KLEIN: And Klein is spelled K-l-e-i-n. Sorry. In 2003, Governor Johanns assembled a diverse team of professionals from the public and private sector to guide him and the state in developing a strategy to how our system responds to child abuse. This team is comprised of over 35 individuals from the medical community, child welfare, the Legislature, foster care, law enforcement, prosecution, and education. This children's task force met for several months and created what I think you already have a copy of which is the road map to safety for Nebraska's children. Like many concerned child advocates, I was fearful that this 25-page document including strategies on prevention, investigation and treatment of child abuse would become something that's just placed on the shelf. Thanks to the leadership of the governor and this Legislature, this plan was embraced and critical components were implemented immediately. One of those components was the assignment of case coordinators in each of the seven child advocacy centers in Nebraska. Our task was simple and is huge to provide leadership, support, and coordination of the multidisciplinary teams that are assigned in each county in Nebraska to investigate child abuse. In the short time these coordinators have been in place, we have confirmed

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some of those fears and concerns that were soon to be problems. We've assisted in clarifying the roles and expectations of all those involved in investigating child abuse, strengthening the protocols, discussing critical cases as they're being investigated, and identifying and arranging for training for all multidisciplinary team members. Collectively, we have been in more and involved and led more than 325 multidisciplinary teams since September of last fall. Yes, there is more to do and yet we have not felt the impact of this intervention and a number of other strategies that were implemented last fall. I applaud Senator Stuthman and am pleased with his leadership and enthusiasm to move and make this state a safer place for children. However, LB 724 is not a strategy that was included in this road map. There is a lot of progress that's occurred in the last six months in improving the child welfare system and there is a lot more that must be done. We all in this state believe that children should be protected. Our recommendation to you is to stay the course, to follow this plan. This is not the right time to try something new. To strengthen the safety net for children of Nebraska, we recommend that you follow these strategies and fund these strategies that were endorsed as solutions to the protection of children.

SENATOR BOURNE: Thank you. Are there questions for Mr. Klein? Seeing none, thank you. Next testifier in opposition?

MARY JO PANKOKE: (Exhibit 8) Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Mary Jo Pankoke and I am the executive director of the Nebraska Children and Families Foundation. Pankoke is spelled P-a-n-k-o-k-e. I am here to testify in opposition to LB 724. In the fall of 2003, I had the opportunity to cochair the Governor's Children's Task Force with Gary Lacey. The model that LB 724 is based on is very different than the multidisciplinary team approach proposed by the Children's Task Force. A version of LB 724's model was presented at the task force last meeting and was on the table as an alternative when a vote was taken on the recommendations included in the task force's final report. A substantial majority of the task force members voted to support the model that was developed during its two-and-a-half months of work which is based on a

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multidisciplinary team approach centered upon child advocacy centers rather than the model proposed in this bill. In addition to my concerns about LB 724 going in a different direction than recommended by the children's task force, I am concerned about the timing of this bill. The majority of task force recommendations have been implemented or in the process of being implemented. Although it is too soon to assess the impact of the current reform efforts, there is evidence that we are on the right track. We should give the current reform efforts sufficient time to be fully implemented and evaluated before changes are made. The last point I want to make is the lack of research or practices to support the model proposed by LB 724. I was in a meeting earlier this week with some of the top national experts in the field of child abuse and neglect. I can tell you, according to these national experts, this model is not on the radar screen. It's a direction the field is going on a national level. National experts are recommending that states move in the same direction as we are going here in Nebraska which is further evidence that we are on the right track and should stay the course. I urge you not to advance LB 724.

SENATOR BOURNE: Thank you. Are there questions for Ms. Pankoke? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Ms. Pankoke, excuse me, I had to leave for just a minute to speak with somebody. You work for what organization that's the children and family?

MARY JO PANKOKE: Nebraska Children and Families Foundation.

SENATOR Dw. PEDERSEN: Now is that an institution or is that just an organization?

MARY JO PANKOKE: We're a nonprofit agency, a statewide nonprofit agency.

SENATOR Dw. PEDERSEN: Do you take in children or do you...?

MARY JO PANKOKE: No, we do not provide direct services.

SENATOR Dw. PEDERSEN: You don't direct any...no services.

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MARY JO PANKOKE: No.

SENATOR Dw. PEDERSEN: So you're basically an advocacy service?

MARY JO PANKOKE: We're advocacy, public awareness. We also provide grants to communities for services for children and families.

SENATOR Dw. PEDERSEN: Where do you get your funding?

MARY JO PANKOKE: It's a variety. It's a combination of public and private funds. We do fund-raising. We also get grants from the federal government. We get grants from private organizations. We also receive some funding from the Department of Health and Human Services.

SENATOR Dw. PEDERSEN: About what percentage of the money do you get from the Department of Health and Human Services?

MARY JO PANKOKE: I can get that information to you. Off the top of my head, I would say it would be over 50 percent.

SENATOR Dw. PEDERSEN: Thank you. Appreciate your testimony.

SENATOR BOURNE: Further questions? Seeing none, thank you.

MARY JO PANKOKE: Okay.

SENATOR BOURNE: Next testifier in opposition? Did you sign in? as well?

KATHY MOORE: Yeah, I did, thanks.

SENATOR BOURNE: Okay. Again, if you're testifying on more than one bill today, you have to sign in on each bill. Thank you.

KATHY MOORE: (Exhibit 9) Yes, I did. Thanks. Kathy Moore, director of Voices for Children in Nebraska. Moore is M-o-o-r-e and I'm here in opposition to LB 724 partly because I do believe it deviates from the course that has been set. In my 25 years of advocacy, I have been very concerned about the child protection system and have seen

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many proposals go forward but then be put on the shelf. Unlike that, I do feel that the proposal put forth a year-and-a-half ago has continued to be implemented in a more aggressive way than I've ever seen before. And I don't want to see us distracted from the goals that were set forth there. I also have tried to do some national research and see that the emphasis nationally is toward more unified approach between Health and Human Service agencies and law enforcement agencies and am concerned that the language in this bill, while it is somewhat vague and unclear, it talks about these individuals being staffed or employed by the Attorney General's Office. I have valued the work of the Attorney General, for years, and valued it for its independence and its oversight capacity, if you will, and the place you go to when all else fails or when you're calling something to question. And I fear that setting up the system that seems to be employed by the Attorney General actually eliminates some of our check and balance and accountability. So, I urge the committee to not advance this bill and to continue to focus on the proposals and the funding such as LB 218 and some of the other proposals that will be before the Appropriations Committee.

SENATOR BOURNE: Thank you. Questions for Ms. Moore?  
Seeing none, thank you.

KATHY MOORE: Thank you.

SENATOR BOURNE: Next testifier in opposition?

NANCY MONTANEZ: (Exhibit 10) Good afternoon, Senator Bourne and members of the committee. My name is Nancy Montanez, M-o-n-t-a-n-e-z. I'm the director of Department of Health and Human Services. I'm here to testify in opposition of this bill. The department has been working diligently to initiate many reforms and improvements to respond to reports of child abuse and neglect and to implement the recommendations of the Children's Task Force as well as the strategies outlined in our federal program improvement plan. I want to thank the Legislature and the governor again for the resources provided in LB 1089 that are assisting us to move forward with our efforts. I would like to highlight some of these efforts. As of January 31, we have hired 113 or 94 percent of the 120 staff provided by LB 1089. We currently have seven training sessions in process based over

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the next several months. We have specialized our intake process. Now we have six specialized sites. We have introduced new intake policy including a three-level priority process for reports of abuse and neglect. We have provided specialized training for our child abuse intake workers. We have entered into a collaboration with Girls and Boys Town to learn from their experience in operating their national hotline. In June, 2004, we rolled out our accountability plan that included monthly data tracking reports that give each worker, supervisor, and administrator specific information about achievement and meeting expectations and outcomes. We also have implemented performance evaluations. We have completed contracts with the Child Advocacy Centers across the state to facilitate coordinations of investigations. We have initiated training and forensic interviewing for law enforcement, protection and safety staff and prosecutors to improve the gathering of information from children during investigations. Also, the Supreme Court commission on children in the courts kicked off their first meeting on February 22, 2005. The commission's initial efforts will be in four areas and Health and Human Services will participate in these efforts. It is crucial that the work that has been started be allowed to progress. I'm sorry, I skipped something. Better go back. We believe the work that have been initiated in our collaborations with others will result in better outcomes of safety, permanency, and well being for children and families. We appreciate the level of support the governor and the Legislature have given us in this challenging endeavor. There needs to be more time allowed for all these new initiatives and changes to take hold and have an impact on the system. It is crucial that the work that has been started be allowed to progress. We look forward to continuing to update the Legislature about progress being made in the child welfare system. We will continue to work with Senator Stuthman regarding any future changes that may need to be made after evaluating the impact of LB 1089. The pilot proposes in LB 724 will detract from these efforts at a time when all attention should be placed on those strategies that the Children's Task Force, the governor, and the Legislature identified as key to improving our protection of children. And I would be happy to answer any questions.

SENATOR BOURNE: Thank you. Questions for Ms. Montanez?

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Senator Foley.

SENATOR FOLEY: Thank you, Chairman Bourne. Ms. Montanez, your testimony states at the top, you're opposed to the bill. But then you don't really tell us why. You go through a whole litany of all the things that HHS is doing to improve and I'm happy about that. What's the problem with the bill?

NANCY MONTANEZ: Why we're opposing that? The bill?

SENATOR FOLEY: Right.

NANCY MONTANEZ: Because we believe that we should allow time for the things that involve the initiatives that have been taking place in the last year and a half.

SENATOR FOLEY: So just take a wait and see...

NANCY MONTANEZ: I think I pretty much have said...

SENATOR FOLEY: ...a wait and see attitude. Don't...

NANCY MONTANEZ: Yes, I really believe we need to allow the time to...we need to be able to allow ourselves to see the progress that is being made, full progress of what has already been initiated. I don't think we've been given enough time. Our new workers are just starting training.

SENATOR FOLEY: Does this pilot project in some way interfere with something you're doing at HHS?

NANCY MONTANEZ: Well, I think it will detract from what we've...

SENATOR FOLEY: How so?

NANCY MONTANEZ: ...I mean, funding...

SENATOR FOLEY: How so?

NANCY MONTANEZ: Because this is going to require some...I mean it will require staff.

SENATOR FOLEY: How many?

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NANCY MONTANEZ: I guess I'm not really clear on the details of the bill. I know I've worked with Ms. Stitt and I don't think I've ever been given a specific number.

SENATOR FOLEY: I find that rather vague. You're not giving me any concrete reasons why this pilot can't go forward.

NANCY MONTANEZ: Well, I guess I'm just...all I can say is I feel that it will detract funding-wise from the initiative, the current initiatives, and I guess I don't know how much more I can tell you on that from the current initiatives that are being...are currently in place anyway.

SENATOR FOLEY: All right. Thank you.

SENATOR BOURNE: Further questions? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Ms. Montanez, if this bill would pass, would it not take some of the burden off your department, some of the supervision or some of the responsibility for this area out of your department?

