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Judiciary Committee
January 26, 2007

[LB29 LB97 LB102 LB290 LB306]

The Committee on Judiciary met at 1:30 p.m. on Friday, January 26, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB29, LB306, LB102, LB97, and LB290. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None. []

SENATOR ASHFORD: Welcome. Many of you,...Senator Friend, if you'd like to come up and introduce LB29. Just briefly, those who wish to testify, if you would come up to the table and fill out the sheet. And when you come to the...your time to testify, if you would realize, except for the introducer, that we'd ask you to sum up in three minutes or so. And we'll turn on a yellow light when one-minute time frame starts, and then the red light, we'd ask you to sum up. How many are here to testify on LB29? Okay, good. Senator Friend, proceed. [LB29]

SENATOR FRIEND: Chairman Ashford, hello again,... [LB29]

SENATOR ASHFORD: Hello. [LB29]

SENATOR FRIEND: ...and members of the Judiciary Committee. Thank you. My name is Mike Friend. For the record, it's F-r-i-e-n-d. I represent the 10th Legislative District in northwest Omaha. I'm here to introduce LB29, at the request of the Health and Human Services System. And the measure previously was introduced by Senator Mark Quandahl in 2002. That was LB1181. And it was also introduced again in 2003 by Senator Dwite Pedersen. That was LB457. LB29 creates a statutory requirement that all court orders for state wards include a mandatory finding directing that parents assist with support for a state ward's cost of care, provided that the parents have the capacity, if you will, to pay. The bill also includes a requirement that Health and Human Services make recommendations to the Child Support Advisory Commission regarding child support schedules and the like. All schedules or formulas would be reviewed by the commission, and report...and the commission would report any suggested changes to the Supreme Court. I would...that would more or less be it, Mr. Chairman. I would like to thank the committee for its consideration of LB29, and I'd be happy to answer any questions that you think that I could answer. And I know that there are some testifiers behind me to follow up. So, thank you. [LB29]

SENATOR ASHFORD: Thank you, Senator Friend. Any questions? [LB29]

SENATOR LATHROP: Yeah, just briefly. Senator Friend, is it your contemplation...first of all, the people that we're providing for, the juveniles who are wards of the state by virtue of some kind of an order of the juvenile court or otherwise? [LB29]

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

Judiciary Committee
January 26, 2007

SENATOR FRIEND: To my understanding, yes. [LB29]

SENATOR LATHROP: And do you expect that the child support guidelines used in a divorce proceeding are going...generally used in a divorce proceeding, are going to become the same guidelines we use for the parents of children...? [LB29]

SENATOR FRIEND: I would...yes, that was my understanding. And I believe that one of the officials from the Health and Human Services System would be able to verify that, but that is my understanding, as well. [LB29]

SENATOR LATHROP: And I just read through the changes, but where do you expect that to happen in the process? If the juvenile court places somebody into foster care, at what point is there going to be a hearing on the child support? And is that going to happen in the district court, or the juvenile court, or where do you expect that to happen? [LB29]

SENATOR FRIEND: Well, my hope would be...and looking at the green copy, I don't think it lays out that standard, or that process and procedure. My assumption would be--and I know that might not help--but as soon as the process begins. So the standard would be that the determination would have to be made as soon as possible. And frankly, Senator Lathrop, I mean, you've been probably...I don't have probably even the experience you do dealing with this subject matter. But that would be my assumption. And maybe I'm assuming too much. I've done... [LB29]

SENATOR LATHROP: Okay. I'm not sure where it would be. [LB29]

SENATOR FRIEND: ...I've done that before. [LB29]

SENATOR LATHROP: They're not caught up in a district court proceeding,... [LB29]

SENATOR FRIEND: You're right. [LB29]

SENATOR LATHROP: ...which is typically where child support...well, it's the only place child support is set and fixed. And the juvenile court may not, at least at present, be equipped to do that. [LB29]

SENATOR FRIEND: Yeah, I guess what you're asking is--so that I have my hands around it--is that, could, you know, two years down the road, somebody make a determination, and then bring a...you know, bring a...or, address it in a new hearing, in order to obtain, you know, a different status, I guess, is...am I understanding that? [LB29]

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

Judiciary Committee
January 26, 2007

SENATOR LATHROP: Right. Then you have the juvenile court modifying child support orders. [LB29]

SENATOR FRIEND: I don't think that that would be the desired outcome, Senator. But I know Ms. Peterson, Director Peterson, if she's willing to testify, and others, may be able to elaborate. [LB29]

SENATOR LATHROP: Okay. Good. Thank you. [LB29]

SENATOR FRIEND: You're welcome. [LB29]

SENATOR LATHROP: Senator Chambers. [LB29]

SENATOR CHAMBERS: Welcome, former committee member Friend. [LB29]

SENATOR FRIEND: Back. Welcome back, yeah. [LB29]

SENATOR CHAMBERS: Yes. Can the Legislature order the Supreme Court to draft a rule and tell the court what that rule should consist of? For example, the Supreme Court shall provide by court rule, as a rebuttable presumption, support order guidelines for the determination of support ordered for a juvenile under this section. Can the Legislature order the Supreme Court to do that? [LB29]

SENATOR FRIEND: Well, that's a good question. I...we have done that before, have we not, in other... [LB29]

SENATOR CHAMBERS: That's what I'm not sure of. That's why I was trying to get help. [LB29]

SENATOR FRIEND: ...areas of law? I would not venture...I won't guess on that. [LB29]

SENATOR CHAMBERS: See, court...rules of the Supreme Court are drafted by the court pursuant to what they deem to be necessary for the administration of the courts. [LB29]

SENATOR FRIEND: On their interpretation of the way we laid it out. [LB29]

SENATOR CHAMBERS: Well, we're telling them how they must...what rules they must adopt, and they could say, if the Legislature thinks that a rebuttable presumption ought to be created, then that's something for the Legislature to do, not the courts. The courts don't look at something and say, well, this is a rebuttable presumption. The Legislature does that, because it's telling the process...progress of a suit. Somebody makes a move, then somebody else is going to be compelled to make a move. And I'm asking,

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

Judiciary Committee
January 26, 2007

can we order the Supreme Court to create a rebuttable presumption? But if you're not sure, then I'll leave you, and somebody who comes after you may give me that answer. [LB29]

SENATOR FRIEND: Yeah, Senator, I'm not sure. And I'd hate...and I've gotten into situations of crossfire where I have made assumptions that I would have to backtrack on. [LB29]

SENATOR CHAMBERS: That's why I don't want to make one myself, and am doing it by questions. [LB29]

SENATOR FRIEND: Sure. Sure. Thank you. [LB29]

SENATOR CHAMBERS: That's all I have, though. Thank you. [LB29]

SENATOR LATHROP: Any other questions? I'm sorry. Okay. [LB29]

SENATOR FRIEND: I will not close. [LB29]

SENATOR LATHROP: Okay, you waive closing? [LB29]

SENATOR FRIEND: I'll waive closing, yeah. [LB29]

SENATOR LATHROP: Okay. Thank you very much. [LB29]

SENATOR FRIEND: You're welcome. [LB29]

SENATOR LATHROP: Do we have those in support? Did you fill out a sheet? [LB29]

CHRISTINE PETERSON: (Exhibit 2) Yes, I did. [LB29]

SENATOR LATHROP: Maybe you can hand that to the Page. [LB29]

SENATOR CHAMBERS: And before anybody asks this lady any questions that might be deemed in any way to be hostile, you got to clear them through me. (Laughter) Just kidding. [LB29]

SENATOR LATHROP: Okay. Please proceed. [LB29]

CHRISTINE PETERSON: Good Afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Christine Peterson, P-e-t-e-r-s-o-n, chief administrative officer of the Health and Human Services System. And I'd like to thank Senator Friend for introducing this bill on behalf of the Health and Human Services

