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Judiciary Committee
February 17, 2011

[LB324 LB536 LB676 LB694]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 17, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB676, LB694, LB536, and LB324. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; and Scott Lautenbaugh. Senators absent: Amanda McGill.

SENATOR ASHFORD: Good afternoon, everyone. Welcome to the Judiciary hearing this day before a long weekend so everyone is in a good mood. Our first bill is LB676. Senator Lathrop is going to introduce it. How many LB676 testifiers do we have? Okay. Why don't we go ahead. Most everyone here has been here before, most of you have anyway. Those who haven't, we have a light system that we ask you to confine your comments to three minutes and the yellow light will indicate when it's time to sum up. The proponents first, if they would come up and sign the sign-in sheet and move up to the front, if there are seats, and we'll go ahead. Senator Lathrop, are you ready to go ahead?

SENATOR LATHROP: I'm ready. Good afternoon, Mr. Chair. Steve Lathrop, L-a-t-h-r-o-p. I'm the state senator from District 12 in Ralston and Omaha. I'm here today to introduce LB676. LB676 requires a little bit of explanation and it relates to what we call EPCs or those taken into emergency protective custody. There are two varieties of EPCs. There are those who are a danger to somebody else and then there are those who are a danger to themselves, and the focus of this is generally on the latter group which is those people who are danger to themselves. And in order to be picked up as an EPC, this is a typical situation, law enforcement gets a call, somebody is engaged in some behavior. Most of the time it is either criminal or borders on criminal behavior. And when law enforcement gets there, they come to appreciate, either by their interaction with the individual or through talking to family or those that are nearby, that the person has a mental illness. And if the person has a mental illness and they are dangerous to themselves or another person, they can be picked up and handled as an EPC rather than dealt with criminally. And 71-919, that section of law, requires that they be taken to an appropriate facility and the difficulty, frankly, is that we don't have enough appropriate facilities. What's an appropriate facility? That would be a facility that's designed to and equipped to handle someone who is mentally ill and dangerous to himself or another person. So what they do is they take them to the nearest hospital and that's certainly true in rural areas, that's certainly true in the metropolitan area before we got Lasting Hope, which has certainly relieved the situation. But here's the problem. If you pick up somebody who is mentally ill and dangerous to another person and you take them to a hospital, you're the law enforcement, you take them to the hospital, you take the handcuffs off of them and leave, you've just left this mentally ill and dangerous person in the custody of nurses and doctors. And the statute doesn't sort out who's responsible for this person until they get to an appropriate facility, and LB676 answers

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that. Law enforcement should stay with these criminally dangerous people until they're taken to an appropriate facility, which would be a facility that can handle someone with those kind of mental illness needs. It's pretty straightforward. And I appreciate that law enforcement has a problem with it and the problem, of course, is they don't want to have to baby-sit the person until they get the call that there's a bed available somewhere. The difficulty with that is you're exposing the nurses and the care providers and other patients to someone who is mentally ill and dangerous to another person. So with that, I'll answer any questions you might have. [LB676]

SENATOR ASHFORD: Senator Coash. [LB676]

SENATOR COASH: Thank you, Chairman Ashford. Thanks, Senator Lathrop, for bringing up this issue. It's an important issue. I have a couple of questions. Is there anywhere in the bill or in the statute where it outlines the criteria for safety, as far as the person who's in EPC, and to give some guidance to both law enforcement and the medical personnel as to say, well, this is... [LB676]

SENATOR LATHROP: No. [LB676]

SENATOR COASH: ...this person is safe? I mean because without that, you might have differing opinions on the safety of it. [LB676]

SENATOR LATHROP: No. No, and I should have, in my introduction, included this, that the bill basically says you, law enforcement, need to stay until the hospital staff said we're comfortable with this person. [LB676]

SENATOR COASH: Okay. [LB676]

SENATOR LATHROP: That may be because they've given the guy some kind of sedative. It may be for a variety of reasons or they've done an assessment, but no. [LB676]

SENATOR COASH: So the criteria for safety is determined by the medical personnel. [LB676]

SENATOR LATHROP: Right. [LB676]

SENATOR COASH: Okay. [LB676]

SENATOR LATHROP: And in effect, the law enforcement can leave whenever they want. Even the hospital people could be saying don't go, don't go, and they go I'm taking my handcuffs off, I got to go back out and engage in my other duties. And this would essentially make it a hospital decision instead of a law enforcement decision.

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[LB676]

SENATOR COASH: Okay. Thank you. [LB676]

SENATOR ASHFORD: Yes, Senator Council. [LB676]

SENATOR COUNCIL: Thank you, Chairman Ashford. Thank you, Senator Lathrop. I mean this is a serious question. I guess what I'm trying to make a distinction, as I originally read the little summary on the bill, we were talking about individuals who had been taken into custody who were not criminally charged but had engaged in some behavior that placed their mental health in issue. Am I correct in what I have...or does this apply to any time an individual is taken into an emergency room by law enforcement because... [LB676]

SENATOR LATHROP: No. No, no, it's only EPCs and that's why it's found in 71-919. [LB676]

SENATOR COUNCIL: So... [LB676]

SENATOR LATHROP: Or it's my intent to have it only apply to EPCs. So if a law enforcement officer, and they have to fill out an affidavit of sorts saying (A) I believe the person has a mental illness and (B) they're dangerous to themselves or somebody else. [LB676]

SENATOR COUNCIL: Okay. Now...and this is what gets me to the question because I thought there were designated facilities for law enforcement to take individuals in those situations. For example, it was my understanding, and if there are Alegant people here to correct me if I'm wrong... [LB676]

SENATOR LATHROP: There are. There are because this started there. [LB676]

SENATOR COUNCIL: But I understood that that was, you know, if you had a situation where there's a person in emergency protective custody, they wouldn't necessarily take them to the emergency rooms at the trauma centers. They would take them to Immanuel, which is where a lot of people go for commitment. [LB676]

SENATOR LATHROP: The problem with that, the problem with that is...and that was exactly what the practice was and that everybody in Region 6 was taking their EPCs over to Immanuel. The problem was Immanuel was overrun with them and, as a consequence, they developed a process which was essentially contact a place called the Spring Center, which was a clearinghouse for where are beds at in appropriate facilities, and that still there were still more EPCs than there were available beds in appropriate facilities. And so the practice developed to take them to the nearest

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hospital, not to an appropriate facility anymore, we're taking them to the nearest hospital where they sit pending placement at an appropriate facility. The statute says they're to take them to an appropriate facility and we didn't have enough of them. That new...I call it new, the Lasting Hope Center that's the old Lutheran Hospital has relieved that problem but it's not resolved it entirely, and certainly that's only in Douglas and...well, in Region 6. Okay. Thank you. [LB676]

SENATOR ASHFORD: Proponents? Sorry, Senator Lathrop, I... [LB676]

SENATOR LATHROP: That's all right. [LB676]

SENATOR ASHFORD: And legal counsel is directing me to some items here that I... [LB676]

STEPHEN SPELIC: (Exhibit 1) Senator Ashford, members of the Judiciary Committee, my name is Stephen Spelic, S-t-e-p-h-e-n, last name is S-p-e-l-i-c. I am the behavioral health services government affairs and community outreach strategist for Alegent Health. I want to thank Senator Lathrop for bringing this bill to the committee to discuss the safe management of volatile patients in a medical facility under emergency protective custody. To give you an idea of the EPC volume, in the period from July 1, 2009, to June 30, 2010, the Alegent psychiatric facilities, Lasting Hope Recovery Center, and Immanuel Medical Center received 984 EPCs, which is an average of 3 EPCs per day. I do want to stress that Alegent works very closely with law enforcement and over the years we have developed a strong, mutually supportive relationship that has been strengthened through our medical facility staff meeting with law enforcement bimonthly. In these bimonthly meetings, we review and discuss cases or circumstances that were of concern to either party and, if necessary, we amend those policies and/or procedures. Our relationship with law enforcement has been further strengthened through the implementation of crisis intervention training, which was initiated in March of 2006. The CIT Program is a cooperative community partnership with providers, law enforcement, mental health consumers, and family members. The program is designed to educate and prepare police officers that come into contact with people with mental illness to recognize the signs and symptoms of these illnesses and to respond effectively and appropriately to people who are experiencing a psychiatric crisis. We have held 13 classes and have trained over 350 law enforcement personnel, and it's of interest to note that since starting these classes in 2006 Alegent has experienced a 26 percent decrease in EPCs. Another factor that is significantly positive, the management of EPCs in Region 6, was the opening of Lasting Hope Recovery Center. One of the unique features of Lasting Hope Recovery Center is that it was designed to function as the region psychiatric emergency center, the intent being to alleviate the need for law enforcement personnel to use the emergency rooms of communities' medical facilities for persons needing psychiatric treatment. Law enforcement from anywhere in Region 6 can bring EPCs to Lasting Hope 24 hours, 7 days a week. All that we require is they

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notify us that they are in route and we also ask a series of questions to ensure that the person they are bringing to Lasting Hope is not in need of emergency medical care. Last year, in 2010, Lasting Hope received 560 EPCs. Prior to its opening, these EPCs would have likely ended up in emergency rooms in one of the community's medical facilities. LB676 is one component to ensure that providers stay safe in the environment and we are willing to work in whatever fashion we can. Thank you and I'll answer any questions if you have any. [LB676]

SENATOR ASHFORD: Thanks, Stephen. Any questions of Stephen? This is a county obligation. How does the county fit into this, the cost of the...? [LB676]

STEPHEN SPELIC: The county does not pay for... [LB676]

SENATOR ASHFORD: Any of this? [LB676]

STEPHEN SPELIC: ...any of this, no. [LB676]

SENATOR ASHFORD: Okay. There's no county... [LB676]

STEPHEN SPELIC: No. [LB676]

SENATOR ASHFORD: It has to have a plan but...the county needs to have a plan but it doesn't pay for any of the service...or a mental health plan. Maybe I'm missing the point. Go ahead, Senator Council. Do you have...? [LB676]

SENATOR COUNCIL: Yes. Thank you, Mr. Spelic, and I appreciate the data you provided on how many EPC cases Alegent has been handling on an average daily basis. What I'm trying to get a handle around is, you know, I certainly appreciate the concern about volatility of patients in hospital emergency rooms. In fact, Senator Ashford and I are part of the announcement of an initiative on Monday of this week to reduce those kinds of threatening situations when gunshot victims come in to hospital emergency rooms, and so I know what hospital staff is dealing with. But I also understand the concern that's expressed by law enforcement and the question is, do you have any feel on...I mean I know, because it's case by case, it's individual specific. I mean there could be no control. Law enforcement could lose control over staffing on the street under the scenario that's being proposed. And I'm...how do you strike that, you know, that balance if, for example, taking a patrol officer off the street for three, four, five, six hours until staff believe they have stabilized an individual? I mean how do we really strike that balance? [LB676]

STEPHEN SPELIC: Well, I will say at Lasting Hope Recovery Center, as I said, we did design that so it was really very law enforcement friendly. We have a separate entrance for law enforcement to bring the EPC patients to us and our goal is just to get the officer

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back out on the street as quickly as possible. If when they arrive at our facility, if it is safe to take the handcuffs off of the individual, they can take the handcuffs off and our nursing staff and our security staff will escort the person in to the assessment center and the officers are free to depart at that point. The only time that we do request that they stay with us is if the individual is really violent and it's not safe to take the person out of handcuffs, and this most often happens when it's a drug-induced psychosis and the person is really very ill. And law enforcement has always been very willing to, at our request, to stay with us until it is safe to take the person out of handcuffs where we can get some medication on board or calm the situation down and get the individual into restraints. [LB676]

SENATOR COUNCIL: Has it been reported to you or are your staff advising that there are situations where the staff may feel that it's unsafe for the officer to remove the handcuffs and yet the officer is deciding to remove the handcuff? [LB676]

STEPHEN SPELIC: You know, again... [LB676]

SENATOR COUNCIL: I mean are they encountering those kind of...? [LB676]