NANCY MONTANEZ: You know, I...and, again, I've met with Carol and actually Judge Icenogle and, again, I'm not sure how that would work. At one time I was told that this would be CPS workers. How we are involved, that's still unclear to me how we would be involved. And I guess for me I'm not sure if I'm looking at if it takes care of the burden. I also want to make sure that this is the best possible system. I understand that there's some fragmentation. We're not communicating between law enforcement and protection and safety in all situations. But I'd like to know where is that happening? Where is the majority of that? I mean, I think in the majority of it, I think it's getting better but, again, we need to allow the multidisciplinary teams to take an effect of that piece working. And I know I've listed some of the things that we've done and I guess I feel that those things that we've done will enhance some of the issues that LB 724 addresses.

SENATOR Dw. PEDERSEN: I wouldn't want any willy-nilly switching back and forth of responsibility. With the burden that HHS already has, I would, if I were part of HHS I would

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really be supportive of trying to get some of that responsibility somewhere else because of all the things that they have going on now that they're so overburdened with. That's just some of the things I'm looking at. Thank you very much.

NANCY MONTANEZ: Um-hum, sure.

SENATOR BOURNE: Further questions? Seeing none, thank you. Next testifier in opposition? Are there any neutral testifiers? Have you signed in?

JO PETERSON: I have.

SENATOR BOURNE: Thank you. Further neutral testifiers after this individual? After this individual we'll have closing from Senator Stuthman. Welcome.

JO PETERSON: Good afternoon, Senators. I'm Jo Peterson. I'm the deputy Hamilton and Butler County Attorney. I represent the Nebraska County Attorneys Association. I'll be very brief. We're taking a neutral position on this bill and the only thing I really want to add is that it's the general consensus of the county attorneys that we are adequately handling these cases, that we are working very hard towards the prosecution and investigation of child abuse and child deaths within our counties and that we are handling that competently so that there's a...if these counties choose to go forward or this Legislature choose to go forward, we take a neutral position but we do believe that it's adequately being handled.

SENATOR BOURNE: Thank you. Are there questions? Senator Friend.

SENATOR FRIEND: Thanks for coming in to testify. And I can pose some of this...part of this question to Senator Stuthman if he chooses to close. Let me be hypothetical. I'm a meth addict. You take my four kids away; you're a judge. There was abuse and neglect and there are reasons that it happened but meth was involved in the whole situation. I prove to you that I'm clean for a nine-month period. In your opinion and your experience, is that long enough? I mean are you convinced? Based on some of the things that I've heard in Judiciary this year alone, this is

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the first year I've been on the Judiciary Committee. Meth is absolutely unbelievably destructive.

JO PETERSON: And that's an accurate statement...

SENATOR FRIEND: I'm clean for nine months. What do you do with my four kids? Are you excited about bringing them back to my house?

JO PETERSON: No, and I will tell you that we terminated parental rights on a mother yesterday in similar circumstances. It was actually a Douglas County case transferred to Butler County. The mother was a meth addict, had difficulty. She was clean for about seven months. We did not return the children home but upped the visitation, supervised visitation to every day for four hours. Within seven months she had begun using again and we're right back where we started. So no, nine months clean would not...as a prosecutor I would not recommend return home.

SENATOR FRIEND: I hate to put you on the spot...12 months, 15, 20. I mean, is it...

JO PETERSON: I don't know that there's an exact figure that I'm going to be able to give you for that.

SENATOR FRIEND: Thanks. And...thank you.

SENATOR BOURNE: Further questions? Thank you. Appreciate your testimony.

JO PETERSON: Thank you.

SENATOR BOURNE: Other testifiers in a neutral capacity? Senator Stuthman to close.

SENATOR STUTHMAN: Thank you, Senator Bourne, members of the Judiciary Committee. You have heard testimony on both sides today. I would hope that you would take all of this into consideration and keep one thing in mind. You know, we're trying to do what's best for the children and trying to take care of the people that are abusing the children. So with that, those are my closing comments and I'll try to answer any questions if you have any.

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SENATOR BOURNE: Senator Friend.

SENATOR FRIEND: Thank you, Chairman Bourne. Senator Stuthman, briefly, you've done a lot of work and good work, and I guess I wanted to...I'm not trying to placate you. I wanted to thank you because I know the task force is an intense situation. You're on the task force. We've had a lot of people talk about the task force. A lot of folks that were involved in that process said that this wasn't part of the task force recommendation. You're on the task force, you're bringing a recommendation of this nature. Can you speak briefly to that, I guess, some of those comments that were actually tossed out there? I mean, or I don't want to put you on the spot. I guess we can talk about it later off the record. We don't need to have it on the record, Senator.

SENATOR STUTHMAN: Yes. Realistically, I can give you the basic comments as far as I personally feel coming from the task force. You know, we did have that in mind as a pilot project with the task force, you know, when we passed it. But that didn't get to be part of what was enacted upon and passed a year ago. We more or less went with the working of the coordinators, trying to get that into process and getting a lot more caseworkers. You know, that process is just beginning to start. Yet, though, I see a lot of value in, you know, having a pilot project. But taking into consideration what we have in place as I gave you my opening testimony, what we have in place and trying to work, you know, maybe we realistically need to give that just a little bit more time. But I want you to remember, we need to keep this pilot project, you know, in mind if that doesn't work. You know, just have that ready to go right away. That's why I introduced this bill. You know, this is something that we have, you know, if you want to pass it out of committee it's up to you. If you want to wait and see what's happening with what we have in place right now, I am the vehicle to bring this forward, you know, for the pilot project. I think there is a need for it in the future and that's why I brought it right now. But we need to give it a chance to work, you know, at the present time. And, you know, we need to have something in our pocket ready to go if this does falter and we see that there is things, you know, that are really falling apart. And we do have evidence of more child deaths which we don't want to see.

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SENATOR FRIEND: Thank you, Senator.

SENATOR STUTHMAN: You're sure welcome.

SENATOR BOURNE: Further questions? Seeing none, thank you.

SENATOR STUTHMAN: Thank you very much.

SENATOR BOURNE: That will conclude the hearing on LB 724. The committee will stand at ease for five minutes and then we'll take up LB 633 and 632.

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LB 633

SENATOR BOURNE: I think we're going to go ahead and get started. All right, we're going to reconvene on LB 633. Can I get a showing of hands of those here wanting to testify in support? I see 11. Those in opposition? I see one so eleven proponents, one opponent. If we could just maybe hear new information and Senator Pahls.

SENATOR PAHLS: (Exhibits 11, 12) Good afternoon, Chairman Bourne and members of the Judiciary Committee. My name is Rich Pahls, P-a-h-l-s. I represent District 31, the Millard of Omaha. I'm here today to bring forth LB 633. This bill increases protection for the victims of domestic abuse. The bill was drafted by the Domestic Violence Coordinating Council of Omaha. As you can tell, there are a number of representatives from that organization here today to testify. They will be offering an amendment that they will explain and I concur with that amendment. Basically, the purpose of this bill is to give victims and potential victims of domestic violence more options when they petition a court of law for a protection order. Now I'd like to draw your attention because we do have a number of people speaking today. As you go down my notes there are four black lined topics I would just like to refer you to. The bill expands relief available under a protection order and there are several statements below that which I am sure the people following me will explain in more detail. The bill creates emergency protection orders. On the second page,

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the bill adds new protections related to keeping firearms out of the hands of a potential violator of a protection order. And lastly, you'll see that there are a number of procedural changes that will be explained by those people who follow me. I suggest that this bill has some very complicated ideas and concepts that if you have any questions that you would refer those to the group of individuals who will be following me.

SENATOR BOURNE: Thank you. Questions for...I still have to ask.

SENATOR PAHLS: I understand that, I understand.

SENATOR BOURNE: (Laugh) Are there questions for Senator Pahls? Seeing none, thank you. (See also Exhibit 13)

SENATOR PAHLS: Yes.

SENATOR BOURNE: First testifier in support?

MARTY CONBOY: (Exhibit 14) Good afternoon, Senators. My name is Marty Conboy, C-o-n-b-o-y. I'm the city prosecutor in Omaha, Nebraska, chairman of the Domestic Violence Coordinating Council of Douglas County and here in support of LB 633. As you can probably tell, it's a 19-page bill. It contains a number of provisions. I have brought with me and would ask that it be published to the senators, just a summary with some clarification of both the amendments referred to by Senator Pahls and the important highlights of the changes proposed here. We're very grateful to Senator Pahls for bringing these issues forward. These are very important as the number of protection orders throughout the state increase and the success of that concept becomes apparent. There have been problems and there also have been occasions where we've looked to other states to what's worked best. And this bill is an attempt to adopt some of that model language which is so successful elsewhere and to look at things that go on in our state to try and make them better for all the parties involved, particularly the victims of domestic violence. This particular bill has, as you can see from the sheet handed out to you, several headings of the type of changes that it would make. It would expand the ex parte relief available to petitioners, allows the courts to prohibit the responder from contacting

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the victim through third parties. In other words, you know, if you're ordered not to harass someone and yet you find someone else willing to do it on your behalf, that that still binds the principal, the person subject to the order and they would be susceptible to prosecution in those particular cases. And some of the things are very minor. I've been teased by a few people that this allows for the court to consider custody of pets. That sounds like kind of a trivial thing to put in a law but for those people who are involved in these, they have seen that that has become a point of contention to those people involved particularly when there's no children involved. More importantly, it also talks about children, what happens to those children during the pendency of a protection order. Who supports them? How is visitation going to be governed? Those things are often just left to chance and when you've got a volatile situation and in order for one party to be restrained from seeing the other, it leaves the possibility open for contact and uncertainly which leads to further violence and trouble and animosity. And this seeks to restore some guidance and order to that process. It talks about the confiscation of firearms during the pendency of the order. And we'll talk about that again in another bill in a few minutes but that is a particularly dangerous prospect when you're talking about someone who has to be ordered by a court to stay away from someone for their safety. This bill has a number of provisions regarding the issuance of the orders, the potential modification of the orders. In cases where the person who seeks the order after several months has a change of heart temporarily and starts to allow the respondent to live there again or to spend time there even though there's an order telling them not to. It points out that that person can't be responsible criminally for that but there's also a provision that that petitioner can come back and ask that that order be set aside so that or modified so that it's clear to them that this is a serious court order that has to be obeyed by everyone. I would be glad to answer any questions. This is a very serious and comprehensive matter. There are a lot of people who put a lot of work into it and still anxious to put more in if necessary.

SENATOR BOURNE: Thank you. Are there questions for Mr. Conboy? Mr. Conboy, I have a quick one. One of the procedural changes is that the petitioner need not appear in person to file a protection order, an affidavit. Does that

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issue where a person has the opportunity or the right to confront an accuser, does that extend to a protection order?

MARTY CONBOY: In many jurisdictions now, that's permitted anyway and what this would do is harmonize that. The idea of the initial application being ex parte, since the hearing is scheduled later at the behest of the respondent, that initial order usually doesn't involve any kind of hearing or discussion at least in Douglas County. And so really is not any reason to have the petitioner there. They're required to fill out the affidavit and the order is almost universally done on the basis of that affidavit. There is the opportunity then for a hearing if it's requested before the order becomes final. So this only governs that very initial stage and again is something that is done principally I think in most counties.