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

Judiciary Committee
January 26, 2007

System. I'm here to testify today in support of LB29. Under current law, a child becomes a state ward by entry of a court order. As part of this order, the court may require parents to pay support to the Department of Health and Human Services for their child's cost of care. Experience has shown that in most instances, the support order is minimal, or no order is entered at all. Collections for support to date have been primarily limited to those instances where there has been a previous child support order entered as a result of a divorce or paternity where only one parent was ordered to pay. Food, shelter, and medical care are obligations incumbent upon all parents for their children. When a child is placed in custody with the state, the state assumes responsibility for these duties. When a state ward is placed outside of the home, the state must pay a third party to provide these services. This action does not sever the natural obligation for parents to provide support for food, shelter, and medical care. If parental rights have not been terminated, it is the responsibility of the department to help parents stay involved in all aspects of their children's lives and mandating such support to be paid on behalf of the child. The parent-child relationship may be promoted in order to reunify the family. Research tells us that children do better when their parents are involved. HHS proposes a statutory requirement that all court orders for state wards include a mandatory finding directing the parents who are financially able pay support for the child's cost of care, based on a schedule or formula. This support will include medical support. The statute would include authority for the agency to make recommendations to the Child Support Advisory Commission regarding the child support mandatory schedule or child support formula. The Child Support Advisory Commission would then recommend these schedules or formula to the Nebraska Supreme Court. Any such schedule or formula should be reviewed and adjusted yearly to take inflation into account. In addition, this bill updates language involving the processing of support payments. We chose the Child Support Advisory Commission because it is the logical body to develop amounts, levels, and payment levels. The Nebraska Child Support Advisory Commission has previously created a schedule and worksheet for the computation of child support in paternity and dissolution cases. The existing schedule and worksheet take into account numerous factors that impact a parent's financial condition and the needs of the child. The courts then review the computed amount, and accept it unless evidence is presented by the parties suggesting the amount of support should be different. The court reviews the evidence and the computed amount, and makes a decision regarding the amount of the support order. For state wards, the Child Support Advisory Commission could develop similar guidelines and worksheets for when both parents are noncustodial, since the department has responsibilities similar to that of a custodial parent. The commission could also take into consideration both parents' financial condition and the needs of the state ward in developing these guidelines. Health and Human Services would request input into the process in order to assist the commission when considering factors that surround families of state wards. And we are certainly willing to work with the courts to address any of the concerns of the bill. I'd like to address just quickly several of the questions that came up while Senator Friend was there. We would anticipate that the order would be given when the juvenile was adjudicated. And the language that Senator

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

Judiciary Committee
January 26, 2007

Chambers asked about, we took that directly from the current statute on dissolution of marriage, and just put it into this statute, because it would be the same process. What this does is provide equity between the district courts and the county and juvenile courts. And the district court, right now, when there is a dissolution, child support is ordered, and then the child becomes a ward. That child support then goes to the state, because the state is providing the parental supports. This would mirror that, in that the county and juvenile courts now would also have the support order coming in, based upon the parents' financial ability. We don't have to use the same worksheet. We can use another one. We'd be glad to work with anyone on it. The bill has been introduced several times before. Part of the reason that we weren't able to move forward with it is, the understanding at the time was that the Child Support Advisory Commission had not been meeting, and it has now met, and they are working, and so we do now have the avenue to go through with the worksheet, and come up with a way to define the amount of support. I'd be glad to answer your questions. [LB29]

SENATOR LATHROP: Anybody have any questions on the committee? Maybe I could ask a few, if you don't mind. [LB29]

CHRISTINE PETERSON: You bet. [LB29]

SENATOR LATHROP: Did you testify, or do I understand, that there is a process currently available in existing statute that permits the juvenile court to order child support from the parents of a child taken into the custody of the state? [LB29]

CHRISTINE PETERSON: Yes, Senator. It was...it's listed...it's permissive, right on the second page of the bill. At such proceeding...in line 23: At such proceeding, after summons to the parent of the time and place of the hearing, the court shall order. And some courts do order. And the other thing that this bill does, in the second...next page, is that instead of having the clerks collect, it would now be similar to what's happening with child support through dissolution. The state unit would collect...state Child Support Enforcement Unit. [LB29]

SENATOR LATHROP: Okay. Are the juvenile courts across the state typically ordering child support as part of an adjudication hearing at present? [LB29]

CHRISTINE PETERSON: Some judges are. But there is no consistency, and there's no consistency with enforcement. We could try to find out an exact count. In fact, if you don't mind me turning around to see if we have that count? No, we don't, but we can find out. [LB29]

SENATOR LATHROP: Okay. I'm just trying to find out the practical side of that. [LB29]

CHRISTINE PETERSON: Right. [LB29]

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

Judiciary Committee
January 26, 2007

SENATOR LATHROP: Many of these kids that are going through the adjudication process in juvenile court are coming from troubled families? [LB29]

CHRISTINE PETERSON: Yes. [LB29]

SENATOR LATHROP: Okay. That's one of the reasons they're there, typically. It's...the presence of the child in the juvenile court system is a symptom of a problem in the family. [LB29]

CHRISTINE PETERSON: Yes, it is. [LB29]

SENATOR LATHROP: And have you worked in that environment? I'm not familiar with your background. [LB29]

CHRISTINE PETERSON: Have I worked specifically in the environment? No. [LB29]

SENATOR LATHROP: With the children in this situation. [LB29]

CHRISTINE PETERSON: I have not worked one-on-one with the children. I've been involved with the supervision of the caseworkers and the agency's work. [LB29]

SENATOR LATHROP: I'm just wondering. What occurs to me is that a lot of these families are, as part of the adjudication, being ordered to go to counseling. They're having alcohol evaluations. They're doing an awful lot of things that the family not involved in juvenile court but otherwise paying child support are involved in. Are we tacking on child support obligations to families that are already under stress...financial stress with requirement that they have alcohol evaluations, do counseling, do all the things that the juvenile court can order? [LB29]

CHRISTINE PETERSON: We would be doing it in the same amount that we're doing it with children who are part of a divorce that have the same support order on them. My understanding is that many of the services, once the child comes into Child Welfare, we contribute to the services that the parents go through. Our feeling on this is, absolutely if there is a...it would all be based upon income as the child support guidelines are now. And we would certainly have no reason not to take that stress into account. The goal behind this is to make the parent also participate in the support for their child, similar to what a parent has to do who goes through a divorce and his child is a state ward. If you're not going through a divorce and your child is a state ward, you don't have any obligation to the state, but if you're divorced, you do, and so this would parallel those out. Both families would be going through stress in the juvenile court with the child. [LB29]

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

Judiciary Committee
January 26, 2007

SENATOR LATHROP: When you say that there's inconsistency, is it inconsistency among... [LB29]

CHRISTINE PETERSON: Judges. [LB29]

SENATOR LATHROP: ...among judges, so that we see one judge never orders it? Or is it inconsistency as the judge handles cases, case by case? [LB29]

CHRISTINE PETERSON: That, Senator, I couldn't answer for you. [LB29]

SENATOR LATHROP: Okay. [LB29]

CHRISTINE PETERSON: And I don't know if we have anybody here that could. [LB29]

SENATOR LATHROP: Okay. That's all right. If somebody can,... [LB29]

CHRISTINE PETERSON: Apparently, we do. Yes. [LB29]

SENATOR LATHROP: ...maybe they'll address it in their remarks. And one more question for you. That is, have you talked to the juvenile court judges about this? [LB29]

CHRISTINE PETERSON: We have, on and off, through the years. And it's a different answer, depending on whether they use it or not. [LB29]

SENATOR LATHROP: Have the juvenile court judges or the county court judges that make up the juvenile courts in the smaller communities, have they met to say whether they favor something like this, or don't favor? Have they ever communicated that to you? [LB29]

CHRISTINE PETERSON: No, I don't believe they have. I don't believe they have. [LB29]

SENATOR LATHROP: Okay. That's all I had. [LB29]

SENATOR ASHFORD: Thank you, Senator. Senator Chambers. [LB29]

SENATOR CHAMBERS: I was reading over the green copy, and in response to a question that Senator Lathrop put to you, you were saying this bill will equate people who are not going through a divorce with those who are confronting this set of circumstances when they are involved in a divorce. Could you say that the way you did, so that it's clear? I think I'm garbling it. [LB29]

CHRISTINE PETERSON: Okay. Right now, in the district court, if there is a dissolution

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

Judiciary Committee
January 26, 2007

and the person is ordered to pay child support, that is a court order and that works whether then the child becomes a state ward through the juvenile court or not. If the child then comes into our custody as a state ward, that child support does not go to the custodial parent, because they're no longer the custodial parent, but the noncustodial still continues to pay it, and it comes to the state, because that's the money that's being used for the child's use. What this would do is, if in...you're in the juvenile and the county court system, and the child becomes a state ward, if there's already...if the ward is from divorced families, the support order is still there. If they're not; this would create a support order similar to that. [LB29]