STEPHEN SPELIC: ...in our experience at both Alegent and Lasting Hope, it's really been our experience that if we request that law enforcement stay with us and to keep the handcuffs on the individual, they have been willing to do that. We, in years gone by, we would find situations where, because officers had no place to take the individual, that they would bring them to the emergency room and basically kind of do what we call the dump and run. But that hasn't happened for years. I mean they really have been very supportive and very helpful to our staff. [LB676]

SENATOR COUNCIL: Okay. And I will...this last question is really not for you, just to put it out there so people can be giving thought to it, is that under current Nebraska statute I believe, long as that individual is in handcuffs, they're deemed to be in police custody, although it's not necessarily an arrest. [LB676]

STEPHEN SPELIC: Correct. [LB676]

SENATOR COUNCIL: And then as long as they're in police custody, liability then flows to the political subdivision over whom...under whom the law enforcement is acting, correct? [LB676]

STEPHEN SPELIC: Correct. [LB676]

SENATOR COUNCIL: Okay. All right. Thank you. [LB676]

SENATOR ASHFORD: Okay, Stephen, I think that's it. Thank you. [LB676]

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STEPHEN SPELIC: Thank you. [LB676]

SENATOR ASHFORD: Next proponent. [LB676]

BRUCE RIEKER: (Exhibit 2) Chairman Ashford, members of the committee, my name is Bruce Rieker, it's B-r-u-c-e R-i-e-k-e-r, vice president of advocacy for the Nebraska Hospital Association and appearing in support of LB676, which has many similarities to a bill you heard just 13 days ago, that being LB677 where we discussed the propensity or increased propensity for healthcare workers to be at risk of being injured while on the job. I'd like to bring an additional perspective to that which Mr. Spelic brought to the committee. He's testifying on, you know, from a perspective of a metropolitan community. The situation exists across the entire state, however, as we represent 65 critical access hospitals as well as 62 or 63 other...or, excuse me, 20 or 21 other hospitals, the critical mass does not exist in all of those communities to have something such as Lasting Hope. I'm not here to say that any of that dumping is going on such as was asked of Mr. Spelic; however, until a situation is de-escalated in its...the tension of a situation may be de-escalated, we do contend that we need to have that safety protection that is afforded to our healthcare workers by law enforcement. It's not going to remove every incident of violence but it's sure going to diminish those situations. So we are supportive of it because of EMTALA and other federal requirements. EMTALA stands for the Emergency Medical Treatment, Active Labor Act which requires our hospitals to provide a medical screening. And if healthcare is necessary to treat and stabilize that individual that we make sure that there's a partnership between law enforcement and us to make sure that everyone we serve and those that provide the service are safe. [LB676]

SENATOR ASHFORD: Any questions? Yes, Senator Coash. [LB676]

SENATOR COASH: Thank you, Senator Ashford. Bruce, I just want to make sure I heard you correctly in your testimony. You don't think this is...it's not the hospital's experience that people put in protective custody are being left by law enforcement in a dangerous situation or like when they're still dangerous? [LB676]

BRUCE RIEKER: We have some anecdotal information, but anything that I could give you as far as specifics where law enforcement dumped and ran I cannot. I don't have specifics to that. However, there are judgment calls and I think Senator Council, you know, alluded to those in her questioning of Mr. Spelic as where is the balance, you know? And sometimes, well, not to put the onus on the law enforcement, but law enforcement is the only entity that has the ability to EPC someone. Healthcare facilities don't have that ability, healthcare practitioners don't. So with their experience, to make sure that a situation is de-escalated to the point that everyone is as safe as possible, somewhere there is a balance. [LB676]

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SENATOR COASH: Thank you. [LB676]

SENATOR ASHFORD: Thank you. Thanks. Next proponent. (See also Exhibit 4) Opponent? [LB676]

RUSSELL TORRES: (Exhibit 3) Good afternoon, Senator Ashford, honorable committee members. I'm Captain Russell Paul Torres, T-o-r-r-e-s, with the Douglas County Sheriff's Office, and I'm here to testify in opposition to LB676. In the opinion of the Douglas County Sheriff's Office, the proposed amendment to Section 71-919 is ambiguous, lacking information with respect to defining who at the medical facility will make the determination that it is safe for the law enforcement officer to relinquish custody. Furthermore, the liability for determining that it is safe falls to the medical facility, which may result in the determination being delayed until the person is evaluated by a mental health professional. This would force an officer to guard the individual until such evaluation is complete. This could be several hours or more than one day. This will reduce the number of available law enforcement personnel to answer calls for service, perform assignments, or conduct self-initiated activities. To our knowledge, each hospital in the Omaha metropolitan area and elsewhere in the state employs security guards which are more suitable for this purpose. For the past three years, the DCSO averaged 107 emergency protective custody situations per year, an average of approximately 2 per week. While this number does not seem very high, it would translate to an annual average of 428 to 3,352 hours devoted to guarding such individuals which equals a minimum annual cost of...from approximately \$13,000 to just over \$100,000. At the present time, with the fairly recent opening of the Lasting Hope Recovery Center in Omaha, our number of personnel hours devoted per person seems to be significantly reduced in relation of this type of call for service. The numbers have not been tracked by DCSO prior to Lasting Hope's opening or since, but I've been told by deputies and supervisors that there has been a definite improvement in this area. Also, Douglas County Sheriff's deputies already ensure that it is safe before leaving the medical facility by conferring with facility staff and, if necessary, waiting until security is present. We also tell the staff to call us back if the situation changes. To conclude, the Douglas County Sheriff's Office opposes LB676 due to its ambiguity and its potential cost in terms of personnel time devoted to guarding such individuals until it is deemed safe by a medical facility for law enforcement to relinquish custody. Thank you. [LB676]

SENATOR ASHFORD: Thanks, Captain. Yes, Senator Council. [LB676]

SENATOR COUNCIL: Yeah, I have a question. I'm just reading the statute and, Senator Lathrop, this may be what you were alluding to in response to a question from the Chairman. It speaks to the responsibility of the county and the county in making arrangements with appropriate facilities, and apparently they've made arrangements with Alegent and Lasting Hope. Do they ever use Douglas County Hospital? [LB676]

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RUSSELL TORRES: There are a number of beds at Douglas County. In our experience, when we call Lasting Hope, I mean there's only so many beds in the metro area so frequently we're told there are no beds available, so for our office lately the majority of ours have been going to Lakeside Hospital and we have a really good working relationship with them. But, yes, there is...there are beds at Douglas County Hospital. I don't know the exact number but believe it's somewhere in the area of 14. [LB676]

SENATOR COUNCIL: Thank you. [LB676]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB676]

SENATOR LAUTENBAUGH: I'm sorry, were you done, Senator Council? [LB676]

SENATOR COUNCIL: Yes. [LB676]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Sir, thank you for coming today. I was listening as you were going over the cost estimates for this additional guarding, if you will. Now are you saying that this would be in overtime so it's an additional cost to what we currently bear or would it just be you're allocating the man-hours and it would take you away from something else? [LB676]

RUSSELL TORRES: It could cause overtime because we need minimum staffing on the street and it could go to an overtime situation. I'm not saying that would be in every case but it could. [LB676]

SENATOR LAUTENBAUGH: Thank you. [LB676]

SENATOR ASHFORD: I mean what comes to my mind, I think you make a good point, I know when Senator Council and I, as she alluded to, we've been working for a year with the two trauma centers and the Omaha police division on setting up a protocol for dealing with situations where a gunshot victim is brought into a trauma center emergency room at either Creighton or UNMC, and what we found, and, Brenda, correct me if I'm wrong, but what we found is when the hospital sits down...I think Senator Lathrop is bringing a great issue here but I think maybe when the hospital sits down with law enforcement and develops a protocol on how to do this, taking into consideration the issues that you've raised and the hospital issues, they tend to work it out. I mean they've certainly worked it out in the case of gunshot victims with the violence reduction thing that...initiative that we worked on. Omaha police division, that's not...this is more...it's not necessarily in the county jurisdiction though it could be, but the Omaha police division has worked, the chief, with both Creighton and UNMC and has come up with I think a working arrangement. This seems to cry out for something

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like that, doesn't it, where you sit down and work out some kind of a protocol on how this would work? [LB676]

RUSSELL TORRES: I think Mr. Spelic, he spoke to frequent meetings that take place bimonthly. We do have an individual that attends those meetings so there is a collaboration that does go on at these meetings and... [LB676]

SENATOR ASHFORD: But what I mean is, you know, when the law enforcement, you know, you get down to the point where the law enforcement officer is...where it's safe to exit the premises or what they do in a certain situation. I'm sure you have meetings but... [LB676]

RUSSELL TORRES: Well, if it's for each specific instance, as I mentioned, we do...you know, obviously...I shouldn't say obviously, but I would expect my deputies to ensure that the situation is stable before they would leave the hospital instead of just, say, dump somebody off and walk out. [LB676]

SENATOR ASHFORD: So, I mean just what you might say is you might have language in this that would recognize that protocol somehow that there has to be some sort of a protocol worked out so that...and I don't know what that all would be, but hearing both of you, that might be the way to go. Anyway, thanks, Captain. Any other questions of Captain Torres? Seeing none, thanks. [LB676]

RUSSELL TORRES: Thank you very much. Good afternoon. [LB676]

SENATOR ASHFORD: Sheriff. [LB676]

JEFFREY DAVIS: Thank you, Chairman Ashford, members of the committee. You notice there's quite a few of us here and so, in the interest of...we know that your time is valuable, we're trying not to be repetitious, and so I just want to point out a few things that I think haven't been covered. In Sarpy County, and by the way, I'm here representing the Nebraska Sheriffs' Association as well as the Sarpy County Sheriff's Department. In our jurisdiction, there are four law enforcement agencies and, between us, last year we had 367 EPCs. It's quite a large number, over one a day. And you can see that based on Captain Torres' estimates, that would be about three times the difference in the amount of money that we might have to pay if we had somebody on overtime that had to stay at the hospital for a period of time. One of the things in the bill that is ambiguous and hasn't been brought up is a jurisdictional problem. And I think Senator Lathrop is exactly correct that the big problem here is there aren't enough beds, that there's not enough facilities to handle these people, and because of that we're constantly going into another jurisdiction and now we really have no authority there, yet we're being asked to stay for who knows how long to try and make sure that situation is okay. In other parts of the state, sometimes they travel four counties before they reach

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their destination to leave this person and now don't know how long they're going to be out of service or away from their county. I also want to tell you that I run a jail facility and, nationally speaking, you probably know this, but 27 percent of the people in jail today are mentally ill and probably shouldn't be incarcerated. And that number is going to go up if something like this happens. You encourage law enforcement in some cases to say, you know what, I don't want to drive around for four hours and then be stuck in an emergency room for another four hours, there's a criminal charge here someplace. And then it becomes our job, our responsibility through classification to make sure this person isn't somebody who needs additional or different treatment. And I again agree with Senator Lathrop that you shouldn't be able to go to one of these facilities, simply take off the handcuffs and drop them off, and to my knowledge that doesn't happen. Our people, like Captain Torres' people, are instructed to make sure the situation is safe before they leave, but you got to remember you're dealing with people that are here and then here and then back here again. We could leave a situation that seems absolutely normal, but if I'm a hospital and I've got to make that decision, I don't know that I'm ever going to tell law enforcement it's okay to leave. It could be a long time, more than 24 hours before I've decided it's safe for my people here if they don't have the proper security. Anyway, I know I'm getting close to my end. Unfortunately for us, in our area, we deal with large Alegent Health, UNMC, and I can't understand why those people wouldn't have sufficient security. We're certainly willing to wait. If they're not on site, if Midlands Hospital doesn't have somebody on site, they're being sent from another facility, I certainly...my people would wait until they got there, till they had security that could handle the situation, but otherwise we may be there for...it could be days in some cases, could be days. [LB676]

SENATOR ASHFORD: Thanks, Jeff. Any questions of Sheriff Davis? Thanks. [LB676]

