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Judiciary Committee  
January 20, 2011

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[LB79 LB85 LB94 LB124 LB157]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 20, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB157, LB85, LB124, LB94, and LB79. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR ASHFORD: Welcome to the Judiciary Committee. On our agenda today, we have LB157, LB85, LB124, LB94, and LB79. There are five bills altogether. How many are here to testify on Senator Coash's bill, LB157? Okay. How about LB85? All right, that's...LB124? LB94? Okay. And the rest would be Senator McGill's LB79. Okay. Okay. Let me introduce my colleagues here. Senator Larson is our newest senator, he's from O'Neill, Nebraska, and welcome again. Senator Lathrop, the Vice Chair, is from Omaha; Senator McGill from Lincoln; Senator Council, of course, from Omaha. Stacey Conrad...

STACEY CONROY: Conroy.

SENATOR ASHFORD: Conroy. She was...

SENATOR LATHROP: Lives next to Conrad.

SENATOR ASHFORD: Lives next to Conrad. (Laughter) Stacey is just...Conroy, of course, but before she was Stacey Trout. But she is our legal counsel, and Oliver VanDervoort is the new committee clerk. So with that, Senator Coash, who is also on the committee, will introduce LB157. Let me just remind everyone that we are using the light system, which means that other than the introducer, Senator Coash, and possibly Senator Wightman, we'll see how he does...but you have three minutes to testify. We have a yellow light that will go on that will tell you that there's one minute remaining in your testimony. We won't include the questions and answers in that time, obviously, but we'd like you to keep your presentation to three minutes so that we can get through all five bills and have everybody still awake and attentive. So, Senator Coash, would you like to introduce LB157? [LB157]

SENATOR COASH: (Exhibits 1 and 2) Yes, thank you. Okay. So good afternoon, Chairman Ashford, members of my Judiciary Committee. For the record, I am Colby Coash, C-o-l-b-y C-o-a-s-h, and I represent Legislative District 27 right here in Lincoln. So I'm here today to introduce LB157. This is a bill to reform the guardian and conservator system in Nebraska. This bill is a product of the guardianship task force commissioned by Chief Justice Heavican in June of 2010. We heard the Chief mention this in his State of the Judiciary today. This task force was convened in response to some very notable tragic instances of abuse of protected persons, also known as wards, by their guardians. And I refer you to the Omaha World-Herald article provided to

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you. The chair of the task force, Senator John Wightman, is also here today and he'll provide an overview of the commission's mission and outcomes following this introduction. This bill represents the beginning of needed reform in the guardian/conservator system. This committee worked very hard, and I am honored to be the spokesperson for the legislative changes recommended by this committee, and I would like to take this opportunity to thank the members of my committee, some of whom are here today. Their dedication to protecting vulnerable Nebraskans is very commendable. The change which I will outline in LB157 represents legislative changes only. In addition to these changes, the court is making needed changes through the court-ruled process. The committee was dedicated to making needed changes to the guardian/conservator system while remaining cognizant of the state's financial situation. We all admit that there is much more to do, but the most pressing need is to find a way to assure that all vulnerable Nebraskans who need a guardian and/or conservator have one. As our population ages, the demands for guardian and conservators will increase, and I'm committed to finding a sustainable way to meet these increased demands. Nebraskans continue to step up and provide their services to vulnerable people as guardians and conservators. They do this because it's the right thing to do, and sacrifice their time and resources to serve others. All of those who step up to be guardians and/or conservators should be commended. The incident that is portrayed in the Omaha World-Herald article is the exception and not the norm. So on to the bill itself. LB157 accomplishes two goals: It provides the court with tools and flexibility needed to oversee these cases, and it enhances the responsibility of guardians and conservators. LB157 makes the following statutory changes: It creates a guardianship and conservator database that will display the status of each guardian or conservator, how many individuals a person is guardian or conservator for, and any information regarding the suspension or removal of a guardian or conservator. This information is already recorded within the JUSTICE system. It simply needs to be transferred into a stand-alone format and made available to the court's Web site. Secondly, it gives judges the ability to refer guardian/conservator cases to mediation or dispute resolution centers, thus freeing up much needed resources for weightier cases. And finally, the bill allows judges to issue ex parte orders when an interested person asserts, via affidavit, that a ward's safety, health, or financial welfare is at issue. Those orders would remain in effect for ten days or until the next hearing, whichever is earlier. In order to enhance the accountability of guardians to both the courts and, most importantly, to their wards, LB157 makes the following statutory changes: First, it requires background checks of a guardian to be conducted and filed ten days prior to an appointment hearing. The checks include a credit check, criminal history record check, a central registry check, and a sex offender registry check. However, the judge may waive these checks at his discretion. Furthermore, the results of these checks shall not be considered public record. Secondly, a newly appointed guardian shall file an inventory of the ward's assets within 30 days of appointment. Only upon this filing shall the guardian receive his or her official guardianship letters from the court. In practical terms, this statutory change eliminates an often-committed crime of opportunity; that is, the guardian cannot have

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the authority to withdraw funds from a ward's account until he or she has filed in court an inventory of those accounts. In order to assemble this inventory, the guardian will obtain permission from the court at appointment. Thirdly, a guardian or conservator must furnish a bond on assets over \$10,000. A judge may waive this requirement for good cause shown, including the express wishes of the ward. Also, the guardian must send a copy of annual inventories to persons interested in the ward's welfare. These interested persons will also be provided a form to fill out and mail to the court if they desire to remain recipients of further inventories or reports on the ward. Along with the final inventory, the guardian shall also file an affidavit saying to whom he sent the inventory copies. Furthermore, the guardian must register his or her case in the guardianship database. And, in addition, the guardian must file his or her letters of guardianship with the register of deeds in each county where the ward owns property or interest in property. And, finally, the guardian must obtain court permission to move the ward's place of abode outside the state of Nebraska. So those are summaries of all the changes. I will tell you that this task force worked very hard throughout the summer. There were many, many ideas as to how we can address this problem. As I said earlier, these changes represent legislative changes in addition to the court-ruled changes, and we felt that what is presented in this bill is the best that we can offer given the short time frame and the fiscal constraints and what we feel we can do to better protect the wards of Nebraska. [LB157]

SENATOR ASHFORD: Thank you, Senator Coash. I'm going to take the time to read the names of the people who served on this commission because, literally, within less than a year's time--and Senator Coash, thank you for all your leadership, and Senator Wightman--but in less than a year's time, really only a few months--seven, eight months, how much? [LB157]

STACEY CONROY: Like three months. [LB157]

SENATOR ASHFORD: Three months. I don't know, I can't imagine any other state or state legislature that could ever address such a complex issue in such a short time. So I'm going to go ahead and name everyone on the list because everyone was fabulous. Judge Bazis, I know she's here--thank you; Sam Brower from Omaha; Senator Coash; Senator Council seems to be on every committee. Do you do any...do you have any free time at all, Senator Council? John Dougherty who is from Omaha; Judge Curtis Evans; Todd Hutton from Sarpy County worked on this; Kathy Jones, the clerk magistrate from Red Willow County; Janet Labenz from Lincoln; Terry Macnamara from Omaha; John McHenry from Lincoln; Senator Nelson from Omaha--John Nelson; and Mary Newman, who I don't know if Mary is here, from the police department in Omaha. Also the staff members: Roger Keetle, who's here; and Sheila Page is here; and Stacey, whatever your last name is (laughter), Stacey Conroy is here; and certainly Deb Brownyard, who's in the back. Thank you, Deb, for all your work. This is really a tremendous effort, so that's the way we do things here. John, would you like to...are

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there any questions of Senator Coash? Senator Wightman. [LB157]

SENATOR LATHROP: Can I ask a question? [LB157]

SENATOR ASHFORD: Sure. [LB157]

SENATOR LATHROP: I've just thought of one. I was trying to read through this, Senator Coash, and I agree with Senator Ashford: great work. And I do a little bit of this, just enough to be dangerous. I'm not an estate lawyer, but I do find myself in conservatorships, most of which involve minors. But it looks like you're going to have people file...conservators will now file a credit report, and then they run their history. So what's the standard for what the credit report needs to look like in order to be okay with serving as a conservator? Do you have to have a score or is it a...? [LB157]

SENATOR COASH: Right. That was a big question within our committee as to not only what the standard was but who should define that standard, and where we did land was we would allow the court to set those standards. But I think what you're going to find is there's an amendment going to be proposed to remove that actual requirement because it seemed to be a little bit confusing. And we didn't get those details worked out, and so we may bring something back that is a little bit more specific to that. But I think... [LB157]

SENATOR LATHROP: I do have a credit report for insurance purposes so I got a little bit of background in this, and I am concerned that some people have not that good of credit because they don't use credit. [LB157]

SENATOR COASH: Right. [LB157]

SENATOR LATHROP: And that might be the perfect person to serve as conservator, so. I guess we either have a standard or we take it out. [LB157]

SENATOR COASH: Yeah, and that's where we have landed as well. Where the credit part of this bill started to come in was just to make sure that people who we would ask to manage somebody else's finances would have the ability to manage their own, but also be of good character--and poor credit doesn't speak to character. Criminal background checks can speak to character, and so we feel that through making sure that, at least through the criminal background checks, that we can keep the good actors in who will be qualified and appropriate. [LB157]

SENATOR LATHROP: And it may get to the same question though, too, on criminal background checks. So you have somebody who has--and we'll take an elderly woman. She's 85, onset of dementia. Now we need a conservator and a guardian. And she has one son--one son--and he has a shoplifting charge from three years ago. Took a pack of

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cigarettes from somewhere. If we don't have a standard for who's going to be okay, you know, what's the standard? How bad does your criminal record have to be? My concern is we also have had hearings on not having enough of these guys around, you know, lawyers... [LB157]

SENATOR COASH: Yes. [LB157]

SENATOR LATHROP: ...or people that are willing to serve as guardians and conservators. So are we going to eliminate somebody who might be just fine for Mom and Dad's conservator and guardian because they have a shoplifting or something that's relatively criminal but also not very big? [LB157]

SENATOR COASH: Yeah, the task force talked about that as well because it is...we have a shortage of people who will step up to do this in the first place. And people who work in this will always tell you that it's always best to have a family member to do that. And so, with the standards, we've addressed that, I believe, through an amendment as well, to try to... [LB157]

SENATOR LATHROP: Okay. Thank you. [LB157]

SENATOR COASH: We'll make sure...that was a concern of our committee as well. [LB157]

SENATOR ASHFORD: Thanks, Colby. [LB157]

SENATOR COASH: Okay. [LB157]

SENATOR ASHFORD: Senator Wightman. Senator Lautenbaugh has joined us. Welcome, Scott. [LB157]

SENATOR WIGHTMAN: Good afternoon, Chairman Ashford, members of the Judiciary Committee. I'm John Wightman, spelled J-o-h-n W-i-g-h-t-m-a-n, and I represent District 36, however I'm here as having served on the committee. I was Chair, but most of the others did a lot of the heavy lifting because if there had been strict truancy laws in effect, I probably would have been charged. (Laughter) I spent some of the time in the hospital and some of the time in recuperating. [LB157]

SENATOR ASHFORD: Well, you also had a little injury you had to deal with. [LB157]

SENATOR WIGHTMAN: (Exhibit 3) Right. So I do urge your support of LB157 which makes needed changes to the guardian/conservatorship laws of Nebraska. In April of 2010, Chief Justice Heavican formed the 14-member Joint Review Committee on the Status of Adult Guardianships and Conservatorships comprised of judges, attorneys,

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legislators, court personnel, law enforcement, and accountants responsible for examining Nebraska's guardian and conservatorship system. Over half of the members of the committee had served and had practical experience as a guardian or a conservator. The pages I think are providing you with a handout listing the members, but you, I think, already have that, so. The Chief Justice appointed me as Chair, as I said, and I got to plead guilty to not doing too much of the heavy lifting. The other legislators serving on the committee, you've already been...you've already named them, Mr. Chairman. So I want to thank Senator Coash for being the primary introducer of LB157. He served in a leadership position as the chair of the subcommittee on best practices for guardians and conservators. Your fellow committee member, Senator Council, was also very active in that committee and contributed a significant amount of time and talent. It is very fortunate that both senators serve on the Judiciary Committee and can be resourceful for additional information. The Chief Justice's charge to the committee was: (1) review the status of adult guardianships and conservatorships in Nebraska courts; review and recommend any needed changes to Nebraska's guardianship and conservatorship statutes; review court rules and best practices in guardianship and conservator cases in Nebraska's courts; review best practice for judges, lawyers, and guardians and conservators; and review the need for any additional resources which might be necessary in order to implement any proposed changes. The committee worked through the summer to study the challenges of our current system, review Nebraska court data, and review the research on various systems. On October 1, the committee filed its report with the Supreme Court addressing all aspects of its charge, with 45 recommendations and recognized that more will need to be done. So this is probably a starting point rather than final action, but. As the demographics of the state change, the state will have more elderly residents, as has already been suggested, and who do not have family members to care for them. Need for guardians and conservators will grow, we're sure of that in the future, and we need to plan for that future. LB157 was introduced to implement one of the committee's charges and related recommendations to make needed changes to the Nebraska's guardianship and conservatorship statutes. As I say, it represents a beginning, not an end. As interested parties review the provisions of LB157, you will be presented with amendments to fine-tune the language of the bill. I've had the opportunity to review these amendments but only for a few minutes this morning, that will be presented to you by a representative of the Nebraska State Bar Association. The amendments appear to be reasonable but, due to my limited time I'm not in a position to take a...to represent any position on them. I would urge you to advance LB157 after careful consideration of the testimony provided to you today. I would like to address a little bit on Senator Lathrop's question that he had. And I think it's well taken that there could be a real possibility of problems looking at credit reports, considering the limited number of people ready to step forward. By the same token, a lot of these conservatorship problems do result from embezzlement of funds in some instances and defalcations. And so that was the reason for that suggestion was that maybe a credit report which, if you didn't define standards, would still perhaps raise a red flag to the

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judge who was handling the particular case, but it might be that you would need to define them. However, that is one of the...one of the proposed amendments deals with that issue. So I'll try to answer any questions that any of you may have. [LB157]

SENATOR ASHFORD: Any questions of John? John, thanks very much for all your efforts on this. [LB157]

SENATOR WIGHTMAN: Thank you. [LB157]

SENATOR ASHFORD: Sure. Judge Bazis. [LB157]

SUSAN BAZIS: Chairman Ashford, members of the Judiciary Committee, my name is Susan Bazis. I am a Douglas County Court judge and I am currently the presiding judge of Douglas County Court. I come here today on behalf of the executive committee of the County Judges Association who does support this bill, as well a member of the guardianship and conservatorship task force that was created by Chief Justice Heavican last summer. The task force was made up of judges, lawyers, senators, clerk magistrates, an accountant, and a police officer. We worked very hard looking at the issues in guardianship and conservatorship cases. We also knew that there was not going to be a lot of money available for the implementation of the recommendations of the task force. The task force recommendations regarding costs fell into three categories: (1) things that would virtually cost nothing to implement, (2) things that may have some cost to implement, and (3) things that would cost a lot to implement, such as a public guardian. One of the biggest things the task force felt would be extremely helpful to everyone involved in these cases, which would really not cost anything, was information. The committee determined that information was one of the best tools that could be used to improve the system, for example, getting more information to the judges up front in a case before a guardian and conservator is appointed, getting more information to the guardian and conservator up front so they know what is expected of them, and getting more information to interested parties who are in the best position to determine if all of the ward's assets are being accounted for. After careful consideration, the task force came up with 55 recommendations. The recommendations were broken down within the report by departments, that being the judiciary, Legislature, State Court Administrator, and attorneys. When you look at the recommendations further, they break down into a number of categories in order to implement the recommendations, which are: legislative changes, court rule changes, policy changes, and technology changes. No one recommendation alone will fix the issues that have currently arisen in guardianship and conservatorship cases. It is a combination of the recommendations that will hopefully improve the system. The recommendations in LB157 are a start to implementing the recommendations from the task force. After this legislation is, hopefully passed, the next phase can start, which are the court rule changes and policy changes. Again, it is a combination of all of the recommendations from the task force which will change how guardianship and conservatorship cases are handled to,

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hopefully, give more oversight and accountability in these cases. LB157, along with the court rule changes, policy changes, and technology changes, will give judges the tools they need to get more information which benefits the courts and, in turn, will benefit the ward and protected person. Judges are only as good as the information we get because we cannot produce information and we cannot investigate matters on our own. LB157 also provides for a procedure for judges to act on information they receive when a ward, protected person's safety, health, or financial welfare is at issue. This legislation will make the system consistent throughout the state and it will help judges preside over these types of cases. On behalf of myself as part of the guardianship and conservatorship task force and on behalf of the executive committee of the County Judges Association, we do support this bill and recognize that LB157 is a little piece to a larger concept. I want to thank you for allowing me to speak here today, and I'll answer any questions if you have any. [LB157]

SENATOR ASHFORD: Yes, Senator Council. [LB157]

SENATOR COUNCIL: Just a comment, Mr. Chairman, fellow Judiciary Committee members. Senator Coash, Senator Wightman, Senator Nelson, all of the members that worked on this task force put in a tremendous amount of work, and I would be remiss if I didn't say that as a member of the committee that was chaired by Judge Bazis, I felt that I was worked like a farm mule. (Laughter) [LB157]

SENATOR ASHFORD: She has that reputation. [LB157]