SENATOR CHAMBERS: If there's a...where there's a dissolution, there are two people, obviously involved. If there's a single person, how does...how is that person's situation equivalent to that of the two-person situation? [LB29]

CHRISTINE PETERSON: A two-person family? Okay. Senator, at this point, we might be getting now into where I would have our legal counsel come up, if that would be all right. [LB29]

SENATOR CHAMBERS: Okay. Sure. [LB29]

CHRISTINE PETERSON: Because I could give the wrong answer. So if I could have them follow up with you with questions, that would be great. [LB29]

SENATOR CHAMBERS: Fine. [LB29]

SENATOR ASHFORD: Any other questions of Chris? Thanks, Chris. [LB29]

CHRISTINE PETERSON: Thanks. [LB29]

GAIL STEEN: I am Gail Steen, S-t-e-e-n. I'm one of the attorneys for the Department of Health and Human Services. I practice predominantly in juvenile court, so I can kind of answer some of your questions about what actually happens now. Senator, to address your question about where the discrepancy lies, there...the judges generally don't order it automatically or on their own motion. They wait for someone to ask the court to order the child support. So there are some courts where it's never asked for; there are some courts where it's asked for and the judge makes a decision based on the facts before the judge. So I would say generally the practice is, there are some courts where it's never ordered, there are some courts where it's ordered consistently, based on the income of the family. Also, to address, I think, your other question about the discrepancy between the parents, it is the anticipation that the committee would be able to look at the child support so that it is applied fairly to all parties, so that it is, if there's a parent that's paying a lot for services because they have insurance or because they have an income, that would be factored into the numbers. And likewise, then it would be

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

Judiciary Committee
January 26, 2007

a fair distribution among the parents, so that it isn't just a single parent having all the responsibilities for the child. There is another portion of the juvenile court that always tries to involve both parents. There is a provision in the statute that paternity can be determined. Case law indicates that we should be dealing with both parents, not just one parent. So it would be anticipated that child support would affect both parents. And it may be that we're identifying the dad for the first time. [LB29]

SENATOR CHAMBERS: But if you have one parent, and that parent's child becomes a ward, that parent had not been paying support to anybody, or receiving any support, under this, that parent is now going to have to start paying support to the state. Is that correct? [LB29]

GAIL STEEN: If that's what the commission determines is the appropriate guidelines. It may be that the commission determines, if this is the sole provider for the child, this is what the qualifications are for payment. Every child has two parents, in most cases. It's whether or not a parent is active. If there really is only one parent, that the other parent is deceased, that parent is automatically responsible for that child's care, all the way through the child's life. So no, that person may not have been paying child support, but if they're no longer dealing with the day-to-day costs, generally, child support is less than the day-to-day costs of a child. [LB29]

SENATOR CHAMBERS: Suppose that parent was poor and not able to take care of the child very well anyway. [LB29]

GAIL STEEN: And that would become the issue of, why is the child in the system? If the child is in the system because the parent is simply poor and not able to meet the child's needs, that's what the guidelines could be addressed to. [LB29]

SENATOR CHAMBERS: What difference does it make why the child is in the system, if the parent couldn't take care of the child, or the child was unruly? No matter how the child becomes a ward, I want to find out what this bill will do in terms of the potential of compelling a person to pay money to the state which the parent was not paying to anybody before, maybe buying beans and rice and bread and feeding the child the best he or she could. But now you're including medical support, which people who are in an intact family say they can scarcely pay for, and on their jobs they get assistance from an employer in paying for some of the medical costs they confront. [LB29]

GAIL STEEN: And the bill is not asking that the parent pay for the entire cost of the child. It's asking that the parent contribute to the cost of the child. The current child support guideline says, if you're making, I believe, \$850 or less a month, your child support maximum can be \$50. So the guidelines tries to build into the case of where a parent does not have much income. If the parent... [LB29]

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

Judiciary Committee
January 26, 2007

SENATOR CHAMBERS: But here's what I'm getting to. Not to be rude, but I don't want you to explain what you've made clear. I'd like to focus on what I'm having difficulty with in the bill. This will place a requirement on a single parent to pay money to the state, if the child becomes a ward, which that parent is not required to pay now, under the law. Isn't that true? [LB29]

GAIL STEEN: That's correct. [LB29]

SENATOR CHAMBERS: So we're creating a burden to the state that doesn't exist. And you're including in that possible burden the cost of medical support. That's a new addition for everybody. [LB29]

GAIL STEEN: That's not a new addition in child support. [LB29]

SENATOR CHAMBERS: Isn't...? [LB29]

GAIL STEEN: No. [LB29]

SENATOR CHAMBERS: Well, why do I see it underlined here as new language on page 3? [LB29]

GAIL STEEN: I think it's to...because that part of the statute deals with the juvenile code, where it doesn't spell out what child support is. The law in child support has said medical costs of the child is factored into the child support calculation. So if you...there generally is a requirement in a divorce action that a parent pay child support and cover...pay for insurance for the child. They receive a credit for any child...or, excuse me, for any premiums that they pay for their health insurance. If they cannot... [LB29]

SENATOR CHAMBERS: You keep talking about child support, and I'm talking about the case where there is no child support involved. [LB29]

GAIL STEEN: Right, and I'm trying to just draw the similarities of how it's worked out otherwise. [LB29]

SENATOR CHAMBERS: But what I want to know is why the new language is put here. If what you're talking about relates to child support, and I'm not talking about child support, why is the new language put on page 3? Maybe you can just explain that to me, because if it's someplace else, it doesn't need to be here. It obviously is being put here to change this language from what it is, to add a burden which now does not exist under this law when it's provided...I mean, when it's applied. [LB29]

GAIL STEEN: The burden...I'm sorry, I didn't mean to cut you off. The burden exists

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

Judiciary Committee
January 26, 2007

under case law; it doesn't exist under statutory law. This makes it clear that case law is being interpreted into statute. And also, just to address your question about a parent that is not paying child support at this time, the change is...why they should be paying to the state, is because now the state is taking care of their child, which before, the state was not, that the state has the full responsibility for their child, for everything, medical, housing, food, etcetera, that before, the parent was meeting that child's needs, or meeting the child's needs as best the parent could. That's why the change. [LB29]

SENATOR CHAMBERS: So what's your point? [LB29]

GAIL STEEN: The change is that if somebody else is taking care of your child, that you should contribute to your child's care as much as you can? [LB29]

SENATOR CHAMBERS: Why? If you can't, then why? Why should I let the state, which wastes money in a lot of programs that I'm aware of as a member of the Legislature, why should I let the state say, well, somebody's got a few nickels, and since we're taking care of this child, now we're going to get those few nickels? Now, if a person is ordered to make these payments to the state and doesn't make them, what is the enforcement mechanism? Because the child is already out of the parent's custody. [LB29]

GAIL STEEN: And again, drawing the similarity from the district court action of how they enforce, if there's a tax intercept, that may be done. If they accumulate, I believe it's more than \$5,000 in delinquencies,... [LB29]

SENATOR CHAMBERS: If they don't have that? [LB29]

GAIL STEEN: If they don't have an income? [LB29]

SENATOR CHAMBERS: Yeah. [LB29]

GAIL STEEN: If they don't have an income, they can't pay. You can't get blood from a turnip, is the kind of common refrain in district court. If a parent cannot pay, they simply do not have the means of obtaining employment or able to maintain employment, if they're on Social Security, something like that, where they simply do not have the ability to pay, that's factored into the child support calculation,... [LB29]

SENATOR CHAMBERS: How many hoops...? [LB29]

GAIL STEEN: ...and child support could always be modified. [LB29]

SENATOR CHAMBERS: How many hoops would this cruel, heartless state run a poor person through before finally concluding, well, I guess they don't have anything? But

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

Judiciary Committee
January 26, 2007

some...there are some caseworkers who are vicious. [LB29]

GAIL STEEN: And I don't think it's about the caseworkers. I think it's about the court establishing child support based on calculations that are...have been looked at. So it's not individualized. It's not an, I don't like you so you're going to pay more child support. It would be based on objective standard. [LB29]

SENATOR CHAMBERS: Well, who is going to bring this matter before a court? You have a child who is a ward of the state. The child, however he or she became a ward, had been under the custody of a single parent. And to make it easy, the other one is dead or gone and we don't know where that person is. And it could be a male or a female who is the single parent. How is that person going to wind up before a court to be involved in this system? [LB29]