JEFFREY DAVIS: Thank you. [LB676]

KEVIN STUKENHOLTZ: Good afternoon. My name is Kevin Stukenholtz, S-t-u-k-e-n-h-o-l-t-z. I'm currently the Saunders County Sheriff and I'm here to represent the Nebraska Sheriffs' Association and we oppose LB676 for some of the same reasons that have already been expressed. The challenge that we have in the smaller jurisdictions is that we have no facility available to us so every EPC that we're responsible for housing has to go to another jurisdiction. So all of the officers that go to that jurisdiction, they have no law enforcement authority there. So if there's some kind of an emergency they would certainly assist in any way they could, but I think this bill misses the point that they don't have any authority in that hospital. The other thing is virtually every county around here, as they transport someone in, if they happen at those late hours, they may have one officer on duty or two, generally taking eight hours to complete an EPC. So when you take an officer that's responsible for an entire county at 2:00 or 3:00 in the morning, they don't have many options available. So we work really well with the local hospitals, as do all the sheriffs' offices. We don't have weekly

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meetings with the healthcare providers but they're also...you know, they're in business and there should be some responsibility on their part to provide adequate security at a reasonable time. That's all I have and I'd be happy to answer any questions. [LB676]

SENATOR ASHFORD: Any questions? [LB676]

KEVIN STUKENHOLTZ: Thank you very much. [LB676]

SENATOR ASHFORD: How many of these cases do you get in Saunders County? [LB676]

KEVIN STUKENHOLTZ: Well, we'll average about one a month. We're working with Blue Valley Mental Health as kind of an intermediate, so they come out at all hours of the night and do evaluations and that's helped extremely. However... [LB676]

SENATOR ASHFORD: They come to the Saunders County jail? [LB676]

KEVIN STUKENHOLTZ: Yes, they will. But the fact is the challenge that we're all aware of is you'll start out, when you realize that you're probably going to have a need for an EPC and there's no bed available, and that goes on for hours with our dispatchers calling every facility on the eastern part of the state until they can find a bed. [LB676]

SENATOR ASHFORD: It's a real problem then. [LB676]

KEVIN STUKENHOLTZ: Yes, it is. [LB676]

SENATOR ASHFORD: I mean the underlying problem is there's a mental health issue and how do we, as everybody here wants to do the right thing, that's obvious, so how do we do the right thing (laugh) in an organized fashion? Tough, tough issue. Thanks. [LB676]

KEVIN STUKENHOLTZ: Thank you very much. [LB676]

SENATOR ASHFORD: Next opponent. [LB676]

BOB LAUSTEN: Good afternoon, Senators. My name is Bob Lausten, L-a-u-s-t-e-n. I'm a police chief in La Vista and I'm also here on behalf of the Police Chiefs Association of Nebraska. I speak on this bill not only as a chief but also as a police officer who has personally dealt with this issue on the street. I will say Steve Spelic's testimony, kudos to Lasting Hope, we need more facilities like that. This bill, as written, does not solve the EPC problem. It creates a bigger problem for law enforcement. As my law enforcement colleagues have told you about, staffing on the street is extremely important, especially in some of the smaller agencies in western Nebraska. I know there are a lot of agencies

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in Nebraska that have less than five members in their entire department. And if they have one officer on the street or they're using reserve officers who are only supposed to work, you know, up to 100 hours a year under supervision, how do you take those officers off the street and have nobody patrolling some of those smaller areas? This bill would allow for-profit companies, such as Alegent, to dictate law enforcement deployment. To do that we're saying, as law enforcement, is wrong. I fear there will be more problems if this bill is advanced. As Steve Spelic said, we do have a good working relationship, but the cooperation sometimes breaks down in the middle of the night in the ER room with the nurses. I'd like to read from a 2007 e-mail written by an RN at Midlands Hospital to the ER nurses. I find this e-mail to be very unethical. Request that police stay with the patient by making the statement to them, I am very concerned about safety issues. If they refuse, call the house supervisor and she will call the supervisor for the officer. Get the officer's name and badge number and chart that you asked them to stay for safety purposes but they refused. If they leave and everything untoward happens or if the patient even looks at you cross-eyed, call them back immediately. Senators, the bill is a good step to bring the problem with have with mental health and EPCs to the forefront. It's bigger than saying, law enforcement, you need to stay in the hospital. We need more beds, whether it's Douglas County Hospital actually cooperating with law enforcement like Lasting Hope does, but statewide we need to do something and I urge you to look at this issue but come forward, hopefully, in the Legislature with something else to help us. [LB676]

SENATOR ASHFORD: Thanks. Thanks for your comments. Any questions? Seeing none, thanks. Any other opponents? Chief. [LB676]

DAVID BAKER: Senator. Senator Ashford, members of the committee, thank you for hearing our testimony today. My name is David Baker, D-a-v-i-d B-a-k-e-r, representing the Omaha Police Department. We're appearing today in opposition of LB676. I will not be redundant. I realize that you've listened to a lot of testimony about my colleagues already. The points have been made and they're fine points. Senator Lathrop has also addressed a very serious issue in law enforcement in that we do have a shortage of beds in qualified treatment facilities, not only in eastern Nebraska but throughout the state. One of the things that we had also identified as problematic in this bill is that there is an indeterminate person in the healthcare industry that will be making a decision as to whether or not the situation is safe for police officers to go. This essentially does turn the process on its ear for the reasons that you've already heard in previous testimony. Moreover, what this does is it essentially turns a law enforcement officer into a hospital security guard and it keeps that officer out of service, not serving the citizens of the jurisdiction that employs the officer during the time that the officer stays at the hospital, I've heard estimates here today, from three to four hours to over a day. In talking to Region 6, in fiscal year 2009, the average wait for a bed was 13 hours, was over 13 hours. In 2010, it was 11.7. We are not talking about an insignificant amount of time that law enforcement would be not only out of service but not under the command of the

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chief of police or his designate in the law enforcement agency but rather under the command of a civilian in a hospital and acting in a capacity as a security guard. In some of the testimony that we've heard today one of the things we haven't talked about is the possibility of a hospital and the types of tools that they can bring to bear on the situation as well to render or to keep the situation safe that has been rendered safe by the law enforcement officers, and that is the hospitals do have at their disposal restraints, they have long-term restraints, they have medicines that can be used, they have other things of that nature. Our officers will not leave the hospital, and in our policy cannot leave the medical facility, until the situation is safe. However, there are means to employ after their departure that will keep the situation safe once it's been rendered. And if for any reason the security personnel and those measures fail, we are available to come back immediately. But we feel that this is...it's overreaching in terms of taking officers out from under their commander's control, taking them out of service, and this is obviously problematic for a city the size of Omaha, even more so for smaller jurisdictions who may only have one or two officers available at any given time and may be out for an extended period of time. So with that and without being further redundant, I'll be happy to answer any questions. [LB676]

SENATOR ASHFORD: Senator Council. [LB676]

SENATOR COUNCIL: Thank you. And thank you, Deputy Chief Baker, again, for offering testimony. So it's standard operating procedure for Omaha Police Department personnel not to leave one of these EPC situations until the situation "has been rendered safe." [LB676]

DAVID BAKER: That is absolutely correct. [LB676]

SENATOR COUNCIL: And so that is standard operating procedure. So what the issue is, very clearly and distinctly, is who determines whether the situation is safe. And under LB676, Senator Lathrop is proposing that because it's a medical and slash mental situation, that medical personnel should be the ones who determine whether the situation has been rendered safe. [LB676]

DAVID BAKER: Correct. It's a mental and medical situation. It's also a public safety or an individual safety situation and, in that regard, the officers work collaboratively presently with the medical staff to ensure that both are safe. If there is an issue, if the officers are being held, they believe, too long, they can contact command officer, can come to the hospital, work with the medical staff and reach a consensus as to when it's safe to leave and when the officers actually will leave. In this case what we fear is there's no impetus for the hospital to be in any rush to allow the officers to go ahead and leave. We've heard anecdotal evidence here so far, thankfully very little of it, of the dump and runs that have been done in the past in some jurisdictions and probably in Omaha too. We've had enough committals that I'm sure that has happened on

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occasion, although I think it's, thankfully, more rare today than it ever has been and it should have never happened. But that being said, we're flipping to the other side there, too, where I have personally been in situations where medical staff, overworked or busy or whatever it happens to be, has elected to go ahead and push that aside for the officer for a period of time and aren't in any hurry for the officers to leave the hospital, and this would certainly add to that and they have no impetus then to go ahead and provide their own security or their own restraint systems and to work with the officers to get them back out onto the street as soon as possible. We do not...hospitals are part of our jurisdiction and certainly part of our concern. We don't want to do anything whatsoever to endanger anyone. My wife is a registered nurse and works very near the emergency room at Bergan Mercy Hospital. I don't want to endanger her safety for one second. But we understand similarly that we have other responsibilities throughout the community. Budgets being what they are, we're all short-staffed. We all need to make the best use of our officers and our employees as we can, and I think the current system and collaborative efforts is working, and although there may be an occasionally outlier outside of the system that caused these concerns, I think those can be worked out collaboratively rather than by making a law to completely dictate every situation in such a way that at least one party, that being the law enforcement agencies, and by virtue of their responsibility to the civic agencies that employ them, the disenfranchised party in terms of determining whether or not it's safe to leave. I believe the officers should have a voice in that. I believe the law enforcement agencies legitimately do have a voice in that. We will make sure that people are safe before they leave. And we respect the fact that mental health professionals and others have a very difficult job, that they are at a good place to tell us whether this person is fit or calm enough to be left without restraints. However, I assure you that we can render the situation safe before we leave, and then if it becomes unsafe thereafter the hospital also has the security and the ability to keep it safe. [LB676]

SENATOR COUNCIL: Just one other follow-up: Since it is, by your testimony, a part of OPD's SOP on, you know, how to handle an EPC situation, and you mentioned that if the officer determines that it's safe to leave and the medical staff doesn't believe so, you indicated that many times the command officer is contacted. Is that...I mean is that like set out in your SOP? [LB676]

DAVID BAKER: It is set out in our SOP but I wouldn't characterize it as many times. [LB676]

SENATOR COUNCIL: Okay. [LB676]

DAVID BAKER: I think that's thankfully rare. There's going to be situations when there's differences of opinion and there's going to be situations where certainly the medical staff has priorities above and beyond our EPC individual that we've brought in. Our temporary restraints, such as handcuffs and things of this nature, aren't meant for

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long-term restraint with anyone that we're with. We're not equipped to handle that kind of long-term restraint in the field. There are restraint systems available to the healthcare providers and we don't wish to dump these off on anybody either, but given the length of time that some of these individuals have to wait for a bed, and it is because of the shortages of beds not only in our area but throughout the state, it's impractical and it's a detriment to public safety to leave officers out of service staying there with them. And I am afraid that the unintended consequence of this may be that at some point, as Sheriff Davis said, an officer in the field allows this to affect his judgment as to whether or not a person is "EPCed" or arrested, gets the kind of help they needed or is incarcerated. We don't want to get to that point but it's human nature to look at sitting in a hospital anywhere from, as I said, an average, it's not an extreme situation, up to 11 hours until a bed is found or being able to take a person down to a jail in a judgment call situation. I don't want to see that influenced by the fact that the officer knows that he or she will be out of service for an extended period of time and unable to perform their other duties. [LB676]

SENATOR COUNCIL: Thank you. [LB676]

SENATOR ASHFORD: This is sort of crying out for data. I wish somebody that's on either side of this, if you have data or information that's more specific on what's going on, that would be helpful. No, your points are absolutely well taken. I just think if we knew how many cases, how long, what's going on, that would really... [LB676]

DAVID BAKER: Well, I think they testified earlier about 900 cases. [LB676]

SENATOR ASHFORD: Right. Right, the number of cases but the length of time and... [LB676]

DAVID BAKER: The figures that we got... [LB676]

SENATOR ASHFORD: And there is some information in here about how long it might be or the ranges with the average cost and that sort of thing. We don't need it now, Chief. I just... [LB676]