SENATOR COUNCIL: And I just want to take this time to express my appreciation for the countless hours that I know you personally put in to the task. I think our committee probably had a weekly telephone conference. The Judge developed and created sample forms that we reviewed at nearly every opportunity. And I just want...I know it's been mentioned, but I really want everyone to appreciate the amount of time and work that went into this effort by everyone involved. And, like I said, I would be remiss if I did not recognize my committee chairperson for the leadership that was provided because I didn't understand how she was doing it and handling her regular caseload with the amount of work that the committee put in. So thank you, because it's a good product. I mean, 55 recommendations is evidence of the amount of effort that was put in, in basically a three-month period of time, so thank you. [LB157]

SUSAN BAZIS: Thank you. [LB157]

SENATOR ASHFORD: Thank you, Senator Council. Welcome, Senator Harr; Burke Harr is here. I just have one question, and you mentioned it, the ex parte orders or ex parte action. What do you do when you get information from...and I'm certain this was discussed, but what do you get when you get ex parte notes or telephone calls or whatever it may be? How does that (inaudible) the rule against taking unilateral action



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or the...I guess the rule or the legal prohibition against taking ex parte action or action in ex parte matter? What do you do in that case and how is that resolved here? And I guess it's still out there, but. [LB157]

SUSAN BAZIS: Well, the judicial code prevents us from having ex parte communications. And so what has happened is we get letters that are unsigned--sometimes they're signed, sometimes they're not. It could be a phone call saying, you know, the guardian or conservator is taking all of the ward's money. And there is not a system in place, which at least this legislation puts a system in place of what we're supposed to do, and there's not consistency throughout the state. Some judges ignore it and say: I can't do anything with that because it's an ex parte communication. Others, such as myself, will treat that as a motion, set it for a hearing, send the information to the parties, and then we have a hearing on it. Part of the problem... [LB157]

SENATOR ASHFORD: How cumbersome is that? I mean, do you take each ex parte communication and turn it into a motion or do you...you make a value judgment on the...how do you...? [LB157]

SUSAN BAZIS: You have to make a value judgment, but the problem is you're obviously looking at it and trying to make that determination, and it is something that I think all judges are very uncomfortable with. But at the same time, I don't feel you can ignore it, and so you have to make a judgment call. And the toughest ones are where they're saying they're draining the bank account, because by our code we cannot act or do an order to freeze those accounts or do anything until there's a hearing and everybody has been noticed in and come in. And usually by that time, the money is gone. It's gone. So this really puts something in place for us to be able to use in order to...in that exact scenario I would be able to freeze the bank account and then bring everybody in and we can talk about it and decide whether it's justified, true or not, and move on from there. [LB157]

SENATOR ASHFORD: Okay. Thanks. Yes, Senator Coash. [LB157]

SENATOR COASH: Thank you, Chairman. Thank you, again, Judge Bazis. I echo everything that Senator Council mentioned. The amendment that's going to come is going to take care of the credit check, which I'm going to be supportive of. With regard to the criminal history background checks, the bill as written gives a lot of judicial discretion. It says that a judge just isn't going to be able to sign the order until they've reviewed those checks. And as the bill is now, I don't...it's all in the judge's discretion. Can you...just from your experience, can you speak to that, how you feel about that part of it? Because I know we talked a lot about that piece of it, and I think it might help the committee understand how it might work. [LB157]

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SUSAN BAZIS: I think it's an important piece. Right now, what happens is the guardian and conservator, a petition is filed, that person is recommended, they come in. If nobody objects, they're appointed. The judge has no information on the background of the guardian and conservator. Nothing. We don't know anything about these people. And I would like...I don't want to put a wrench in anything, but as to the credit check, I understand the concern--and even the background check--about are we going to make it so people won't be able to serve? And we did talk a lot about that within the committee, because I think the initial recommendation was if you ever had a judgment against you, you could not serve. And I said, we wouldn't have anybody to serve or very...it would cut out a lot of people. But the background check or the credit check actually may be somewhat important, because not everybody will get bonds and the courts can waive the bond, for example, if the majority of the money is being paid to a nursing home or something. And I think the bar association's position is that there's going to be a credit check that's done for the bond and they won't be able to get bonded if they don't pass a credit check, which is true, but if they don't pass, the court won't see that credit check and I don't know that the bonding company will release that to the court. And it may be something that I want to consider to determine whether I'm going to restrict these accounts, because if they can't get a bond I may be able to restrict it so they can't get into it without a court order. But the background checks, the credit checks, all of those are tools that the court can use to determine whether I'm going to set bond, how much the bond will be, whether I'm going to restrict those accounts, or maybe not appoint that person at all. But, right now, we don't have any information on these people that get appointed. None. [LB157]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB157]

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford. Thank you for coming today, Your Honor. Would just a check of the court records for judgments be a compromise and something short of a full-blown credit check? [LB157]

SUSAN BAZIS: The problem is you would have to do it throughout the...I mean, I guess through [Nebraska.gov](http://Nebraska.gov) you could do that throughout the state. Possibly. And I would say in the bill Senator Coash has put, a lot of this is in the judge's discretion and they can waive that if they deem it to be appropriate. Whereas if there's only one heir, that being the son, you may say, you know, it's okay, I'm going to waive that, you don't need to do the credit check. So in certain circumstances that might be okay because each case is different based on who's doing it. You can't treat them all the same. And so that's why I do think it's important for the courts to have discretion and possibly waive some of these requirements, because in one case it maybe should happen, in another case it wouldn't be required. [LB157]

SENATOR LAUTENBAUGH: Similarly, regarding the criminal issues that you're going to be able to consider, do we need to spell out what crimes you can consider like we do in

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the rules of evidence as to whether or not a prior conviction is admissible that deals with this type of thing but not this type of thing? Would that be helpful, or is that too much? [LB157]

SUSAN BAZIS: I think it's too much. I don't think it's necessary. I don't think you need to go that far. I think all the judges are looking at these as a tool just to determine what we do on bond and certainly whether the person should be appointed or not. But if it's a shoplifting from 20 years ago versus, you know, a felony assault that happened last year, I mean, those are two different things. But I personally would still want to know that as a judge, because that way if I have a question about that or what the circumstances were regarding that, I can ask the person while they're in court with me, while everybody is there. I can ask them. If I have a concern about their background or some criminal offense, I can ask them about it and make a determination based on what I want to do on that case. So I don't think you need to go out and specify you can...you know, if you are convicted of this, you can't serve. And I would prefer that you didn't do that because that will severely limit the people we have to serve. And without a public guardian, we're pretty short to begin with. [LB157]

SENATOR ASHFORD: Thanks, Judge. [LB157]

SUSAN BAZIS: Thank you. [LB157]

SENATOR ASHFORD: The next testifier is...or John McHenry. Is John here? Let's see, Marla Fischer-Lempke. I'm sorry. I just wanted to make sure I got the name right. [LB157]

MARLA FISCHER-LEMPKE: That's fine. [LB157]

SENATOR ASHFORD: I had half your name. [LB157]

MARLA FISCHER-LEMPKE: (Exhibit 4) Members of the committee, my name is Marla Fischer-Lempke, M-a-r-l-a F-i-s-c-h-e-r-L-e-m-p-k-e. I'm with The Arc of Nebraska. We're a statewide organization for people with developmental disabilities and their families. We have 17 local chapters across the state. The Arc of Nebraska supports LB157. It's our experience that guardianships are often looked to as the first answer to situations where a less restrictive option of substituted judgment may be more appropriate. The Arc's core values strongly promotes self-determination. In that regard, we commend the option of courts referring guardianship and conservatorship proceedings to mediation. This is a wonderful opportunity for those considering guardianships or conservatorships to look at less restrictive options. One example is that a person might be able to make some decisions for themselves, like where they want to live, where they want to work, but the same person might need some assistance with directing their medical care or their finances. It doesn't necessarily require a

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guardianship to help with those kinds of decisions. Less restrictive options, such as powers of attorney, may be utilized instead. Not only will exploring these options allow for more self-determination of the individual, but it will save precious judicial resources as well. Fewer people will need to involve the court for a full proceeding when a simple document will suffice. Further, while limited guardianships exist and are preferred in statute, they're often not utilized in practice. We also appreciate the requirement of background checks for guardians. We're aware of situations where a guardian might have several people as their ward. It calls into question whether the guardian can truly fulfill his or her duty to look out for the ward's best interest. Putting measures into place that involve registries and the other measures that were mentioned will be one way to...a good way to enter into these relationships cautiously. One suggestion that we would offer is to provide an alternative to the State Patrol check as offered in LB166. If an equivalent measure can be offered that's less time consuming, this may help to speed the process along. Finally, we commend the bill's provision to ensure a prompt inventory of the protected person's property. However, we would offer that notice always be given to the ward as an interested person. While current statute allows notice to be given to the ward if he or she has sufficient mental capacity to understand these matters, there is an entirely different determination that is beyond the scope of the statute. To disregard notice without fact-finding efforts to determine the person's capacity to understand the notice, effectively disregards the ward's rights. This has the potential to be detrimental to people who are already vulnerable. We suggest consistently requiring notice to be sent to the ward any time notices are sent to interested persons. The ward should always be included as an interested person in his or her affairs regardless of mental capacity. We thank Senator Coash for introducing this legislation and request advancement of LB157. I'd be glad to answer any questions. [LB157]

SENATOR ASHFORD: Any questions of Marla? Thank you. [LB157]

MARLA FISCHER-LEMPKE: Thanks. [LB157]

SENATOR ASHFORD: Thanks for your testimony. Is Mark Intermill here? Yes, Hi, Mark. And then Tom is next. [LB157]

MARK INTERMILL: (Exhibit 5) Thank you, Mr. Chairman. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I appear today on behalf of AARP Nebraska. And I would echo the plaudits for the committee and the work that they did this year. We were following their activities and we certainly appreciate the work that's been done. I would also say that I appreciate the statement that this is a starting point. And as a representative from AARP, I'm here to push a little bit farther. We think that there are a lot of good things that this bill does. The database, the inventory of the estate, the annual updates, all of those things move us forward. But we also, as we looked at this bill, recognized that there are two different types of guardians. There's the family

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guardian--the person who has an established relation with the ward who has a longstanding understanding of that individual. There are also the professional guardians who may have dozens of wards. And one of the things that AARP is interested in is developing a certification process for those professional guardians, and we think that this bill provides the basis for that. And we've provided you with some information about other states that have established certification processes, what those processes look like. They require either training or testing for guardians, for those professional guardians who may be appointed by the courts but who may not have that longstanding relationship with the ward. So we want to just raise that as a possibility and suggest that that may be something that we could establish in Nebraska to help us provide better protections for those individuals who have been declared incompetent or incapacitated by the courts so that they can be assured of having the best possible life. [LB157]

SENATOR ASHFORD: Thank you. Any questions? It's good to be pushed a bit. But it's a good start, I agree, Tom. [LB157]

THOMAS MAUL: (Exhibit 6) Senator Ashford, members of the committee, good afternoon. My name is Tom Maul. I'm a lawyer, practicing lawyer, in Columbus, and I'm also the chair of the Nebraska Bar Association legislation committee. And let me also start out by saying how very much we practitioners of the law who do this guardianship-type work appreciate the efforts of the task force that they worked so very hard on. We certainly are all aware of the terrible problem that occurred in Douglas County. And, you know, and unfortunately it happened if you will, through the court system, and it's something that just should not happen. We have some concerns, and I say we, I mean the legislation committee--there's 30 lawyers. And we sat down last Friday and looked at approximately 80 bills, and certainly this was one of them that generated a lot of discussion. A good number of the lawyers on that committee, like myself, do this kind of work. There's a sentiment among many of the people that, you know, let's be a little careful because we want to end up with something that accomplishes what we're trying to do and doesn't make it so very difficult that we're not able to practice out there. Mark just mentioned the distinction between a family guardian and professional guardian. You know, out west, as I like to say, in outstate Nebraska we don't have a lot of professional guardians. People are not lining up to do this work, okay? This is a thankless job. And I always say among the families that I sit with, you know, who gets the short straw? I mean, who gets to be the guardian for Mom or Dad? And so we have to be a little careful that let's not make this so difficult that we're not able to get the people, the guardians, the assistance that they need. As Senator Coash indicated, the bar association has suggested or promoted or submitted to, for your consideration, some amendments to this, some amendments. Let me go through those just briefly, and then I'll be happy to answer any questions we might have. We do add some clarifying language of defining what is an interested person. I like the idea of notice, that you're giving notice to a lot of people as it is to what you're doing. I don't think it hurts. I'd rather be more inclusive than less inclusive. We've added that

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language. We removed the credit check requirement for a lot of the reasons. The discussion was, as Senator Lathrop said, I don't know that it's going to show you anything. It's going to show what their Dillard's balance or Von Maur balance is. I mean, I don't know that that really is going to make a difference as to when we're trying to get someone to serve as a guardian or a conservator. We do strike the language or suggest that you strike the language from the bill that makes the guardian pay for this. That's just not how it's done. I mean, under the current circumstances, these are expenses of the estate. These are expenses of the ward. Now all these checks that you require, they're going to take some time, they'll be done on a prescribed forum, and they cost some money. And while the guardian, I think, can pay that up front, certainly we think that ought to be able to be reimbursed from the ward's estate. Notice of the inventory by registered, certified...I'm sorry, certified mail, return receipt requested. Remember, if you want to ensure that they're not going to get notice, send it certified mail. Nobody picks up certified mail. Okay. It's doesn't...nothing good comes by certified mail. And finally, we ask that you limit the bond requirements to those items that are not covered when restricted accounts...I'm sorry, I went over my time. [LB157]

SENATOR ASHFORD: Okay. Any questions of Tom? Yes, Senator Council. [LB157]

SENATOR COUNCIL: I just have one. Yeah, Tom, thanks a lot. But on the language, the addition of the new Section 6, again what's the bar association's rationale for the definition? I mean, because it's basically the same definition of an interested party of the current statute. [LB157]

THOMAS MAUL: We lifted it out of the probate. [LB157]

SENATOR COUNCIL: Right. [LB157]

THOMAS MAUL: We lifted it out of the probate, and I think we limited it, we don't include creditors, we don't include those kinds of things. [LB157]

SENATOR COUNCIL: Okay. [LB157]

THOMAS MAUL: But I think it's a definition that the practitioners are used to working with. [LB157]

SENATOR COUNCIL: Yeah, because it comes straight out of the probate codes then. [LB157]

THOMAS MAUL: Exactly, that's where we pulled it out of. [LB157]

SENATOR ASHFORD: Seeing no other questions, thanks, Tom. [LB157]

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THOMAS MAUL: All right. Thank you. [LB157]

SENATOR ASHFORD: Do we have other proponents on LB157? Opponents? Neutral? Bob. [LB157]

BOB HALLSTROM: (Exhibit 7) Senator Ashford, members of the Judiciary Committee, my name is Robert J. Hallstrom. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in a neutral capacity on LB157. In addition to commending those, including the Chief Justice and the court who worked on this particular issue, we commented to the Supreme Court when they issued the report for input from the public there were a number of things that we raised to the court, some that would be proposed to be implemented by court rule, others by legislation. The specific item that we would like to draw to the committee's attention today in my testimony has a proposed amendment to address our concern, is the establishment of the central database. The concern that the bankers have, simply put, is that the prospect that someone will decide that because that central database exists, that we should have actual notice of the fact that someone has resigned, been terminated, or removed as conservator/guardian. As you might expect in the...with the volume of transactions that banks work with in processing checks, doing transactions on an on-line real-time basis, it simply is not reasonable to expect us as a check comes in, for example, to have checked that database to determine whether somebody is or is not continuing to be authorized to act in that capacity. So we have simply put an amendment together that would note, which I think is the reality of the situation, that the database is there for informational purposes only and that there would be no liability or cause of action that would arise from a financial institution's use of the information or failure to use the information. [LB157]

SENATOR ASHFORD: Fair enough. Any...yes, Senator Lathrop. [LB157]

SENATOR LATHROP: I do have a question that's bank related but unrelated to what you just talked about. And that is, the way it's set up, the bill would not hand out the letters of conservatorship or guardianship until after you bring the inventory in. And if I'm going to the bank to find out what Mom has, let's say I've just been appointed and all I have is an order from the court that says I've been appointed, don't I need the letters of conservatorship to get to the bank and have the bank actually tell me what's the balance in Mom's account? [LB157]

BOB HALLSTROM: The bank would traditionally require and should require that there be some authorization either through a power of attorney or a court-appointed document to release that information, yes, Senator. [LB157]

SENATOR LATHROP: But don't they...and this is the question, is an order...and maybe you can look into this and then get back to me, and that is, don't they usually require the

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letters of conservatorship before they'll answer that question or do you think an order that says, you know, Steve's been appointed to represent Mom as conservator? [LB157]

BOB HALLSTROM: What we recommend to our bankers is that they have a current, active, recognized letters of personal representative or letters of conservatorship that have been issued and are in possession of the person. [LB157]

SENATOR LATHROP: Okay. And if I can't...if I have to provide an inventory before I can get the letters, do we have a glitch? [LB157]

BOB HALLSTROM: That would...I think so. [LB157]

SENATOR LATHROP: All right. Maybe you can look at that and talk to us about what to do with that. [LB157]

BOB HALLSTROM: Okay. [LB157]

SENATOR ASHFORD: Thanks. Thanks. [LB157]

BOB HALLSTROM: Thank you. [LB157]

SENATOR ASHFORD: Any other questions of Bob? Senator Coash, do you wish to close? [LB157]

SENATOR COASH: Briefly. Thank you, Judiciary Committee, for indulging on this important issue. It's been said a few times, but this really is a start. We have a lot of work to do to make sure that we provide vulnerable Nebraskans, elderly, people with disabilities, with the appropriate protections to make sure that their health, their safety, and their assets are all protected. If I could put a theme behind what LB157 does, two things come to mind. One is eyes--and information. Judge Bazis I think laid that out very well. The more eyes we have on a vulnerable person, the more likely they are to be protected. And the more information we put in front of those charged to protect them, the more likely they are to be protected. And so I appreciate your time today. I think we have a very good start and I think we can make this bill...we won't have any glitches and we'll get this taken care of. [LB157]

SENATOR ASHFORD: Can I just for...we have the amendments that you spoke of. [LB157]

SENATOR COASH: The bar, yes, we have those. [LB157]

SENATOR ASHFORD: And does Bob have...do we have amendments or...? Okay, so it would be those amendments and then the amendments from the bar essentially. Are



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there others or is that basically what we have? Well, thank you again, Colby, for bringing this topic up a couple of years ago (laugh) and Senator Council as well, and appreciate your leadership. [LB157]

SENATOR COASH: Thank you. [LB157]

SENATOR ASHFORD: Okay. That closes the hearing. Let's move on to the next bill, which is Senator Karpisek, who isn't here yet but I'm sure will be soon. Oh, my.