GAIL STEEN: And what I would anticipate having, a parent is served with a petition in juvenile court of, your child is in need of care because of these reasons. In the cases where child support is collected, it says, if the child is...remains in care and the court determines the child needs to remain in care, the court will determine whether or not you have the financial means to help assist the child. [LB29]

SENATOR CHAMBERS: But there is no child support here, so...you keep bringing that up. How would you bring a parent before the court who is not paying child support, who is not receiving child support, no child support is involved? This person is living hand to mouth. [LB29]

GAIL STEEN: They're being brought before the court by the petition that brought the child into the system. There is something that brings the parent to court, and that's the original juvenile court petition, and that would be the impetus to get the parent before the court, which is already existing now. It's just, this bill would add a requirement that the court must look at the issue of child support as well. [LB29]

SENATOR CHAMBERS: And if the...now, the state has the physical possession of the child, and the parent doesn't show up when any paper is served, what happens? What do you do? Do you send the sheriff to look for that parent? [LB29]

GAIL STEEN: If there is a parent...if their child is removed from a parent and a parent fails to come to court and say, what do I need to get my child back, or, no, no, it's a big misunderstanding, judge, this isn't what happened, if a parent disappears for six months, then their parental rights can be terminated. Obviously, if a parent has not been served, the court cannot issue orders for child support, cannot issue orders commanding it to do things that the parent is not before the court. Does that make sense? [LB29]

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

Judiciary Committee
January 26, 2007

SENATOR CHAMBERS: And because I'm one of those muddleheaded, mash-brained, mush-brained, bleeding-heart liberals, or whatever it is, and don't want the state to be able to do this to these people, what will happen, as far as the state's being able to continue functioning, HHS continue doing its meat-grinding work on people, if this bill is not passed? Is...are all those things going to cease? [LB29]

GAIL STEEN: No. The bill says...the statute already says the court may order child support. We are asking just to change, essentially, that language to instead of saying "may" order, "shall" order, to make it mandatory, so it is evenly applied across the state. [LB29]

SENATOR CHAMBERS: I don't think Scrooge should always be the example that the state follows. Do you all at HHS go through every section of statute where there is a "may" which leaves the court some discretion, and you say, uh-uh, we going to make this person pay, or else? [LB29]

GAIL STEEN: No. [LB29]

SENATOR CHAMBERS: Well, so you don't trust the court to use its discretion, as we find existing on page 2, in line 25, where the court "may" order and decree that the parent shall pay? You want to say the court shall order? You don't trust the court's discretion? Is that what the problem is? [LB29]

GAIL STEEN: It's not a matter of trusting the court's discretion. The issue is, it's not being ordered, and so we would like it to be ordered so that it is consistent, so the state does receive some payment, in order to lessen the burden across the whole state for the rest of the taxpayers. [LB29]

SENATOR CHAMBERS: Well, isn't the situation where the order is not entered an exercise of the court's discretion, and exercising its discretion, it decides that it shall not order and decree that this payment be made? Isn't that court exercising its discretion? [LB29]

GAIL STEEN: From talking to the judges, that's not the issue. It's that it hasn't been brought before them. It's not that the judges think child support is a bad idea or the courts do not want to order child support; it just isn't brought consistently before them. They don't feel they have the power to automatically say, if nobody has asked me for it, I can still order child support. This would give the court that authority to say, in this case, child support needs to be ordered. [LB29]

SENATOR CHAMBERS: No, you're not...you are giving the court a mandate here. In every case, it has to do it. [LB29]

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

Judiciary Committee
January 26, 2007

GAIL STEEN: Right. Right. Based on... [LB29]

SENATOR CHAMBERS: And I don't like that. [LB29]

GAIL STEEN: And I understand that. That's what we're asking the... [LB29]

SENATOR CHAMBERS: Did you speculate that I might not like it when you brought it here? [LB29]

GAIL STEEN: (Laugh) We didn't bring it just to make you angry, no. [LB29]

SENATOR CHAMBERS: No, I'm not angry. But did you suspect that I might find it difficult to accept that changing "may" to "shall"? Or, I wasn't in contemplation when this bill was brought? [LB29]

GAIL STEEN: I don't think that you were specifically in mind when the bill was brought. We were aware other people may object to the same issue. [LB29]

SENATOR CHAMBERS: Okay. And now my question: If this bill is not passed, it's not going to hurt HHS one whit, is it? [LB29]

GAIL STEEN: It will remain that we are not receiving as much child support as we believe could be ordered in the case. It would reflect that we'll come back to the Legislature and ask for more money for the services that we need to meet the families' needs. There will be more cost to the society as a whole. [LB29]

SENATOR CHAMBERS: Now we're getting down to it. Dollars and cents. But because we're dealing with poor people, pennies and crumbs of pennies. How much of HHS' budget will we no longer have to be worried about as a Legislature if we pass this bill and you can grind this money from these semi-turnips? [LB29]

GAIL STEEN: And I have no idea what the...I believe there's a fiscal note that's before the Legislature. I don't know what those numbers are. I believe that's before the committee in the fiscal note, of what we anticipate the numbers will be. [LB29]

SENATOR CHAMBERS: Five percent of the budget? It will be... [LB29]

GAIL STEEN: I truthfully don't know. [LB29]

SENATOR CHAMBERS: ...five percent of the HHS' budget? [LB29]

GAIL STEEN: Whatever the legislative note...or, excuse me, the fiscal note says. I'm just not sure what that number is. [LB29]

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

Judiciary Committee
January 26, 2007

SENATOR CHAMBERS: Do you, as the attorney,...and if this is not your area, I won't pursue it. Do you have any idea what the total budget of HHS is? [LB29]

GAIL STEEN: And this is not my area. That's not something I know. I... [LB29]

SENATOR CHAMBERS: If I told you it's a lot, would you accept that as a ballpark figure? [LB29]

GAIL STEEN: (Laugh) I would guarantee that it's a lot. [LB29]

SENATOR CHAMBERS: Okay. That's all that I would ask you. Thank you. [LB29]

GAIL STEEN: Thank you. [LB29]

SENATOR ASHFORD: Senator Lathrop. Senator Lathrop. [LB29]

SENATOR LATHROP: Just a few questions, just by way of background. Typically, what happens is that some child is having problems, he might have got picked up for stealing or doing something, they come into the juvenile court system, and the juvenile court system brings the entire family in there, generally. Am I right? [LB29]

GAIL STEEN: Correct. Correct. [LB29]

SENATOR LATHROP: And in the course of bringing the entire family in, they might find out that mom has a drinking problem, dad isn't around or has got a drug problem, right? [LB29]

GAIL STEEN: Correct. [LB29]

SENATOR LATHROP: Then they use the fact that they've got the child there--and I don't mean that in a bad connotation--but they use the fact that the child has come before the juvenile court, to straighten the family out, to do evaluations and order treatment in order to bring the family back to the point where it can function and raise the child again? [LB29]

GAIL STEEN: And generally, that's true. The court is limited by what's pled by the county attorney. So if the county attorney never pleads anything about the parents' inability to meet the child's needs, the court is limited in how much services it can give the family. But assuming everything works lovely and all the pleadings are correct, yes, that's exactly correct. The goal of the juvenile court is to rehabilitate the families so they no longer need assistance from the state or from the court. [LB29]

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

Judiciary Committee
January 26, 2007

SENATOR LATHROP: And if they don't rehabilitate the family, the next step is to terminate the parental rights? [LB29]

GAIL STEEN: Correct. [LB29]

SENATOR LATHROP: So mom is given, for example--and this is not, probably, an uncommon situation--she's told to go get an alcohol evaluation, then go through drug or alcohol treatment, those kind of things, and then she'd be ordered to pay child support. Here's my question. If you don't do those things, then you can have your parental rights terminated, and that's the hammer held over their head. What if they don't pay their child support? Does that then become a consideration in whether or not the kid ought to go home eventually to mom? Or is that one of those things that reflects that the parent isn't properly participating in the family rehabilitation plan? [LB29]

GAIL STEEN: Statute 43-292 spells out the grounds that a parent's rights may be terminated, and not paying child support is not a grounds for termination. [LB29]

SENATOR LATHROP: Would you agree, though, that some of the parents are going to skip hearings because they're delinquent and they haven't pay the child support that was ordered? [LB29]

GAIL STEEN: No. [LB29]