DAVID BAKER: Okay. The 11.7 hours, we got that from district 6 as a compilation of the time when they first got a call for the bed. [LB676]

SENATOR ASHFORD: How long you have to wait for a bed. Is that...okay, and that's the average time to wait for a bed. Is that what the average... [LB676]

DAVID BAKER: Which is not necessarily, in fairness to... [LB676]

SENATOR ASHFORD: ...the same thing as the officer remaining or is it? [LB676]

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DAVID BAKER: It's not necessarily the same thing. [LB676]

SENATOR ASHFORD: Could be but it may not be. [LB676]

DAVID BAKER: It could be and that's part of our concern. There is no real incentive for the hospital to let the officer go before that time and, in some cases, they may feel more comfortable having the officers there and allowing their security staff or medical staff to attend to other things that are in other ways important to them. [LB676]

SENATOR ASHFORD: Good. Thanks. Thanks for your testimony, Chief. [LB676]

DAVID BAKER: Thank you. [LB676]

SENATOR ASHFORD: Gary. [LB676]

GARY KRUMLAND: Senator Ashford, members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities. We've had some concern expressed by some of the smaller departments about the effect of the bill on their staffing for policing requirements. As you heard, some small departments may have six or less police officers, and that's not just per shift. That's the total department. So you may only have one or two officers on a shift. In those smaller communities, it's very likely if you have an EPC situation they're traveling outside of the city to a different jurisdiction to find the proper medical facility. And so if they...they're already going to be gone for a while, going to be gone outside of their jurisdiction, and if it even extends that stay even longer, that just creates an additional burden on providing public service or public safety to the jurisdiction itself. So I won't repeat anything else but just get that aspect from the smaller departments. [LB676]

SENATOR ASHFORD: Thank you, Gary. Thanks for your comments. Any other testifiers? Opponents? How about neutral testimony? Senator Lathrop. [LB676]

SENATOR LATHROP: Let me again say why this bill is necessary and let me just use a hypothetical hospital and I'll use Midlands Hospital. That hospital, by federal statute, cannot turn somebody away. They cannot turn somebody away. Law enforcement, under 71-919, has a duty to take them to an appropriate facility. Midlands, in this example, is not an appropriate facility. They don't have a psych ward. Their people aren't trained to deal with them. [LB676]

SENATOR ASHFORD: Yeah, that was what I was going to ask, who has psych. Yeah. [LB676]

SENATOR LATHROP: Here's an appropriate facility. An appropriate facility has people

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who are trained in de-escalating, trained in dealing with people that have these kind of disorders and problems. They have the equipment, the staff, and the rooms and the facilities for it. Okay? So we have a shortage of beds. That's a crisis that the cops didn't start. But when they pick up somebody, and by the way, only a small percentage of these people are dangerous to somebody else. Most EPCs are dangerous to themselves. They've tried to kill themselves. And so they won't spend any more time at the hospital with those people than they are right now. They get them there and this doesn't say you have to wait until they're taken to an appropriate facility, only until a medical person says it's okay to leave. Right now, that judgment is made by law enforcement. And Sheriff Davis said, well, sometimes they're here and sometimes they're there and sometimes they're here, and he's exactly right. You get somebody who's hearing voices telling them to kill people, in one minute they're revved up and the next minute they're calmed down, and that's when the police take the handcuffs off and leave. Now when they leave, they leave them in hospitals with doctors and nurses that aren't equipped to deal with them. That's the problem. And so they turn around and beat nurses up, and it happens. If you want data, I can give you depositions. I've done one of these cases and it's awful. And it's surprising to me that they come in and oppose this because right now it's the difference between letting law enforcement, that's not trained in medicine at all, and the healthcare providers, who are, make a judgment about when it's safe to leave. And for the EPCs that are suicidal, it will be right away because anybody can watch somebody. A nurse isn't going to get beat up watching a suicidal patient. They're going to get beat up by the guy who is hearing voices that say kill somebody, kill somebody. And when you take the handcuffs off and you leave and say this is your problem now, people get hurt. And I appreciate the staffing dilemma they have, but if we had enough Lasting Hopes this wouldn't be an issue. But the Legislature isn't giving people enough money to deal with the mental health issues and so these folks have a problem they've got to deal with, and we need, not unlike swabbing for DNA, we need to sort out who's going to take care of the safety of our nurses and our doctors at the hospitals until these folks are taken to an appropriate facility as the statute requires. [LB676]

SENATOR ASHFORD: And we had the testimony from the nurse the other day... [LB676]

SENATOR LATHROP: You did. [LB676]

SENATOR ASHFORD: ...which was fairly compelling if not extremely compelling. Yes, Senator Council. [LB676]

SENATOR COUNCIL: Just quickly, Senator Lathrop, I appreciate the point but it's almost during your discussion there that you presented another Catch-22. I think everyone here agrees that there's not enough beds in the facilities where there are people who are trained to do this and you have focused on a subset of that where law

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enforcement, because of this lack of beds, has no choice but to take these individuals to facilities that aren't necessarily geared up for handling these types of patients. And yet it's almost the argument to a point that law enforcement was making, was that you're saying, law enforcement, you should stay here until such time as these medical personnel, who may or may not know how to treat the person that you just brought in, when they determine that it's safe. And I guess inherent in that is that they have some degree of training in recognizing when that type of mental situation has de-escalated. [LB676]

SENATOR LATHROP: I got two answers to that. One is that they have a better shot at making the right decision than does law enforcement, okay, because they're coming through their emergency rooms all the time. The medical doctors that work in the emergency rooms have at least done a rotation in psychiatry so they have more knowledge about when it would be safe than would someone who has gone to the police academy and been engaged in law enforcement. The second thing I'd say is the duty of law enforcement is to take them to an appropriate facility; they're not. If they take them to Lasting Hope, they've taken them to an appropriate facility. No one has a quarrel, drop them off and leave. When they take them to, for example, Midlands Hospital, which is not an appropriate facility, they are taking advantage of the fact that Midlands cannot refuse to take that patient, okay? [LB676]

SENATOR COUNCIL: So what's the option? [LB676]

SENATOR LATHROP: So... [LB676]

SENATOR COUNCIL: But that gets to the county's obligation. So should the answer in that situation be, and it gets to the point that then you leave law enforcement with two options, okay, arrest them and put them in criminal custody or do what with them? [LB676]

SENATOR LATHROP: Well, let's talk about that for a second. If they are obviously over-the-top dangerous to somebody else, that's not going to happen. They're in EPC and putting them into Sheriff Davis' jail is not going to be the answer and no one is going to do that. They'll do it in a close call perhaps, right, but they're not going to do it in an obvious case. And in a close call they're not going to be asked to stay there for long periods of time. It is the obvious dangerous person that they need to stay with. [LB676]

SENATOR ASHFORD: I mean we're again dealing with what happened two decades ago when we decided,... [LB676]

SENATOR LATHROP: Yes, we are. [LB676]

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SENATOR ASHFORD: ...as a matter of policy, to change how we deal with mental health in this state and across the country. You know, why do we have so many incarcerated individuals? Many of them are mentally ill. And we made that decision 20 years ago, whenever it was, to save money, most every state did it, and now we're...and we did it nationally on the federal level, and now we are...now we have this convergence of very well-meaning people who are all trying to do good work with almost impossible situations. [LB676]

SENATOR LATHROP: And the reality is that by going to more community-based care we've done something very humane. [LB676]

SENATOR ASHFORD: Right. [LB676]

SENATOR LATHROP: But when you don't properly fund it... [LB676]

SENATOR ASHFORD: Right. [LB676]

SENATOR LATHROP: ...and you... [LB676]

SENATOR ASHFORD: There aren't enough beds. [LB676]

SENATOR LATHROP: ...in the course of reinventing government or rightsizing government you don't fund these kind of things, who pays for it? In this case, it's the nurses and the doctors in the emergency rooms that are subject to assault because everybody is kicking the can down the road. [LB676]

SENATOR ASHFORD: This is the third or fourth hearing we've had sort of on this general issue and it's just so glaringly obvious that we're...and it's not going to get any better until we hit the systemic issues head-on again. [LB676]

SENATOR LATHROP: Well, it's availability of appropriate facilities. [LB676]

SENATOR ASHFORD: I mean this is a way to address, yeah. [LB676]

SENATOR LATHROP: Yes. [LB676]

SENATOR ASHFORD: Thanks, Steve. Great. Okay. Senator Conrad is...welcome. [LB676]

SENATOR CONRAD: Hello. [LB694]

SENATOR ASHFORD: Hello. [LB694]

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SENATOR CONRAD: Good afternoon. [LB694]

SENATOR ASHFORD: Good afternoon. [LB694]

SENATOR CONRAD: Chairman Ashford, members of the committee, my name is Danielle Conrad, D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d, representing the "Fighting 46," yes. [LB694]

SENATOR LAUTENBAUGH: Do you want to wait a minute while they...sorry, I just... [LB694]

SENATOR CONRAD: I can multitask if you can. Okay. C-o-n-r-a-d, representing the "Fighting 46" Legislative District here in our Nebraska Unicameral Legislature. I'm here today to introduce LB694. LB694 would amend the Nebraska evidence rules to allow admission into evidence of certain medical reports and bills without testimony of the healthcare provider or custodian of the records. The trial court would, of course, retain the discretion whether or not to admit such evidence. This change would be applicable only in a small amount of cases where the amount in controversy is less than \$25,000. This legislation was brought to me by the Nebraska Association of Trial Attorneys and I'm hopeful that there will be some folks behind me who can testify more specifically. [LB694]

SENATOR ASHFORD: Well, they're not in the first few rows. Maybe they're...(laughter)... [LB694]

SENATOR CONRAD: Well, I thought... [LB694]

SENATOR ASHFORD: ...maybe they start at row four. (Laugh) [LB694]

SENATOR CONRAD: I know, for example, that there are going to be some opponents that are coming behind me and so they're talented enough that they could probably give us both sides. [LB694]

SENATOR ASHFORD: They're in row six. (Laugh) Okay. Thank you, Senator Conrad. [LB694]

SENATOR CONRAD: Thanks. [LB694]

SENATOR ASHFORD: Yes. [LB694]

SENATOR COUNCIL: Senator Conrad, you can't get off that easy,... [LB694]

SENATOR CONRAD: Yes. Oh. [LB694]

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SENATOR COUNCIL: ...you know, being a member of the bar yourself. But is it the objective, because when I was looking at it I'm like, well, this represents a really serious departure from rules of evidence on authenticity and all of that and I did note that it was limited in its application to cases where the controversy is \$25,000 or less. Number one, how do you determine that because many times that's not even stated in the complaint in terms of the damages that are ultimately awarded? And then number two, assuming that you can identify cases that have liability exposures of less than \$25,000, is it the belief that the cost of bringing in the medical providers is itself what is driving this? I mean I've had to call some doctors in just to authenticate a narrative report and they charged more than I did. (Laughter) So I just... [LB694]

SENATOR CONRAD: Yeah. Yes, Senator Council, rather than let that be an indication that maybe you should reexamine your rate structure,... [LB694]

SENATOR COUNCIL: Yeah. (Laugh) [LB694]

SENATOR CONRAD: ...in all seriousness, two points. One, I'm not an expert in this field. I don't practice in this arena. I haven't beforehand and have no plans to. But my understanding when this legislation was brought to me is, number one, by the time that you get to trial or deposition and you're going to require the services of these custodians or healthcare providers to authenticate the records, by that point you probably have a pretty good indication of what at least the allegation or claim may rise to the level of to help kind of sort out that threshold. But I think that the number itself was chosen just to try, and admittedly in an arbitrary manner, to try and limit this exemption to smaller cases. And recognizing that with these smaller cases anything that we can do to make the system work a little bit more efficiently and shorten trial times and lessen litigation costs has benefits for all parties involved. [LB694]