SENATOR KARPISEK: (Laugh) Yeah, so early in the year, isn't it? Hello.

SENATOR ASHFORD: Senator Karpisek. Welcome, and LB157...no. Well, I just wanted to tell you we just did LB157. (Laughter)

SENATOR KARPISEK: Okay.

SENATOR ASHFORD: And so just to put everything in context, we're going to LB85, I hope. LB85, is that right? Okay. All right. [LB85]

SENATOR KARPISEK: Thank you, Chairman Ashford and members of the Judiciary Committee. This bill we brought in front of you last year toward the end of the year with the Adult Guardianship Act and had a little work on it over the interim. And I appreciate the early hearing date this year, and it does tie into a little bit of the bill you just heard but not a lot. I want you to keep in mind that it is a separate issue and also that it is adult guardianship, not speaking of children's guardianship. My name is Senator Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. LB85 would adopt the Uniform Guardianship and Protective Proceedings Act from the Uniform Law Commission. The bill is designed to address many problems related to multiple jurisdiction, transfer, and out-of-state recognition of adult guardianship proceedings. In addition, LB85 would facilitate communication and cooperation between courts in different states about adult guardianship. Due to the increasing population mobility, cases involving simultaneous and conflicting jurisdiction over guardianship are increasing. Even when all parties agree, steps such as transferring a guardianship to another state can require that the parties start over from scratch in the second state. Obtaining recognition of a guardian's authority in another state in order to sell property or to arrange for a residential placement is often impossible. LB85 will, when enacted, help to effectively address these problems. I just want to say that this bill was important to me with my mother-in-law suffering some dementia problems, having my wife's siblings out of state. What happens if someone can't take care of her here, if there's an argument over who takes care of her? If there is an issue when she goes to her sisters in Texas and something happens there? I just see many issues that come up, and the Alzheimer's Association had brought this to me, then started working with Larry Ruth with the Uniform Law Commission. And that's why I brought it. And I think that it's a

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great idea to try to help these people find out where they can belong, get rid of some of the arguing that has to happen and maybe a lot of the law proceedings that have been going on. So thank you, Senator Ashford. [LB85]

SENATOR ASHFORD: Thank you, Senator Karpisek. Yes, Senator Larson. [LB85]

SENATOR LARSON: Excuse me for my ignorance. I'm one of the few members that don't have a law degree on the committee. But don't state courts already have the power to address questions of jurisdiction and stay or dismiss proceedings if another state has a more appropriate forum? [LB85]

SENATOR KARPISEK: Well, and I also don't have a law degree, Senator Larson, and we (laugh) have some testifiers behind us. But as I understand, it depends where they are and what the laws are in each individual state. [LB85]

SENATOR LARSON: And how much difficulty do the courts encounter now in trying to obtain cooperation from other courts in other states? [LB85]

SENATOR KARPISEK: As I understand, some of the states are very uncooperative. I've heard Texas, when you're there, you're theirs, and that is it. If I am misspeaking, I will apologize, probably not to Texas but to you. (Laughter) [LB85]

SENATOR ASHFORD: Now that's sort of an uncomfortable feeling, (laughter) thought, I mean. [LB85]

SENATOR LARSON: I guess I can have the pages make a copy of this my LA provided me. But Texas is planning to introduce this legislation in 2011 when they come back is my understanding. [LB85]

SENATOR KARPISEK: I think there's roughly 20 states now that have this in place and 10 to 15 that are planning on introducing it. [LB85]

SENATOR LARSON: Okay. Thank you, Senator Karpisek. [LB85]

SENATOR KARPISEK: Thank you, Senator Larson. [LB85]

SENATOR ASHFORD: Thanks, Senator Larson. Any other questions? Thanks, Russ. [LB85]

SENATOR KARPISEK: Thank you, Senators. I will stay to close. [LB85]

SENATOR ASHFORD: Eric, are you next? Eric Fish from Chicago is here. Welcome to Nebraska, Eric. [LB85]

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ERIC FISH: (Exhibits 8 and 9) Thank you, Mr. Chairman. For the record, my name is Eric Fish, E-r-i-c F-i-s-h, and I represent the Uniform Law Commission, and I am here on behalf of the Nebraska Uniform Law commissioners. I'm joined by two of them in this room. One is Larry Ruth and the other is professor Steve Willborn from the University of Nebraska Law School. Our other commissioners are Judge Arlen Beam, Amy Longo, Joanne Pepperl, and Harvey Perlman. I come here from Chicago to testify in support of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act. Throughout my testimony I will refer to it as UAGPPJA. It is not a Scandinavian slang term or anything similar to that; it's just the easiest way to get through that long title. UAGPPJA, as Senator Karpisek has mentioned, touches upon three main issues that happen with guardianships. The first is the determination of which state has primary jurisdiction over the guardianship, the second being the recognition between the states of these guardianships, and the third deals with the transfer of guardianships. And I'll take them in that order. It sort of files a logical progression of if an individual has one set up, has to move, or has to transfer the guardianship. And I will touch upon, Senator Larson, some of the concerns you raised, some of the questions. First, the act builds upon a similar model that exists for children here in Nebraska, the Uniform Child Custody Jurisdiction and Enforcement Act. This act touches the adult guardianships, and as we go forward I will make sure that it comports to all the terms that may be part of this overhaul of guardianship law. There might be some technical changes that are needed but I will work with counsel to make sure that these comport with each other. Jurisdiction is a tricky question because some states might have, as the senator mentioned, presence jurisdiction; that is, if you are in Texas, you are under the jurisdiction of Texas. That could be on vacation. That could be just passing through. Somebody can attach a guardianship jurisdiction to you right away. Oftentimes this is not a good thing because if an individual comes from Nebraska and is only in Texas for a little bit and has all their property and personal matters in Nebraska, Nebraska would lose its jurisdiction. So what is proposed in this is a three-tiered model of jurisdiction. The first would be to set up a home state, which is the primary state for jurisdiction; the second is they have a backup significant connection state, which is in case an individual does not have one of these home states; and the third would be emergency jurisdiction, meaning an individual can fall under Nebraska jurisdiction if they are here for a limited time but an emergency happens. The recognition part is part of a failure within the U.S. system of full faith and credit in which states do not have to give full faith and credit jurisdiction to guardianships. This is a ruling that came from the Supreme Court and it's an anomaly within that doctrine; that is, say a Nebraska court does not need to give...or does not...or Nebraska guardianship may not receive similar treatment of recognition in another state, Texas being one of them. But it happened in Illinois with a law professor who fell under the state's ward, couldn't get his guardianship recognized across the river in St. Louis. These are court decisions that have to happen. It's not a constitutional mandate to recognize. And third is a issue of transfer. As you know, America is becoming a transient society, and this bill gives the states and the state courts the

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ability to discuss the transfer, make sure that the individual is protected and is protected under the laws, and that the full amount of protection is going to be happening in that new state. States are allowed to communicate on these issues and work out a compromise on the transfer. The goal of this is a seamless process, which is an individual transfers, moves, courts communicate, and it shifts over to the new state's jurisdiction. This act has been passed in 20 states and, as has been mentioned, is going to be introduced in about 15 more. It's supported by the judges who have been involved with these cases, it's supported by the lawyers that have been in these cases, and it's been supported by the consumer advocates. So you have all three components of people that are dealing with these in favor of this. As I mentioned, it's built upon the child jurisdiction act and that has proven to be very successful. We envision this to be as successful. I will take any questions on this act if the committee has. [LB85]

SENATOR ASHFORD: Any questions of Eric? What is the...first of all, what do the borders, Nebraska border states, which of the Nebraska border states have adopted this? [LB85]

ERIC FISH: Off the top of my head, Mr. Chairman, the...I believe Colorado and Iowa are about this. There's a map in your materials that I've handed out. [LB85]

SENATOR ASHFORD: Okay. Oh, Okay. Oh, there...right here. All right. [LB85]

ERIC FISH: Yeah. Part of my time I spent in the office coloring maps (laughter). [LB85]

SENATOR ASHFORD: Color maps. So Colorado, Iowa are the two. [LB85]

ERIC FISH: Um-hum. [LB85]

SENATOR ASHFORD: And the others not yet. [LB85]

ERIC FISH: Yeah. We're looking forward to moving it in Kansas. They're under a Kansas bar study for this act. [LB85]

SENATOR ASHFORD: Because I assume there are numerous border-type situations for families. [LB85]

ERIC FISH: Yes, yes. In Illinois when I testified, it was very important because many of the cities are on the border. [LB85]

SENATOR ASHFORD: Right. [LB85]

ERIC FISH: And the same being here in Kansas. [LB85]

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SENATOR ASHFORD: So Kansas, South Dakota, Wyoming, and just Missouri. When did this process begin historically? [LB85]

ERIC FISH: It was first drafted and promulgated by the commission in 2007, with the first introductions in 2008. So in terms of uniform acts, this is highly successful to have 20 within the first two or three years. [LB85]

SENATOR ASHFORD: Right. It's funny that it would take this long, isn't it? Because obviously the child jurisdiction act or process has been in place for considerably longer. [LB85]

ERIC FISH: The experience with the child jurisdiction has made it actually one of the quicker adopted acts. Courts are familiar with the processes, and we had a good model to base this off of. [LB85]

SENATOR ASHFORD: Okay. And you work with this in your practice? [LB85]

ERIC FISH: I do. This is...as part of my profession with the commission, I've got to go around and teach judges and practitioners how to use this but also work with legislatures that are going to adopt it and to make it comport to their existing guardianship systems. [LB85]

SENATOR ASHFORD: Okay. Any questions of Eric? Senator Council. [LB85]

SENATOR COUNCIL: Just a nonsubstantive question. And, Eric, welcome. Just when we were working on this last year and it was late in the session, we didn't get to it. I was just curious. The young woman from the uniform commission who presented this to us last year, is she still with the commission? [LB85]

ERIC FISH: It would have been me, so it must not have changed. (Laugh) I don't think so. [LB85]

SENATOR COUNCIL: Yeah, well, no, when I met with... [LB85]

ERIC FISH: The Alzheimer's perhaps was the one that brought it? [LB85]

SENATOR COUNCIL: No, it wasn't on the anatomical gift. Was it on the anatomical gift? [LB85]

ERIC FISH: Nicole Julal is one of the co-counsels in my office. [LB85]

SENATOR COUNCIL: Okay, okay. All right. All right. Thank you. [LB85]

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ERIC FISH: Yeah, she's still there. Just got married and just had a baby, so. [LB85]

SENATOR COUNCIL: Oh, great, great. Well, I was just...it was good work. And there was another gentleman, though, on the guardianship...and Larry can answer that question when he comes up, but to have the opportunity to sit down with the Uniform Law Commission and see where there are opportunities to address these issues. And I was really pleased that we were able to get the Anatomical Gift Act adopted last year and would have liked to have seen this one be enacted last year, but time ran out. So it's not...there's no significant changes between what we're looking at here and... [LB85]

ERIC FISH: There are not. [LB85]

SENATOR COUNCIL: ...that was we were considering last session. [LB85]

ERIC FISH: There are not. And, as I mentioned earlier, I'll work with counsel, if you move forward with the bill that was ahead of me, to make sure these match up. I think they go to two of the larger issues of elder abuse that may exist. [LB85]

SENATOR COUNCIL: Yeah, because I know there's one reference to Section 26 here in the uniform act that's going to have to be... [LB85]

ERIC FISH: Um-hum. Correct. [LB85]

SENATOR COUNCIL: ...reconciled with what occurs with LB157. Okay, thanks. [LB85]

SENATOR ASHFORD: Any other questions? Thanks, Eric. [LB85]

ERIC FISH: Thank you, Mr. Chairman. [LB85]

SENATOR ASHFORD: The next proponent. Good afternoon. [LB85]

TERESA STITCHER FRITZ: Good afternoon. I'm Teresa Stitcher Fritz, and I am program and advocacy director for the Alzheimer's Association. The Alzheimer's Association...I guess I should spell my name. Teresa is T-e-r-e-s-a, Stitcher, S-t-i-t-c-h-e-r, no hyphen, Fritz, F-r-i-t-z. [LB85]

SENATOR ASHFORD: Thank you. [LB85]

TERESA STITCHER FRITZ: (Exhibit 10) Sure. The Alzheimer's Association of Nebraska supports LB85, which will adopt the Nebraska Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act to be enacted on January 1, 2012. We thank Senators Karpisek, Coash, and Council for introduction of the bill during this 2011 session. Adult guardianship is the process through which a court appoints and oversees

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an individual to serve as the legal decision maker--guardian--for another adult who due to incapacity or other disability is unable to make decisions for himself. Due to the impact of dementia on a person's ability to make decisions and in the absence of other advanced directives, people with Alzheimer's disease may need the assistance of a guardian. Adult guardianship issues commonly arise in situations involving snowbirds, transferred or long-distance caregiving arrangements, interstate health markets, wandering, particularly by a person with dementia, and even those rare incidents of elderly kidnapping. The process of appointing a guardian is handled in state courts. The U.S. has 53 different adult guardianship systems, and data estimates, as of 1987, that there are 400,000 adults in the U.S. with a court-appointed guardian. Demographic traditions suggest that today this number is probably much higher. I'm not going to read any further of my... [LB85]

SENATOR ASHFORD: Well, we have your statement too, so. [LB85]

TERESA STITCHER FRITZ: Right. All I wanted to say is that I wanted to share our one scenario as to why the Alzheimer's Association...we deal with this frequently. Alice and Bob are an elderly couple who are residents of Nebraska but they spend their winters in a rental apartment in Florida. Alice has Alzheimer's disease and Bob, her husband, is her primary caregiver. In January, Bob unexpectedly passes away. When Steve, the couple's son, arrives in Florida, he realizes his mother is incapable of making her own decisions and needs to return with him to his home in Nebraska. Florida, New York, and Nebraska has not yet adopted UAGPPJA. Steve decides to institute a guardianship proceeding in Florida. The Florida court claims it does not have jurisdiction because neither Alice nor Steve have their official residence in Florida. He next tries to file for a guardianship in Nebraska, but the Nebraska court tells Steve that it does not have jurisdiction because Alice has never lived in Nebraska, and a New York court must make the guardianship ruling. If these three states adopted UAGPPJA, the Florida court initially could have communicated with the New York court to determine which court had jurisdiction. We, on a daily basis, face these situations, families reaching out to us in crisis, and it usually is a time of crisis. So, again, we thank Senator Karpisek for working with us in the 2010 session and now again in 2011. There's approximately 37,000 Nebraskans with Alzheimer's disease or other dementia, so we'd very much like to see this bill passed this session. Any questions? [LB85]

SENATOR ASHFORD: This is excellent work. [LB85]

TERESA STITCHER FRITZ: Well, thank you. [LB85]

SENATOR ASHFORD: It really is. Any questions of Teresa? [LB85]

TERESA STITCHER FRITZ: We thank Senator Karpisek and Council and Coash.  
[LB85]

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SENATOR ASHFORD: It was good work by them too. [LB85]

TERESA STITCHER FRITZ: Thank you. [LB85]

SENATOR ASHFORD: Thank you. Next proponent. Any opponents? Neutral testifiers? Senator Karpisek. [LB85]

SENATOR KARPISEK: Thank you, committee. Just real quickly. I think as we have said, with the mobility of our population and with the baby boomers increasing in age and not... [LB85]

SENATOR ASHFORD: What? [LB85]

SENATOR KARPISEK: (Laughter) Yeah. I think there was 37,001, Senator, that they meant. (Laughter) [LB85]

SENATOR LATHROP: That was a great close, Senator Karpisek. [LB85]

SENATOR KARPISEK: That was me, Senator. [LB85]

SENATOR ASHFORD: Enough said, Senator Karpisek. [LB85]

SENATOR KARPISEK: (Laugh) That was me. But I do think that we can see where this can really get into a tough time for families when their loved ones get caught up in this. So I appreciate you hearing our testimony and hope that we can move this along and be one of the states that can work together with this. Thank you. [LB85]