SENATOR BOURNE: Most counties in Nebraska?

MARTY CONBOY: Yes.

SENATOR BOURNE: Okay. Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Conboy, thank you for your testimony. I had a question regarding the provision in this bill that allows the court at the time a protection order is entered to order the respondent to pay temporary child support. Usually, and you'd agree this is done in a dissolution proceeding or paternity proceeding. How can this be done efficiently and correctly without the respondent coming to the court with his or her income so that they can run a child support calculation. Or are you thinking of maybe a standard set of just basic sustenance or kind of a sliding scale of how much they can pay based on some specific criteria or how is the judge going to make that determination in child support?

MARTY CONBOY: Well, and that's going to be a difficult issue along with custody itself and visitation because as you know even in domestic proceedings are very difficult. But I guess in the absence of that, we have a rather chaotic alternative right now. This is only a temporary situation and it certainly wouldn't have the same thoroughness or you know, sort of information that you would have at a regular domestic hearing. But it would at least permit some

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clarification to the parties, and they would both have an opportunity to have input on that as to what would preserve the status quo during the pendency of this order and the processes that might go on with it. And certainly that can be modified. The petitioner can come in if there's a change of circumstance. It was pointed out and I think correctly in discussion since this that perhaps that there should be a provision that the respondent also have that right to come in if there's a change of circumstance. You know, I guess this is brought forward by the lack of anything now to try and supply something where there's at least a chance for a court directed guidance rather than what is often used as a leverage by the party who's got the income against the other party. You know, you drop that order or else and we'd like to see that that isn't the only alternative.

SENATOR FLOOD: What about situations where an ex parte order is entered and the respondent fails to file for a hearing within ten days. The judge in that situation may or may not depending on how we actually, if this bill was to pass, may not even have the opportunity to order that temporary child support if they haven't even had a chance to see the respondent, if he or she fails to file for the hearing.

MARTY CONBOY: Really, and I would agree with you that that should be in the form of a show cause where the judge would have the opportunity to put the respondent on notice that if you don't appear to provide information that it would be a pretty one-sided affair. And that, I think, is probably a reasonable addition to this. And I'm going to add that in talking to Judge Merritt who's here, you'll hear from soon and from members of the bar association that there are ways to, I think, improve the language here in some of those things that would make it work better. That is a practical consideration that I guess wasn't put in here as well as it should be.

SENATOR FLOOD: Thank you very much.

SENATOR BOURNE: Thank you. Further questions? Seeing none, thank you. As usual, great testimony. Appreciate it.

MARTY CONBOY: Thank you.

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SENATOR BOURNE: Next testifier in support. (See also Exhibit 15)

TARA MUIR: (Exhibit 16) Good afternoon, Senator Bourne and members of the committee. My name is Tara Muir, T-a-r-a M-u-i-r. I'm the legal director with the Nebraska Domestic Violence Sexual Assault Coalition. LB 633 will stop the practice of arresting victims for violating their own protection orders or aiding and abetting the violation of their own orders. A common scenario in our state is the victim of domestic abuse calls 911 because she's afraid her partner is going to kill or seriously harm her as he strangles and slams her into a wall or her children or a concerned neighbor may call 911 on her behalf. We have to be clear today that...usually the victim wants the violence and terrorism to stop. She may not necessarily want her partner to leave; she wants him to get help. So next in the scenario, 911 dispatch sends officers or an officer in rural areas to the scene. If the officer hasn't arrested her for fighting back to save her life the officer usually tells the woman to get a protection order. Over and over our advocates or court clerks hear from victims, I was told to come here and get a protection order. Our advocates are trained to safety plan with her, walk through the protection order process so a victim understands what she's in for with a protection order if she thinks she really needs one. We have to explain to her that if she wants contact with the abuser she'll probably have to ask for it because most judges in our state check boxes and often don't take the time to hear from victims that they have to talk with this abuser because he may keep all the family finances or we have to take care of children together. Judges usually just check the box that's no contact and they don't list out any exceptions. Or often the victim is so afraid of the abuser that she is quite willing to have no contact, at least for a while. In some towns in our states advocates have to tell victims, be very careful. You could be arrested for seeking this protection. In our scenario, say it's a couple of weeks later and the victim needs help paying the heating bill so she contacts the abuser or the abuser may, in true batterer form, manipulate the situation by begging for forgiveness and swearing he's a new man and so they have a reunion. If he regresses and gets violent again and he typically does, and then law enforcement is called that time, she's often in as much if not more trouble than he is

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when the law arrives in some of these towns. The arrest of victims has got to stop. The frustration level of law enforcement and prosecutors in these towns, we believe, is out of control. One officer hauled the victim in on an aiding and abetting charge but refused to charge the abuser with violating the protection order himself. I talk with and sometimes I even try to train law enforcement officers and prosecutors on this issue. Some jurisdictions completely understand the fundamental tenets of law that do not support these arrests. Others do not understand it at all. I hand them copies of the 2003 Ohio v. Lucas decision. You're getting a copy of that today. It ruled you can't arrest petitioners for violating their own protection orders or aiding and abetting the violation and walks through how the United States Supreme Court has ruled that you can't be arrested for a crime that was created to protect you. Protection orders are about the behavior of the respondent and nothing else. How or why a respondent finds himself at the petitioner doorstep is irrelevant. I'm out of time.

SENATOR BOURNE: Thank you. Questions? Senator Flood.

SENATOR FLOOD: Thank you very much for your testimony. Thank you, Chairman Bourne. Thank you for your testimony. You and I have talked about this issue several times about a victim of domestic abuse that has a protection order issued against someone else, the batterer, in any given situation. I guess I'd like to start by asking you about the language on page 6, lines 23 through 28. Legally, I think a lot of prosecutors are hesitant to file a criminal charge against the person that's protected in a protection order because there's nothing in statute currently that really allows that to happen. Is that the case?

TARA MUIR: I'm sorry, I was trying to look for where you were...

SENATOR FLOOD: Oh, I'm sorry, I'm sorry...

TARA MUIR: ...page 7 or page 6?

SENATOR FLOOD: Page 6.

TARA MUIR: Okay, I'm sorry. Go ahead and ask your question again.

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SENATOR FLOOD: But there's nothing in our statutes right now. There's no specific criminal cause of action that a prosecutor can file to charge the protected person in a protection order from violating that. Is that right? So the case where if somebody was charged with aiding and abetting the violation of a protection order. There's nothing specific in our statutes that allow that to happen.

TARA MUIR: To allow it to happen?

SENATOR FLOOD: Right.

TARA MUIR: No, but those prosecutors certainly say basically since it's silent we can go ahead.

SENATOR FLOOD: But you...I mean, as an attorney you probably agree that that charge should have no merit legally.

TARA MUIR: Absolutely.

SENATOR FLOOD: Legally.

TARA MUIR: Right.

SENATOR FLOOD: And I would agree with you with the state of our law currently that legally shouldn't happen and too often or more than not, victims are pleading to those crimes without reliable legal counsel. Is that true?

TARA MUIR: Right, that's correct.

SENATOR FLOOD: Along the same legal reasoning, if we look at page 6, lines 23 to 28, this bill imposes liability on a third person acting under the respondent's direction. My concern here for the same reason that I don't think that we should legally be able to prosecute the protected person in a protection order, I don't know that we can enjoin the behavior of a third party that's not specifically a party to a protection order. Does that make sense?

TARA MUIR: That does make sense. We're trying in this particular section to really get at those savvier batterers who can use friends and family to go ahead and do it and get

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victims to change their mind about the protection order or remove or recant and other criminal charges of things that have happened. So that's become a very big problem and we're trying to address that particular problem with this language.

SENATOR FLOOD: And I appreciate the addition of the language in here, acting under the respondent's direction. I think that's more specific. My concern is that it's a broad stroke in that the action of a third party maybe not under the direction but the perceived direction. You could subject somebody to criminal liability under the protection order process that's never been named as a party or ever been under the consideration of the court. Would you share that concern?

TARA MUIR: I would share that concern. It's been a while since I've really worked on this section but I think what I would hope is happening is that the respondent is going to be charged with violating the protection order because they're trying to go through a third person. And perhaps that's how the charge can still be...

SENATOR FLOOD: So you wouldn't want this to be interpreted as criminal liability for the third party.

TARA MUIR: I think the third party probably could still have criminal liability if it does rise to harassment or stalking independently.

SENATOR FLOOD: But not under the protection order.

TARA MUIR: Right.

SENATOR FLOOD: And I appreciate that clarification. I guess from a legal standpoint I have concerns about, and I realize that we don't deal with legal situations all the time when we have protection orders. There's emotional issues and there's things that only victims would understand to be the situation. So I want to be as sensitive to that as possible. But from a legal standpoint, I'm concerned that a party that requests relief from the court and relief so serious that it restricts the personal freedoms of the respondent so much so that he or she cannot live in their own house or see their children or see their wife or

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whatever the case may be. And then that petitioner for whatever reason, and I want to be as sensitive as possible to some of the reasons that it may happen, invites the respondent back into the home and then for whatever reason after that the police are called. And that respondent is charged with violating the petition. Are we creating a standard here that I know judges are frustrated with, when the person asking for certain specific relief from the court or a certain remedy violates the tenets of their affidavit? Because it's a pretty high standard to get a protection order. And then a call is made a week later. Do you see the concerns there just from a legal perspective, take everything else out of the picture?

TARA MUIR: Um-hum. I do see the concerns. What we hope for and try and train on is to educate the judges to be a lot more savvy and detailed in that protection order. That just a phone call isn't a violation. You get into proof problems with well, when did the call turn abusive and those kinds of, and harassing. But hoping that the protection orders can be detailed enough to accommodate victims who do say, some contact has to be made. There are going to be birthday parties coming up, whatever it is that sets her up for failure and adds to the frustration of the system and the people who work in it. At the point the protection order is issued I think some of those things can be fixed if we spend enough time to get into them at a hearing or even on the affidavits.

SENATOR FLOOD: And that's a point well taken. I agree with you on the checking of boxes and how specific that really is when it comes down to the enforcement of the order. And if the Judiciary decides to be very specific in allowing some minimal contact either by phone or supervised visitation or unsupervised at a location that's agreed upon you almost need a parenting plan for some of that. In the situation where it's so severe that the court determines that no contact at any time and that's specifically requested and it's not a box checking issue, it's an actual order of the court with the full knowledge of what's gone on here. In those situations where the petitioner does make contact for whatever reason, should we look at something in the most severe cases so that there's an incentive on the part of the petitioner to really follow the tenets of what they're asking the other party to do and that is, no contact for

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whatever reason. In that very limited circumstance where no boxes are checked.

TARA MUIR: I would still say no. And given that you do have an understanding that often there's so much else going on with victims and only they know what action can really scare them or what look or what words that are said can really put them in fear. And I'll try and be brief but when we train we try and get across that in domestic violence situations, particularly early on when the criminal justice system gets involved, victims very often will act to make the batterers less angry with them because, as you know, they get pretty angry about the fact they got a protection order or they're sitting in jail for seven days. It seems incomprehensible to us on the outside who aren't within that family dynamic that you would try and even extend an olive branch to someone who just knocked your teeth out. But often sometimes that is the case where victims are so being held captive within this very abusive and serious violence that they will try and placate and may even take that first initial step to test the waters, just how mad is he at me and if he's going to get out in three days maybe I should talk with him.