SENATOR LATHROP: You don't think that's going to happen? [LB29]

GAIL STEEN: I don't think they're going to skip, no, because we have parents that are not meeting the service needs, that they were supposed to get a psych eval, they were supposed to attend counseling and they're not doing it, and they still attend court. The court does not use contempt powers very often in juvenile court, because it's usually not effective. So I would not anticipate situations where the court is...where child support becomes the sole problem in a case. [LB29]

SENATOR LATHROP: Maybe this is a different way to put it. It's a little bit of a nontraditional courtroom, in the sense that everybody is trying to work towards reuniting the family. [LB29]

GAIL STEEN: Correct. [LB29]

SENATOR LATHROP: And there's a lot of positive feedback for the parents when they're there. And now you've got the juvenile court judge going to have to talk to somebody about not paying the child support. [LB29]

GAIL STEEN: The court usually talks to the parent anyway about supporting their child,

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

Judiciary Committee
January 26, 2007

because usually one of the requirements is you must maintain a stable home for the child. So it would tie in with that, as well, that if a parent is not able to pay the child support, the court will ask, what's stopping you from doing this? Is it because you don't have the correct services, because you don't have transportation? What's the problem? Let's fix that problem so that you don't need to rely on the state or the court system. So does that answer your question? [LB29]

SENATOR LATHROP: I think so. Thanks. [LB29]

SENATOR ASHFORD: Senator Pirsch. [LB29]

SENATOR PIRSCH: I think you largely touched upon those things for Senator Lathrop's question. But there would be other possible ramifications, just as with child support as it exists today, including revocation of...or, I'm sorry, suspension of the individual's privilege to drive, correct, and other type of determinations? [LB29]

GAIL STEEN: I would anticipate that the other parts of the child support statutes would still apply to parents. Juvenile court generally meets at least every six months, per statute, but often meets more often, so there is no reason why the court couldn't also modify the child support order if there was a situation where a parent became laid off. And the court could suspend child support for three months while the parent was getting back on their feet. Or a parent needed to go into drug and alcohol treatment, was not going to be able to be employed while they're inpatient. There's more flexibility, I believe, in a juvenile court, simply because they are reviewing the case on a regular basis, that a district court does not do. So yes, there would be the ramifications. But there's also the benefit of having more frequent reviews, where this could be an issue at every hearing. [LB29]

SENATOR PIRSCH: Thank you. [LB29]

SENATOR ASHFORD: I just have a couple. I need to know from HHS how much money you collect now, or how much money is paid. Not this second, but I need that information. [LB29]

GAIL STEEN: Okay. [LB29]

SENATOR ASHFORD: And if you can get me a ballpark of what percentage of cases there is actually a payment. And then, thirdly, just a statement. I think...this has been...and I've been gone 12 years, and this was...something like this was before us at that time, as I recall. But I...my concern is that--and I practiced a lot in the juvenile court over the years--is that I understand the need to help pay the costs, but if you take the discretion outside of...from the court, the main object of all this is to bring the family together, primarily, and a big part of that is financial stability. That's a major part of it, as

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

Judiciary Committee
January 26, 2007

well as drug and alcohol testing and treatment and so forth. And if money is being paid to the state when the state's overriding role here is to reunite the family or to care for the child, those sort of...in my mind, once the state takes that responsibility upon itself, that it's the role of the...unfortunately, it's the role of the taxpayer to pay for that. The state takes that, they assume that role. Once we decide to get into that business, then that's a part of the business that we need to get into...or, that we need to pay for as taxpayers. I'd like a little bit more information on how we manage this. [LB29]

GAIL STEEN: And Senator, I also just want to let you know, there are cases where child support is being paid, and it does not seem to stop the parents from reunifying, does not seem to stop... [LB29]

SENATOR ASHFORD: And that's why...and I understand that, and I'm not...I appreciate your answers and your candor. I just...I have a little more faith in the judiciary to evaluate this situation, possibly, here, because each case is so different. And then the other concern I have is that once we get into the business,...and that's why it gets so problematic. When we take on a program, when we decide to do something, it is the role of government to do that, it's the role...and we look to the taxpayers to pay for that. And that's why taking on these responsibilities and these roles become very, very expensive over time. And I just...that's just the way I think about it. But I think the more information you could give me, I'd like to know about what...of what the reimbursements are, what percentage of the cases are reimbursed. And...but I...you've given me good infor...I mean, your answers have been candid, and I appreciate it. [LB29]

GAIL STEEN: And we'll be happy to provide that information to you. [LB29]

SENATOR ASHFORD: Thank you. Any other questions? Senator Chambers. [LB29]

SENATOR CHAMBERS: Tailgating on what Senator Ashford said, a lot of what any of us can say in this area would be anecdotal, so I'm going to use something by way of analogy. America, for what I feel to have been political reasons, attacked Afghanistan and the Taliban. Now I hear that the President is asking for, it might be \$10 billion to be put into Afghanistan to rebuild it, stabilize it. They have a worse heroin problem than they've had, opium, poppies, and problems that did not exist before America went in. Now that America has blundered and messed up a country, they say, you all have to straighten it out. Well, America came there. America launched a nighttime sneak attack in Baghdad. They said, Saddam Hussein is the problem. Well, they killed Saddam; things are worse there. People are saying, things were not this bad when Saddam was here. There was electricity. People were not being killed at random. There were nowhere near the numbers of people being slaughtered under Saddam as is happening now. And now the Americans are saying, it's time for the people in Afghanistan, on the one hand, and in Iraq, on the other, to solve the problems that America created. America says, we're tired of taking care of you all. America created the problem.

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

Judiciary Committee
January 26, 2007

America went there and did...they destroyed this country. They did it. The people in Iraq don't have airplanes dropping bombs. They don't have missiles. They don't have any of the destructive capability that is being unleashed on the people now. That is what America chose to do. Now they're blaming the people who were the victims. As Senator Ashford pointed out, the state entered this area, and now it's saying, those who are already facing...this is me saying it; I'm tailgating on what he said. Now that the people who are in this bad situation anyway, the state is going to put additional burdens on them and say, in every case, the court shall order these payments. You were saying, very briefly, that there are cases where people are paying child support, and the families were being reunited. Well, under the current system, the judge can order these payments or not, and may have chosen to order them in a situation where the ordering of the payments is not going to interfere with the reunification of the family. It could even be a situation where whoever is going to have to pay said, I'm willing, I'm willing to do anything to bring my family back together. So there is no quibbling or arguing about the payments. Here, no matter what the circumstances, no matter what they are, when that family comes before that court, whether there are two people, whether they're married, unmarried, whether there's one person, the judge shall order, no matter what. Well, somebody could say, well, the judge might say a reasonable amount is a penny. Well, why order that which is of no consequence and value to be done? Why order the court to engage in futility because HHS, for political or other reasons, has come up with the idea that this is good, we need to take away the discretion of the court? You happen to be sitting there. I don't expect you to answer all the things that I'm saying. [LB29]

GAIL STEEN: Oh, but I want to. (Laugh) [LB29]

SENATOR CHAMBERS: But I just want into the record, as clearly as I can say it, why I'm opposed to this bill. [LB29]

GAIL STEEN: And I appreciate that, Senator. And what the agency has seen is that it does help families engage more, become more active in the case if they are paying child support. So there's definitely a financial motive for having the child support ordered. But there's also case law...or, excuse me, there's also statistical information that indicates it also helps the family actually work to get their kids home, as opposed to saying, well, you know, it's okay being single again. [LB29]

SENATOR ASHFORD: But they can do that now. The court can order that now. [LB29]

GAIL STEEN: Correct. [LB29]

SENATOR ASHFORD: And maybe some discussions with the Supreme Court about maybe making it more clear to the judges that they would like to see that looked at more closely gets at it just as easily, to try that first, and...which is not an unreasonable request. And then let the judges, with their discretion, determine. Because I agree that

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

Judiciary Committee
January 26, 2007

there...that in some cases a financial contribution would be fine. But in some cases, it's really not fine, and it's just a problem. But I...you know. Thanks. Senator Pirsch. [LB29]

SENATOR PIRSCH: I just have a brief one. Do you envision, then, should this...these new set of payment structures be promulgated by the Supreme Court then, that that would closely mimic the existing child support guidelines? [LB29]