SENATOR ASHFORD: Thanks, Russ. And I would like to thank Larry Ruth as well for his work on the Uniform Law Commission. We've had many very...these are exceedingly difficult issues. Those of us who are lawyers and went to law school remember all the conflicts of law exam questions, and it's a very tricky field of the law. And Larry has done a great job on a national basis working through many of these issues, so thanks, Larry, for being here. [LB85]

SENATOR KARPISEK: And thank you for bringing that up. I meant to say that. And Larry has really helped out--and the Alzheimer's Association. They've both been very helpful to work with and even got me up to speed a little bit. [LB85]

SENATOR ASHFORD: Thanks very much. [LB85]

SENATOR KARPISEK: Thank you. [LB85]



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SENATOR ASHFORD: Okay. Senator Avery, I saw him come in. LB124. [LB124]

SENATOR AVERY: Good afternoon, Senator Ashford, committee. My name is Bill Avery, B-i-l-l A-v-e-r-y. I represent District 28. I am bringing before you LB124. It's fairly straightforward and I think a fairly simple bill that would amend our adoption placement statute in order to provide adoptees with more information about their cultural and ethnic history. Currently, the law provides that adoptive children be provided their medical history as a part of their adoption records. Medical history includes known family traits, allergies, illnesses, or genetic defects of any biological parent and their biological families included but not limited to siblings, parents, grandparents, aunts, uncles, unless the child is foreign-born or was abandoned. LB124 would include race, ethnicity, nationality, Indian tribe, or other cultural history of either or both of the parents that would be part of the medical record. The importance of this is that adoptive parents and the adoptees can identify potential ethnic-based inherited medical conditions or frequency of mental or behavioral illnesses that are not listed otherwise in the medical history. Parents can embrace the culture of their children, can help their children embrace the culture, history, and language of their culture of origin. It can secure benefits for minor children who may be entitled to certain scholarships and things of that sort because of certain ethnicity, race, or tribe. There are hundreds of Native American or tribal scholarships available to children who are enrolled as members of specific tribes, such as the Cherokee Nation of Oklahoma. Of course, most of these are based on need and performance criteria, but the initial eligibility is established first by ethnicity. I know when I was at the university, a number of students that qualified for very generous scholarships because of their ethnicity, and I thought it was a very good program or good programs and quite beneficial to the students. There are also minority scholarships that exist for Latino students, African American, Native Alaskan, Asian, multiracial, multicultural children. And sometimes if you're an adopted child, you don't know what your cultural history is. And I don't think these children should be left out of opportunities because their adoption record lacks this information, so I'm asking that this be added to the existing statute. I have some families here, some testifiers who will share their personal stories and experiences involving adoption and the importance of recognizing ethnicity. And I will ask them to come up, or you will, (laugh) in a few minutes. I'm going to have to go back to my own committee. I have a bill coming up, so I will not be staying for closing. I might stay for a few minutes to listen to the discussion. [LB124]

SENATOR ASHFORD: Thanks, Senator Avery. How many proponents to do we have? Do we have any questions, first of all, of Senator Avery? How many proponents, those that are for the bill? We have a few. Tom is here and...okay. Well, why don't we go ahead with the proponents, and you have some young people here, too, Bill. [LB124]

SENATOR AVERY: Great looking family. [LB124]

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SENATOR ASHFORD: Good. So they're taking notes, so we better be careful (laughter). [LB124]

ERIK DELANEY: Well, we have to occupy them somehow. [LB124]

SENATOR ASHFORD: Okay. [LB124]

ERIK DELANEY: They've actually prepped me for your questions. [LB124]

SENATOR ASHFORD: Okay. [LB124]

ERIK DELANEY: No. My name is Erik Delaney, and I'm here on behalf of LB124. That's spelled E-r-i-k D-e-l-a-n-e-y. And I guess I'd ask you guys if you remember when you were a child and you started asking yourselves the big questions: What are we doing here? What does this mean? Who am I? And the reason I ask you that is because people who have been adopted--in Nebraska, at least--never really get to fully answer those questions for themselves. There's a seminal book on adoption that's called...it's titled Being Adopted: The Lifelong Search for Self. All right. And it was written by a group of M.D.'s and Ph.D.'s, and they did some longitudinal studies over several generations. And that...you know, as a result of that, they titled their book The Lifelong Search for Self. Right. Now, this is a personal thing for me, obviously, in a number of ways. I've got grandchildren here. I've got children here. My oldest daughter is Omaha on her mother's side, we know, but only to a certain extent. She'd be here, too, but she gave birth to a grandson of mine (laugh) yesterday. So which sort of drives the point of this home or drives home this point of sort of handing off cultural heritage to the next generations. And I understand...you know, when I was born in 1966, the adoption laws were a little bit different, and we thought to protect the parents and, you know, maybe there was mitigating circumstances or whatever. But today I'd ask you to maybe think about how important it is to protect one individual as opposed to generations, right, like the senator said. You know, the possibility for a variety of opportunities exists. I know three of my children here, their mother is Cherokee, right, to some degree. But, you know, if I knew some of these things, then, you know, my children may benefit. And that's not hard to extrapolate from there what that could, you know, lead to for children. The important thing, though, for me is Sophia (phonetic). Where is she? Is Sophia over there? She asks me about every other week, she says, "Dad, have you found who your real parents are yet?" And she asks me that because she wants to know who she is. She goes to powwows with her older sister and sees this rich regalia and heritage, you know, and she wants and thinks maybe she's connected to that but doesn't know. Right. Adopted people in Nebraska, you know, we just want to know, you know, who we are. And we hope you'll help us find the way to do that. And I don't think it'll cost much money either, so... [LB124]

SENATOR ASHFORD: Eric, would you...why don't you introduce your family. [LB124]

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ERIK DELANEY: Okay. I've got Mira (phonetic) sitting on the floor over there. She's my granddaughter. She's Jacinda's (phonetic), Jacinda who gave birth yesterday, my oldest daughter, that's her daughter. And then Torin (phonetic), the one with the long hair. And people often say, "Is that a girl or is that a boy?" I'm only teasing him...that's my grandson. Sitting next to him is Anthony (phonetic), that's my son. And then I mentioned Sophia already, my daughter. Behind them is Corlee (phonetic), another daughter of mine who's taking notes on her new laptop she got for her birthday, yesterday actually, (laughter) which now she has a nephew who has the same birthday as she does. And next to them is Clair (phonetic) who's sort of the sergeant at arms for the clan and a student at Lincoln High. She's exceptional, I mean, so. [LB124]

SENATOR ASHFORD: Thank you. Would you...and also, any questions of Erik? Thanks for your comments. Would you fill out this sheet, too? And I was very bad at...there are sheets on the table behind. So if people would fill out the sheets before they come up, it would be great. Thanks, Erik. Thanks for your comments. [LB124]

ERIK DELANEY: Thank you. [LB124]

SENATOR ASHFORD: Any other proponents on this bill? Tom, are you speaking on this? And then... [LB124]

THOMAS MAUL: Tom Maul. Again, T-o-m M-a-u-l, on behalf of the Nebraska Bar Association. We're here in support, strong support, of LB124. As many of you know, when an adoption is filed in Nebraska, the biological parents have to file...are required to file a form with the court that gives their medical history. What this bill does is just adds this other race, ethnicity, that information. We think it's a good thing not only for the reason that the prior speaker said. Legally speaking there are under the Nebraska Indian Child Welfare Act, there are certain requirements which have to be complied with. And, again, the sooner we know in the process, the sooner we know what's...that if there is, for example, Indian involved, then there's a whole set of requirements that have to be followed. That just helps the system. It not only helps the family, it helps the process that we're trying to get through the adoption. So be happy to answer any questions that anyone might have. [LB124]

SENATOR ASHFORD: Questions of Tom? Very clear. Thanks. Julie. Judi, I'm sorry. Excuse me. [LB124]

JUDI gaiashkibos: Thank you. Senator and Judiciary Committee, I am Judi gaiashkibos, the executive director of the Nebraska Commission on Indian Affairs. Do I need to spell that or do you have (laughter)... [LB124]

SENATOR ASHFORD: Well, I think we can find it. [LB124]

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JUDI gaiashkibos: Okay. So that said, I am an enrolled... [LB124]

SENATOR ASHFORD: It's J it starts with, right? [LB124]

JUDI gaiashkibos: Right, J. [LB124]

SENATOR COUNCIL: It's that g that's the...(laughter). It's the one that starts with g that's the problem. [LB124]

JUDI gaiashkibos: I am an enrolled member of the Ponca Tribe of Nebraska and I am here to lend support to LB124. It's very complicated as far as from the tribal perspective, and there is language in there. And the last testifier mentioned the Indian Child Welfare Act. And so I did bring something that...to pass out to you and I won't go into all the details. I'm not an attorney. I have consulted with two of my board members who are Native women attorneys, and so I do think I have done my research and I want to give you my response. I think that this bill provides support for provisions that currently exist in the Indian Child Welfare Act, both federal and state statutes. So that said, I'd like to address taking tribal enrollment out of the picture. I think this bill is a fairly well-meaning bill, but it is important for an adopted child to know their heritage. I do believe that, regardless of what that may be. And in the bill, that language, when "available," that leads me to believe that this is voluntary information and may not have...necessarily will be collected. And, however, if we take an Indian child, ICWA is definitely implicated in the bill. Simply knowing that one or both of your parents are Native isn't helpful in terms of enrollment. Enrollment is up to the tribe. And I don't know how practical this information of knowing just the name of your tribe would be without knowing the names of the Indian parents, because to be enrolled in a tribe--that is, there are over 565 federally recognized tribes in the United States--each tribe has their own enrollment process. So even if you have the names of your parents, the tribe has the right to accept members, tribal members. And there are various reasons why they would or may not, and each tribe is unique. So it goes usually to an enrollment committee and then it goes to the tribe. I haven't seen any tribal enrollment provisions for any tribe that allows for enrollment without showing, at the bare minimum, some sort of lineal descent. And so I have a concern with that. Will it allow for someone to connect with their heritage? Yes. But it won't give them their CIB, which is Certificate of Indian Blood. However, ICWA already addresses this exact issue, and that's already in the laws in the state of Nebraska and federal legislation. If ICWA already covers this, then I'm not sure why the need for this. This amendment won't really help any Indian children who were adopted prior to the passage of ICWA, November 8, 1978, get educational benefits; it won't hurt them either. In fact, this bill probably is more helpful to non-Indian people than it is to Indian people because it will give them information about their heritage. So all that said, (laugh) as ICWA is very complicated, the Indian Child Welfare Act, which was implemented in November 8, 1978, and as the director of the Indian Commission and as

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the liaison between the state and the federal and the Governor, it's really important to help you all to understand the complexities of being an Indian person. You know, we are sovereign citizens. We have dual citizenship, and oftentimes the average person in the state doesn't realize that. And so for Indian children who were adopted and then they find out that they're different and they want to know, there is a process in place where they can go to find that out. But what I might encourage you to consider is adding language to this bill that I think is an okay bill, I'd like to see: and in compliance with the Nebraska Indian Child Welfare Act. [LB124]

SENATOR ASHFORD: Okay. Why don't we do this, Judi. I think we can...you can get together with Senator Avery's office and think about your language and see how that all comes together. But we have time for you to do that if you want to talk to Senator Avery, not right this second but sometime in the next few days. [LB124]

JUDI gaiashkibos: And also scholarships basically require typically that you be an enrolled member of a tribe. [LB124]

SENATOR ASHFORD: Okay. [LB124]

JUDI gaiashkibos: And so there is some tribes have different degrees of blood quantum. Some...typically, the majority, it's at least a quarter. Some have lineal descendancy. So... [LB124]

SENATOR ASHFORD: It's a complex issue. I think... [LB124]

JUDI gaiashkibos: It is very complicated, and you may be living in the state of Nebraska but you could be from a tribe in...as they said, on the East Coast, the Eastern Cherokee Nation. So I hope that this has been helpful. [LB124]

SENATOR ASHFORD: Well, you've definitely raised the issue. Senator Council. [LB124]

SENATOR COUNCIL: Yeah, and thank you, Judi. It has been helpful, but. And I appreciate the complexity. And we've had our own personal conversations about that. And I'd be interested in seeing the proposed language to make the bill better. But just in terms of what you've outlined for us, to have a provision where the child's historical ethnicity is included in the adoption file, does that not help in terms of providing the first step for determining whether they can be enrolled? And then, you know...but if you don't know at all, you don't know whether you can even pursue the process of qualifying for a tribal membership. [LB124]

JUDI gaiashkibos: Oh, I think the answer would be yes, and if the parent that is giving up the child has given information there that does indicate their tribal affiliation.

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Oftentimes, in adoptions, people don't want to share that information, so you wouldn't know if the child were an Omaha. And if you don't have the tribal affiliation and if you don't have the name of the parent...I get calls at least once a week... [LB124]

SENATOR COUNCIL: Okay. [LB124]

JUDI gaiashkibos: ...from people wanting to get enrolled in a tribe. They think they're Indian, they feel like they're an Indian, and they want to be an Indian. So (laugh) they contact us. [LB124]

SENATOR COUNCIL: So, but those are two conditions. You either have to... [LB124]

JUDI gaiashkibos: You would have to have the name of your parent, and then they have to be on the tribal rolls. There has to be proof. Each tribe has different requirements, but they need to have evidence that you descend from that tribe, that you're a direct descendant. It can't be your aunt or your uncle. It has to be: my mother is a member of the Ponca Tribe, my grandfather was; therefore, I'm eligible to be enrolled. Now all that said, it still is up to the tribe whether they approve the enrollment. For instance, the Shakopee Sioux, Mdewakanton Sioux Tribe in Minneapolis, they have a very wealthy, successful gaming business, and they have approximately 250 tribal members who are all millionaires. So I, myself, I descend from Santee, which is a sister tribe to the Dakota Mdewakanton. I have ten brothers and sisters. If I went and could find evidence that I could be a millionaire, would they accept me? Probably not because I have too many siblings, and then that cuts into the per cap. So, you know, they might say, you have evidence here but we're not going to enroll this person because her family is too large. So just because you have the evidence doesn't mean you will be enrolled. And every tribe has the right that is their sovereign right to decide who is enrolled. So to put this in the bill, I think would be helpful, but it's not totally the solution. And already we have federal and state legislation that pretty much covers this. So if it includes that reference, I think then that it's a good thing and it will, as I said, help non-Indian children more than it will help Indian children. [LB124]

SENATOR ASHFORD: Okay. [LB124]

JUDI gaiashkibos: Any other questions? [LB124]

SENATOR ASHFORD: I don't think so. [LB124]

JUDI gaiashkibos: Okay. [LB124]

SENATOR ASHFORD: Thanks, Judi. [LB124]

JUDI gaiashkibos: Thank you. [LB124]

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SENATOR ASHFORD: (See also Exhibits 28 and 29) Do we have any other testifiers on this bill? Is Bill, Senator Avery going to close? Waive closing? Okay. Thank you. Senator Howard is here to introduce LB94. Thanks for coming, kids. [LB124]

SENATOR HOWARD: They don't want to stay and learn about adoptions?

SENATOR ASHFORD: They were very attentive and they were sitting very nice and quietly. Senator Howard.