SENATOR FLOOD: What about, and this will be my final question and I really appreciate your testimony. What about a requirement that the court or an organization like yours or Bright Horizons in Madison County specifically counsel the petitioner on the importance of not contacting the other party so that it's laid out very clearly that this is not in your interests to make contact for whatever reason. And if you do want to get back together with him and want to see him, come back to the agency that you're working with or the court, file the simple short form, petition or request to modify the order rather than this other situation where the respondent gets a call, comes over for dinner. I'm just looking for a way that we could help protect both sides of what's happened here so that this person doesn't get a call, go over there, and get charged. And I don't really have an interest in protecting a batterer from criminal liability except that I think there's value to walking the walk once you get the protection order if that makes sense.

TARA MUIR: It makes sense. I guess I would say that our advocates already do that. This change in the law actually

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I think in my testimony or I attached to it, there's a suggested protection order form language that would kind of warn the petitioner that if you want something different than what's currently in this order you should go back in front of the court to modify or dismiss the protection order. But we can't underestimate the ability of these batterers because we don't know the situation to manipulate that first call as well or to make it look like that when law enforcement does arrive on the doorstep. Or it's a neighbor who calls and says, I know that guy isn't supposed to be there and that's his car. Law enforcement come and all he's doing is helping fix a plumbing problem in the house. So because protection orders are to protect the petitioner period, and the whole Ohio v. Lucas case lays out in all legal language why we cannot hold that petitioner who's seeking protection liable for anything else.

SENATOR FLOOD: Okay. Thank you very much.

TARA MUIR: Thank you.

SENATOR BOURNE: Thank you. Next testifier in support?

MATT KAHLER: Good afternoon. I'm Matt Kahler, K-a-h-l-e-r. I'm deputy county attorney in the domestic violence division of the Douglas County Attorney's Office. I just want to deal with four of the provisions in this bill that I think are particularly important from a prosecution angle. And I think will help assist both prosecutors, law enforcement, and the various judges in the system as far as handling violation of protection order cases. The first issue I want to talk about is on page 6. We've already talked about this a little bit regarding language being added to prohibit a third person acting under the direction of the respondent to harass a petitioner, telephone, or stop by their home to harass them in any way. I just think it's important to make it clear in the statute that this, first of all, for the respondent that this is not allowed, that they cannot tell a family member or a friend to try to drop by to either intimidate them from coming to court or trying to get them to drop the protection order. In handling domestic violence cases on a daily basis, I see this on a daily basis. And we have phone calls from victims all the time and we have to deal with each in a case by case basis. In trying to clarify, I think Senator Flood already touched on this, but

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I believe the intent of that language is to hold the respondent responsible for some of that conduct rather than trying to prosecute these third parties under this particular statute which I believe would be difficult and it would be much easier to prosecute them under the witness tampering or harassment statutes, depending on the situation. The second issue I want to talk about is on page 7. It proposes to, will allow court to set a specific distance in a protection order for a respondent to stay away from a petitioner. I think the suggested distance is a hundred yards although the language says it could be greater depending on the circumstances. The situation we see quite a bit in prosecuting these cases, we see the respondent parking their car five houses down from the petitioner or we see them driving through the neighborhood where it's inevitable they'll run into the petitioner at some point. And for a victim of domestic violence I believe that this kind of contact can be just as frightening as showing up on the front doorstep in certain situations. And this is purposeful conduct on the part of a respondent and I believe that says in general their contact seems to get more dangerous as time goes on. I think this is important to put this language in there, to give more guidance to law enforcement in our office as far as putting a stop to this contact. On page 7 I want to touch on the proposed language that you cannot waiver or nullify a protection order by inviting the respondent over to the home. And we've already talked about that. And that a petitioner should not be charged with the violation of their own protection order. I've read Ohio v. Lucas and I agree with the decision in that case. I believe the protection order statutes are intended to deal with the actions of the respondent and not the petitioner. And I believe that that is how we have not been charging victims in Douglas County for these violations. I believe that the language in the statute should make it more clear for guidance for law enforcement in our office as a prosecutor that it would not be proper to hold them responsible under this statute. I'm out of time. If I can answer any questions.

SENATOR BOURNE: Thank you. Are there questions for Mr. Kahler? Seeing none, thank you. Next testifier in support.

CHARLIE VENDITTE: (Exhibit 17) Good afternoon, Senator

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Bourne, committee members. My name is Charlie Venditte. I'm a retired Omaha police officer after twenty-five and a half years and was responsible for heading up the domestic violence investigation squad from 1997 until 2003 when I retired. There are several issues in the bill that I support, some of which I want to mention today under LB 633. The first one being, the fact on the minimum distance I can't tell you how important it is for an officer that's responding to a violation of a domestic violence protection order to know specifically that the individual named as the respondent cannot be at the person's residence, at the person's neighborhood, at the person's place of employment. Numerous times officers would respond to calls. The respondent or the suspect would be in front of the victim's residence and would just be sitting in his car. The victim would be terrified not knowing what this individual was going to do and because it was not mentioned specifically in the protection order that the respondent was not supposed to be there, he would not be arrested. So I think that's very important for that to be implemented into statute. Another thing I want to mention and this came into play numerous times even after the suspect was incarcerated in the corrections center or detention center of the local jurisdiction's jail, he would have a fellow inmate contact the victim by telephone, free telephone calls coming out of the corrections center. The fellow inmate would contact the victim, tell her, threaten her if she were to prosecute what's going to happen to her. So I think it's very important to initiate third parties in there as well. Some other facts I'd like to read to you regarding firearms and domestic violence statistics, nationally nearly one-third of all women murdered in the United States in recent years were murdered by a current or former intimate partner. More than three women a day are killed in the United States by their intimate partners and two-thirds of all these partner homicides are committed with guns. The presence of a gun in the home makes it 12 times more likely that a woman is going to become a homicide victim not to mention her children that are living in her residence at the time. A gun is the most commonly used weapon in domestic violence homicides and women are more than four times likely to be murdered by guns used by their intimate partners than are strangers that are killed when knives, guns, or other weapons are used combined. Nationally, in 2000 50 percent of all homicide victims who were female were killed with firearms. In 2003

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last year, 52 law enforcement officers were killed and of the 52, 45 or 87 percent were killed by firearms. Of the 52 murdered officers, 19 percent were responding to family disturbance calls. Needless to say, it is very important to remove firearms from convicted domestic violence abusers or individuals that have protection orders issued against them. I see my red light is on. I have more to say but I think I'll save it for LB 632 when I'm back up here.

SENATOR BOURNE: Thank you. Are there questions for...is it Captain Venditte?

CHARLIE VENDITTE: Sergeant.

SENATOR BOURNE: Sergeant.

CHARLIE VENDITTE: Yeah.

SENATOR BOURNE: Seeing none, thank you.

CHARLIE VENDITTE: Thank you.

SENATOR BOURNE: Next testifier in support.

TIM DUNNING: Good afternoon, Senators. Tim Dunning, Douglas County Sheriff. I'm also a member of the Omaha Domestic Violence Coordinating Council. In order to be, as you can see, we have a number of people here. In order to not repeat everything over and over and over I've picked apart the bill, if you will, to answer some of the questions that you might have. Under the...LB 633 expands relief available under the protection order. One of the things that we're asking that this bill set is a minimum distance for a respondent to stay away from a petitioner. I don't mean the bill is set but to mandate that the court state that. It's just another tool for law enforcement. It is something that is a problem for us, probably on every protection order that we serve that there's not enough clarification and therefore we're going back and forth to the courts. This puts the respondent on notice as to what distance would place that person in the realm of having an additional criminal charge of violation of a protection order. LB 633 has some procedural changes for protection orders. The petitioner cannot nullify the order by inviting the respondent to the residence. The petitioner cannot be

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charged with violating their own protection order and this really isn't a problem in Douglas County but my colleagues with the Nebraska Sheriffs Association say that it is a problem in the western parts of the state. A petitioner should not be arrested or charged with inviting or contacting the respondent. In response to Senator Flood, to your earlier comments, it may be stupid, it's probably unadvisable, but it is more stupid and unadvisable for the respondent to violate what they have already been told not to do. It additionally would require that all Nebraska police officers receive mandatory training of not less than two hours annually. We really never knew what the right number of training was but, you know, we currently have mandatory training for coverage of the pursuit laws. We have mandatory coverage of use of force and this is a very complex realm that law enforcement officers need to be continually updated. LB 633 creates emergency protection orders. This allows Nebraska courts to issue emergency protection orders upon consent of the victim and requests that law enforcement when the peace officer asserts that there's grounds to believe that the victim is in fear of abuse, based on recent abuse or minor children are in immediate and present danger of abuse. The emergency protection order expires after five days on the close of the judicial business on the fifth court day following the issuance. Emergency protection orders are not new. They are available in the majority of states. Currently, a tool in the law enforcement pocket is that of the emergency protective custody and that works well and it just adds clarification. And I see I'm out of time and I have a lot more notes.

SENATOR BOURNE: Thank you. Questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Sheriff Dunning, thank you very much for your testimony today. Some of these jerks that try and harass the protected party are so irrational at the time they are sitting outside the house. Do you worry about, if we put a hundred yards on there and I'm not asking this question because I disagree with a hundred yards but I can see some of these people actually measuring out a hundred yards and standing at that point and harassing from whatever position they can find, a hundred yards is pretty, you know, in a residential neighborhood it's going to provide some protection. In some

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rural areas it may not. Do you think a hundred yards is far enough away? Is there another way to do this that we can ensure that the protected party is going to be safe from this guy or this respondent, I should say?

TIM DUNNING: Well, I don't know that I would agree with the 300 hundreds. I would think it would be...

SENATOR FLOOD: Oh, 100 yards, yeah.

TIM DUNNING: ...I would hope that it would be much farther than that. I mean, we now see language and protection orders that they can't drive by the place of residence, can't drive by the place of work. I mean, there's a lot of inadvertent contacts. I mean, you really have to brainstorm some of these things in the protection order process to make sure that you try and cover all the bases. But the greater the distance, and I would agree if you make it a thousand feet they will be at 1001 and that's...

SENATOR FLOOD: And that's the way they operate, yeah.

TIM DUNNING: That's the whole issue here is protection.

SENATOR FLOOD: I guess the other...and it occurred to me while you were giving your testimony about the contact and you're right. If the person who the protection order is against makes contact even if it's invited, they are in violation of the law, clear and simple. I don't disagree. Could we put something in protection orders that gave the petitioner the right at their own choosing to call the respondent as long as it's a one-way call so that the petitioner if she or he or whoever it is has to get a hold of Dad or Mom or whoever it may be, they can do that by them making the phone call. We can prove that by telephone records. So that in the event they have to get a hold of them, we don't have to build in all these other protections. We just give the petitioner that right. I'm not opposed to that. I'm just worried about this language kind of confusing everything.

TIM DUNNING: I really don't think I can give you a good answer on that.