SENATOR COUNCIL: Okay. Now I appreciate that the parties may at that point in time have a feel for what kind of recovery they're looking at, but I'm concerned that it places the judge in a position of making some predetermination as to where they think the exposure...because they'd have to rule on...they would have to make the evidentiary ruling before you'd get to the ultimate outcome of the case. Well, I'll ask my good trial... [LB694]

SENATOR CONRAD: No, and I think those are good questions and it is my understanding that this is a very...this idea is in the very early stages of consideration... [LB694]

SENATOR COUNCIL: Okay. [LB694]

SENATOR CONRAD: ...and there's still a lot of those questions and ideas being

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presented, even within the Trial Attorneys Association, about how to appropriately set the parameters to ensure judicial efficiency but still protect the litigant's rights. [LB694]

SENATOR COUNCIL: Right. Thank you very much. [LB694]

SENATOR CONRAD: Yes. [LB694]

SENATOR LATHROP: Think Senator Lautenbaugh might have a couple questions for you. [LB694]

SENATOR CONRAD: Great. (Laughter) Well, I figured that potentially if...no, I won't go there. Okay, yes, thank you. [LB694]

SENATOR LAUTENBAUGH: And I'll reassure you the trial attorneys tend to follow me around so there will be one here for you in a moment I'm pretty sure. [LB694]

SENATOR CONRAD: Great. [LB694]

SENATOR LAUTENBAUGH: Yeah. This is something the parties could handle by stipulation now, could they not? [LB694]

SENATOR CONRAD: I believe that would be an option that would be available and probably does occur in many cases when there is indeed not a great deal of controversy related to the authenticity of said medical records. It would save the litigants a great amount of time to enter into a stipulation on these or other issues. [LB694]

SENATOR LAUTENBAUGH: Thank you. [LB694]

SENATOR CONRAD: Yes. [LB694]

SENATOR LATHROP: Any other questions? I see none. Thank you, Senator Conrad. [LB694]

SENATOR CONRAD: All right. Thanks. Thank you. [LB694]

SENATOR LATHROP: You'll be here to close? [LB694]

SENATOR CONRAD: I'll reserve the right. [LB694]

SENATOR LATHROP: All right. Proponents. How many people are here to testify on this bill, for or against? And is there one behind you? Okay. Good. Come on up. [LB694]

JASON AUSMAN: Thank you, members of the committee. My name is Jason Ausman,

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A-u-s-m-a-n, and I am here on behalf of the Nebraska Association of Trial Attorneys to offer support for LB695...or, excuse me, LB694. I'd like to start off by answering your questions, Senator Council, the question being, well, how do we figure out this \$25,000 issue. And I think that what's important about the bill is that we're leaving this to the discretion of the judge, okay? If anybody has an objection to offering records into evidence or offering a narrative report into evidence, that can be brought to the judge, and I would imagine there's going to be an inquiry by the trial court as to what's this case about, are you planning on asking the jury for more than \$25,000. I mean I doubt that the inquiry would be that thorough. I just think that this bill is limited to a very few amount of cases and the parties are going to, hopefully, end up agreeing to allowing the records or reports into evidence or the issue will be taken up with the judge. So there is judicial discretion there before allowing those records and bills into evidence. The second thing that I would add is if there is concern about offering records and reports into evidence when the amount in controversy would exceed \$25,000, I know how I would handle that. If I had a case that was worth more than \$25,000, I would want my medical care provider either on the witness stand or before a court reporter raising their right hand and taking that oath to testify as to the truth, the whole truth and nothing but the truth. I just think that when the ante is up like that and the case is worth more than that amount of money, the traditional safeguards associated with the current laws ought to be there and I, for one, am going to want my provider there to testify. I think the best thing that I can do is give you an example of what this bill or who this bill is aimed to benefit. I've got a case right now. A client was involved in a car accident. Client hurt her shoulder and hurt her neck. Shoulder was treated by an orthopedic surgeon, the neck was treated by a family practitioner, had some x-rays, had an MRI, had some physical therapy, handful of doctors' visits, was in and out of the doctor's office in three to four months, no permanent injury. Okay? We've got about \$8,500 worth of medical bills and sometimes there are interesting issues that present in these cases. Well, did the accident really cause these injuries? Well, we put all this information together. I got a narrative report from my orthopedic surgeon, I got a narrative report from my family practitioner, both of whom linked the injuries to this particular car accident; got the records and bills together, submitted it to the insurance company for consideration, again, \$8,500 in medical bills, no permanent injury, and the response from the insurance company was, as it sometimes is and will likely continue to be, we don't believe the accident caused these injuries, your offer is \$1,000. [LB694]

SENATOR ASHFORD: Jason, I'm going to have you sum up. [LB694]

JASON AUSMAN: Okay. [LB694]

SENATOR ASHFORD: You done? [LB694]

JASON AUSMAN: If I may just have a couple minutes to finish the example, Mr. Chairman. [LB694]

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SENATOR ASHFORD: No, you don't. No, can't do that. Let's have some questions. Any... [LB694]

JASON AUSMAN: Okay. [LB694]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB694]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Mr. Ausman, was there something else you wanted to divulge in support of this bill? [LB694]

SENATOR ASHFORD: (Laugh) Senator Lautenbaugh. I can't...I have absolutely no control. I don't even know...I have no idea... [LB694]

JASON AUSMAN: Thank you. [LB694]

SENATOR ASHFORD: ...I have no idea why I'm even sitting here. [LB694]

JASON AUSMAN: Thank you, Senator. [LB694]

SENATOR LATHROP: Lautenbaugh does that all the time for the trial lawyers, the favoritism. [LB694]

SENATOR ASHFORD: Objection! (Laughter) Jason, go ahead and, Jason, finish up if you could. [LB694]

JASON AUSMAN: My point is this. To get this case to trial I'm going to spend \$6,000 between the two doctors, bringing them to trial or getting trial deposition testimony, and if my client goes to trial she's going to expect, if we do everything that we want the jury to do, to get \$12,000 to \$15,000 out of this case. When you start doing the math, you pay back those medical bills, you pay back those expenses, there's literally nothing left over for the client after those issues are taken care of. And I've told my client it makes no sense to pursue the case so she doesn't get her day in court. [LB694]

SENATOR LAUTENBAUGH: I do have some less open-ended questions, Mr. Chairman. [LB694]

SENATOR ASHFORD: See if you can laserlike into it, will you? (Laughter) [LB694]

SENATOR LAUTENBAUGH: I do want to explore how this would work, though, from a practical standpoint. It would be the judge's discretion as to whether or not it would be capped at \$25,000, and what would happen if there's an excess verdict? [LB694]

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JASON AUSMAN: Mr. Lautenbaugh, I don't think that this law is unlike what we've currently got on the books right now for the Workers' Compensation Courts where these judges are reviewing records and reviewing reports. I think that how this would work from a practical standpoint is the parties would get together; plaintiff's counsel, defense counsel say, hey, is this a case where we can use these; and if there were any concerns by either one of the parties, I think that issue would be brought up to the trial court. The trial court would undertake an inquiry as to whether or not this made sense and the trial court can say, no, do it the old-fashioned way or let's try via record or narrative report. [LB694]

SENATOR LAUTENBAUGH: And you're not going to know that till fairly late in the case, I'm assuming, in a lot of cases. [LB694]

JASON AUSMAN: In the example that I just gave you, I can tell you right now that if you were on the other side of the case I would tell you I'm not going to ask for more than \$25,000, can we do it this way. [LB694]

SENATOR LAUTENBAUGH: Would that then be a binding cap on recovery if... [LB694]

JASON AUSMAN: I don't know that it should. I don't know that it should. I think that the same situation would come into play where if you've got a case in county court and there's an excess verdict, that verdict still stands. You certify that judgment up to district court. I don't think the plaintiff should be penalized by it but I think that if it was a situation where you knew you were going to come in and ask for more than that, and that was a concern with defense counsel, that issue should be brought to the judge and if there were any questions the judge should say no. [LB694]

SENATOR LAUTENBAUGH: And, Mr. Ausman, knowing you as I do, I didn't think you took cases that were worth less than \$25,000, so I didn't see how this would affect you. But I'll take your word for it. [LB694]

JASON AUSMAN: (Laugh) We tried one a year ago. [LB694]

SENATOR LAUTENBAUGH: I recall. [LB694]

JASON AUSMAN: But you were gracious enough to stipulate to allowing the records into evidence and I don't get along with... [LB694]

SENATOR ASHFORD: How did it work out? [LB694]

JASON AUSMAN: ...all defense counsel as well as I get along with you, Senator Lautenbaugh. [LB694]

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SENATOR LAUTENBAUGH: I'm so glad this is on the record. This is spectacular.
(Laughter) [LB694]

SENATOR ASHFORD: Is that it, Senator Lautenbaugh? [LB694]

SENATOR LAUTENBAUGH: I can't imagine improving upon that, Mr. Chairman.
[LB694]

SENATOR ASHFORD: (Laugh) Senator Council. [LB694]

SENATOR COUNCIL: Thank you, Chairman Ashford. I guess that does need to be on the record and I think some people will use it against him too. (Laughter) I'm trying to get to that, too, because I'm defense counsel and you're plaintiff's counsel and you say, well, you know, this case isn't worth more than \$25,000 and I shouldn't have to go through all of this. And I say, well, Your Honor, look, I think I have a right to cross-examine; you know, I think we ought to go through the normal evidentiary channels. And the judge, in his or her discretion, says, no, I'm going to allow the reports and the records to be introduced without having to go through the authentication and the foundation. And my question is, do I get to demand a jury instruction that says if you find the defendant liable you can't return a verdict for greater than \$25,000? [LB694]

JASON AUSMAN: Again, I don't think so. I don't believe the plaintiff should be punished in that situation but you still have all the rights of cross-examination afforded you under this bill. If you've got an issue with what the plaintiff's doctor is saying, you still have the right to cross-examine, still have a right to take his or her deposition and introduce that deposition transcript into evidence at trial. So all of those safeguards I believe would still be there under this bill. [LB694]

SENATOR COUNCIL: Yeah, but, see, I guess that's what I'm trying to...I don't see how you reduce the costs because I'm going to need to take their deposition to come to some appreciation as to whether or not, you know, I think that if I get them on the stand I'm going to be able to convince the trier of fact, you know, not to accept the conclusions of the practitioner. [LB694]

JASON AUSMAN: Sure. In this example, though, the cost would be reduced to the claimant because the claimant is choosing not to take that deposition, not paying for the court reporter, not paying for the doctor. But if defense counsel is somewhat nervous about the testimony and still wanted to spend that money to take deposition testimony, you'd still have the right to do that. So that would at least lessen the cost for the claimant. And the same right would be afforded to defense counsel if they wanted to hire an independent medical examiner. You don't have to bring that examiner to trial. You can get a narrative report. If the plaintiff chooses to cross-examine by way of deposition or compelling that witness' attendance at trial, those safeguards are still there

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and those rights are still there. [LB694]

SENATOR COUNCIL: I don't know, I don't know many plaintiff's counsel that would allow a deposition to be taken without them being present but it's... [LB694]

JASON AUSMAN: Well, no, they'll be there. [LB694]

SENATOR COUNCIL: Yeah, I mean...but and that's where the cost is (laugh)... [LB694]

JASON AUSMAN: The cost... [LB694]

SENATOR COUNCIL: ...part of the cost is. [LB694]

JASON AUSMAN: Understood. [LB694]

SENATOR COUNCIL: Okay. Okay. [LB694]

SENATOR ASHFORD: Okay. [LB694]

SENATOR COUNCIL: Thank you. [LB694]

SENATOR ASHFORD: Thanks, Jason. Would you give us your name, full name, for the... [LB694]

JASON AUSMAN: Yes. [LB694]

SENATOR ASHFORD: ...so we can... [LB694]

JASON AUSMAN: Jason Ausman, last name spelled A-u-s-m-a-n. [LB694]

SENATOR ASHFORD: Thanks, Jason. [LB694]

JASON AUSMAN: Thank you. [LB694]

SENATOR ASHFORD: Okay. Any other testifiers on this either...what are we on, the proponents or opponents? [LB694]