SENATOR HOWARD: (Exhibit 11) Thank you. Good afternoon, Senator Ashford and members of the committee. For the record, I am Senator Gwen Howard, that's H-o-w-a-r-d, and I represent District 9. LB94 is a straightforward bill that would allow adoptive parents to read a child's file before an adoption is finalized. The purpose of LB94 is to foster openness in the adoption process. Families need to have all possible information available when they commit to the lifelong responsibility of a child. The benefits of improving communication are twofold. The information helps to prepare families for the child they adopt and it makes it more likely that a child will stay with a family if problems arise after the adoption is finalized. Right now, most families receive information from an individual who has reviewed the file. If later there are problems with the child and the parents feel information was not shared beforehand or, in worst case, deliberately withheld, they may be less likely to try and salvage the family relationship. Unfortunately this all too often results in the child returning to the custody of the state. Families who are engaged from the onset are more likely to engage if problems arise. I have discussed LB94 with the Department of Health and Human Services and they have suggested wording that I support. I've had an amendment drafted based on those suggestions, and it makes an exception for certain documents that might otherwise be protected because of state or federal law. Moreover, the department has gone a step further than my original bill in recognizing that the adoption file should be available, by written request, any time after the adoption is finalized. This can only increase the openness of the process. This is included in the amendment. Every child deserves a loving family. LB94 would ensure that when a child is adopted, we have given the adoptive family all available background information. This openness will contribute to long-term success for the adoptive family and the child they have pledged themselves to. Thank you for your time and attention to LB94. [LB94]

SENATOR ASHFORD: Any questions of Senator Howard? It seems that...why wouldn't they do it? Senator Council. [LB94]

SENATOR COUNCIL: Yes, thank you, Senator Ashford. Senator Howard, did DHHS give you any indication of what kind of federal or state statute would prohibit the release? [LB94]

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SENATOR HOWARD: Well, actually I do know that answer already from the years I worked for Health and Human Services. And there is a document called the appendix which has material pertaining to the original filing, the police document. The department has always withheld the appendix. It's even understood by the Foster Care Review Board that the appendix is a separate...it's a separate file that really is not shared. [LB94]

SENATOR COUNCIL: And that's a DHHS rule or regulation? [LB94]

SENATOR HOWARD: We'll it's always been whether...I think they can define it for you, but it's always been practice and policy. [LB94]

SENATOR COUNCIL: Okay. And the reason I'm asking the question is the amendment says, you know, "cannot be released based upon state or federal statute, rule, or regulation," and that language suggests that it has to be a state statute or a state rule or regulation or a federal rule or regulation. And if that's what they're trying to protect against releasing or including, I don't know that this language...if it's just an internal departmental policy as opposed to... [LB94]

SENATOR HOWARD: I'm going to defer that to Todd Reckling who I believe is here, and that's his wordage. [LB94]

SENATOR COUNCIL: Thank you, Mr. Chairman. [LB94]

SENATOR ASHFORD: Yes, Senator Larson. [LB94]

SENATOR LARSON: Thank you, Senator Howard. How much information and what types of information does the DHHS caseworkers currently provide adoptive parents for children in DHHS custody? [LB94]

SENATOR HOWARD: Well, you know, that's a good question. And the answer is that it varies, it varies across the state. When I was a case manager in Omaha, we had a policy, we had a separate adoption unit at that time, and we had a policy that we would supply the information that was in the case record, other than the appendix, to the adoptive families should they choose to come in and read it. It doesn't leave the building, but they're given the opportunity to come in, spend as long as they want to, if they want to take notes. We don't ordinarily...we didn't ordinarily produce copies of things, but they were certainly given the opportunity to read that. But again, that was a localized policy through our adoption unit. [LB94]

SENATOR LARSON: So you believe that the information is vital enough to adoptive parents to justify invading the privacy of the child and the DHHS? [LB94]



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SENATOR HOWARD: Invading the privacy of the child? [LB94]

SENATOR LARSON: Well, invading meaning, you know, releasing all the information that the state has on the... [LB94]

SENATOR HOWARD: I think it's critical. I think if you're going to take...if you're going to adopt a child regardless of the age, that child has some history that you as the adoptive parent should have the opportunity to know. [LB94]

SENATOR LARSON: Thank you. [LB94]

SENATOR ASHFORD: Thank you. [LB94]

SENATOR HOWARD: Thank you. I will be here. [LB94]

SENATOR ASHFORD: Okay. How many proponents do we have of this bill? Okay. How many opponents? I don't know, is Todd Reckling here? Is anyone here from HHS? Okay. I don't know if we'll get a complete picture or not. (Laughter) But I will get a complete picture but I don't know if we'll... [LB94]

SENATOR HOWARD: They indicated they would be here. [LB94]

SENATOR ASHFORD: I don't know if we'll get their complete picture or whatever. Okay. Let's go through the proponent testimony, why don't we. Yeah. If you'd...? You've already signed your sheet. Good. If everybody would sign the sheet and then come on up. [LB94]

PAMELA ALLEN: (Exhibit 12) Good afternoon. I'm Pamela Allen, P-a-m-e-l-a A-l-l-e-n, and I'm the executive director of the Nebraska Foster and Adoptive Parent Association. Thank you for giving me the opportunity to visit with you today. NFAPA is the statewide support and advocacy organization for foster and adoptive families all across the state. NFAPA is in favor of LB94. Families adopting a child from the child welfare system need and deserve to have the opportunity to make an informed decision before they adopt a child. They need and deserve to have the opportunity to read the complete file of the child they are taking into their family. NFAPA hears much too often from families who adopt without full disclosure. NFAPA's FOCUS mentors--Families Offering Care, Understanding and Support--hear from adoptive families who did not receive information concerning: alcohol consumption by the birth parent, which could cause fetal alcohol effects; mental health issues of the parents, which can be inherited by the child; or past behaviors or concerns with the child. Families reaching out to children needing permanency need to be aware of the issues they may be facing with the child, not necessarily today but in the future. They need to be able to make an informed decision as to whether they can, as a family, be able to meet the needs of the child.

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Fetal alcohol children often don't exhibit behaviors or difficulty in school until early adolescence, and mental health issues may not show up until the child is older. That does not mean they don't exist. The minimum time a child must live with a family before they can be adopted is six months. We all know that children can honeymoon for that period of time and longer. An example of this would be one of the children that we adopted that actually honeymooned for a whole year, and the day we adopted him, completely changed his behaviors. His family has mental health issues and there was a history of drug and alcohol addictions. Would we not have adopted him had we known those things? Of course, we would have adopted him. However, we would have been prepared for the behaviors that would come--the holes in the wall, the physical aggression, bipolar diagnosis, and fetal alcohol syndrome. This lack of information not only can contribute to placement disruption but problems within the adoptive family unit because all of the attention and energy is being focused on the adopted child. Families have had to mortgage their homes to pay for legal fees or hospitalizations; little time is left for other family members; marriages are stressed; couples are divorced; families and friends are unable to help. It affects the tax dollars allocated for education, police, as well as mental and behavioral health; level of supervision needed is not being addressed; skill set needed to parent and educate these children are not identified early on. Unknown family history can also lead to a delay in getting appropriate help with medical, mental and behavioral health issues, and education. Nebraska has already experienced the effects of safe haven. These families, many of them, did not have adequate disclosure. These families, as much as they love their children, were not able to meet their needs. It is important that we, as a state, do whatever we can to avoid those situations. Therefore, NFAPA is in support of LB94. As the more information that is given, the less likely disruptions will occur. And I would be glad to answer any questions. [LB94]

SENATOR ASHFORD: Those are great comments. Any questions? These are adoptive parents so I can't imagine there's a HIPAA issue, but maybe someone could comment on that. I mean, it would seem to me that it would be critical, it would be essential, it would be...I mean, we're talking about, in the area of truancy now, trying to access information at the point when the child is excessively absent and that information is available. [LB94]

SENATOR COUNCIL: Mr. Chairman? These are the HIPAA, these are children who are wards of the state. [LB94]

SENATOR ASHFORD: Right. [LB94]

SENATOR COUNCIL: ...so the state is the guardian, they have the ability... [LB94]

SENATOR ASHFORD: Right. [LB94]

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SENATOR COUNCIL: ...to release the medical... [LB94]

SENATOR ASHFORD: Right. And, plus, they're adoptive... [LB94]

SENATOR COUNCIL: I mean, they have the ability to consent to the release of the medical information. [LB94]

SENATOR ASHFORD: Right, plus they have the...they can consent to it, plus providing that information to the adoptive parent is clearly within... [LB94]

SENATOR COUNCIL: Exactly. [LB94]

SENATOR ASHFORD: I mean, unless I'm missing something. [LB94]

SENATOR COUNCIL: The guardian has the right to do that. [LB94]

SENATOR ASHFORD: Okay. Thanks very much. [LB94]

PAMELA ALLEN: Thank you. [LB94]

SENATOR ASHFORD: Boy, I would think that would be a critical...yeah. [LB94]

SENATOR LATHROP: Fetal alcohol syndrome... [LB94]

SENATOR ASHFORD: Yeah. I mean, isn't this a no-brainer? [LB94]

SENATOR LATHROP: ...and then the ones that don't connect with the parents, whatever that's called. [LB94]

SENATOR ASHFORD: Yeah. Okay. [LB94]

SENATOR MCGILL: Yeah. [LB94]

SENATOR ASHFORD: You already won, I don't know. [LB94]

SARAH FORREST: (Exhibit 13) Thanks. Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t, and I'm here to support LB94 on behalf of Voices for Children in Nebraska. Voices for Children's support for LB94 is shaped by 23 years of advocacy on adoption issues and the extensive firsthand case experience of our founding director, Kathy Bigsby Moore. In providing adoptive parents with the opportunity to read case files and by promoting full disclosure before adoptions are finalized, LB94 is crucial to the success of adoptions in Nebraska. There's a wide misconception that children and families need to start over or

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start with a clean slate when adoption occurs. The very opposite is true, however. If children don't have information from their past, they actually lose pieces of their memory. When prospective adoptive parents don't have full disclosure about a child's background and needs, they cannot seek the training and resources they need to best support that child, especially if difficulties arise in the future. Senator Howard's extensive professional experience in child welfare enables her to see that full disclosure is in the best interest of both children and families. The North American Council on Adoptable Children, NACAC, is a widely recognized organization that has led adoption reform efforts across the country for more than 30 years. NACAC's policy and practice recommendations emphasize the importance of full disclosure and a family's need to receive a child's information prior to adoption. It is because the success of placements depend on this information. This information should, at minimum, include: family, agency, court, school, mental health, and medical files, according to NACAC. You'll find the full policy brief attached to the testimony I've provided you. Many states have adopted statutory language that fulfills these recommendations and guarantees prospective adoptive parents access to important information before adoption is finalized. LB94 implements these adoption best practices in Nebraska and we urge you to advance it. Thank you, and I'll take any questions if you have them. [LB94]

SENATOR ASHFORD: Any questions? Thanks. [LB94]

SARAH FORREST: Thank you. [LB94]

SENATOR ASHFORD: Next proponent. [LB94]

DENISE POWELL: Hi. Thank you for allowing me to testify today. I'm here today to speak in favor of LB94, which would give a person petitioning to adopt children permission to review their case file maintained through the Department of Health and Human Services. [LB94]

SENATOR ASHFORD: Denise, just give us your name real quickly. Sorry to have to interrupt. [LB94]

DENISE POWELL: Denise, D-e-n-i-s-e P-o-w-e-l-l. [LB94]

SENATOR ASHFORD: Great. [LB94]

DENISE POWELL: (Exhibit 14) I am an adoptive parent of four children and former foster parent of at least 14 other children through the Department of Health and Human Services. My husband and I have been doing foster care since 2006 and adopted two of our children in April of 2008 and the other two in July of 2008. My daughter Isabella was adopted in 2008, and at the time we adopted her, we were aware that she had cerebral palsy and mild mental retardation. She had previously had surgery to correct that, so

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she was mobile and could walk. And we wanted to help a child with special needs. We inquired about a box marked "yes" for sexual activity and were told that she may have been touched inappropriately. A year or so after the adoption, we started noticing various behaviors, for example, asking an older gentleman if she could sleep with him, and on one occasion walking around without her swimsuit top on at our family reunion. Isabella disclosed to me that she was sexually abused by older men while residing with her biological mother, and remembers the men giving her mother money. (Crying) I apologize. I later discovered that there were sexual notations in her file after we started noticing the behaviors a year after the adoption or a little bit longer. We also discovered that she was diagnosed with reactive attachment disorder and posttraumatic stress disorder. Due to Isabella's aggressive sexualized behaviors, I have to constantly be with her to ensure that she does not attempt to cause harm to any of the other children in my home or herself. My husband and I feel that we are unable to protect our family and Isabella. We have been unable to obtain appropriate services that were needed because we didn't have the information regarding her past. When we discovered Isabella's past, we sought, actively, outside services but have continued to be denied assistance. Isabella is currently on a wait list for developmental disability services but was denied priority one funding in December of 2010. Isabella has been denied mental health services by Magellan due to her low IQ, and we have also been denied special needs childcare to help us meet Isabella's needs. When we adopted our other three children, we received information beforehand and were prepared. We were mentally prepared to handle them and their problems. (Crying) I'm sorry. I guess in closing I would just say that without the information we can't help her, and we received too little too late. She's at CAPS right now and she's unable to return home. Thank you. [LB94]

SENATOR ASHFORD: Okay. Hold on just a second, Denise. Thank you for your comments, and you're doing great, so. [LB94]

DENISE POWELL: I'm sorry. [LB94]

SENATOR ASHFORD: No, you're doing great, you're doing great. Thanks for sharing this with us. Senator Lathrop, do you have a... [LB94]

SENATOR LATHROP: I just have one question to make sure I understand. Are you telling me that Health and Human Services actually knew all this stuff about Isabella... [LB94]

DENISE POWELL: Everything, I went back in her file I found. [LB94]

SENATOR LATHROP: ...before the adoption? Okay. [LB94]

DENISE POWELL: She...they knew... [LB94]

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SENATOR LATHROP: Okay. And then now that you want services, they're telling you, you're on the waiting list for DD... [LB94]

DENISE POWELL: I've been denied everything. [LB94]

SENATOR LATHROP: ...and they won't help you with the other services. [LB94]

DENISE POWELL: I can speak with you later about what was recommended to me but I won't say it in public. [LB94]

SENATOR LATHROP: Okay, but they didn't just keep it from you, now you're getting jacked around because they won't give you services through DD. [LB94]

DENISE POWELL: No, we were told that the only way we can get help at this point is to make her a state ward. [LB94]

SENATOR MCGILL: Oh, my gosh. [LB94]

DENISE POWELL: And the last thing that we want is to put her out there where we can't protect her anymore and that that abuse that she suffered for 10 or 11 years of her life would continue or perhaps happen again by somebody else. [LB94]

SENATOR LATHROP: How old was she when you adopted her? [LB94]

DENISE POWELL: She was almost 14. [LB94]

SENATOR LATHROP: Okay. [LB94]

DENISE POWELL: About I think right at 13 actually, and she's 16 now. [LB94]

SENATOR LATHROP: Well, you know, it's awful that they didn't tell you that. I appreciate your willingness to adopt somebody with...basically she had special needs before you ever got into... [LB94]

DENISE POWELL: Um-hum. It's not her fault that that happened to her. She's a beautiful child who needs to be protected and she doesn't understand everything that she's doing to other people. Thank you. [LB94]

SENATOR MCGILL: Thank you very much. [LB94]

SENATOR ASHFORD: Good afternoon. Go ahead. [LB94]

LINDA DUBS: (Exhibit 15) Good afternoon, Senator Ashford and other members of the

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Judiciary Committee. My name is Linda Dubs, L-i-n-d-a D-u-b-s. I am testifying today in support of LB94 and am representing Nebraska Children's Home Society. Nebraska Children's Home has been providing services to children and families across the state for 117 years. We have ten offices across the state in nine locations. Nebraska Children's Home Society provides an array of children and family programs, including pregnancy, parenting, and adoption, and postadoption services; foster care; in-home services to children and families; and early childhood programming. Our mission is to provide safe and loving care to children and their families. At Nebraska Children's Home Society, I serve as the director of clinical services. I also work as a supervisor in the Right Turn Post Adoption Program, which is funded by LB603. Right Turn is a collaboration between Lutheran Family Services and Nebraska Children's Home Society. The program has served approximately 285 Nebraska families, to date. I am a licensed clinical social worker and an independently licensed mental health practitioner. I have 30 years' experience working with children and families. I am also a former foster parent and a current adoptive parent. My two children were adopted at ages 3 and 6 from the child welfare system. Parenting children from the child welfare system presents new and different challenges compared to parenting your biological children. Their histories are generally more complicated and these children can present with some puzzling behaviors in the eyes of the adoptive parent. They have been abused and/or neglected and suffered a number of situations. A plan to address the specialized needs of these children can make all the difference. Why would we not want to be preventive in addressing these issues? Prospective adoptive parents, who are sometimes the current foster parents of the child, need to have as much information as possible in order to meet the needs of the child. Withholding information from parents who are adopting a child is like asking someone to drive from Lincoln to Scottsbluff without a map. They may know generally where to go but they may take many wrong turns, unnecessary detours, and never actually get to their destination. It can make the parent's goal of developing a trusting and healthy relationship with their new child extremely difficult. Children in the foster care system commonly have several case managers during their time in the child welfare system; therefore, the file or the child's record is the most consistent record of the child's story. Disclosure of the record, or the child's story, can enhance the parent's understanding of the child's past, thereby facilitating the move towards healing and a hopeful future. When the adoptive parent can share his or her appreciation of the past pain a child has gone through, an important step is taken in the development of the parent-child relationship. Wow, everybody is gone. (Laughter) The timing of the disclosure of the child's file to prospective adoptive parents is crucial. A legitimate discussion regarding this timing will be a key to success, as the timing will impact the child. The child's ability to trust is compromised when he has been promised a forever family, only to find the forever family is unable to fulfill their commitment. Broken promises are common day to most of these children, and care must be taken by all involved to provide a thoughtful process free from other insults to the child's trust and hope. Prospective adoptive parents need full and accurate information about what they are undertaking. By doing this, they can

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be prepared for the future. Adoptive parents need to hope for the best and prepare for the future with their eyes wide open. Thank you. [LB94]

SENATOR ASHFORD: Thank you, Linda. Any questions of Linda? Thank you. [LB94]

SENATOR LATHROP: Can I ask just one? [LB94]

SENATOR ASHFORD: Yeah, Senator Lathrop. [LB94]

SENATOR LATHROP: Is it soon enough to give them the file, the information in the file? This bill, I was just looking at it, the bill says that right before, after the petition after the adoption is filed that they get a chance to read the file on the prospective adoptive child. And by then you've already been the foster parent, you're getting attached, and then they're kind of... [LB94]

LINDA DUBS: That's really a discussion I think that needs to occur, because one of the concerns is that we've already told the child you're going to be part of our forever family, so there's, then the stage is kind of set for another letdown for the child. So I think that's a discussion that needs to occur as far as is that soon enough. [LB94]

SENATOR LATHROP: Well, do you have an opinion about that? [LB94]

LINDA DUBS: I don't know if the agency has an opinion about that. [LB94]

SENATOR LATHROP: Okay. [LB94]

LINDA DUBS: From my personal standpoint, I do not believe that it is soon enough. [LB94]

SENATOR LATHROP: Okay. Maybe somebody else who's going to testify will have a thought about it. Thank you. [LB94]

LINDA DUBS: Yup. Thank you. [LB94]

SENATOR ASHFORD: Okay. Thanks, Linda. Next proponent. [LB94]