SENATOR FLOOD: Yeah.

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TIM DUNNING: I guess, hopefully, somebody that's following me up can do that. Folks?

SENATOR FLOOD: Okay. Well, I thank you very much and I appreciate your testimony.

TIM DUNNING: Thank you.

SENATOR BOURNE: Further questions for Sheriff Dunning? Seeing none, thank you. Next testifier in support. Welcome.

CASSANDRA CATES. Hi, my name is Cassandra Cates. I'm here today to tell you a victim's perspective on what's been going on. I have an active, valid protection order in place. The person I have the order against has been arrested or has seven charges pending against him. We have 11 reports pending, being able to implement the reports. I went through the process, filled out the affidavit, signed the affidavit, turned it in, didn't see a judge, he signed it. It went into the record. The person I filed against it, and I asked for a hearing. I didn't have the opportunity to ask for a hearing. The judge never heard that this person has over 30 guns that I know of, handguns, rifles, shotguns, assault weapons. This person has a home six blocks from mine. He's a violent person. The violence continues to escalate. He was arrested at my home for bringing a handgun to my home, holding me hostage, telling me he was going to kill me, telling me he was going to kill himself. Thank the Lord, I was able to get away from him. He had a standoff with the police at my home. Prior to that, he had a standoff with the police at his home. Apparently, he was...a suspicious vehicle in the neighborhood, I'm sure stalking my home. I've been stalked for months and months. This person continues to get out of jail, continues to have his handguns, his rifles, his shotguns. No one is able to enforce the federal law to go in and get them or order that he give them up. I've worked with the prosecutor's office. I've worked with the detectives. I've gone to court. I've done everything in my power to have my rights protected, my children's rights. I have three young adult sons he continues to threaten. The U.S. Attorney's Office told us to look into it. As of yesterday he didn't appear for a hearing. They ordered a

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warrant for his arrest. He's out, he's a fugitive. He still has his guns. I don't know today if I'm going to go home and he's going to have one of his rifles up in a tree waiting to shoot me. So it's really important that we pass this law that someone go in, get the guns and make my life safe, my children's life safe and others who aren't as assertive as I am, their lives safe. And I'd entertain any questions that you have.

SENATOR BOURNE: Thank you. Appreciate your testimony.

CASSANDRA CATES: Um-hum.

SENATOR BOURNE: Are there questions for Ms. Cates? Seeing none, thank you. But we do appreciate you taking the time to testify. Next testifier in support?

ERIN RICHARDSON: (Exhibit 18) Good afternoon. My name is Erin Richardson. I am a YWCA family violence specialist and advocate in Omaha, Nebraska. I am submitting my written testimony and also a letter of support for LB 633 from YWCA Omaha.

SENATOR BOURNE: We'll enter that letter into the record.

ERIN RICHARDSON: Thank you. I wanted to address a couple of the different options that are available in working with victims of domestic violence for the past four years in filling out protection orders and assisting them through the process. One of the options is the petitioner need not be present to file the ex parte protection order. There are numerous times when working with a woman or a victim of domestic violence that they might not be able to be present in filing that protection order. They may lack transportation, they may live in rural areas and not be close to the courthouse for their county. They may have physical limitations. For instance, being in the hospital for injuries, being in the hospital because of ongoing medical conditions or just giving birth to a child. I was working with a client. She was being threatened and harassed by the perpetrator. The nurses were being threatened and harassed by the perpetrator and the actual hospital staff security were receiving bomb threats from him. Yet for her to get up after giving birth to a child and go down and file her own protection order was one of the

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situations we had to figure out how to get around. So this would definitely help victims in that situation. Another one was an elderly woman who was hospitalized for stress-related illnesses and he was continually coming up to the hospital, verbally and emotionally abusing her while trying to get over the stress-related illnesses, working with the doctors and working with her family on figuring out how to file the protection order on her behalf. Another option that I wanted to address is the option of protection orders lasting longer than a year. Currently, protection orders after a hearing that's been ordered as an ex parte...if there or isn't there a hearing, they are only in effect for one year. When I work with victims of domestic violence we are safety planning for a long period of time. Usually I am very honest with my clients and that we're doing a safety plan for the rest of their lives. This protection order is a part of her safety plan. And for that protection order to last longer than a year because continually the harassment begins, usually we see it begin right after that protection order has been expired. It will start happening again if he follows the protection order. So to be honest with her and say that she's going to have to safety plan for the rest of her life and then to see that you also have to come back in a year and refile this protection order and stir the pot a little bit for that perpetrator. Then that would eliminate that happening for that victim. I have other notes but thank you.

SENATOR BOURNE: Thank you. Are there questions for Ms. Richardson? See none, thank you.

ERIN RICHARDSON: Thank you.

SENATOR BOURNE: Next testifier in support? Welcome.

NANCY LIVINGSTON: (Exhibit 19) Good afternoon, Senators. My name is Nancy Livingston, L-i-v-i-n-g-s-t-o-n. I'm an advocacy coordinator for YWCA Omaha Women Against Violence Program. I'm here to speak in support of LB 633 by offering information on how the expanded relief made available in protection orders can be a valuable resource for victims of domestic violence. As advocates, we work with domestic violence and safety planning on a daily basis. For many victims, a protection order may be part of their plan as they strategize their safety. Over the years we've heard

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from victims the need for additional relief that could fit in the protection order process that would expand ex parte relief such as, as you've heard. Prohibit the respondent from contacting the petitioner through third parties. Many of the victims we serve state that friends and/or family members take on the role of harasser once the abuser has been silenced by the protection order. Extend temporary custody from 90 to 120 days, moving from your home, finding a job, and child care and applying for assistance if needed takes weeks and sometimes months. Finding an attorney can easily move down the list of priorities once a victim makes a decision to leave the abuser. Award temporary possession of pets. Many victims of abuse will not leave their homes because they cannot take their pets and they fear for their pets' lives if they leave without them. LB 633 will also expand relief after a hearing such as setting parameters around visitation. Children are often pawns used to continue the harassment and manipulation of the victim. This will allow some guidelines as to what is in the best interest of the child. Award temporary child support upon proper information, income information to the court. The burden will be upon the petitioner. With the proper information this will contribute to the victim's safety and less dependence on state resources. Researchers have found one of the three reasons victims often make the decision to stay or leave is based on the availability of financial resources. Award limited restitution upon proper evidence to the court. Again, the burden will be upon the victim to present the proper evidence to the court but this can have a definite impact on the safety. We have heard over and over of the times the abuser has kicked in the door damaging the frame, unable to pay for repairs for the third time the victim is blockaded in the home. Windows shot out; plywood is nailed over the openings. The tires are slashed so the victim cannot go to work. The ability to ask for this additional relief after a protection order hearing will keep this information in front of the same judge in many cases instead of another court action in small claims court. This will give domestic violence victims and their children added resources as they reach out to the community for assistance. Please forward LB 633 to the floor. Thank you.

SENATOR BOURNE: Thank you. Questions for Ms. Livingston?  
See none, thank you.

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NANCY LIVINGSTON: Thank you.

SENATOR BOURNE: Next testifier in support.

JOAN SKOGSTROM: Greetings, Chairman Bourne and members of the committee, my name is Joan Skogstrom spelled S-k-o-g-s-t-r-o-m. I am here to testify in support of LB 633 and specifically to discuss emergency protection orders that are set out in LB 633. I want to tell you that I am the executive director of the Domestic Violence Council in Omaha and I'm also a lawyer licensed to practice in Iowa and Nebraska and have been providing legal services and advocacy to victims for almost 20 years, covering four states including Nebraska. And I've had an opportunity to see and practice and work with domestic violence laws and see how they work or don't work. A lot of what is in LB 633 is based on the model code that has been held to be a model for states to work with and also it is using and looking and researching the best practices and finding out why things have failed from other states. It's worked very hard to look at the pros and cons and impacts of these different protection order reliefs that we are proposing. Specifically, emergency protection orders as they set out in LB 633, they have very specific and limited and very much intended purposes. The emergency protection orders will provide victims of abuse relief immediately. They are intended to be available and provide relief when the courthouse is closed, after five on Friday, on holidays, before eight on Monday. Emergency protection orders would only be available to victims when the courthouse is closed. The orders will be available only when a law enforcement officer at the request of the victim believes that there is danger. The order is designed and intended to stay in effect for a short period of time and have an expiration date posted clearly on the front of the order. It's intended that the time remain only in effect only for enough time for the petitioner to file a temporary protection order. In those states who have emergency protection order provisions they vary from the close of the next business day to as many days as 14. We are proposing five. In closing, though, the proposed language in LB 633 creates the remedy, provides a tool to provide greater safety for victims, to provide them relief when they otherwise would have to wait sometimes days to get the court's approval. This is a tool that can be used and it can be very effective to keep our

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victims and our whole community safer. Thank you, and I would welcome questions.

SENATOR BOURNE: Thank you. Are there questions for Ms. Skogstrom? Seeing none, thank you. Next testifier in support. Okay, that will conclude the support testimony. Are there testifiers in opposition? Have you signed in?

PAUL MERRITT: (Exhibit 20) I haven't. I'll sign when I leave if that's okay, sir so I don't hold you...

SENATOR BOURNE: Perfect. Nope, that's great. Thank you very much.

PAUL MERRITT: I didn't think I had counted 11 but I might have lost count so. Senator Bourne, members of the Judiciary Committee, my name is Paul Merritt, M-e-e-r-r-i-t-t. I am one of the district judges for Lancaster County and I have been asked to appear here today in opposition to LB 633 on behalf of the Nebraska District Judges Association. Quite frankly, I'm not positive this isn't neutral but I was asked to say in opposition on behalf of the association. Nebraska Revised Statute 42-902 Reissue 2004 provides, in part, that the legislative intent for the adoption of the Protection from Domestic Abuse Act, which is proposed to be amended by LB 633 was a finding that there was a present and growing need to develop services which would lessen and reduce the trauma of domestic abuse. The District Judges' Association agrees with that declaration and supports endeavors to continue to lessen and reduce the trauma of domestic abuse. The association's concerns with LB 633 relate not to its subject matter but rather to its breadth and mechanisms. In three minutes, I cannot address the association's concerns line by line but I will try to highlight some of the issues. Does expanding a protection order to include "any third...prohibiting any third person acting under the respondent's direction" mean that a named third party can have a protection order entered against him or her or does it mean that if a third party acts on behalf of the respondent, that is, the person who has a protection order against him or her, the respondent can be prosecuted? We've heard a little testimony of that already as to at least what the intent is, I believe. Does setting a minimum 100-yard protected zone around a protected person mean that if the protected person and the respondent work for the same

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company one of them has to quit or change shifts or that if they are both at Gateway here in Lincoln or the mall in North Platte the respondent has violated the protection order by being in the same section of the mall at the same time as the protected person? Or that a protected person and the respondent cannot go to the same church at the same service? Is it really the intent of the Legislature to create a mini-divorce environment where temporary custody, temporary parenting time and temporary child support are going to be addressed? If it is, who is going to be presenting evidence relating to the best interests of the children, for example, where and under what circumstances is supervised parenting time going to take place? And who is going to provide the financial information and child support worksheets required for the determination of child support? My experience is that probably over 95 percent of all protection order matters are done pro se, that is, without either side being represented by counsel. Who is going to present the evidence for the courts to consider in addressing these sometimes complex issues? I recognize that some places have aides or advocates. Not all communities are fortunate enough to have that type of service available. Brought today and who is going to initiate in contempt proceedings when respondents don't comply? If temporary child support is ordered under this bill the respondent would not be able to seek a reduction if he or she loses a job or has a reduction in hours, since only the protected person can seek a modification of the protection order. On at least four occasions, the new language of LB 633 refers to after notice and opportunity for hearing. Protection orders are on a fast track. Logistically, I can envision a real difficulty in trying to address all of these issues at one hearing and finding the time to promptly address them at separate hearings. In closing, I would like to say that the Nebraska, that the District Judges' Association does not oppose, in fact, it supports the protection of victims of domestic abuse. However, the association does not agree with LB 633 as drafted. The association is willing to work with those seeking amendments to the Protection from Domestic Abuse Act. And, in fact, we've had some of that going on out in the hallway before we got started here. Thank you.