GAIL STEEN: I would anticipate they will use that as a starting point, and that they may note the fact that a parent is paying for services or that a parent has other needs, and so these are more exceptions in a child support case, because currently, now, you can deviate from a child support guideline under certain situations. It may be that the commission will come up with more reasons to deviate from the guideline, or it may say, if you're paying for this, then your child support is only this. Something along those lines would be...I think would be likely to happen out of the commission. [LB29]

SENATOR ASHFORD: Thank you, Senator Pirsch. Any other...do we have any other testifiers on this bill? Great. Thank you so much for your... [LB29]

GAIL STEEN: Thank you. [LB29]

SENATOR ASHFORD: Senator Stuthman, are you next? LB...I'm sorry, do you wish to close? No, Mike Friend is gone. Senator Peterson doesn't wish to close, apparently. (See also Exhibit 1.) (Laugh) Okay. Senator, good afternoon. [LB29]

SENATOR STUTHMAN: Senator Ashford and members of the Judiciary Committee, for the record, my name is Arnie Stuthman, S-t-u-t-h-m-a-n, and I am here to introduce LB306. What LB306 does--and this was...this idea was brought to me by one of my constituents--it would require that the Social Security Numbers in court orders should only contain the last four digits. But in the research that some of my attorneys in my area found out, that this was already addressed in last year's LB1113, so it has been taken care of. So at that time it was too late to withdraw it from the agenda, and I respectfully would ask that you IPP this. And those are my final comments, and that is also my closing. Thank you. [LB306]

SENATOR ASHFORD: Any questions? (Laughter) [LB306]

SENATOR CHAMBERS: Once again, you're living up to our credo of shortness. (Laughter) [LB306]

SENATOR STUTHMAN: (Laugh) Thank you. [LB306]

SENATOR ASHFORD: We would have called you right up at the beginning if that was what you...thank you, Senator. My goodness, I don't know what to do next. (Laughter)

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

Judiciary Committee
January 26, 2007

Let's see. Senator Erdman, do we have...LB102. Sure, come on up. [LB306 LB102]

CHERYL WOLFF: All right. Thank you very much. It's an honor to be here before the Judiciary Committee. This is the first time I've had to introduce a bill on behalf of Senator Erdman. My name... [LB102]

SENATOR CHAMBERS: Excuse me, could you speak just a little louder? [LB102]

CHERYL WOLFF: Oh, sure. My name is Cheryl Wolff, spelled C-h-e-r-y-l W-o-l-f-f. I'm legislative aide for Senator Philip Erdman of the 47th Legislative District. I'm here to introduce then LB102, which provides that any personal representative, other than a special administrator, for all decedents who resided in a medical institution or are 55 years of age or older shall give written notice of his/her appointment within 14 days to the Department of Health and Human Services Finance and Support. Currently, Medicaid is required to file a claim in the estate of any deceased Medicaid recipient if the deceased was 55 years or older or resided in a nursing home. It is the responsibility of the state to recover as much of the Medicaid costs as possible from available resources. Specifically, under this bill, for all decedents 55 years of age or older or who resided in a medical institution, notification would be given to the department of the appointment of a personal representative when an estate enters probate. Currently, the department learns of estates by reviewing death or probate notices in the newspapers statewide. The notification required in this bill will ensure that the department is aware of these estates. As the Department of Health and Human Services is here today, I anticipate they will be able to respond to any specific questions. And thank you very much. [LB102]

SENATOR ASHFORD: Thank you. I guess I...any questions? [LB102]

SENATOR CHAMBERS: Not of a staff member. [LB102]

SENATOR ASHFORD: Thanks. [LB102]

CHERYL WOLFF: Thank you. [LB102]

SENATOR ASHFORD: You can stay around if you like, or you can... [LB102]

CHERYL WOLFF: Oh, I'll stay. [LB102]

SENATOR ASHFORD: All right. Yes, Chris. How many witnesses do we have? You're the only one? [LB102]

CHRISTINE PETERSON: (Exhibit 3) Good afternoon, Senator Ashford, members of the Judiciary Committee. I'm Chris Peterson, P-e-t-e-r-s-o-n, chief administrative officer for

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

Judiciary Committee
January 26, 2007

the Health and Human Services System. I'd like to thank Senator Erdman for introducing LB102 on behalf of the Health and Human Services System, and I'm here to testify in support of LB102. LB102 provides that not later than 14 days after appointment of a personal representative other than a special administrator, the personal representative shall give written notice of his or her appointment to the Department of Health and Human Services Finance and Support. Currently, Medicaid is required to file a claim in the estate of any deceased Medicaid recipient if the deceased was 55 years or older, or resided in a nursing home. The bottom line is that it is the responsibility of the state to recover as much of the Medicaid costs as possible from available sources. Under this bill, notification would be given to the Department of Finance and Support of the appointment of a personal representative when an estate enters probate. Currently, the department learns of estates by reviewing death or probate notices in the newspapers statewide. The notification required in this bill would ensure that the department is aware of all possible estates. I'd be glad to try to answer any questions. [LB102]

SENATOR ASHFORD: Anyone? Senator McDonald. [LB102]

SENATOR McDONALD: Ms. Peterson, if someone is in a nursing home and they are single, I mean, the spouse has passed away so there's no home to go to, and they're on Medicaid, I thought they could only have \$4,000 worth of assets. Is that true? [LB102]

CHRISTINE PETERSON: They can have \$4,000 worth of assets. They could also, if they're the spouse, there could be a home that the spouse is currently living in. So there could be... [LB102]

SENATOR McDONALD: But I'm talking about being single. [LB102]

CHRISTINE PETERSON: Yes. Oh, being single. Yes. And irrevocable trust. [LB102]

SENATOR McDONALD: So it's really a small amount that you could go after, anyway. [LB102]

CHRISTINE PETERSON: Very small. Yes. We just...we're required to do it. Yes? [LB102]

SENATOR ASHFORD: I don't have any. Senator Chambers. [LB102]

SENATOR CHAMBERS: This is for my information. If there is a living spouse, how does this work, then? [LB102]

CHRISTINE PETERSON: It doesn't work until after the spouse dies. We defer anything until after the remaining spouse dies. This doesn't impact anybody, any spouse that's

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

Judiciary Committee
January 26, 2007

still living. [LB102]

SENATOR CHAMBERS: Right now, if I may ask,... [LB102]

SENATOR ASHFORD: Yes, Senator. [LB102]

SENATOR CHAMBERS: ...do you have an official obituary reader? [LB102]

CHRISTINE PETERSON: Yes, we do. [LB102]

SENATOR CHAMBERS: And that person collects newspapers from...I just wanted people to know how serious this is taken. [LB102]

CHRISTINE PETERSON: We do do that. We also get many people that call in to tell us about somebody who they feel probably was on Medicaid. So yes, that's how we find out. [LB102]

SENATOR CHAMBERS: And do most of those kind of calls come from the rural or the urban areas? [LB102]

CHRISTINE PETERSON: You know, I don't know if we've ever done that. One of the things about this is also the timeliness. Medicaid does not have a lien on an estate, whereas a hospital might. And so if we don't find out until way after it's settled, Medicaid might not be able to reclaim any of the money that was available to pay off other bills. [LB102]

SENATOR CHAMBERS: But I mean, you actually have private citizens call in and say, hey, somebody croaked and I think they might be on Medicaid and you might be interested in coming to get whatever they got. [LB102]

CHRISTINE PETERSON: We have many private citizens that call us about many concerns. This would be one of them. [LB102]

SENATOR CHAMBERS: Christian charity is a beautiful thing. That's all I have. Thank you. [LB102]

SENATOR ASHFORD: Anyone else? Senator Lathrop. [LB102]

SENATOR LATHROP: I do. Just a short couple of questions. [LB102]

CHRISTINE PETERSON: Certainly. [LB102]

SENATOR LATHROP: After they send notice to HHS that somebody 55 or older died

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

Judiciary Committee
January 26, 2007

and they had been living in a nursing home, the idea then is that you will be alerted to it. Do you follow the claims process and the probate code after that? [LB102]

CHRISTINE PETERSON: Yes. [LB102]

SENATOR LATHROP: You're not going to have any special treatment beyond that, where you have...? [LB102]

CHRISTINE PETERSON: No, no. No, we tried that one earlier, about two years ago, and that didn't go anywhere. [LB102]

SENATOR LATHROP: Okay. And one of my concerns, I'll just tell you, is that getting an amount of a claim from Medicaid is sometimes a lengthy process. [LB102]