CHRISTIE ABDUL: (Exhibits 16 and 17) Hello, Senator Ashford. And Senator Howard, thank you so much for introducing LB94. My name is Christie Abdul. You'll be receiving written testimony from Lutheran Family Services, which I'm an employee of, but I'm testifying on behalf of myself as a licensed clinical social worker and licensed mental health professional. As a licensed clinical social worker who has worked with foster and adoptive families as well as children waiting to be adopted in the state of Nebraska, I want to share that I am in strong support of passing LB94. This legislation would ensure



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that all prospective adoptive parents receive information regarding their children's history; in turn, better preparing parents to meet the needs of their child as that child grows and develops. Research suggests that full disclosure of a child's abuse, neglect, academic, medical, mental health, and social histories can better prepare families for the lifelong journey of adoption and reduce the risk of adoption disruption. This also ensures that the family is able to seek out the appropriate treatment for their child. All prospective adoptive parents should be given the opportunity to read their children's case file. It is imperative that the prospective adoptive parent not only be provided access to the file, but that the file's contents are explained to them and that questions regarding past treatment and trauma be answered. Section XIII of the Health and Human Services Adoption Guidebook indicates that families should receive full disclosure regarding the child's history prior to accepting the placement of a child or signing the HHS adoptive placement agreement. At this time, there is no guarantee that this full disclosure will happen, and in my experience in working with families, that practice varies depending on the case manager involved in the case. LB94 will ensure that this happens prior to the finalization of the adoption, therefore ensuring that families have the tools and skills necessary to meet the needs of the children joining their family. Again, I want to thank you for the introduction of the legislation and for your advocacy for the children of Nebraska. Please do not hesitate to contact me with any further questions. Any questions? [LB94]

SENATOR ASHFORD: Okay, Christie. Any questions for Christie? [LB94]

CHRISTIE ABDUL: Senator Lathrop, can I address your question that you...? [LB94]

SENATOR LATHROP: Sure. [LB94]

CHRISTIE ABDUL: I believe strongly in working, having worked with adoptive families preplacement, at placement, postplacement, and postadoption--as I'm currently in the Right Turn program, that families should receive the information really prior to the child being placed for adoption, or if the child has been in the foster home, when that family is making that decision to adopt that child. Because if you wait until the child...the packet is filed with the court and the family finds out information in there such as, maybe in Denise's case where the child had serious sexual abuse, things that...and then you are faced with that decision in that 30 days, or you have to call off the adoption and the child's prepared for that, that can cause new trauma to that child and serious trauma to that child. And it's not really fair to any of the family members involved. So best practice, I believe, is that the file would be shared with the family long before the point in which this legislation indicates, but this is a safety net if that doesn't happen. [LB94]

SENATOR ASHFORD: Thanks. Thank you very much, Christie, for your comments. [LB94]

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CHRISTIE ABDUL: Thank you. [LB94]

SENATOR ASHFORD: Any other proponents? Tom. [LB94]

TOM MAUL: Thank you, Senator Ashford. Tom Maul, T-o-m M-a-u-l, again appearing on behalf of the Nebraska State Bar Association. The committee, legislation committee, we looked at this and we certainly are generally in support of LB94 for all of the reasons that this committee has heard today. However, our committee raised the same concerns that Senator Lathrop brought up. You know, the sooner the better. The bill, as presently written, it's after the filing of the petition. Well, you're right. I mean, you're on the track. If a petition has been filed, the adoption date has been...the hearing date has been set. That is a little late. You know, and if it could be the sooner the better, if it can be at the time of placement. I understand most of the adoptions of a child who's in the custody of HHS is to the foster parents. But our concern, again, is just the sooner they can have this information, the better for all the reasons you've heard here today. There are critical reasons why you need that information. That was a concern that we had with LB94 as written. If there's any questions, I'll be happy to answer them. [LB94]

SENATOR ASHFORD: Thank you, Tom. [LB94]

TOM MAUL: Thank you. [LB94]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Senator Howard? You know, thanks for everything you do on these issues. [LB94]

SENATOR HOWARD: Oh, thank you. That's very nice of you to say that. Thank you. [LB94]

SENATOR ASHFORD: And Senator McGill and both of you, on your work on...I mean, your leadership on all these things. [LB94]

SENATOR MCGILL: Can I start by... [LB94]

SENATOR HOWARD: I think after spending all the years that I've spent in it, I have an obligation to (laugh) keep bringing it in. [LB94]

SENATOR MCGILL: Absolutely. [LB94]

SENATOR ASHFORD: Keep us in the loop. (Laughter) [LB94]

SENATOR MCGILL: Can I quick ask you a question before you actually close? [LB94]

SENATOR HOWARD: Yeah, sure. [LB94]

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SENATOR MCGILL: What was...can you reiterate what HHS's involvement has been in helping you draft this or what their...? [LB94]

SENATOR HOWARD: Well, Todd Reckling sent me a note in on the floor and surprised the heck out of me by saying he supported this because usually we spar and can...I (laugh) was...I appreciated the support. [LB94]

SENATOR MCGILL: Yeah, so you drafted this independently? [LB94]

SENATOR HOWARD: But what he wanted to do was to put in an amendment that...did you have a chance to read the amendment? [LB94]

SENATOR MCGILL: Yeah, yeah. [LB94]

SENATOR HOWARD: It really kind of expands what I had originally put in, including the opportunity to read the file, I mean, years later. If you say, you know, I want to check this out, I want to come back and look at this. Not a bad idea. It's always good when they're willing to sit down and work with you, you know. [LB94]

SENATOR MCGILL: Yeah. I was just wondering if it was your idea and then they came... [LB94]

SENATOR HOWARD: Oh, the amendment? [LB94]

SENATOR MCGILL: The whole bill, I guess, the bill was yours and then they came and... [LB94]

SENATOR HOWARD: Oh, no. The bill is my idea. I mean, the bill needs to be done. [LB94]

SENATOR MCGILL: Oh, absolutely. I love it. [LB94]

SENATOR HOWARD: The bill needs to be...and I think I can answer a question that Senator Lathrop had. I agree, the earlier you share the information with folks, the better. However, there's a piece to that. Ideally, before a child is placed with a family, whether it's for foster care or adoption, the family is given the picture--I mean, as much as you know. You don't know everything going in because there's always things that come up as you process along in a case. But I think if--this goes to the credibility of Health and Human Services, which is why people are suspect of what (laugh) they're told--if you can give a family the most complete information that you have and caution them about things that could prove to be problematic, so they're watching for that and they can deal with it appropriately. One thing that I tried to do when I did adoptions, and I did them for

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a number of years with folks, is if there was any information in that file or I was given any information along the way in working with the child that there had been exposure to alcohol on the part of the parent, I would talk with these adoptive parents who were in love with this child and say, I think in everybody's best interest--the child, your own, your family's--that the child should be seen over at Munroe-Meyer for a fetal alcohol eval. That, to me, was always like kind of an insurance policy for the future. When a family signs an adoption agreement for a child, signs an adoption agreement with the department, if that evaluation has been completed, Munroe-Meyer sends a letter saying that we can't rule this...either we found this or we can't rule this out, I could include that in the agreement and that would leave the door open for services in the future, which is very, very important. Because if you don't have that crack in the door, the department is not going to be there for you, frankly. Safe haven has addressed that somewhat, but traditionally the department has said the child...you adopt a child, it's like a child that was born unto you and it's your responsibility. This bill gives people the opportunity to look in the file for themselves. They can read this. They may not understand things. If they had any questions...I usually, following the signature of an adoption agreement, I would...the people would come in, the parents would come in. I'd have a room reserved for them. They could spend as long as they wanted with that adoption file, take any notes they wanted, for their information basically. I think it's like any other relationship or contract that you enter into: The more information you have, the better you feel about what you're doing. In a nutshell, that's pretty much it. I'll do the closing unless you've got any other questions you want me to try to answer. [LB94]

SENATOR ASHFORD: Go ahead and... [LB94]

SENATOR HOWARD: Thank you. Children do best when they belong to families. Families do best when they have as much information as possible and they're engaged in an honest process. These are the goals of LB94: Keep the process honest, keep the information open so that families have the best possible chance for success. Thank you. [LB94]

SENATOR ASHFORD: You know, thanks for doing this, Gwen. [LB94]

SENATOR HOWARD: Oh, you're welcome. The problem that bothered me about the whole thing was it wasn't uniform. I mean, it was quite hit and miss. We did an adoption unit in Omaha, so we were really more dedicated to that issue. But when you get into other offices or other...I mean, now we're into the privatization, the reform effort. (Laugh) [LB94]

SENATOR ASHFORD: Well, I wonder how many...you know, I've always wondered, I haven't ask you though, how many families you've created? [LB94]

SENATOR HOWARD: Oh, gosh. I don't know. I don't... [LB94]

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SENATOR ASHFORD: That you created out of whole cloth, do you know? [LB94]

SENATOR HOWARD: You know, and they still stay in touch with me, which I'm grateful for. [LB94]

SENATOR ASHFORD: (Laugh) Thousands? [LB94]

SENATOR HOWARD: Oh, I don't think I'd say thousands but certainly a good share of...I mean, it's nice to help people to be able to put their family together in such a way that it's sustainable, that you feel that in the future they're going to be able to work together, work things out, which sometimes I'd say to them, I know you're in love with this child, but let's have this evaluation done. And I only had one family ever that said, no, we don't need it. [LB94]

SENATOR ASHFORD: Really? [LB94]

SENATOR HOWARD: Yeah. [LB94]

SENATOR ASHFORD: One family? [LB94]

SENATOR HOWARD: One family. But the department is kind of...after I left, the department kind of clamped down on that because there was a cost to having that done, so. [LB94]

SENATOR ASHFORD: Well, thanks for all those years. [LB94]

SENATOR HOWARD: You're welcome, you're welcome. [LB94]

SENATOR ASHFORD: Okay. Any other... [LB94]

SENATOR HOWARD: Free to go? Free to go. [LB94]

SENATOR ASHFORD: (See also Exhibits 23, 27, and 28) That concludes the hearing. LB79. Senator McGill. [LB94]

SENATOR MCGILL: Hello, Chairman Ashford and fellow committee members. I'm Senator Amanda McGill from northeast Lincoln, that's Amanda McGill, M-c-G-i-l-l. Forgive me, this is my first time getting to really talk about child welfare reform, so I might go off a little bit here at the beginning. As you all know, I've been pretty involved with it over the summer and fall, starting off as a member of the Children's Behavioral Health Oversight Committee. As a member of that, we got a lot of e-mails all summer and fall about the problems with child welfare reform. There's still a great deal of

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confusion out there. I still feel like there has to be a senator involved with an individual problem in order to get any answer, if there even is an answer given to us, out of HHS. I can't count the ways that I would be doing things differently if I were there in terms of communication and transparency and planning and openness. But what I've learned out of the whole situation and where we're going is, well, twofold. But when it comes to this privatization, this reform effort, I believe there are going to be good caseworkers and bad caseworkers regardless of who houses them. Whether it's HHS or KVC or the coalition up in Omaha, you're going to have good workers and bad workers. And the point of this whole reform is to try to get kids into more permanent situations more quickly. As Senator Council knows and everyone here has heard about some of the efforts in Omaha or the round tables in high schools, whether it's in east Omaha or west Omaha where foster care is at the top of the list in terms of the issues they're facing and how many households they've been in during their care and time in foster care. And this privatization effort and this reform I'm not convinced is really addressing that particular issue. It's led to more confusion that we've had to step in and try to do what we can, like Senator Howard's last bill dealing with the adoption end of it. And we're going to see a lot of bills dealing with different elements of child welfare reform, but there's only so much we can do as a Legislature when there's a different branch running that process and making those decisions. One of the things I believe we can do is to increase the number of CASA workers. They've been proven to decrease the amount of time that children are in the foster care system, and I think that's the most important thing we need to be looking at. Right now, we're taking kids out of the home and they're skipping between so many different households that it begs the question, would they have been better off staying with their original parents? And it's sad when that's the option. You know, the bill that I present here today...I know Janice Walker is looming behind me to testify (laugh) against it because it is a court fee increase of \$1.25. But I ask even as we're looking at the budget issues and how to fund the court system that this be left on the table and not just automatically ruled out because the courts don't support it. This is something that we, as a Legislature, can do to directly impact the lives of these kids, that has nothing to do with the child welfare reform but can make such a deep impact on how long those kids are wards of the state. LB79 would create a grant program administered by the Nebraska Supreme Court that would provide grants to those who are training and recruiting volunteers under the court, Court Appointed Special Advocate Act. In addition, it would provide grants that could be utilized for the expansion of cost of programming into counties that aren't even being served right now. These funds would come, like I said, from the \$1.25 court fee increase. CASA volunteers do such a extraordinary job for us throughout the state, and in many cases, they're the child's only constant in a sea of change, and that's certainly true right now as there's so much change going on with caseworkers. They are volunteers who have their hearts truly in the case and spend a lot time with the youth. If you have questions about this bill I can take them now, but we have plenty of people lined up to get into the details. I just firmly believe this is something that we can be doing to make an impact right now.

[LB79]

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SENATOR ASHFORD: Any questions of Senator McGill? One thing about Janice is she may not be supportive but she's good at implementing when we tell her that there's something we want her to do. (Laughter) Okay. Great. [LB79]

SENATOR MCGILL: All right. [LB79]

SENATOR ASHFORD: Great comments. Proponents? [LB79]

RENEE EVELAND: (Exhibit 18) Thank you, Senator McGill, Senator Ashford, and members of the committee. My name is Renee Eveland, R-e-n-e-e, Eveland like Cleveland, E-v-e-l-a-n-d. I'm an attorney here in private practice, but I'm here actually as part of my role as vice president for the state CASA board. We have a state board and then we have local programs that have their individual boards throughout the state of Nebraska. We serve 1,200 children through volunteer service, it's all volunteer-based. And I couldn't elaborate any more than the prior testifiers in the prior bill about the need for children in care and the trauma that they experience and that sort of thing when caseworkers change and things change. CASA, as Senator McGill pointed out, is the thing that stays constant in those children's lives. That creates a constancy in the knowledge that we have about the child, and in turn, that reduces time in care. I and my husband are state-certified foster parents also, so I personally have experienced the upheaval that occurs when a child changes caseworkers year in and year out, month after month, changes in caseworkers. The constancy of a CASA worker, and it's volunteer-based, is so important because we have learned that it saves time and care. On average, the statistic is that a CASA volunteer that is appointed to a child saves four months in care, and that's a significant savings. So it's important for the life of the child, of course, but it translates to dollars--\$12.5 million per year, in fact. And so we certainly are in favor of a modest court fee, \$1.25, as you've heard, as a way to ensure that CASA is sustainable, viable. We've been around for 25 years, so we know what we're doing, we just need a little funding to help the program. And I thank you so much for your time today. If there are any questions, I'd be happy to address them. [LB79]

SENATOR ASHFORD: Yes, Senator Coash. [LB79]

SENATOR COASH: Thank you, Chairman. Renee, do you think more money is going to increase your ability to recruit volunteers? I mean, CASA volunteers are so valuable, and we get...I know that we would take and the courts would appreciate more children being represented by CASA volunteers, but I'm trying to find the connection between an additional resource and being able to get a bunch more volunteers, and I just wonder if you could speak to that. [LB79]

RENEE EVELAND: Thank you for the question, Senator Coash. And the way that I would respond to that is simply that we hear from our local programs, so again I'm from

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the state board, and these local programs are really struggling to...they sustain themselves by private grants, private donations, grants and things of that nature, and they do that so that they can train these volunteers and keep their programs alive. Some...and it's very disparate across the state, some get county funding, some don't, and so the playing field is certainly not level throughout the state. And I think that would lend itself to some uniformity and absolutely would take the pressure off of these organizations to ensure their financial viability so that they can focus on the children, training, and so forth. There is a long waiting list of children. We serve 1,200 children, but a long waiting list of judges who want CASAs, judges who want kids to be served by CASAs, and we just can't get to them all because of that financial component. So thank you for your question. [LB79]

SENATOR COASH: Well, I understand that the additional resource would certainly help the local chapters with their training, but if you don't have a bunch of new people who are volunteering their time to become CASA workers, how will the resource help you fill that in? I mean, you might get a bunch of...here's what I'm worried about, you might get a bunch of money. You'd be able to shore up the training and provide all the training you want, but you don't have an additional 15, 20, 100 people to train. It doesn't...I'm just...I'm worried that you would have enough resources to do training and make it uniform and a level playing field, but if more people don't volunteer and the resource isn't used to find more people to volunteer, it wouldn't really be worth the effort. [LB79]

RENEE EVELAND: Sure, and if I'm summarizing correctly, you're saying, what if we have a dearth of volunteers? On some level I just fundamentally disagree because I think we have a state that has willing and ready and able volunteers and that those resources would help. Furthermore, the one function of the state board, of course, is to promote general awareness throughout the state and to be able to focus on those efforts to help recruit volunteers. That financial component is tied to that. But fundamentally I think your question as to whether we really will have volunteers, on one hand, we have 25 years of history to show that we have been able to get the volunteers that we've needed in the past. We're always looking at new ways to get volunteers, but I think they're out there and the kids are there to be served and the judges want us there. We also have great national support as well. I know there are differing levels maybe of awareness about CASA, but we had a national program, supporters of the likes of Dr. Phil and Judge Judy. It is a big national program. Our state is one of seven states that does not provide state funding, which is kind of a shocking statistic really. And I think so we're not looking at just Nebraska CASA but all of these other states who are able to collect the requisite number of volunteers I think helps show us that, yes, indeed the volunteers are there, the need is there, and that that financial component would help transition focus away from staying alive, so to speak, into service to the children, and that's what's important. [LB79]