SENATOR BOURNE: Judge, would you submit that written testimony to us? Could we have a copy of that or did we

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already get it?

PAUL MERRITT: No, you did not.

SENATOR BOURNE: Could we have a copy or if...

PAUL MERRITT: Sure.

SENATOR BOURNE: Okay.

PAUL MERRITT: I mean, it somebody would make a copy, that's fine, Senator.

SENATOR BOURNE: No, no, we'll take care of that.

PAUL MERRITT: Okay.

SENATOR BOURNE: Questions for the Judge? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Judge, my first question was going to be what you just answered in the last few words. What can be done to bring your people together? And you've already answered that, that you're willing to work with them.

PAUL MERRITT: We are and I've talked with the last speaker. I'm sorry, I can't remember her name. And I think she's going to be contacting the president of the association and trying to get some discussion going on.

SENATOR Dw. PEDERSEN: Would you agree, Judge, with the testimony that was brought in here today that this is a very serious problem?

PAUL MERRITT: Very serious problem. I agree wholeheartedly. You can't help but be heartfelt when you hear all these stories especially the woman who doesn't know what's going to happen to her when she goes home tonight. Very, very serious problem, Senator.

SENATOR Dw. PEDERSEN: Scary. Thank you.

SENATOR BOURNE: Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Judge, I know

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you had three minutes. Were there any areas that you wanted to maybe expound upon at all know that you see this firsthand? It's fairly open-ended but...

PAUL MERRITT: It's very open-ended...

SENATOR BOURNE: I know, you don't ever want to ask a lawyer an open-ended question like that (laughter).

PAUL MERRITT: And, Senator, there are things but I think that I got the just...I can down line item by line item but then I think everybody else probably should have the opportunity to go down by line item, line item. I understand...I will mention one thing. That 100-yard protection zone, let's call it, where if somebody parks five blocks or five houses away, the protection order says disturb the peace of. I mean, a law enforcement officer is going to have to make the determination whether he or she believes that somebody parking five houses away is disturbing somebody's peace. And whether that's outside a 1,001 yards or 100 yards, I mean, it's the conduct I think. With respect to checking boxes I heard that there were complaints about that. I appreciate that. The boxes we check are the ones that are specifically prescribed by statute. I am not aware that the statute says a judge can make his or her own requirements or conditions or restrictions on a respondent. It's either one or all or some of these particular matters. And I guess that's all the further I would go, Senator, unless you have a specific question, sir.

SENATOR FLOOD: No, I think you've done a good job. And I think there's more work to be done on this bill before it's ready.

PAUL MERRITT: Thank you.

SENATOR FLOOD: Thank you.

SENATOR BOURNE: And Judge, what I hear you saying is that you agree with the goal and you are willing to assist in tactically accomplishing the goal so that it comports with the system.

PAUL MERRITT: The judges agree with the goal. We may not

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agree with everything. You will never agree with everything. That's just the nature of the beast but I believe that with input at least there can be some matters that can be agreed upon and at least we can understand why we don't disagree upon things, Senator.

SENATOR BOURNE: Fair enough. Thank you. Thank you.

PAUL MERRITT: Thank you, sir.

SENATOR BOURNE: Next testifier in opposition. Are there any neutral testifiers? Senator Pahls to close.

SENATOR PAHLS: Just a couple of closing remarks. The part that I liked about it, I'm hearing people say, we need to talk about this and make this a better bill. I think involving the judges and your expertise over here because you asked a number of questions, getting together. I think we can make this a better bill and move it on.

SENATOR BOURNE: Excellent. Questions for the senator? Seeing none, that will conclude the hearing on LB 633. Senator Pahls to open on LB 632.

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SENATOR PAHLS: (Exhibit 22) Good afternoon, again, Chairman Bourne and members of the committee. First of all, I do want to thank you because these bills at one time were on two separate days and bringing them together one day. I do appreciate that effort. My name is Rich Pahls, P-a-h-l-s, representing District 31, the Millard of Omaha. The bill that we will be discussing here that I'm bringing forth is LB 632. This bill amends the Nebraska Criminal Code by adding two new offenses. As you can see, this bill will be a little bit more concise. Again, this bill was drafted by the Domestic Violence Coordinating Council of Omaha and, as you can tell, their representatives will be here to speak further to this bill. They also have an amendment and they will explain that to you. The two points that I would like to bring up dealing with the bill, any person who has been convicted of domestic assault will not be allowed to possess a firearm or ammunition. The second, any person who is subject to a protection order will not be allowed to possess

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a firearm or ammunition while the protection order is in effect. And as I look through the bill, the violations of either of these offenses is a Class IV felony and any peace officer may confiscate a firearm from any person who is in violation of this act. And to add more information to these two parts of the bill, I would allow you to (inaudible) and go on. The people following me, I'm sure, would give you more than adequate information.

SENATOR BOURNE: Thank you. Are there questions for Senator Pahls? Seeing none, thank you.

SENATOR PAHLS: Thank you.

SENATOR BOURNE: Can I have a showing of hands of those here to testify in support? I see roughly eight, nine. Those in opposition? I see none.

MARTY CONBOY: (Exhibit 21) Good afternoon, Senators. My name is Marty Conboy. I'm the city prosecutor in Omaha, here on behalf of that body as follows, the city of Omaha and also I am a prosecutor. I have a letter that I promised to pass along on behalf of Rick Boucher who was here earlier. He had expressed some concerns about this bill and also some support for portions of it and LB 633. Amendments have actually kind of taken away the interest that he had. He wanted this to be submitted to show that he was here on these things. This will be brief. This bill unlike the last has just one major provision. It would require that a person convicted of domestic assault be prohibited from the right to own a firearm. This is a mirror of the federal law under the Violent Act which prohibited this conduct up until a few years ago. Based on the Supreme Court's ruling about states' rights in the commerce clause, this was then deferred to states to decide whether or not they want to adopt that same language. This is that same language. In fact, with the amendment which takes away the opportunity for law enforcement officers to possess firearms with court approval, this literally is the same language. And what it does essentially is makes it clear that you can't own a gun if you've been convicted of domestic assault. And you've heard some of the statistics about why guns and domestic assault are a deadly combination consistently, predictably, and why this bill will be a direct impact on that problem. The current language would unfortunately result in some law

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enforcement officers facing the loss of their careers. That is unfortunate. I don't think it will be common, if at all. Pilots who come to work drunk or truck drivers, lawyers who abscond with clients' monies. Those particular offenses for particular professions are fatal for those professions. And that is because of the particular nature of those jobs and, unfortunately, in law enforcement someone who would be guilty of this particular crime would not be able to possess a firearm and probably continue to work in that capacity. I'll be glad to answer any questions. This bill, again, is a collaboration from the Domestic Violence Council. Senator...

SENATOR BOURNE: Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. Marty, and just to dialogue with you a little bit here. Don't we have some statutes in place that would help this already?

MARTY CONBOY: I'm not aware of anything that specifically deals with domestic violence assault.

SENATOR Dw. PEDERSEN: Okay.

MARTY CONBOY: There are ordinances in the city of Omaha, for instance, that I know certain crimes...

SENATOR Dw. PEDERSEN: That's what I'm thinking of is the...it's an ordinance not a... You've been around this business for a long time and so have I. Don't you think these same people who would have these weapons would get them anyway even if there was a law?

MARTY CONBOY: Well, at least now, we'd have the force of law to take action against them. Right now there's absolutely no prohibition whatsoever. And like people who possess firearms illegally that, for instance, that are felons we can at least now have an offense we can bring to bear if we do find that they have weapons. So at least it gives us a tool to use.

SENATOR Dw. PEDERSEN: And I'm not saying I don't agree with the bill because, I mean, I do agree with it. But my experience has been, I mean, you can make all the laws you want and they want to do somebody in, they're going to do it

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anyway.

MARTY CONBOY: Unfortunately, that's probably true. I guess what we're trying to do is create both a state policy and at least the opportunity to intervene.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Further questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Mr. Conboy, just a few...just observations and a question. And I don't know if you have a copy of the bill out in front of you there.

MARTY CONBOY: I do.

SENATOR FLOOD: Okay. On page 3, Section 4, the whole section basically but specifically, lines 16 through 19. I don't know if you've got that in front of you there.

MARTY CONBOY: Yes.

SENATOR FLOOD: One of the things I liked about the other bill in LB 633 was that it gave certain hour requirements for the respondent to have a protection order to get the guns out of the house and then maybe even file an affidavit stating that they complied. My concern here twofold. Number one issued after a hearing in line 16, in cases where we have an ex parte order and there's no request for a hearing, that language maybe needs to be cleaned up. Would you agree?

MARTY CONBOY: Well, actually, and this is just an extension of the felony possession law. So, really the hearing to determine guilt and the expiration of the opportunity for appeal which makes the conviction final I would submit does satisfy the requirement toward notice in a hearing. And there is actually legal process. It is sort of a consequence of that process much like somebody might lose their driver's license on a particular kind of crime. It happens kind of as a direct result so I guess they're on notice. And certainly it happens this way with felonies right now on a daily basis. When your conviction becomes

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final, the order just automatically takes effect. And really what this does in Section 4 is creates the criminal sanction and that...

SENATOR FLOOD: See, I read...and maybe I'm misreading this. I read this as it was talking about while subject to a protection order issued pursuant to Section 42-924 which order was issued after a hearing. I read that as it was clarifying the hearing of the process of the protection order, not the actual violation.

MARTY CONBOY: I apologize. I was looking at the wrong paragraph.

SENATOR FLOOD: Okay, okay.

MARTY CONBOY: That is related to the protection orders which were discussed earlier and this is an extension of the LB 933 language and would not involve a hearing...

SENATOR FLOOD: Okay.

MARTY CONBOY: ...and I would agree that that probably would make it...I guess this dovetailed into our discussion...

SENATOR FLOOD: Yeah.

MARTY CONBOY: ...when we drafted LB 933 so we assumed that it would occur but in isolation it doesn't mention it at all and probably would be prudent to repeat it here.