CHRISTINE PETERSON: Yes. [LB102]

SENATOR LATHROP: That time span has gone from days to sometimes months, right? [LB102]

CHRISTINE PETERSON: Yes. Um-hum. [LB102]

SENATOR LATHROP: And so you're not going to hold up estates by giving yourself additional time to make the claim,... [LB102]

CHRISTINE PETERSON: No. [LB102]

SENATOR LATHROP: ...any more than any other creditor would? [LB102]

CHRISTINE PETERSON: No, this is not to hamper any process that is in place; it's to just have us do what we are required by federal law to do. [LB102]

SENATOR ASHFORD: Yes, Senator McDonald. [LB102]

SENATOR McDONALD: So in their meager possessions, if they have a wedding ring, can you take the wedding ring, or can the family have it? [LB102]

CHRISTINE PETERSON: Senator, I would have to get the specifics for you. This is...has to do with the assets. But I'd be glad to find that question out for you. [LB102]

SENATOR McDONALD: Okay. [LB102]

SENATOR ASHFORD: Senator Pirsch. [LB102]

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

Judiciary Committee
January 26, 2007

SENATOR PIRSCH: So this just has to do with the notification part, correct, just in that? And doesn't... [LB102]

CHRISTINE PETERSON: Yes, that's all it is. The process goes on. We do it now. [LB102]

SENATOR PIRSCH: Yeah, doesn't change it. And does that seem to be a problem, on occasion, that you're not getting the notice to...? [LB102]

CHRISTINE PETERSON: Yes, it is. [LB102]

SENATOR PIRSCH: Can you give me an idea or concept of how...the magnitude of the problem, you know? Because right now, your system of discovering it is based upon mainly monitoring newspapers, is that right? [LB102]

CHRISTINE PETERSON: Right. The way we figured our money, we based upon the South Dakota, because they have this in there, and we use that 1 percent collection rate of the nursing home expenditures. And so we just based it off of an average state cost that another state received, and then put our numbers into it, the number of nursing homes we have. So we didn't have a count or any that we might be missing. We have no way of knowing those. We just ran it off of South Dakota's estimates, their formula, so. [LB102]

SENATOR PIRSCH: Great. Thank you. [LB102]

SENATOR ASHFORD: All right. Just so...this would...if the spouse...no, just so I fully...this take...if there is a spouse in the home, this doesn't apply, correct? I mean, the notice applies, but the...nothing happens as long as the...then you watch the spouse in the home somehow? (Laughter) And then...sorry. Maybe I don't want to know anything more, I don't think, do I? I understand what you're...I just...but that's what you're dealing with here. [LB102]

CHRISTINE PETERSON: Yeah. We have...we are required by federal law not only to collect for a payment made to Medicaid, but if we overpay, even if it's our fault, sometimes we're required by federal law to go after that, too. So... [LB102]

SENATOR ASHFORD: Okay. Thanks, Chris. [LB102]

CHRISTINE PETERSON: Thank you. [LB102]

SENATOR ASHFORD: Any other testifiers? LB97, moving right along. Senator Flood. [LB102 LB97]

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Judiciary Committee
January 26, 2007

DENISE PEARCE: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Denise Pearce, that's P-e-a-r-c-e, for the record, and I work with Senator Mike Flood, who represents the 19th Legislative District. And I am here today on his behalf to introduce LB97. LB97 is another cleanup bill. It proposes to repeal Section 25-2922 through Section 25-2929, which set forth what is known as the settlement escrow process. These sections of law terminated on July 1, 2004. And that is all I have for you today, unless you have any questions. [LB97]

SENATOR ASHFORD: Boy. No one else...is there anyone else here to testify on this bill? Do we need to know anything else about it? [LB97]

SENATOR McDONALD: This is a good day. (Laughter) [LB97]

SENATOR ASHFORD: (Laugh) Yeah, it is. [LB97]

SENATOR MCGILL: (Laugh) I know. Geez. [LB97]

SENATOR ASHFORD: Is that all we...Senator Lathrop, do you have any questions? (Laugh) [LB97]

SENATOR LATHROP: You know what, I'm not sure what that...what you're implying. [LB97]

SENATOR ASHFORD: (Laugh) No, I was saying...no, that's a good...that was a good thing. Thank you. [LB97]

DENISE PEARCE: Thank you. [LB97]

SENATOR ASHFORD: That's it all right. This is a good day. LB290. Pete. [LB97 LB290]

SENATOR PIRSCH: Well, I'm not going to break the string. Good afternoon, Chairman Ashford, members of the Judiciary Committee. I'm Pete Pirsch. It's, for the record, P-i-r-s-c-h. I'm representing the 4th Legislative District. And the...LB290 is intended to provide that if it is determined that there won't be a sufficient number of lawyer members eligible to sit on a nominating commission, the executive council of the Nebraska State Bar Association shall nominate at least one lawyer candidate for each vacancy on the nominating commission which needs to be filled. Currently, law requires, Section 24-809 requires that two lawyer candidates be nominated for each position. Furthermore, this legislation provides that if the executive council is unable, with reasonable effort, to obtain a sufficient number of candidates for each vacancy, it may nominate candidates who do not reside in the judicial district or area served by such nominating commission. Current Section 24-806 allows candidates from outside the judicial district or area served by such nominating commission to be nominated for election to the nominating

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

Judiciary Committee
January 26, 2007

commission. And so I'll...I'm bringing this forward on behalf of the Nebraska State Bar Association. Representing that association here today is Bill Mueller. I'd be happy to take any quick questions if you have it, if I...I'm sure Mr. Mueller would be a pretty good resource if you have any questions, as well. [LB290]

SENATOR ASHFORD: Yes, Senator Chambers. No, please. [LB290]

SENATOR CHAMBERS: If you had a chance to bag a delicious, delectable salmon, would you waste your efforts on a minnow? [LB290]

SENATOR PIRSCH: Probably not, there. [LB290]

SENATOR CHAMBERS: I don't have any questions of you, Senator Pirsch, with all due respect. (Laughter) [LB290]

SENATOR PIRSCH: Okay. Very good. Thanks. Anyone else? [LB290]

SENATOR ASHFORD: Thanks. Thank you, Pete. Mr. Mueller, do you have some comments? We're normally not this informal. We're much tougher, normally. [LB290]

BILL MUELLER: (Exhibit 4 missing) Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association, in support of LB290. Senator Pirsch was kind enough to bring this bill on behalf of the bar. The Page is handing out a copy of current statute 24-806; 24-806 already provides what we are asking you to amend into 24-809. Back in, I think, 1995, this Legislature adopted a statute requiring that when the bar seeks lawyer candidates to serve on a judicial nominating commission, the bar must find one qualified candidate for each position, and if we can't find candidates from the judicial district specifically, then we can go outside that judicial district. I missed amending Section 24-809. We made that change to 24-806, but we have similar language in 24-809. So we're asking you to do two things to 24-809. We're asking you to require that we find one lawyer candidate to run in the district involved, and we're also providing language that says that if we can't find sufficient candidates from the judicial district, we can go outside that district. What happens is, when we're recruiting lawyers to serve on commissions, we need a sufficient number of democrats or independents or republicans, and there are parts of the state that it is difficult to find a lawyer who's a registered democrat, who's interested or willing to serve on a judicial nominating commission. So, I'd be happy to answer any questions that the committee may have. [LB290]

SENATOR CHAMBERS: Are there democrats willing to acknowledge that they're lawyers? [LB290]

BILL MUELLER: Yes. (Laugh) [LB290]

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Transcriber's Office

Judiciary Committee
January 26, 2007

SENATOR ASHFORD: Senator McDonald. [LB290]

SENATOR McDONALD: So do they have to stay in that party for a period of time? So say if they are registered democrat, decided maybe in the last election to go republican, and then say, okay, now I'm democrat. Does that enter into this at all? Do they have to be a democrat for a certain period of time? Or how does that work? [LB290]

BILL MUELLER: As a matter of fact, we realized this conflict in statute when the current Chief Justice position became open, and the Supreme Court Clerk's Office started looking at judicial nominating commissions, and discovered that several members of the commission, lawyers and nonlawyers, had changed their political party. And there's another section of statute that says that once you change your political party, you're off the commission. So that then triggers 24-809, where the Supreme Court Clerk contacts the Governor to find laypeople, and the Supreme Court Clerk contacts the bar to find lawyers to serve on these commissions. So if you're elected to a commission and you change your party registration, you're off the commission, even if you change back. [LB290]