SENATOR COASH: So are you...you said the volunteers are there but then you said



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you've got more cases than you can provide volunteers for. I mean, are you turning away volunteers and saying, hey, we can't have you because we don't have enough money to provide the training? [LB79]

RENEE EVELAND: Not that I'm aware at this time. [LB79]

SENATOR COASH: Okay. All right. Thanks. [LB79]

RENEE EVELAND: Were there any other questions? [LB79]

SENATOR ASHFORD: Well, I think Senator Coash makes great points. I'm very interested in this for a couple of reasons. One is the issues or concerns, at least in our county, in Douglas County. I don't think it really applies as much in Lancaster. But we've had this discussion, and maybe not as much in some of the rural counties, with the guardian ad litem system. I mean, we have reports from a third-party objective expert saying that the guardian ad litem system in Nebraska is not only broken, it's one of the worst in the country. And we're going to be taking that up this session in a bill. I think Senator Christensen has a bill. And I think we need to answer Senator Coash's questions. I mean, those are...and I would recommend that somebody provide Senator Coash with specific numbers on how...where this money is...how this money is going to be spent, because I think he raises a great point. But with the failure of the guardian ad litem system and with the focus that the Legislature and the judiciary and the executive branch are focusing on children that are not attending school, for example, on a regular basis, there's something...some of those children are in the juvenile system, some of them are not. But I think this committee is trying to put this all together, trying to find a pathway for children. To Senator Coash's absolute point, money has to be used efficiently because we don't have that much money to go around. But I'm very interested in this. I don't know if this bill exactly is the answer but I think it's part of the answer. But this committee and my colleagues on this committee, we think about this all the time. Most of our time we're thinking about, how do we do this? How do we make certain that children that are having issues are identified early in the process so that we don't have to...? As the Chief so absolutely correctly stated in his State of the Judiciary this morning, let's try to keep these children out of the juvenile system. Well, if our guardian ad litem system is broken, and it seems like it may be, then it really, in parts, then...you know, I'm very interested in this. I don't know how this all plays together, but I think this committee, I'm sure as one of our tasks, will be to putting all these pieces together by the end of the session and say, where do we go? Which way to do we go here? And so the more information, (1) on funding and how money would be spent, and (2) how do we track these cases. You know, my guess is that CASA-cased children are...there's a success rate, there's a positive impact on these children. And I don't know how we get that data, necessarily, but that would be very helpful to get. [LB79]

RENEE EVELAND: Thank you so much, Senator Ashford. And, in fact, I think there are

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compilations of some information that we certainly can provide to the committee. And thank you for your points also as well; we'll get you some information, Senator Coash, to address your concerns. Statistics are very important when we're talking about how are the dollars going to be spent. Are we getting the most bang for our buck, so to speak--or \$1.25 in this case (laugh)--in order to serve the children? [LB79]

SENATOR ASHFORD: Well, there's no doubt that we're getting...I don't mean it that...there's no doubt that 443 volunteers that aren't being paid, there's no question that that's a good deal for the state of Nebraska. That's not the question. The question is, how are these children doing? Because there are other elements of the system that are touching them on an ongoing basis, not just CASA volunteers, so I think it's important to know how those children are doing. [LB79]

RENEE EVELAND: Absolutely. [LB79]

SENATOR ASHFORD: Senator Council. [LB79]

SENATOR COUNCIL: Thank you, Chairman Ashford. Renee, can we also receive data on the counties where CASA is receiving funds from county governments? [LB79]

RENEE EVELAND: Absolutely. [LB79]

SENATOR COUNCIL: Because, I mean, the issue as I see it is not whether or not CASA programs are effective or whether or not CASA needs to be expanded and we need to provide ways to recruit and train more volunteers so we can serve more youngsters. The issue, plain and simple, is how do you pay for it? And if there are alternative ways because what I hear you saying partially in response to Senator Coash's question is that CASA is looking for an ongoing, sustainable source of funds. The 400 volunteers you have now may not be there next year or the year after, but you would need to provide for that level of volunteer service and the requisite training. So the issue is whether there...you know, and appreciating the fact, you know, Janice has been pointed out and others that, you know, you're going to get opposition to use of the court fee. So the question is, is whether there's some alternative that we can be looking at. And I don't know what level of funding would be required on a county-by-county basis and whether that's...I mean, if the lobbyist for the Nebraska Association of County...if organizations were here, they'd probably be grinding their teeth, but. I mean, I think that's what we need. I think that's what we need to be looking at as well. And I think I fairly confidently speak on behalf of the committee that the value of CASA has been demonstrated. Many of us have visited CASA. We see the presentations from the young people who have been impacted positively by CASA, and we've also seen young people who have not had the benefit of a CASA volunteer who has been, I think as Senator McGill said, the one constant. I mean, I can't tell you regrettably how many young people I have spoken with who have had 12, 13, 14 caseworkers, and we're not

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talking in a ten-year period; we're talking in like an 18-month period. So, and, you know, what kind of impact that has on that child and their opportunities to be successful. So the bottom line is, how do we find, you know, the most appropriate source of funding for CASA? [LB79]

RENEE EVELAND: And, Senator Council, your remarks are also well taken. Of course, we've looked at that, as you can imagine, over the past 25 years, frankly, and of course during the duration of my involvement with CASA. And in a question of whether county funding will stay there or be there in the future, and all of those kinds of things, is a big question mark, just as any private donation is always a question mark. And I think to that end, one reason that we have pursued this particular avenue of the court fees is that we perceive that CASA is a dual function. It is a service to children absolutely, but it is a service to our judiciary as well, and that sort of segues back to the comments about how CASAs and guardians ad litem perhaps can work together. But in the end, just fundamentally as part of its mission, CASA does provide the judiciary with the information that they are seeking, and as part of that, CASAs mission, they are serving the judiciary. They're not an agenda. They don't have that agenda of working for DHHS or some other entity. Their agenda, so to speak, is to provide the court with information. And so that's sort of the thinking that landed us here today, just to give you some background about that. [LB79]

SENATOR COUNCIL: Okay. [LB79]

SENATOR ASHFORD: Senator Larson. [LB79]

SENATOR LARSON: As the only rural senator on the Judiciary Committee (laugh) not representing Douglas or Lancaster Counties, I have a few question regarding your guys' presence in rural Nebraska. I see that you have programs in 33 counties and that's good, but what about the other 60, first of all, that you don't have a presence in, and how will this bill help grow your presence in rural Nebraska? Will it grow? And, frankly, are there the volunteers in rural Nebraska to provide the services that CASA offers? And, obviously, if this goes through, it's \$1.25 for the whole state, whether or not your county has the services or not, and that's a concern as a rural senator. You know, my constituents might be getting charged for something that they don't get to use. [LB79]

RENEE EVELAND: Yes, thank you, Senator Larson. I may defer somewhat some of your comments to our executive director who will be the last to testify, but...and certainly we have those statistics. As you can see from the written testimony, we are beginning CASAs in three additional counties. There are some counties that have had CASA in the past, that for financial reasons have--Gage County being an example--have gone away. Other counties are considering whether they can logistically get volunteers over to those counties to help sort of pick up the piece of the puzzle left behind, and there are just lots of logistical questions about that. But as to the specific counties and that, I

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certainly appreciate your question and may defer that. [LB79]

SENATOR LARSON: I understand that, you know. But Gage County I'd still argue is still relatively urban to the area that I serve (laugh), so. And that's my concern. [LB79]

RENEE EVELAND: Oh. Understood. [LB79]

SENATOR ASHFORD: Okay. Thanks. Yes, Senator Lautenbaugh. [LB79]

SENATOR LAUTENBAUGH: Thank you, Senator. Thank you for coming today, and I appreciate what you do and I hear good things about the CASA workers and I know it's an important program. I think one of the things we struggle with is getting good information regardless of which facet of childcare and the court system we're looking at. I mean, Senator Ashford, you and I remember a very different study apparently. You remember a professionally done third-party one; I remember one that we probably shouldn't have paid for because it was a complete sham. And I hope...we may be talking about two different guardian ad litem studies. But we are hamstrung time and time again by the inability to have good actual evidence and data. What we have instead are anecdotes and anonymous complaints, all too often, and it's very difficult and often unwise to make policy based upon that. So I appreciate you coming today. It's important that you're here. And to make this a question, wouldn't you agree it's important that you're here to tell us about this? (Laughter) [LB79]

SENATOR ASHFORD: I appreciate that, Senator Lautenbaugh. I would, though...the point I'm making is the caseloads for each individual guardian ad litem, it may not be the individual guardians that are doing a poor job, I don't think that's the point. The point is, is that...and I don't think that's the complaint. I think the concern is the caseloads and that one of our...and those are indisputable. And I think that one of the goals of--so (laugh) we're having a little debate here--but one of the goals, I think, of what we do here is to keep children out of the juvenile justice system entirely so that we don't have to have this happen. But point well taken. But I think it's really the caseloads that we're dealing with generally. But thanks for your comments. Let me ask, how many people are here to testify on this bill? Okay. Why don't we go ahead and finish the testifiers. Do we have any opponents? Okay. Let's just finish up the proponents and... [LB79]

RENEE EVELAND: Thank you for your time. [LB79]

GWEN HURST-ANDERSON: Mr. Chairman, members of the committee, thank you for having us here. I'm Gwen Hurst-Anderson, G-w-e-n H-u-r-s-t hyphen Anderson, A-n-d-e-r-s-o-n. I'm executive director of the Nebraska CASA Association, and I'm not testifying but I wanted to respond to some of the questions, particularly yours, Senator Coash, about if the funding were there, would the volunteers be there. And I'll tell you about a couple of things. One, in 2009, Senator Lathrop asked for a study of the

sustainability of CASA in Nebraska. And as a part of the study, we worked with Concordia University who interviewed several other programs across the United States. And what we learned was that in the states where there was state funding, as soon as that state funding occurred, there was an increase in volunteers and it was a significant increase. What we know in Nebraska is that we do have programs that have had to turn away volunteers. The reason is because our national CASA guidelines state that there can only be 30 volunteers for every full-time, dedicated staff person who is working with those volunteers. So as soon as you get beyond that, then they need to hire additional staff people. If there's no money, you can't hire the staff people. So those are key and important things to note. The other reality is, many of our counties, and they're especially rural counties, are ones that have not been able to start CASA programs because they don't have the funding to do that. And they've been asking us, is there any way that you can find some funding for us so that we can start CASA programs? And even if we can't sustain, for instance, a full-time staff person in one county, can we join together with several counties? And the answer is yes. And so the funding here would make an extreme difference in terms of the number of programs that there could be in Nebraska and the number of children who could be served and the volunteers are there. [LB79]

SENATOR ASHFORD: Senator Larson. [LB79]

SENATOR LARSON: So what are the, you know, in terms of the...you've said that there could be an expansion into rural counties. Is there a plan for that? You know, what portion of this money is going to go back to rural Nebraska, and will it be a consolidation of counties to get CASA programs there? Is there any plan in terms of getting these services out there? [LB79]

GWEN HURST-ANDERSON: There is not currently a plan, Senator Larson. One of the pieces that the Nebraska CASA board is doing is some strategic planning. And amongst that, a part of that anyway, is asking judges in many of our counties, would they like to have a CASA program? And actually the answer is always yes, but. And once that information comes back...the other thing we're doing is asking them to prioritize where those programs ought to be. And so as that information comes back, we will develop that plan. In terms of this funding that we're talking about, 10 percent of it goes to expansion of programs into new counties, so. And that's dedicated just for that purpose. Now the other reality is, once they are a program, then they would have access to the funding that would provide for the recruitment and training of volunteers. [LB79]

SENATOR LARSON: Okay. Ten percent goes into the expansion of new counties at \$1.25. How much of that new funding, total, will come from the other 90 counties that aren't considered urban counties, I'd say? It would be my next question. I would consider Lancaster, Sarpy, and Douglas Counties your urban counties, and I understand they make up a lot of the court system in terms of funding. But again, \$1.25

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for every court case across the state is worrisome, especially to me in rural Nebraska, and only 10 percent going to the expansion to rural Nebraska. I'd ask how much of that money is coming from rural Nebraska? So, and I know you can't answer that today, but. [LB79]

GWEN HURST-ANDERSON: I was going to say, I don't have an answer to that. (Laughter) I'm sorry. [LB79]

SENATOR LARSON: Yeah, I know you can't answer that today but that's my ultimate concern. You know, I've heard a lot of good things about CASA as well, but again, I'm just worried about protecting the rest of the state that doesn't have access to this already. [LB79]

GWEN HURST-ANDERSON: I appreciate that. And one of the realities is that we do want to expand into the rest of the 60 counties where we don't have a presence. [LB79]

SENATOR LARSON: And that's very good. [LB79]

SENATOR ASHFORD: Any other comments? And I think Senator Larson brings up a great point. I think we need more information and everyone has said the same thing. We need more information on how this money is going to be spent. I mean, it's interesting how it would be spent theoretically. You know, we have juvenile issues across the state, more of them are in Douglas County because it's the largest county, that's obvious. But I think the more information we have on your strategic plan...in fact, we need your strategic plan I think (laugh), because if we're going to be looking at any funding, we're going to need your strategic plan to see how you're going to spend your money, so. Okay. Thanks. [LB79]

GWEN HURST-ANDERSON: Thank you. [LB79]

SENATOR ASHFORD: Next proponent. Good afternoon. [LB79]

JAMES GALLANT: (Exhibit 19) Good afternoon. Mr. Chairman, members of the Judiciary, I'm kind of like Senator Larson over here. I'm just a small-town country lawyer... [LB79]

SENATOR ASHFORD: I've never bought that. (Laughter) [LB79]

JAMES GALLANT: ...and my name... [LB79]

SENATOR ASHFORD: It's always a good start but I've never bought it. [LB79]

JAMES GALLANT: My name is James Gallant, G-a-l-l-a-n-t. I practice in Dodge County.

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Fremont is my county court. For the last 20 years, I've been guardian ad litem. At any given time, I will have between 15 and 20 cases that I am dealing with. And I appear today to support this LB79. During my...I'm in the trenches working with the judges, working with the juvenile courts, and I've noticed two things that have happened over the last 20 years. And the first one was that Through the Eyes of a Child Initiative has been extremely, extremely important in how the judiciary and how we as guardians ad litem proceed in the juvenile court. The second great development has been the growth and the expansion of CASA. And these people are volunteers; they're not paid. And from my experience, I see that laypeople are very distrustful of HHS; they're distrustful of the court system; they're distrustful of the guardians ad litem, but they aren't distrustful of lay volunteers that come in and dedicate themselves to making decisions. I would imagine I have probably, of my total caseload, I might have one-fourth of my cases I have CASA workers. They're absolutely invaluable to me. I just finished a two-day trial on a relinquishment of a mother that was disabled and had a CASA volunteer, a Methodist minister, a retired Methodist minister, very compassionate, very kind to a mother that couldn't raise her children because she just didn't have the ability to do that. The CASA volunteer came in and basically explained things to her and visited with her. A few years ago, I was guardian ad litem of a six-month-old child. The mother and the father weren't married. The mother indicated to me that the father was abusive, that the father had a drinking problem, a gambling problem. And so basically when I visited with the CASA volunteer, I said, you know, he supposedly goes to this bowling alley, he plays pickle tickets, and he drinks, and, you know, you go by this place every day. I go by this place every day. So would you mind taking a little time just walking into the bowling alley and see what's going on? Well, sure enough, after two or three weeks she called me, and she said, well, he was there last night, and she said: I've got to resign as a CASA volunteer. And I said, well, why do you have to do that? Well, he was angry, he was drunk, he was abusive; he threatened her at that point in time. And so she said to me, she said: I just can't do it. I thanked her profusely and I said, you know what though, you've given me the answer as the guardian ad litem. [LB79]

SENATOR ASHFORD: I think those are great comments, and you have 15 cases and that's a huge number. [LB79]

JAMES GALLANT: That's right. [LB79]

SENATOR ASHFORD: In Douglas County, the average is 60. [LB79]

JAMES GALLANT: Okay, well, I have 15 cases... [LB79]

SENATOR ASHFORD: And that doesn't mean...the point is, that's a lot of cases. And for you to...the amount of time and effort, which is I'm sure significant, and the help you give those children is immense... [LB79]

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JAMES GALLANT: Right. [LB79]

SENATOR ASHFORD: ...and then to have to do 60 cases is a lot, but. And so that's my point. But any questions of James? [LB79]

SENATOR LAUTENBAUGH: Yes, Mr. Chairman. What percentage of your practice is guardian ad litem work? [LB79]

JAMES GALLANT: I would guess about 10 percent. [LB79]

SENATOR LAUTENBAUGH: Thank you. [LB79]

SENATOR ASHFORD: I don't know if we're... [LB79]

SENATOR LAUTENBAUGH: Yes, we're still doing this. (Laughter) [LB79]

SENATOR ASHFORD: So what's the point? (Laughter) I mean...thanks, James, really. [LB79]

JAMES GALLANT: All right. [LB79]

SENATOR ASHFORD: Good point, good comments. (Laugh) Sorry. Next proponent. [LB79]