SENATOR FLOOD: So the bill is dependent upon LB 633. All right. The other one, in Section 3, page 2, lines 9 through 12, domestic assault and I don't know what Section 28-323 says. Is that basic third degree assault?

MARTY CONBOY: Domestic assault is the bill that was passed recently which creates a separate offense so it would only be domestic assault convictions under that section. So regular, if you want to call them regular assaults under either city code or state statute would not qualify for this. And that is, I guess, a departure from the federal law which really just talked about crimes of violence involving domestic violence. And this would specifically be limited to domestic assault.

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SENATOR FLOOD: Okay. Thank you very much.

SENATOR BOURNE: Further questions for Mr. Conboy? Senator Pedersen.

SENATOR Dw. PEDERSEN: Thank you, Senator Bourne. One more, Marty. In my...this might sound a little ridiculous but if I were one of these ladies I would have a concealed weapon in my purse and know how to use it. Okay? And, but it is a serious question I have for you is if...are they protected by the law for a concealed weapon?

MARTY CONBOY: Well, I...

SENATOR Dw. PEDERSEN: As far as a prosecutor goes?

MARTY CONBOY: It certainly is the kind of thing that is, because of the serious nature of the offense, as much as a criminal law can protect someone, just like these protection orders we've talked about. You know, they are certainly not a guarantee of protection but they are the force of law which at least steps in and allows a peace officer to arrest someone for a serious crime just for the possession of that weapon. We don't have to wait till they're parked out in front or that, you know, they show up at work. If they're caught anywhere with that weapon...

SENATOR Dw. PEDERSEN: Well, I'm talking about one of the victims here. Would the law cover them for having a concealed weapon themselves?

MARTY CONBOY: Oh, the victim for having a concealed...?

SENATOR Dw. PEDERSEN: The victim.

MARTY CONBOY: Under our current concealed weapon law, I would submit that there is an exception in our statute in 28-1202 that talks about concern about the safety of persons and property and although it also talks about employment I think that that extended concern probably would be legitimate as an exception to our concealed weapon law and...

SENATOR Dw. PEDERSEN: So under the law if they were...let's

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say you're a cop in the Kwik Shop and you see this lady getting her money out and she has a gun in there, you arrest her. Do they actually put them in handcuffs and take them away and then they have to prove "theirselves" that they were protecting themselves?

MARTY CONBOY: Yes, that is correct. It is an affirmative defense so certainly they or their attorneys could submit why they had it and that would be subject to the charging decision. But they would initially be arrested.

SENATOR Dw. PEDERSEN: But in most cases, probably the prosecutors would drop the charges and not file.

MARTY CONBOY: I was behind a woman at the metal detectors at the courthouse recently, and the security people tapped me on the shoulder and said, look at this, and she had a gun in her purse. And she was coming to a domestic violence hearing and was concerned about it and had good reason to be. And ultimately, we determined not to file charges but she...they asked me what to do. I said, she needs to be cited and the reports made and we can make sure that that's exactly what's going on because it's pretty difficult to tell right on the spot. But once it was evaluated, that's exactly what happened.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Further questions? Seeing none, thank you.

MARTY CONBOY: And I did have just a summary to hand out. It's very brief, if I could.

SENATOR BOURNE: Appreciate that. Next testifier in support?

CHARLIE VENDITTE: (Exhibit 22) Charlie Venditte. In addition to being a retired police officer from Omaha, I'm also a member of the Domestic Violence Coordinating Council. I don't believe I mentioned that earlier but I wanted to advise you of that. Though this bill is short in definition, I think it would have a great support from law enforcement agencies around the state. And the reason I bring that up is currently, on the books, there are federal laws that would govern this type of activity being illegal.

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Unfortunately, as in the case that the victim here today described, for several months law enforcement authorities have known that the person she has a protection order against has 30 weapons in his residence. Those guns are still there. Unfortunately, the only law enforcement authorities that can take action on that are the federal authorities, ATF--Alcohol, Tobacco, and Firearms unit. And what we would like to see if this bill passes is this would give the local authorities the authority they actually need to go into the residence and remove those weapons. As the victim stated here, she has dealt with the local authorities, they're aware of it. ATF has been made aware of it but the guns are still in the residence. So I believe that on the local level this is what law enforcement agencies have needed. Since the federal law went into effect and I believe it was in 1994 and the Lautenberg Amendment to the Constitution also advises that it's perfectly legal for law enforcement to go in and remove these weapons. However, the federal authorities at this time are the only ones that can do that so by passing this bill you would give local authorities the authority to go in and remove the weapon which you've heard from statistics here today and that information I've passed out to you earlier regarding domestic violence and firearms. Very specific on details on the recipe for death and one is domestic violence offender in possession of firearms. So I'd be glad to answer any questions.

SENATOR BOURNE: Thank you. Questions for Sergeant Venditte? Seeing none, thank you.

CHARLIE VENDITTE: Thank you.

SENATOR BOURNE: Next testifier in support?

MARGARET BUCK: Chairman Bourne, members of the committee, you know me as Margaret Buck, Senator Aguilar's legislative aide. Today I'm here as an individual, not representing him or any particular organization. And my name is spelled M-a-r-g-a-r-e-t B-u-c-k. I'm here to expound on what we've talking about, about the federal firearms provision. Unfortunately, I'm uniquely qualified to talk about it because I'm told I'm the only person in the state to actually get the U.S. Attorney General's Office to enforce that provision. In 2001, after being attacked, I had a

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protection order against someone and I knew he had guns. He never did any jail time until six months after the assault when he was convicted of that assault and hauled off from the courtroom. During that time, he stalked and harassed me and my best friend, and I knew he had rifles, shotguns, you know, all those things. The local police and the Nebraska State Patrol were very helpful to me in protecting me both at work and at home. But, again, they didn't have the authority to do anything about the firearms. They didn't even know at that point how to tell me to go about getting it enforced. I think it was the Lancaster County Attorney's Office that finally suggested that I talk to the U.S. Attorney and so I did. And they set up a series of roadblocks that I considered somewhat of an obstacle course to get this accomplished. First was that after the protection order was granted, he had to protest the protection order, ask for a hearing, and personally bodily show up in court. That happened. That doesn't usually happen but that happened in my case. So the next roadblock was well, then I had to prove to them that he had the guns in his possession immediately since the assault. I didn't live with the guy. I didn't have any contact with the guy. I had no idea how to do that but an idea came to me and I called back to the Attorney General's Office and offered to take them to his deer stand on opening day of hunting season. And they declined that offer but from that they went to the Game and Parks and got his hunting application on which he had to name a specific weapon that he was going to use. They used that as a basis for a search warrant. The guns were eventually confiscated. That was about five months after the assault. Eventually, the grand jury convicted him but, interestingly enough, it wasn't on my protection order. It was because he had had previous protection orders against him and so he had been a prohibited person for years, and he was still buying guns and ammo. It was a very interesting, frustrating, year-long process. That shouldn't have to happen. The local authorities knew what was going on. They worked with me on almost a daily basis. It would have been very, very helpful for them to be able to do it on their own authority. I had a comment to answer your question, Senator Pedersen. Last year the domestic violence assault legislation that was passed, part of the emphasis behind that was to get DV assault defined, not just another third, what did you call it?

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SENATOR FLOOD: Third-degree assault.

MARGARET BUCK: Third-degree assault. And the reason for that is because when they do the background checks, if it shows up as just an assault that the State Patrol doesn't know whether domestic violence was involved or not. So we wanted that to be specifically defined so that when they apply for their next gun permit or whatever reason they go through a background check it will show up as DV assault.

SENATOR Dw. PEDERSEN: Thank you.

SENATOR BOURNE: Thank you. Questions? Senator Flood.

SENATOR FLOOD: Thank you, Chairman Bourne. Just real quick, thank you for your testimony. How long did he...did he go to jail under the federals?

MARGARET BUCK: He did. He...

SENATOR FLOOD: And how long was it for?

MARGARET BUCK: He did five months in a federal facility.

SENATOR FLOOD: Good for you.

MARGARET BUCK: After he got out of the state facility.

SENATOR FLOOD: Thank you.

SENATOR Dw. PEDERSEN: Any further questions from the committee? Seeing none, thank you, Margaret. Next testifier, please. Support.

CASSANDRA CATES: (Exhibit 24) Hi, again, my name is Cassandra Cates, C-a-t-e-s. I won't repeat myself, just so that those of you who weren't here know. I have 11 police reports outstanding. Seven crimes reported and pending. This law would give the police the authority to go in and get those guns that I talked about earlier. Right now they don't feel they have the authority to do that. Secondly, to make this violation a crime it will give him some jail time, hopefully. And my ultimate goal is to be safe, secure, have my family safe and secure so we need to give

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the law enforcement the authority and we need to make it a crime so there is a penalty for his actions.

SENATOR Dw. PEDERSEN: Thank you. Any questions from the committee? I have one.

CASSANDRA CATES: Um-hum.

SENATOR Dw. PEDERSEN: Where do you live?

CASSANDRA CATES: Omaha.

SENATOR Dw. PEDERSEN: Omaha.

CASSANDRA CATES: Um-hum.

SENATOR Dw. PEDERSEN: Have the police...has your police protection or sheriff, wherever you live, response time been pretty good for you?

CASSANDRA CATES: Quite frankly, it feels very slow. Generally, when I've had to call them I've been attacked so I'm hysterical. So I can't honestly answer that. It feels like an eternity.

SENATOR Dw. PEDERSEN: So if you're hysterical, I mean, it does add to the length of the time.

CASSANDRA CATES: Yeah, it does, it does. They've been very helpful when they've come. They've been thorough, I would say. But, you know, the nature of the attacks are so severe that I'm hysterical so I can't honestly answer.

SENATOR Dw. PEDERSEN: I want you to know you've been heard today.

CASSANDRA CATES: I appreciate that. I appreciate the opportunity. Yes.

SENATOR Dw. PEDERSEN: Senator Combs.

SENATOR COMBS: I just want to thank you for coming. It's a very brave thing because those of us who have been abused are the last ones to want to admit that we have been abused. It's a very brave thing to do and I commend you for that and

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also to Margaret. And I know it's a very tough thing to admit but once we do then we can start getting help so I thank you for that very brave thing to do. Thank you.

CASSANDRA CATES: Thank you.

SENATOR Dw. PEDERSEN: Any other questions from the committee? Seeing none, thank you. Next person in support? Sheriff Dunning.

TIM DUNNING: Good afternoon. Tim Dunning, Douglas County sheriff, also representing the Nebraska Sheriffs Association on this particular bill. Charlie Venditte testified to what I was going to add to this testimony but in consultation with Marty Conboy we felt that there was an area that needed to be clarified that Senator Flood had brought up earlier. And I think that is that we're making it optional in one bill and mandatory in another with regards to firearms. And what we're trying to accomplish is that the court may, after a hearing and finding that the respondent represents a credible threat, order the surrender of all firearms and firearm certificates. If the respondent is present at a hearing, the court shall order firearms to be surrendered within 24 hours. If the respondent is not present at the hearing, the court shall order firearms to be surrendered within 48 hours. And I think that was the point that you were making earlier. The court shall order that the respondent file an affidavit within 72 hours, stating to whom the firearms were sold or where the firearms are located, and stating that the respondent does not have immediate access to or control over firearms. Allows law enforcement agencies to charge a fee for storage which addresses the disposition and addresses the disposition of unclaimed property and the right of the respondent to modify the petition regarding firearms. This just gives local law enforcement the authority to enforce which is already in federal law, codifies federal law into state law. Gives local law enforcement and prosecution an additional tool to keep victims safe and alive. The time frame is important because we know that the most serious assaults and murders are committed within 72 hours of receiving protection orders and dissolution papers. The affidavit that the bill would require the respondent to sign and file would be developed by law enforcement and the victims' services across the state. Be happy to answer any questions you might have.