SENATOR LAUTENBAUGH: Proponents. [LB694]

SENATOR ASHFORD: Proponents. Any opponents? [LB694]

RENEE EVELAND: (Exhibit 5) Good afternoon, Senator Ashford and members of the committee. I'm Renee Eveland, E-v-e-l-a-n-d. I am with the Wolfe, Snowden law firm

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here in Lincoln, Nebraska, and I'm here on behalf of the Nebraska Defense Counsel Association in opposition to LB694. I have received feedback from many members of the legal community in response to this bill and I would like to quote an attorney who I consider to be in the category of the best and the brightest in the state. He said the bill makes a mockery of the rules of evidence as they've existed for hundreds of years and turns our system of justice on its head. That statement is made with all due respect to Senator Conrad. We were in law school at the same time and I understand sort of the background or inspiration for this bill. In fact, I read it and I think of Workers' Compensation Court where we think, well, let's put all of these bills and evidence in and the judge can sort it out. But the committee should understand, I believe, that the big difference between this legislation in our regular state court system as opposed to comp court is hugely significant. In comp court there is quid pro quo system that exists all over the country and the idea is that the employee who is injured does not have to prove negligence of the employer. In exchange, the employer's liability is capped. We've heard from Mr. Ausman that this is not going to operate as a cap so there is no "quid pro quo" in this case. Another significant difference being that it is a judge who is acutely familiar with evidentiary rules who is considering the reports in comp court as opposed to here, where we would have a jury reading all kinds of extraneous hearsay without the requisite foundation, authenticity and all of these other important evidence rules that have been carefully crafted over hundreds of years to ensure that the evidence that's coming into court has indicia of reliability. There is no separate indicia of reliability for a case being under \$25,000 as opposed to any other case. We've heard that that number was arbitrarily selected. Obviously, it's the concern of the NDCA that that number would creep up over the years. But most importantly, it is an arbitrary number. I've outlined six major points in my written submission here. It turns the evidence upside down. There are due process concerns here and I do think that this bill would be unconstitutional. It is subject to system manipulation and fraud and I've outlined a number of scenarios where that would be...could play out. Again, this is not a compensation court and the system is different. There are significant drafting and wording issues that I'm struggling with, again, all due respect to Senator Nantkes...or Conrad now, I apologize, and then finally that the number is arbitrary, the \$25,000. So the remainder of my points are outlined in here and I think it's just important to know, too, this idea of worth of the case. We heard Mr. Ausman say it's his assessment of worth. We've also heard it's judicial discretion as to worth. That's a significant issue that needs to be sorted out so that there isn't manipulation. And I'll take questions at this time if you have them. [LB694]

SENATOR ASHFORD: Thanks, Renee. Yes, Senator Lautenbaugh. [LB694]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today, Ms. Eveland. What organization do you represent? [LB694]

RENEE EVELAND: The Nebraska Defense Counsel Association. [LB694]

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SENATOR LAUTENBAUGH: I knew you'd come someday. I've been so lonely here for so long. (Laughter) I do share those concerns, obviously. Would this bill be palatable in any way if there was an actual cap in it? [LB694]

RENEE EVELAND: No. No, I think that there are...the concerns about this not being a compensation system, we haven't addressed redaction issues, there's so many grounds for mistrial by just shuffling in this evidence that a cap simply would not address all the concerns that I've outlined there. [LB694]

SENATOR LAUTENBAUGH: And then leaving aside the problem with the threshold and understanding that all numbers are arbitrary, would a lower threshold, making this almost a small claims matter, make it better in any way? [LB694]

RENEE EVELAND: Absolutely not. The same concerns are there about the constitutional concerns and why we're disposing of our longstanding rules of evidence. Your point is absolutely well-taken and can be summarized. We can handle this by stipulation. We already have a mechanism that's cheap. We have requests for admissions and, in fact, there's a penalty in place. If plaintiffs or if defense attorneys don't admit things that should have been admitted, they're penalized. They can be forced to pay for the plaintiff having to prove up his or her case. And that burden of proof needs to stay in the camp. Our fundamental system of justice is predicated on this, that the plaintiff proves the case first and then the defense is able to put on their defense of the case. But the first hurdle has to be there. The plaintiff has to prove up the case, not that there's a presumption in favor of that. So that's why I and the Nebraska Defense Counsel would be opposed to caps or changing that \$25,000. [LB694]

SENATOR LAUTENBAUGH: Thank you. [LB694]

RENEE EVELAND: Any other? Oh. (Laughter) [LB694]

SENATOR ASHFORD: Go ahead. [LB694]

RENEE EVELAND: I want to get out of this seat, you know? (Laugh) [LB694]

SENATOR ASHFORD: No, no, no, go ahead. There's... [LB694]

RENEE EVELAND: Oh, Senator Harr. [LB694]

SENATOR HARR: Just quickly. [LB694]

SENATOR ASHFORD: Yes, go ahead and she's going to ask you if it's okay if you ask her a question. (Laughter) [LB694]

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RENEE EVELAND: Hi. [LB694]

SENATOR HARR: If I may, thank you for coming today. [LB694]

RENEE EVELAND: Yes. [LB694]

SENATOR HARR: Since you say this bill is about hearsay and authenticity, I guess my question is, who is the attorney at the large Nebraska law firm who belongs in the category of the best and brightest? [LB694]

SENATOR ASHFORD: I was going to ask that question. [LB694]

SENATOR HARR: Oh, I'm sorry. [LB694]

SENATOR ASHFORD: Well, you go ahead. [LB694]

SENATOR HARR: Then I will withdraw that question. Go ahead. [LB694]

RENEE EVELAND: Steve Gealy. [LB694]

SENATOR HARR: Who is it? [LB694]

RENEE EVELAND: Baylor law firm. Steve Gealy. [LB694]

SENATOR HARR: Okay. [LB694]

SENATOR LAUTENBAUGH: I was going to fess up to it. [LB694]

RENEE EVELAND: He would like to... [LB694]

SENATOR ASHFORD: I was going to say I thought they were in here. I don't see them in here. [LB694]

RENEE EVELAND: You know,... [LB694]

SENATOR COUNCIL: Whoa. Whoa, wait, wait, wait. [LB694]

RENEE EVELAND: ...he would like...he... [LB694]

SENATOR ASHFORD: Wait, just a second. The bright, best, one of the best or brightest might have been... [LB694]

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RENEE EVELAND: One of the best, right. [LB694]

SENATOR ASHFORD: That might have been a better...(laugh) [LB694]

RENEE EVELAND: My firm has most of those, that category, but... [LB694]

SENATOR COUNCIL: Whoa! Whoa! Whoa! Whoa! [LB694]

SENATOR ASHFORD: Okay. Wow! [LB694]

RENEE EVELAND: No. I'm kidding. I'm kidding. [LB694]

SENATOR LATHROP: Surely you can think of some exceptions? (Laughter) [LB694]

SENATOR COUNCIL: I can see one, two, three, four, five right here. [LB694]

RENEE EVELAND: Absolutely. [LB694]

SENATOR LAUTENBAUGH: You're losing us, Renee. [LB694]

RENEE EVELAND: Absolutely. No, and here of course. [LB694]

SENATOR LATHROP: You're bleeding credibility. [LB694]

SENATOR COUNCIL: Yes. [LB694]

SENATOR ASHFORD: And Senator Wightman is back there. I mean it never ends in this room. [LB694]

SENATOR HARR: Thank you. I have no further questions. [LB694]

RENEE EVELAND: Excellent question. [LB694]

SENATOR ASHFORD: Thank you, Renee. Next...I think we're...yeah, we're finished. [LB694]

RENEE EVELAND: Thank you. [LB694]

SENATOR ASHFORD: Thanks. [LB694]

KORBY GILBERTSON: Good afternoon, Chairman Ashford, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of the Property

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Casualty Insurers Association of America. I am an attorney but I would never claim to be a better one than any of you because you all know me well enough to know that would not be true. I think Ms. Eveland covered most of the issues that PCI raised when they reviewed this piece of legislation. The bottom line is, and I think the most compelling reason is, parties already have the ability to stipulate on evidence. They don't think that this should be a new standard used for cases. And with the \$25,000 cap they are very concerned that this would raise the risk of having fraudulent claims, especially for automobile accidents. Obviously, as insurers, that concerns them. Be happy to try to answer any questions. [LB694]

SENATOR ASHFORD: My only...in reading through the actual language in the bill, it seems like there are protections in here. Maybe Senator Lautenbaugh will help me on this when we talk about the bill later, but I don't want to get into long division about it. But isn't the idea here to try to reduce cost in some of these lower... [LB694]

KORBY GILBERTSON: I think that's... [LB694]

SENATOR ASHFORD: Isn't that what defense insurance companies would like to see happen? [LB694]

KORBY GILBERTSON: I think in some circumstances that can happen, but you can already stipulate right now. If both parties agree to do that, there's no problem. [LB694]

SENATOR ASHFORD: No, I get that but... [LB694]

KORBY GILBERTSON: The concern comes when you have reports from different providers that cannot be challenged unless you are willing to pay to be able to cross-examine those people. They're concerned about constitutional issues. Ms. Eveland covered those in her testimony. [LB694]

SENATOR ASHFORD: You could still stipulate under this. Maybe I'm misreading. You could still stipulate to the medical records. [LB694]

KORBY GILBERTSON: Right now. [LB694]

SENATOR LAUTENBAUGH: You can now, yeah. [LB694]

SENATOR ASHFORD: Right,... [LB694]

KORBY GILBERTSON: You can now, and I think... [LB694]

SENATOR ASHFORD: ...but I mean this doesn't change that. [LB694]

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KORBY GILBERTSON: ...what this does is it reverses it. It would be...it would go in unless you would argue that it...or actually that's not even correct, if a judge would agree with you that it should not go in. It would be the judge's discretion on this case. [LB694]

SENATOR ASHFORD: Okay. Thanks, Korby. Any other questions? Seeing none, thank you. [LB694]

KORBY GILBERTSON: Thank you. [LB694]

SENATOR ASHFORD: Other opponents? (See also Exhibit 6) Neutral? Senator Conrad, do you... [LB694]

SENATOR CONRAD: Quickly. [LB694]

SENATOR ASHFORD: Your classmate is still here so I don't know. [LB694]

SENATOR CONRAD: Well, and who said the rules of evidence couldn't be fun? I think that this hearing clearly indicates otherwise. And thank you to my colleague Senator Harr, because I was going to say that it was definitely a first to be attacked by a member who didn't even have the wherewithal to show up and do so on the record themselves but to send somebody to do it for them. That's a pretty unique experience, so thank you for that experience. There's a first to add to my legislative experience. Also, I would like to extend my gratitude to Ms. Gilbertson and thank her for her professional courtesy in taking the time to contact me and talk about concerns in advance of this hearing, which I can't say I can extend that same gratitude to other opponents today. Nonetheless, as I noted in my opening, this is a piece of legislation that I clearly brought for discussion point to try and see if we can't find ways to decrease litigation costs and find efficiencies for all parties with cases or controversies that this may benefit. In essence, I think it's been well, clearly defined on the record that this would simply codify what already can happen through stipulation. So I'm a little unclear as to some of the other issues related to constitutional problems or otherwise. I think Sixth Amendment concerns, if I remember, apply to criminal context rather than civil context, but those are issues for another day. Thank you for your kind consideration. [LB694]

SENATOR ASHFORD: Thank you, Senator Conrad. [LB694]

SENATOR CONRAD: Thanks. [LB694]

SENATOR ASHFORD: Good-bye. That reunion is going to be great. (Laughter) Senator Wightman. Okay, we're now on...what are we, LB336 or LB694? [LB694]

SENATOR LATHROP: The Wightman-Ashford bill. [LB536]

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SENATOR ASHFORD: Yes. [LB536]

SENATOR WIGHTMAN: LB536,... [LB536]

SENATOR ASHFORD: LB536. [LB536]