JESSICA HILDERBRAND: Thank you, Mr. Chairman and members of the Judiciary Committee. My name is Jessica Hilderbrand, J-e-s-s-i-c-a H-i-l-d-e-r-b-r-a-n-d, and I'm here to speak about something that's been brought up a little bit before, and that's the impact that a CASA volunteer has. At the age of 15, I was taken and dropped off at a Boys Town shelter when I was 15. I met three people while I was there. The first one was an intake worker from the Department of Health and Human Services; the second was a police officer who came to get my story; and the third person was a person, her name was Beth, and she told me that she was a CASA volunteer. And at that time I had absolutely no idea what that meant and what kind of impact that she was going to have on my life--and I do now. And I know that we're to keep it quick and short. But to talk about the impact that this volunteer has had on my life would be impossible to do in a day, so I'm going to touch on a couple of different things. She was the one and only consistent person that I had from the time that I was told that I came into foster care until I aged out. And still to this day, she is still that one consistent person that I have had in my life. The consistency, it made a difference when I changed placements. I didn't have to constantly repeat my story because it's very traumatic to talk about the things that have happened and the things that did happen at that time as a kid. And to have to tell multiple people multiple times, you start to become a little numb to your



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story and to what has happened to you. But I didn't have to do that because Beth knew my story, she knew where I was at the time, and she was able to meet with people ahead of time and let them know what was going on and to prepare them and to prepare me for those transitions. I had, obviously like every other young person who experienced foster care, multiple caseworkers. And there were actually a couple times I was supposed to be in a temporary placement and ended up being there for a longer term and because of that transition within the caseworkers. But the one person that I was never forgotten about was Beth, my CASA volunteer. Her role ultimately was to advocate for me in court, and so I definitely want to touch on that, although there are many other things that she did for my life. She understood and I understood the importance of me attending court and being able to talk to the judge about what was going on in my life and what I wanted for my life. And when I would come into court, it was very intimidating as a child. And so because she knew me so well, she and my foster mom were able to work out a system where we showed up late and where I would sit in a place where I felt safe. She always made sure that I was able to review my court reports so that I was comfortable with what she was saying, because a lot of times what was being reported in the court reports wasn't exactly what was going on or wasn't timely. So having that was an amazing asset to making sure that what was going on in my life was being correctly reported to the judge. The other thing is, is that I really, really wanted to talk to the judge. At that time, I didn't have a lot of confidence to do it in court or in front of my biological mother, and so Beth arranged with my judge for us to meet in private quarters. And there was nothing, nothing more empowering than to know that I could talk to the judge and tell him what was going on and that there was somebody in my life, Beth, my volunteer, who took the time to arrange that. That's not easy to do. And so, but she took the time to do that. There are multiple other things that she did to make me the person that I am today. And I have a whole list of things here, but I'm not going to read all of them. I know for a fact that because of her consistency, because of her getting to know who I was as a person, I was able to build the confidence that I have. I was able to not turn out like my parents, and so my children will not end up in the system. And so if you look at cost savings just from me, and to look at the other kids who are going through the system at the same time that I did and their kids who are ending up in the system, that will not happen with me and that will not happen with my children or my children's children. And I know that has to do...because I had a volunteer, a volunteer who was not being paid to care about me and to take the time to get to know me and my life and exactly what I needed. [LB79]

SENATOR ASHFORD: Jessica? [LB79]

JESSICA HILDERBRAND: Yeah. [LB79]

SENATOR ASHFORD: Great job. [LB79]

JESSICA HILDERBRAND: Thank you. (Laughter) I didn't talk about half of what I...it's

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hard to read. [LB79]

SENATOR ASHFORD: Actually, I wouldn't mind sitting here listening all evening, but it's a great story. I think Senator Coash and Senator Council. [LB79]

SENATOR COASH: Okay, thank you, Chair. Hey, Jessica, thank you. [LB79]

JESSICA HILDERBRAND: Hello. [LB79]

SENATOR COASH: Good to see you again. One of the things we often hear about the outcomes from having a CASA volunteer is, and Senator McGill mentioned this very well in her opening, is that the CASA volunteer is a big factor in the amount of time a case is involved in the court system. [LB79]

JESSICA HILDERBRAND: Um-hum. [LB79]

SENATOR COASH: Now I know you can only speak to your own experience, but do you feel like your volunteer was a factor in the time that it took? [LB79]

JESSICA HILDERBRAND: Um-hum. Yeah. [LB79]

SENATOR COASH: I mean, you mentioned a lot of different factors of your advocacy, but what about the time factor? I mean, how much longer do you think you would have been in court without a CASA volunteer? [LB79]

JESSICA HILDERBRAND: Thank you for your question, Senator. Unfortunately, because they would never file a termination of parental rights against my mother, I aged out of the system. However, I will say that I do have a forever family and a permanent family because of the work that Beth did. I transitioned a lot, but I had built a really great relationship with the very first foster home that I was in and I desperately wanted to go back to that. But because of the transition in caseworkers, no one really knew that, other than Beth. And even though the department wouldn't file a termination against my parents, Beth worked incredibly hard to make sure I had that permanency in my life and that I had a permanent family. And no one else would have been able to do that to make sure that...because when I was a senior, I ended up being able to be put back in that home and that has been my stability. I wouldn't have a family if it wasn't for that work that she did getting me back to that original foster home. So, unfortunately for me, it didn't save me any time in the system because they wouldn't file against my parents; however, it did help me achieve permanency so that I had a family. And every kid deserves a family, so. [LB79]

SENATOR COASH: Thanks. Thank you. [LB79]

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JESSICA HILDERBRAND: Yeah. [LB79]

SENATOR ASHFORD: Thanks. Senator Council. [LB79]

SENATOR COUNCIL: Yes, thank you, Chairman, Ashford. Jessica, good seeing you again. I have a question that is kind of a follow-up on some discussion that had occurred up here. During the time that you were a ward of the state, Beth was your CASA volunteer, did you have a guardian ad litem? [LB79]

JESSICA HILDERBRAND: Um-hum. I did. [LB79]

SENATOR COUNCIL: And what was the interaction or the relationship between yourself and your guardian ad litem? [LB79]

JESSICA HILDERBRAND: Yeah, thank you for your question. We didn't have a relationship at all. He...I actually didn't know he was my guardian ad litem. Some of the time he attended court and that was the only time that I ever saw him or talked to him. Again, I know he had multiple...he was the only one in the area and he had multiple cases. And he and Beth had a really good relationship, and so they were able to communicate. The only time I ever saw him was when I actually went to court, and...yeah. [LB79]

SENATOR COUNCIL: All right. Thank you. [LB79]

SENATOR ASHFORD: Gosh. [LB79]

JESSICA HILDERBRAND: Yeah. [LB79]

SENATOR ASHFORD: Good job. [LB79]

JESSICA HILDERBRAND: Thank you. [LB79]

SENATOR ASHFORD: And good job to your CASA volunteer. [LB79]

JESSICA HILDERBRAND: Any other questions? [LB79]

SENATOR ASHFORD: I think she's here, isn't she? [LB79]

JESSICA HILDERBRAND: She did show up, yes, (laughter) to talk about... [LB79]

SENATOR ASHFORD: I don't know how I knew that. It was the... [LB79]

BETH WISSING: I'm very proud of where she's come from. [LB79]

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SENATOR ASHFORD: Well, you should be. [LB79]

BETH WISSING: And I did drive from the rural county. (Laughter) I'm the director of the CASA in Clay County. [LB79]

SENATOR ASHFORD: Great. [LB79]

BETH WISSING: Yeah. And I usually would have dressed not in jeans but I heard she might need me today, and so now it's a friendship but I drove up with her. [LB79]

SENATOR ASHFORD: Thank you. Okay. [LB79]

BETH WISSING: And I'll drive home with her. [LB79]

SENATOR ASHFORD: Thank you very much. All right. Thank you. [LB79]

JESSICA HILDERBRAND: Okay. [LB79]

SENATOR ASHFORD: Thanks, Jessica. Let's see, we have I think one other testifier and then Janice. [LB79]

DAVID PARTSCH: (Exhibit 20) I'm not sure how to follow that up. My name is David Partsch, P-a-r-t-s-c-h. I'm from Nebraska City. I'm the Otoe County Attorney. I want to just clarify I'm testifying personally and not on behalf of the County Attorney's Association who, as far as I know, have not met yet to be able to discuss this particular bill. I guess I don't really need to go into the value, I don't think, of the program. I think that value is apparent from the previous testimony and other studies that have been done. I'll vary, I guess, from the written testimony presented. I just want to let you know that we have implemented CASA in Otoe County. Our total population right now is about 15,000, so we're considered a rural county I believe, and...but we have also had discussions with the counties to the south of us, Nemaha County and Richardson County. I know they're very interested in implementing the program but just haven't been able to do so, in large part, I believe, because of funding issues. And so if we want to see this program expand throughout the state, and if the state wants to take a stand and protect our children, I think the only way to do that is through a statewide implementation of funding for the program. I would say that since July of 2009, when we got started, we've trained and recruited 14 different volunteers for our program. We've served 36 different cases and children through that program. And these are all, again, on abuse and neglect cases. So just for example, we've had a case where a mother of two children abandoned her infant and four-year-old so that she could go and get high. We've had another family that had multiple special needs children that were being physically assaulted and abused by their parents. And so these are the most vulnerable

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Nebraska citizens that are in need of protection, and I think the best way to do that is to encourage the expansion of the program statewide. Thank you. [LB79]

SENATOR ASHFORD: Thank you. Thanks. Good to see you again today. Okay. And if you have a written...do you have a written statement too? [LB79]

SARAH FORREST: Okay. So you don't even need to...well, again (laugh)... [LB79]

SENATOR ASHFORD: Well, if you have a written statement, that's great, and if you want to summarize that. [LB79]

SARAH FORREST: (Exhibit 21) I'm just going to briefly touch on a couple of points. Sarah Forrest, representing Voices for Children in Nebraska and in support of LB79. As you all know, the state has recently embarked on a child welfare system reform. We call it Families Matter. And since that point, substantial confusion and change has occurred in the system across the state--rural, urban, everywhere. And now more than ever, CASA volunteers have a crucial role to play. As we look towards a comprehensive reform of our child welfare system and serving the best needs of our most vulnerable children, you've all heard about the effectiveness of CASA programs--their potential for cost savings and reductions and the absolute need for volunteers. On December 31, 2010, there were 6,250 Nebraska children in out-of-home care. As of that same date, 784 children were being served by CASA volunteers and 1,400 Nebraska children were on the waiting list for CASA services. The need is obviously there. And creating this fund would be an important step to recruit but also train volunteers, and also, through the grant application process, be an important and valuable way about gathering that information that you've all been talking about, about how many children CASA volunteers serve, the effectiveness of their services, time and placement. If we really want to make substantial changes to our child welfare system and get that data, this creation, the creation of this fund presents an excellent opportunity, and Voices for Children encourages you to advance LB79. It's a crucial time in our system and it presents an excellent opportunity for the state to take a very positive step forward and one that many other states have done. And I'll take any questions if you have them. [LB79]

SENATOR ASHFORD: Any questions of Sarah? Seeing none, thanks, Sarah. [LB79]

SARAH FORREST: Thanks. [LB79]

SENATOR ASHFORD: Okay. Any other proponents? Opponents? Janice. [LB79]

JANICE WALKER: Actually I'm testifying in a neutral capacity, Senator. [LB79]

SENATOR ASHFORD: Oh, you're neutral. Okay. [LB79]

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SENATOR MCGILL: I'm sorry. (Laughter) [LB79]

SENATOR COUNCIL: You've been beaten up for nothing now. [LB79]

SENATOR ASHFORD: I'm overjoyed actually. (Laughter) [LB79]

JANICE WALKER: I'm Janice Walker and I am the brute that has been (laughter) looming in the back of the room, and it is with great reluctance that I testify today. All of you senators received a letter from me earlier in the week setting out my position and the position of the Supreme Court with reference to LB79. I have the highest regard for CASA as an organization and for the work that they do, and I believe that they not only help children and families, I believe they are of great benefit to the courts. I know that the judges love their CASA volunteers, so I agree with all of that. I simply ask that the Legislature look at a means of funding that does not rely on court fees for the reasons that I have articulated on other occasions. The Supreme Court believes if we are to increase fees to users of the court system, we should use those fees for core court services. [LB79]

SENATOR ASHFORD: Isn't this a core court service? [LB79]

JANICE WALKER: It could be a core court service if it weren't for the fact that we may be faced with closing some of our county court clerks' offices due to budget cuts, and I have to look at that as more central to the operation of the court. Certainly you heard testimony earlier today about the vulnerable adults that are also in the court system, and several years ago, we had a bill to create a public guardian's office. There could not be anything else more worthy unless it were children. So we simply ask that the Legislature look at some other means of funding what is a very worthwhile and, I believe, necessary service. [LB79]

SENATOR ASHFORD: And that's a fair comment, Janice. But I think that...and it is a fair comment and clearly a relevant comment, but...and I think we have to have discussion in this Legislature about what those core court services are. And I'm not suggesting necessarily that we should run out and spend money that we don't have. Don't get me wrong. But certainly a guardian ad litem is a core court service, is it not? I mean, these are people that are paid by the counties that provide court services to juveniles. [LB79]

JANICE WALKER: They do. [LB79]

SENATOR ASHFORD: And what seems to me to be clear, and Senator Lautenbaugh cautions me, possibly the study regarding guardians is not supportable, and I take...you know, it's a debatable point and it's a fair comment. But clearly what we do have is an

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overload in the juvenile court system. And the Chief has done a great job in the juvenile area, made it very clear today that the overload in the juvenile court in Douglas County is a big, big problem, significant problem financially and to the administration of justice. And I think he's absolutely spot on. So anything we can do...I'm not arguing with you, but anything we can do to help those children who are going through the process, be successful in the process, certainly number one, and therefore not have to continue to access court services is something that has to be part of the debate or discussion. I think that's what we're saying. [LB79]

JANICE WALKER: Certainly, and... [LB79]

SENATOR ASHFORD: Or I'm saying. I'm not suggesting we're all saying it, but. [LB79]

JANICE WALKER: (Laugh) Right. And certainly there are different structures for how legal services for children and services such as CASA provides, guardian ad litem services. There are different models for how that is done. [LB79]

SENATOR ASHFORD: And I...listen, we may have the best guardian ad litem system. All I know is that there are a lot of kids in the guardian ad litem system in the abuse and neglect side that are numerous, numerous cases that these guardians have. And they may be the best guardians ad litem in the history of the world but if they have so many cases that they can't give the individual...no, it's not possible to give the kind of service to those children that they would like to do because they just have too many cases is a reality. And if it's a reality,... [LB79]

JANICE WALKER: Um-hum. [LB79]

SENATOR ASHFORD: ...if it's real, if it's factual, then I think it's incumbent upon this committee to address somehow that issue. I mean, we can't ignore it and certainly we can't ignore or shouldn't ignore, you know, what happened last year in the juvenile courts with the filings, as the Chief mentioned today, you know, 800, 900 filings in juvenile court. So anyway, we respect everything you're saying. It's just a dilemma we're all in. [LB79]

JANICE WALKER: It is. And I hope you will also consider in your discussions that the role that the CASAs play and the role that guardians ad litem play sometimes are two different roles, and... [LB79]

SENATOR ASHFORD: Well, clearly, and thereby, legally, two different things. But I get it. Okay. [LB79]

JANICE WALKER: Okay. Good. [LB79]

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SENATOR ASHFORD: Thanks. [LB79]

JANICE WALKER: You're very welcome. [LB79]

SENATOR ASHFORD: Senator McGill. [LB79]

SENATOR MCGILL: I'd like to start by apologizing to Janice (laughter) for making it sound like she was a villain. I know she's supportive of CASA and what it does, and to me it's not about pitting one against the other or against the courts. Regardless of how you feel about guardians ad litem or not under the current system is we have a permanency problem in Nebraska with the way things are working right now. I ask that this be kept on the table as we hear Senator Council's bill dealing with the courts and fees and we have that greater discussion about what resources are needed in rural Nebraska, and that includes the court systems and loads and what's best for...and how our money is best spent. You know, I just ask this be part of that larger discussion. Since you asked for more information on CASA, we will bury you in a mountain of it, (laughter) especially... [LB79]

SENATOR COUNCIL: Hey, hey, exempt me, exempt me. [LB79]

SENATOR LATHROP: Wait a minute, wait a minute, wait a minute. I'm not sure I did. [LB79]

SENATOR MCGILL: ...especially when it comes to... [LB79]

SENATOR LATHROP: I did the study. [LB79]

SENATOR MCGILL: Oh, that's true. [LB79]

SENATOR ASHFORD: A small hill maybe. [LB79]

SENATOR MCGILL: ...to the length of time it takes to find permanency versus otherwise. And the bill...just to talk about the funding for a quick second, the bill does lay out that \$25,000 would go to the court to administer this fund so that we would be covering that cost. Eighty percent of the funds would be awarded as grants to recruit new CASA volunteers, so recruitment is part of that, and to defray the cost of training the volunteers. And then the 10 percent shall be awarded as grants to expand CASA into rural areas. But remember, these are grants administered by the court, so some of that 80 percent could still go to rural areas and expanding some of those programs or those joining of counties to expand in the counties that don't have it already. And so there are some guidelines here and then it would be up to the courts in terms of where that money goes, so as we ask them for a strategic plan, that's great, but it also will depend on who the courts determine writes the best applications to get that money. So



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with that, I hope that we can keep this on the table. It's incredibly important, I feel, to the future with this child welfare reform being so unstable. You know, this is something we could be doing to expand the number of stability cases that are more stable in Nebraska. [LB79]

SENATOR ASHFORD: (See also Exhibits 24-26 and 30-32) Okay. Thanks. [LB79]