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SENATOR Dw. PEDERSEN: Thank you, Sheriff Dunning. Any questions from the committee? Seeing none, thank you. Next testifier in support.

MATT KAHLER: Good afternoon. Again, Matt Kahler with the Douglas County Attorney's Office, K-a-h-l-e-r. I just briefly, I'd like to point out that in a situation like this with this statute, our office is in kind of a unique position, perhaps a better position than the U.S. Attorney's Office to prosecute these types of cases. In Ms. Cates' case, for example, I know that she's met with prosecutors in our office on several occasions. She had advocates with the YWCA who are present here as well that have met with her. We are able to receive reliable information from her with respect to how many weapons he has, where he keeps them, and we'd be able to prosecute these fairly easily compared to other offices that have no experience or connections directly or otherwise to these victims. I think to create this law to coincide with the federal law would give our office and law enforcement a tool in order to enforce these quite easily once we establish a relationship with the victim. And I think given the fact that many of these cases seem to be one step away from a homicide investigation I think it's important that we have this tool to be able to take these weapons away from the defendants. Any questions?

SENATOR Dw. PEDERSEN: Thank you, Mr. Kahler. Questions from the committee? Senator Flood.

SENATOR FLOOD: Thank you, Senator. Thank you for your testimony. I don't think anybody on this committee is going to drive home tonight and not think about her safety tonight. What kinds of...and I know that there's no amount of resources in this state that are available for every specific situation. What can she do in the meantime to increase her security because if we're looking at someone that's a step away from a homicide, does she need to relocate to a new residence or increased police patrols? What do you recommend to people?

MATT KAHLER: Well, unfortunately, her case is very...it's a very severe case and I am familiar with some of the facts of the various reports out there in her case. If she's an example, an actual rare example of someone that's done

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possibly everything she can. She's dealt with the police directly. She has police contacts. Y advocates, she has prosecutors that she has direct contact with. Unfortunately, in her case, for one reason or another, the defendant keeps bonding out despite, and right now I believe there's a \$1 million bond, for example, on this particular defendant. But he...and that's as of yesterday so the judges at this point have increased the bond to the point where, hopefully, we'll be able to keep him incarcerated when we arrest him on that warrant but prior to that he has been able to bond out in a matter of hours, my understanding is, after being bonded in. As far as what she can do in the meantime to ensure her safety and other victims in her situation, I'm not sure what the answer is because every system that we've set up thus far has failed her in that he's still out on the loose. He has all these reports. Someone with this many reports of domestic violence, especially against the same victim, should not be out on the streets right now. It is just a situation where, and I can't answer without having had direct experience with this case but I don't know how to answer that other than having her either stay with family members or stay somewhere where he isn't able to find her right away especially in a situation like there is right now where he's a fugitive, as she stated earlier. And we have no true idea of where he might be at any moment.

SENATOR FLOOD: Can you ever...and I know the resources are tight, you don't get the money from the state that you need. But can you put a patrol officer outside of her house? Is that an extreme measure? Has that ever happened before?

MATT KAHLER: We've had cases before where police officers have a...and I'm not familiar with the terminology, but they have increased patrols of certain homes. I don't know if the police have had that right now on her residence or not. But there have been situations where we've requested and victims have requested extra patrols to go by her home but I'm not sure if that's been used in this particular case.

SENATOR FLOOD: Thank you.

SENATOR Dw. PEDERSEN: Any other questions from the committee? Seeing none, thank you, Mr. Kahler.

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MATT KAHLER: Thank you.

SENATOR Dw. PEDERSEN: Next testifier in support?

NANCY LIVINGSTON: (Exhibit 25) Good afternoon. My name is Nancy Livingston, L-i-v-i-n-g-s-t-o-n. I'm the advocacy coordinator at YWCA Omaha, Women Against Violence program. I'm here to speak in support of LB 632 by offering information on how difficult it is to safety plan with victims of domestic violence when guns are in the home and there is no recourse to have them removed under current state law. Held hostage by your abuser who has access to guns is terrorizing. Held hostage by your abuser who has access to guns and is a member of law enforcement adds a new dimension of terror for a victim of domestic violence. As an advocate working with victims of domestic violence, when I encounter a victim whose abuser is with law enforcement, I cringe because I know the barriers that the victim faces with safety planning. Call the police? He is the police. Have him arrested? Responding officers may invoke the code of silence. Take him to court? It's your word against an officer, and he knows the system. A woman I worked with several years ago was married to an Omaha police officer and made a decision to leave an abusive relationship. He had access to guns 24 hours a day seven days a week, and he made sure she was well aware of this since he was assigned to the precinct that patrolled her neighborhood. She thought she could reach out to the court system like any other victim of domestic violence but she was wrong. She tried three times to attain an order of protection and was denied three times. Her affidavits were well written, documenting physical abuse and threat of imminent harm as required by state statute. Was she denied a protection order because the officer's job could be at jeopardy if the order was signed and a violation occurred? Was she denied because the judge assumed the officer would be assigned to desk duty, unable to carry a service weapon? I'm sure all played a part in the decision not to grant her a protection order. With the implementation of LB 632, a mechanism will be in place to evaluate law enforcement officers as to their psychological health without leaving this discretion up to a judge when a protection order is applied for. Safety planning with domestic violence victims is always determined by the risks they face with their abusers and also what personal and public resources are available. When guns are mentioned, as

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advocates we try to incorporate that information into as many resources as possible. If a weapon was used to threaten or terrorize, we explain the importance of that information in an affidavit for an order of protection. When making a police report, we encourage the information about guns to be reported to the responding officer. During prosecution we stress the importance that the county attorney is reminded about the weapon so the judge is aware, all with the intent of having someone take notice of the guns and for someone to remove them but no one seems to know how to do this. With LB 632, the state will mirror what federal law states is illegal and will take guns out of the hands of those who are terrorizing victims in our state. Thank you.

SENATOR Dw. PEDERSEN: Thank you, Ms. Livingston. Any questions from the committee? I might add before you leave, compliments to your organization. I've been in this business of drug and alcohol counseling for many years. I've referred many people to you and not just victims but mine has been mostly perpetrators, and you do a good job with them too.

NANCY LIVINGSTON: Thank you very much, Senator.

SENATOR Dw. PEDERSEN: You bet. Thank you. Next testifier in support? (See also Exhibit 26)

TARA MUIR: (Exhibit 27) Good afternoon, Chairman and committee members. My name is Tara Muir, T-a-r-a M-u-i-r. I'm the legal director for the Nebraska Domestic Violence Sexual Assault Coalition. The coalition supports LB 632 in creating these offenses that have long been in place in federal law. Last year in Nebraska, outside the Omaha area, the network of programs and shelters served over 7,000 victims. These stats also reflect that in 157 incidents of abuse, a gun was used. This means that about every other day in our state...these aren't national statistics, but in our state a gun is used by a batterer to control, manipulate, or terrorize a victim of domestic violence. Keep in mind these are numbers only those we know about. There are more who do not come to our programs. I train advocates and interested groups across the state about our laws that impact victims. Last summer I traveled all over the state and into small towns with the Nebraska State

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Patrol's domestic violence program director to train on the new laws enacted last year in the 2004 session. One new law we did train on was 29-440 where incident to a domestic assault arrest, a peace officer shall seize all weapons that are alleged to have been involved or threatened to be used and may seize any firearm and ammunition in plain view or discovered pursuant to a search. During our training some felt taking away hunting firearms was inappropriate and too severe a penalty. While we understand people in Nebraska have strong attachments to hunting because many grew up with hunting as a family activity and many continue the tradition with family and friends. However, during these same trainings a couple of prosecutors and law enforcement officers were willing to say one loses the privilege to hunt when you commit these crimes and we agree. I do have some statistics attached to my testimony about the dangers of guns in the hands of abusers and the escalation of violence. I wanted to make a couple of extra comments since I have some time. Federal law does infer that there must be a hearing before the firearms are supposed to be taken away. And that's why in LB 633 we wanted to be very clear that a plaintiff can request a hearing so that that's not bypassed by a batterer who does not request a hearing. That criteria will be satisfied so we included it in LB 633. And just on a last note, our criminal justice system, unfortunately, often fails a lot of victims. The charges are dropped, the charges are reduced and little or no jail time is sentenced if they are convicted. So we're here and we squirm under the system we're in to try and provide safety like we've been talking about for the woman who has to go back to Omaha. So we just hope you take really good, serious, long look at these laws we've put before you this whole session and pass some good ones. Thank you.

SENATOR Dw. PEDERSEN: Thank you, Ms. Muir. Any questions from the committee? Seeing none, thank you. Next testifier in support? Commissioner Borgeson, good to have you.

MARY ANN BORGESON: (Exhibit 28) Thank you. Good afternoon, Senators. My name is Mary Ann Borgeson. I am a commissioner for Douglas County and employee for Alegent Health Systems and the chairperson of the Domestic Violence Coordinating Council. I would like to take this opportunity to thank Senator Pahls for introducing this legislation and thank Senator Bourne and the committee for allowing these

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bills to be heard today. I appreciate the opportunity to testify in support of these two very important domestic violence bills, LB 632 and LB 633. The Domestic Violence Coordinating Council has been working as a collaborative group on domestic violence legislation for over five years and specifically on these two bills for over two years. We have had the involvement of numerous individuals from a wide variety of organizations. These bills have input and feedback from prosecutors, family law attorneys, police and sheriffs, probation officers, doctors and nurses, victim service providers, civic leaders, and more. We as a community as a state have certainly made great strides in addressing domestic violence. We are making a difference in people's lives but the work is not done. We need to remain focused and on course to continue improving how we handle and address domestic violence. These bills surely don't solve all the problems but they address gaps that currently exist in law enforcement, prosecution, and the courts in Nebraska. If the committee has concerns about any language or even sections in the bills, we ask that you work with us to modify, revise, or fine tune the bills as seen fit. I think you've heard today that even as late this afternoon we were working with organizations to make sure that the concerns and language of the bills have been changed so that there would be support for them. So we're here to ask you as committee members to do that and we hope and request that you will do that and then move the legislation forward. Thank you.

SENATOR Dw. PEDERSEN: Thank you, Mary Ann. Any questions from the committee? Seeing none, thank you for your work too.

MARY ANN BORGESON: Thank you.

SENATOR Dw. PEDERSEN: Are there any other testifiers in support? Are there any testifiers in opposition? Any testifiers in neutral? Senator Pahls to close. He waives closing. That will close the hearing on LB 632 and the hearing of our bills for today are completed. (See also Exhibit 29)