SENATOR WIGHTMAN: ...is that the number you're searching for? (Exhibit 7)
Chairman Ashford, members of the Judiciary Committee, for the record, my name is John Wightman, Wightman spelled W-i-g-h-t-m-a-n, representing the 36th Legislative District. LB536 would enact the Nebraska Uniform Real Property Transfer on Death Act. The bill provides an asset-specific mechanism for the nonprobate transfer of land. The Nebraska Real Property Transfer on Death Act mirrors the Uniform Real Property Transfer on Death Act promulgated by the Uniform Law Commission in 2009. Last year you may recall I introduced LB736, mostly for discussion purposes at the request of the Bar Association as a first draft of a Uniform Real Property Transfer on Death Act. It was recommended in advance that that be left and no action taken on it so that the Bar Association could discuss it. Over the interim, an in-depth study was conducted pursuant to LR488. Changes were made to LB736, conforming the Uniform Law Commissioner's act to Nebraska law in addressing concerns of various parties. I would ask that the interim study report, developed pursuant to LR488, be made a part of the permanent record of LB536. The act permits owners of interest in real property to execute and record a transfer on death deed, or a TOD deed, which enables an owner of real property to pass the property to a beneficiary on the owner's death simply, directly, and without probate. By this deed, the owner identifies the beneficiary or beneficiaries who will succeed to the property at the owner's death. During the owner's lifetime the beneficiaries have no interest in the property and the owner retains full power to transfer or encumber the property or to revoke the transfer on death deed. The act establishes requirements for such an instrument, the creation and revocation of a transfer on death deed, and clarifies the effect of the transfer on death deed on all parties while the transferor is living and after the transferor dies. The Nebraska Real Property Transfer on Death Act provides the transfer on death deed must contain all of the essential elements and formalities of a properly recordable deed executed during the life of the maker. The transfer on death deed must state that the transfer to the beneficiary occurs on the transferor's death and must be properly recorded during the transferor's lifetime in the office of the register of deeds where the property is located. The capacity required to create a transfer on death deed is the same as the capacity to make a will, having to do with the transferor's competency to do that. A transfer on death deed does not operate until the transferor's death and remains revocable until then. The transferor may revoke the deed by recording an revocatory instrument, such as an instrument to revoke the transfer on death deed, or a subsequent transfer on death deed that names a different beneficiary. Also, if the transferor disposes of the property during his or her lifetime, the transfer on death deed is ineffective, so it doesn't

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interfere with the transferor's right to sell that property at a later time. Until the transferor's death, a recorded transfer on death deed has no effect. It does not affect any right or interest of the transferor or any other person in the property. The transfer on death deed creates no legal or equitable interest in the designated beneficiary. Liability of the beneficiary for claims against the transferor's estate is limited to cases where the estate is insolvent. A designated beneficiary may disclaim all or part of the transferred interest. We've had some suggestions and we have attempted to meet those, and in order to address concerns raised by the Department of Health and Human Services, Section 20 was added. Section 20 found on page 16, lines 19 through 21, provides that the department may require the revocation of a transfer on death deed by a transferor in order for the transferor to qualify for Medicaid assistance, so that could be done during the lifetime of the transferor. It is not the intent of this act that it may be used to circumvent property of sum spent for Medicaid assistance on behalf of the transferor. Additional language to clarify this intent is found in a proposed amendment, AM403, which has been provided to you, I believe. Additional concerns have been raised that I wish to address with AM403. They're as follows: The Nebraska Land Title Association was concerned about the liability of a good-faith purchaser of real property transferred pursuant to the act. AM403 on page 2 adds Section 18 modeled after 30-24,108 of the Probate Code. This language clarifies that when property acquired pursuant to a real property transfer on death deed is sold, it is sold free and clear of any claims of the estate. Other title issues raised by the Nebraska Land Title Association will be addressed by title standards established by the Nebraska State Bar Association. I've been authorized to say that AM403 addresses all of the concerns raised in a letter sent to the committee from the Nebraska Land Title Association. The sample form for a transfer on death deed is optional in LB536. In order to address concerns by the Nebraska Land Title Association, AM403 removes the optional sample form from the proposed law. Instead, the Nebraska State Bar Association will develop and provide a sample form. In order to address concerns of the Nebraska Association of County Officials about the possible loss of inheritance tax revenues, the warnings about inheritance tax liability and possible Medicaid recoveries are required to be included in a transfer on death deed document. To address the question of what happens to a TOD deed that gets recorded with defective warning language, a provision that mirrors the saving language in current law for defective acknowledgements is included at page 2, lines 12 through 14. I did just learn this morning that NACO, primarily Douglas and Lancaster County, are going to appear in opposition to LB536 based upon a fear that they will lose inheritance tax. I believe the mandated warnings which are provided to be set forth in the document address this fear. In AM403, at line 17, the TOD deed is required to contain a warning as follows: The property transferred remains subject to inheritance taxation in Nebraska to the same extent as if owned by the transferor at death. Failure to timely pay inheritance taxes is subject to interest and penalties, as provided by law. That entire warning would be set out. For that reason, I question the position of the counties for the reason that the title examiners are going to require a determination and payment of inheritance tax before a sale of the real property can

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occur. Not only will the beneficiary owe penalties and interest at the rate of 14 percent if they fail to file a proceeding, they also owe a 5 percent penalty per month, up to 25 percent of the inheritance tax due, and that was put in a bill about three years ago I think when this...when we increased the exemptions under the inheritance tax law. So they have both a penalty and interest so it's going to be in their best interest to determine this inheritance tax, get it paid within the one-year statute of limitations for doing that. One last issue that I must address is the fiscal note, and I don't know that the new fiscal note has gotten to you yet, but I've discussed those issues with Phil Hovis, the fiscal analyst, and asked for a revised fiscal note. The fiscal note assumes LB536 creates a new exemption from the documentary stamp tax. This assumption is incorrect and I think Mr. Hovis would agree that that is true, that there are already exemptions provided for every deed that would be filed under this. So if you transfer the property from a personal representative at the time of the death or a trustee under a revocable trust, there is no tax on that, no documentary stamp tax at the current time nor neither would this have a tax, documentary stamp tax, under it. The transfers under this act are in-lieu-of transfers under (15) and these provide exemptions for a deed of a personal representative; transferring to beneficiary, (17); deeds transferring property into a trust; and perhaps under (5)(a), deeds between a husband and wife or parent and child. So I see no fiscal impact at all and I think Mr. Hovis agrees with that as to the loss of documentary stamp taxes from the passage of LB536 and it is my understanding that the fiscal analyst will provide you with a revised fiscal note. With that, I urge you to advance LB536. Let me talk a little bit just briefly about it. We already have three forms of transfers that fit very similarly in doing much of the same thing that this particular act would do, but two of them immediately confer upon the grantee a current interest in the property. One of those is a joint tenancy deed. You can transfer to all of these proposed beneficiaries and the transferor himself or herself and create the same thing. The only thing is you've given a current interest and you have...may owe a gift tax return, depending upon the value of the property that's being transferred. A second one is, that is frequently used at least out in agricultural areas, is a retention of a life estate and transferring a remainder interest. And third one, the one...and that one also transfers an interest that if you were to sell the property after you did either of the first two, you would have to have the transferee join in the deed. But the third one that probably is the most akin to what we're talking about here is a revocable trust which doesn't transfer any interest. It gives the party the power to revoke, but the difference is that a revocable trust might very well cost you \$1,000 to \$2,000 to get a revocable trust where you may be able to do this for \$50 to \$100. So somebody who just owned a home, I think if people had a substantial amount of property they would use a revocable trust, but if they just owned a home they might very likely prefer to use this method, neither of which create any current interest in the beneficiary. [LB536]

SENATOR ASHFORD: Thank you. Senator Council, then Senator Harr. [LB536]

SENATOR COUNCIL: Yeah, thank you, Chairman Ashford. Thank you, Senator

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Wightman. I had some opportunity to have a brief conversation about LB536 and I appreciated you going through the other ways of transfer because, first question, an elementary question for those who don't practice in real property law or probate law, is that people can transfer future interest by a deed with rights of survivorship, but the only difference between that and a transfer on death is that the people named in that WROS deed have a present interest... [LB536]

SENATOR WIGHTMAN: Right. [LB536]

SENATOR COUNCIL: ...which creates some problems. But last year or the year before the body passed a bill that you introduced that raised the monetary threshold for, lack of a better term, probate without going through the formal,... [LB536]

SENATOR WIGHTMAN: Right. [LB536]

SENATOR COUNCIL: ...and what kind of document is used to transfer, and it went from \$25,000 to \$50,000, so if the decedent's estate was valued at less than \$50,000, you didn't have to go through the whole probate procedure but you could sign an affidavit. How is real property transferred under those circumstances? [LB536]

SENATOR WIGHTMAN: On those circumstances there's never a deed filed. There is just an affidavit of the current owner who would receive the property in which, number one, under the Small Estates Act, he says...he states under oath that he is the person or that he names the persons who would receive the property under a current will, and I think the will has to be attached in that instance so that... [LB536]

SENATOR COUNCIL: But this is intestate. [LB536]

SENATOR WIGHTMAN: ...but he would have to be certifying that that was the last will and testament. [LB536]

SENATOR COUNCIL: Okay, but it's intestate, no will. [LB536]

SENATOR WIGHTMAN: Well,... [LB536]

SENATOR COUNCIL: And the only asset is a piece of real estate that's valued at less than \$50,000. [LB536]

SENATOR WIGHTMAN: And it would be the same affidavit except he would say he was an heir-at-law... [LB536]

SENATOR COUNCIL: Okay. [LB536]

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SENATOR WIGHTMAN: ...and he would have to give the names of all of the heirs-at-law... [LB536]

SENATOR COUNCIL: Okay. [LB536]

SENATOR WIGHTMAN: ...who would share in that property. And he also has to, in that certificate, provide the county assessor or the register of deeds, but it will eventually work its way to the county assessor, what the assessed value, the current assessed value of that property is. [LB536]

SENATOR COUNCIL: And then would it be at that time that there would be some inheritance tax determination, but if you're one of the parties exempted or with very little there wouldn't be any inheritance issues associated? [LB536]

SENATOR WIGHTMAN: Right. If you were a sole heir or a sole devisee under a will and it was \$50,000, you would owe inheritance tax on the last \$10,000 but at 1 percent it would be \$100. But if it were \$100,000, obviously it would be quite a bit more. It would be about \$600 instead of the \$100 if there was a single heir. [LB536]

SENATOR COUNCIL: Okay. Well, you know, from my perspective and some of the people that have come to me asking assistance, the parent passed away, no will, all they had was some real estate, or people come to...maybe before their loved one passes and want to go through whether we should have a will when all Mom and Dad have are the house. And this...and if the house is valued at less than \$50,000, it would seem that you would want to spare them the cost of having to probate a will if you had another way, another vehicle for them to arrange for the transfer of that property on death with whomever the decedent wished to receive them, and this transfer on death deed provides that option, correct? [LB536]

SENATOR WIGHTMAN: That's correct. It would be an option that probably would not be used very much by people with substantial estates. It might well be, it was pointed out to me that it might well be people who had a revocable trust with regard to much of their other property but...and I know... [LB536]

SENATOR COUNCIL: Had this one piece of property that they wanted to handle differently. [LB536]

SENATOR WIGHTMAN: Right, and that's quite often true because they would like to keep this in joint ownership between the two spouses so it could be sold easily in the event the first spouse passed away. So they might want to use this just for that house. [LB536]

SENATOR COUNCIL: Thank you. [LB536]

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SENATOR ASHFORD: Senator Harr. [LB536]

SENATOR HARR: Thank you, Mr. Chairman. And I think that your last paragraph kind of gets at my first question, would it not...well, with Brenda and then also with your opening, which is, I guess, what is the public policy purpose of this or why do we need this bill? I mean we have common law. For years we've had, as you talked about, life estate and all these other. Why do we all of a sudden need this Uniform Real Property Transfer on Death Act? [LB536]