SENATOR ASHFORD: Okay. Any questions of Mr. Mueller? [LB290]

SENATOR LATHROP: I'm just curious, just as a matter of educating a member of the bar, why we are going from nominating two lawyers to serve on this, to at least one. Is that a...does that allow us to have three on there--us, the bar--to have three people on there? Or is it a...? [LB290]

BILL MUELLER: Okay. Yes, I was not clear. What we're talking about here is finding the pool of candidates that then are put on a ballot and the lawyers then elect by secret ballot the lawyers to serve on the commission. We can find more than one. I mean, if we have seven lawyers who are interested, all seven will be on the ballot. There are situations where we have a difficult time finding one lawyer who's in the right party, who's in the right district. We just think that it makes sense not to have to go out and recruit two people to run against each other. If we can find one person who will run,...and we send out E-mails, we put notices of people who are interested. There are many reasons that a lawyer does not want to serve on a commission. They may have a law partner who is going to apply for that judgeship, in which case they're not eligible to serve. They may be thinking that in the future they may want to be a candidate, and once they serve on a commission, they're not eligible to be elected for a period of, I believe, two years. So there are reasons that lawyers are just not able to serve on commissions. [LB290]

SENATOR ASHFORD: Thank you, Bill. [LB290]

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

Judiciary Committee
January 26, 2007

SENATOR CHAMBERS: Just to ask a question that might have occurred to others, and even if not to others, to me, by granting this boon to the bar association, what would prevent, in a given area, the people involved from going outside that district in the first instance, because there might be somebody they'd rather have on that commission, and they don't even go through the trouble of trying to find somebody in the given district? [LB290]

BILL MUELLER: I suppose that that could happen. I think that if that did happen, I suppose that you could file a lawsuit and chall... [LB290]

SENATOR CHAMBERS: How would we know? Part of it might be taken care of when you said they have to put these notices out. [LB290]

BILL MUELLER: Absolutely. [LB290]

SENATOR CHAMBERS: And people will know that they can apply if they want to. [LB290]

BILL MUELLER: Yes. And on the bar's executive council, as you are aware, we have geographical representation. So the first thing we do is, when there's an opening in the 12th district, which is in the Panhandle, we will talk with the lawyer representative on the executive council to say, we need lawyers from that district. So we would have a real political problem within the bar if we started nominating Omaha lawyers to serve on nominating commissions outstate. [LB290]

SENATOR CHAMBERS: So what I raised in my question is not likely to be an occurrence that will take place in the real world? [LB290]

BILL MUELLER: I think that that's true. [LB290]

SENATOR CHAMBERS: Okay. [LB290]

BILL MUELLER: We really make an effort to find lawyers from that district. And those lawyers will know, because, again, after we nominate, they then get a ballot, and they'll see that Senator Lathrop and Senator Pirsch are the only candidates from the 12th district. We will get calls if that would happen. [LB290]

SENATOR CHAMBERS: And especially when neither one of them lives there. (Laughter) [LB290]

BILL MUELLER: That's right. [LB290]

SENATOR CHAMBERS: Okay. [LB290]

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

Judiciary Committee
January 26, 2007

SENATOR ASHFORD: Thanks, Bill. [LB290]

BILL MUELLER: Thank you. [LB290]

SENATOR LATHROP: Can I ask a question about a previous bill? [LB290 LB102]

SENATOR ASHFORD: Yes. [LB290 LB102]

SENATOR LATHROP: We had the Health and Human Services here a moment ago, and I think you were in the room. [LB290 LB102]

BILL MUELLER: I was, and I'm aware of that bill. [LB290 LB102]

SENATOR LATHROP: And they...yeah. And they asked to essentially require of probate lawyers that they notify HHS every time somebody 55 or older dies that once resided in a nursing home. That burden doesn't trouble the bar association? [LB290 LB102]

BILL MUELLER: HHS has been before this committee with this bill before. I believe that there was a bill two years ago, and there may have been a bill four years ago. After those bills were...well, when those bills were introduced, the bar opposed those, because as introduced, those bills would have required a notice in every estate. I worked with HHS to limit it to those persons 55 years of age or older, or those who had been in--and I don't have the language in front of me--but had been in facilities. And HHS was kind enough to introduce the bill with that language this year that we had agreed to a year or two ago. [LB290 LB102]

SENATOR LATHROP: Okay. I'm just wondering then, if I'm a probate attorney, which I'm not and never have been, but if I was a probate lawyer and my...some lady brings the...you know, dad died, and he was...and we never talk about the fact that he was in a nursing home at one point or another, and me, the probate lawyer, don't send the copy to HHS, is there liability there? [LB290 LB102]

BILL MUELLER: I think that there could be, and that's our concern. I mean, I think in a perfect world we wouldn't have this notice requirement. But I think looking at the fact that HHS, through its Medicaid program, has expended public funds,... [LB290 LB102]

SENATOR LATHROP: Okay. I was just wondering, and I may be out of order to ask that question after they've left, but I think it's... [LB290 LB102]

SENATOR ASHFORD: I think it's a good question. [LB290 LB102]

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Transcriber's Office

Judiciary Committee
January 26, 2007

BILL MUELLER: Well, and I thought about coming up in the neutral capacity. [LB290 LB102]

SENATOR ASHFORD: Well, you're here now, so. [LB290 LB102]

SENATOR McDONALD: Does everyone that dies have to go through probate? Are there some estates that are small enough that they don't require them to go through probate? [LB290 LB102]

BILL MUELLER: I believe that there are. [LB290 LB102]

SENATOR McDONALD: So if there were small amounts of assets, they don't go through probate, is this necessary to have this bill, if you're not going through probate to finalize the assets? [LB290 LB102]

BILL MUELLER: Senator, I will tell you, I have never probated an estate in my life, so I'm certainly not an expert on this. My recollection of the bill talks about, whenever a personal representative is appointed,...I don't believe that PR is appointed in every situation,... [LB290 LB102]

SENATOR ASHFORD: So that...no, I think it... [LB290 LB102]

BILL MUELLER: Senator Ashford probably knows more than any of us around the table. I... [LB290 LB102]

SENATOR ASHFORD: I don't. No, please, Senator...Mr. Miller, don't presume that. But I think the fact that they mention personal representative would imply that...or, not imply, but would connote the fact that, yes, there has been a probate. Otherwise, there's no...because it says personal representative and it excludes special repre...or, special administrator. So I think that's correct, Bill. [LB290 LB102]

BILL MUELLER: I will find out, though. [LB290 LB102]

SENATOR McDONALD: So in an estate that's so small that people can't afford to go through probate, because it does cost, and their assets are so small, they wouldn't even go through probate, so that there was no way for Health and Human Services to get the assets that they think they're deemed if it doesn't go through probate. [LB290 LB102]

BILL MUELLER: And I... [LB290 LB102]

SENATOR ASHFORD: I think that's right. [LB290 LB102]

BILL MUELLER: Yeah, I don't believe that this bill would require that a personal

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Transcriber's Office

Judiciary Committee
January 26, 2007

representative be appointed. [LB290 LB102]

SENATOR LATHROP: There is a process for estates smaller than \$10,000, or \$20,000. What's the number? It used to be \$10,000, that you can do it by affidavit. [LB290 LB102]

BILL MUELLER: By affidavit. [LB290 LB102]

SENATOR ASHFORD: That's a good question, though, Senator McDonald. Thanks, Bill. [LB290 LB102]

BILL MUELLER: Thank you. [LB290 LB102]

SENATOR ASHFORD: Going back to...no, Bill, I was going to ask you some questions on the first... [LB290]

BILL MUELLER: Sorry. [LB290]

SENATOR ASHFORD: No, I'm kidding. That's fine. Thank you. We're done. We're done. [LB290]

BILL MUELLER: (Laugh) On this bill, LB290. [LB290]

SENATOR ASHFORD: (Laugh) No, I don't know. [LB290]

BILL MUELLER: Thank you. [LB290]

SENATOR ASHFORD: Thank you. That concludes all of the hearings, I believe. [LB290]

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Judiciary Committee
January 26, 2007

Disposition of Bills:

LB29 - Held in committee.
LB97 - Advanced to General File.
LB102 - Indefinitely postponed.
LB290 - Advanced to General File.
LB306 - Held in committee.

Chairperson

Committee Clerk