SENATOR WIGHTMAN: Well, I think it is to mirror what is done with regard to investments and portfolio assets. You can do this already with regard to whether it be bank accounts, whether it be certificates of deposit, can even do it with a brokerage account. [LB536]

SENATOR HARR: Oh, and I understand you can do it with personal property. Why do we need it for real property though? [LB536]

SENATOR WIGHTMAN: Well, because...my answer would be that it is a relatively cheap method of handling a piece of property and providing who it's going to pass to, you might want it to pass to two of your children instead of three, and not do a will, so you could do that by this document. [LB536]

SENATOR HARR: Does it...why is it cheaper than doing a will? [LB536]

SENATOR WIGHTMAN: Well, number one, you're going to have to probate the will to pass it at the time of the death, which in and of itself would be a substantially more costly method. [LB536]

SENATOR HARR: So it's cheaper for the...it's cheaper for the heirs you're saying. [LB536]

SENATOR WIGHTMAN: Probably. Well, I think without doubt. Whether it's cheaper, that much cheaper for the transferor might be a question. [LB536]

SENATOR HARR: Okay. Well, and I'm looking at AM403. I have a real problem on page 2, line 12 through 14. Prior to that you have warning, warning, warning, which is good and those warnings are required, shall contain the following warnings, and then there are the three warnings. But if I read number two correctly, it really makes the warnings optional because if you don't have them nothing happens. So the "shall" becomes "may" really. And really, I mean, what's the liability if I don't put it in there? So it kind of makes all those warnings moot. [LB536]

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SENATOR WIGHTMAN: I would say, Senator Harr, that we were working on this as recently as midmorning, attempting to put these various amendments together in order to meet some objections, and that would be the reason that the warnings now might be invalidated, and we certainly would work with the committee on that. [LB536]

SENATOR HARR: And this gets to the difference between real property and personal property, which is why I'm asking the policy issues, public policy behind this, because what you have here is, as you said, it's the title insurers who want this because they don't want to...they want certainty... [LB536]

SENATOR WIGHTMAN: Right. [LB536]

SENATOR HARR: ...in transfers, which gets me to why I kind of have...Section 18 really opens up I think for some fraud. It makes fraud a lot easier. I just...I can...in my head I can work out ways pretty easily to defraud to hide assets from Medicare, Medicaid, or even from other debtors if I'm the beneficiary. So I have a little problem with that. I mean the nice thing about real property is you can attach to that. Personal property, with the way it's written, I have a little issue. And walk me through, I don't do probate, I have no idea really and I don't really, to be honestly...learn too much about probate. [LB536]

SENATOR WIGHTMAN: Don't want to. [LB536]

SENATOR HARR: But I do have a basic understanding of real estate law and so I'm trying to work through my head how this works and to make sure that the county captures that estate tax. So...and stop me at any point when you think I'm wrong, off track. I have no problem with that. So I...in this, in my scenario let's set up I'm going to give this to my kid, so I write out a deed. I say upon my death, this goes to my child. That goes of record with the county assessor, right? [LB536]

SENATOR WIGHTMAN: That's...with the county register of deeds. [LB536]

SENATOR HARR: Or register of deeds. Excuse me. [LB536]

SENATOR WIGHTMAN: Right. [LB536]

SENATOR HARR: Thank you. Thank you. Register of deeds. I pass away. When does it switch...when would title switch over to my child? How would that notice be made? [LB536]

SENATOR WIGHTMAN: There probably would be no notice other than the inheritance tax determination. There will be later people that might address that issue but I... [LB536]

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SENATOR HARR: Well, so when would I register it with...my child all of a sudden says, hey, I have the deed that says it's mine. If you looked on the assessor Web site, who would it have as the owner of the property? Would it still be me or would it be my child? [LB536]

SENATOR WIGHTMAN: You're the transferor? [LB536]

SENATOR HARR: I'm the transferor, yes. [LB536]

SENATOR WIGHTMAN: The record title is going to show in the transferor until steps are made or actually probably would be done by the filing of a death certificate of the transferor. [LB536]

SENATOR HARR: Okay. So in this situation, I pass away. [LB536]

SENATOR WIGHTMAN: Your beneficiaries would probably at that point go in and file a death certificate to show that they have the power to sell it. [LB536]

SENATOR HARR: Okay. So...but there is no actual transfer...a transfer occurred but there isn't anything on record that changes it. [LB536]

SENATOR WIGHTMAN: Well, the certificate of death is filed with the register of deeds. [LB536]

SENATOR HARR: Okay. Is that adequate notice, do you think, to...for the county attorney to realize that there's an inheritance tax issue? [LB536]

SENATOR WIGHTMAN: It's the same thing, Senator Harr, that we use today with regard to joint tenancies. Say the transferor and two beneficiaries are shown as the grantees in a joint tenancy deed. The first thing that ever occurs is this death certificate. [LB536]

SENATOR HARR: Well, but with a joint tenancy, there's no transfer of ownership, per se, because they both owned it beforehand. [LB536]

SENATOR WIGHTMAN: Well, no, we're talking about...and this frequently happens, one of the two spouses dies... [LB536]

SENATOR HARR: Okay. [LB536]

SENATOR WIGHTMAN: ...and their surviving spouse, in order to save probate, frequently come in and want to make a joint tenancy deed to themselves and perhaps two of their children or all of their children or whatever it might be. And so there is a

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transfer of a present interest at that point and the only way they can sell that property, if a title insurer is looking at the record properly,... [LB536]

SENATOR HARR: So when is inheritance captured in the situation you just gave? [LB536]

SENATOR WIGHTMAN: Well, it should be captured within a year because if they don't file that inheritance tax within a year they're subject to a 5 percent penalty per month, up to 25 percent, and a 14 percent interest rate. So there's a lot of incentive to go in and file that inheritance tax because the amounts are going to get pretty large in a hurry. [LB536]

SENATOR HARR: Okay. But in that situation, when you go to sell the property, you'll have the old deed and there will be a question of who owns it and it will say, oh, well, who is Jane Doe? Well, that's my mom, she passed away. So there would be notice. The register of deeds would be on alert at that situation. [LB536]

SENATOR WIGHTMAN: Without filing the death certificate. [LB536]

SENATOR HARR: Yeah. In this situation though, because there isn't anything that would put the county assessor necessarily on notice that, hey, you should be collecting something, I don't see where they are put on notice and that's my real quandary is I...well, let's say the property says future trust. I own it. My kid gets it. Kid goes in, gets a transfer. It's in my, you know, my child's name alone. They go to sell the property, there's no way to capture at that point. I mean there would be no way for the assessor to say, oh, whoa, whoa, whoa, looking back you should have paid an inheritance tax because that's owned completely. [LB536]

SENATOR WIGHTMAN: At...excuse me for interrupting. At that point... [LB536]

SENATOR HARR: Oh, please do. No, no, don't...yeah. [LB536]

SENATOR WIGHTMAN: At that point, the title insurer is going to tell them that we won't approve this title when you sell it until you determine the inheritance tax. At that point, they're going to owe 14 percent interest on all of this amount plus the 5 percent a month penalty, up to 25 percent. [LB536]

SENATOR HARR: Well, and that gets me back to Section 18 though because there's no reason for the title insurer to say that because the transaction would be good, because according to Section 18, if there's a transfer, the purchaser or lender beneficiary gets...takes the title free of any claims of the estate. [LB536]

SENATOR WIGHTMAN: Except this is a lien against the real estate and not just a claim

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against the estate, and I don't think it says liens. Because if there's a lien out there, that's going to be called to their attention and they aren't going to take free and clear of that inheritance lien. [LB536]

SENATOR ASHFORD: Maybe I suggest we might...maybe if there's something off the mike, Senator Harr, you might want to clear this up, if there's a... [LB536]

SENATOR HARR: Yeah. [LB536]

SENATOR WIGHTMAN: I know one of the proponents will be Senator...or will be John Lindsay and he can probably address those issues maybe with a little more experience than myself,... [LB536]

SENATOR HARR: Okay. [LB536]

SENATOR WIGHTMAN: ...although we run into it a lot. [LB536]

SENATOR HARR: Okay. No, I think actually your comment did answer my question to a large degree. Okay. Thank you. [LB536]

SENATOR ASHFORD: Thanks, Senator Wightman. [LB536]

SENATOR WIGHTMAN: Thank you. [LB536]

SENATOR ASHFORD: How many...go ahead. We're just going to...I'm just going to ask how many people are here to testify on this bill. Okay. Why don't we come up to the front. How many proponents do we have? All right, come on up and good afternoon. [LB536]

NAT STERLING: (Exhibit 8) Good afternoon, Senators. My name is Nat Sterling, N-a-t S-t-e-r-l-i-n-g. I'm testifying in support of LB536 on behalf of the Uniform Law Commission. I was the chair of the drafting committee that prepared the Uniform Nonprobate Transfer on Death Act. This act was adopted by the Uniform Law Commission in 2009 and last year, 2010, approved by the ABA house of delegates. During the year, other states such as Nebraska have studied this bill and this year there are six states considering enactment of it, including Nebraska. It's a simple, inexpensive means to directly transfer the property on death without probate. As we just heard, the act is interesting to people who would like to avoid the cost and time of probate and the expense of a trust instrument. It has become quite a popular device in a number of states. There are 13 states which now have Nonprobate Transfer on Death for Real Property Acts, including your neighboring states of Colorado, Kansas, and Missouri, and in fact Missouri has got about...more than 20 years of experience with this type of instrument. The Uniform Law Commission decided to do this just because it was clear

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that this was a device that was becoming more attractive to the states generally and there are little differences. Although, in general, the acts are similar in their operation in all states, little differences. Some states call it...have a different terminology. They call it a beneficiary deed instead of a transfer on death deed. There are questions that are not answered in some states that are in others. What we've done is we've taken the best. We've looked at every state, taken the best provisions from each state, and put together a complete act that is better than any one state in answering all the questions. This was put together with the assistance of the real estate bar, the probate bar, the title insurance industry, the banking industry, the elder law community. The experience in the states that have this has been quite favorable. There have been very few, if any, problems. It's operated smoothly. We've heard from title insurers and others that there was some concern at the outset, but when they worked on it in practice they found it was quite successful. The act has been approved by the ABA real estate and probate section, by the ABA Commission on Law and Aging, and by the American College of Real Estate Lawyers. The material I've handed out to you is a pretty complete packet. It includes the Uniform Act with commentary and then some brief of synopses of how the act operates and the reasons for adopting it, along with some supporting letters. So I appreciate your consideration of this and of the Nebraska State Bar for studying and making appropriate adjustments for Nebraska. [LB536]

SENATOR ASHFORD: Thank you for all your effort on this work. Any questions? Do you have...? [LB536]

SENATOR HARR: I'll wait. Thanks. [LB536]

SENATOR ASHFORD: Thanks. Thanks for coming all the way out here. [LB536]

NAT STERLING: You're welcome. [LB536]

SENATOR ASHFORD: Bill, Bill Lindsay. We have Lindsay one. [LB536]

WILLIAM LINDSAY: My name is William Lindsay. I'm a practicing attorney in Omaha, L-i-n-d-s-a-y. I'm here to testify as a proponent for LB536. When I first saw this concept a number of years ago, it resonated with me because I have had many situations where I've had clients who come in, as Senator Wightman testified, and they want to do a deed naming their children. They don't understand what the risks are, such as they put their son and daughter on the deed and now there's a child support lien in place or their daughter files bankruptcy or gets involved in an automobile lawsuit. And when I've had the ones that have already done this and I tell them what the risks are, you know, the color goes out of their faces because they realize they're now subject to their children's lives. The major advantage of this, in my opinion, is its revocability and the fact that there is no lifetime effect on this. It's like a beneficiary on a life insurance policy or you can have a POD beneficiary on a CD at a bank. The inheritance tax warning has been

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strengthened in the amendment, AM403. I think that's a fairly strong warning. One point, no other form of transfer has a required inheritance tax warning built into it. The joint tenancy deed doesn't have such a warning. The life estate deed, again, does not have such a warning. So if the people read their deed, they should see that there is an inheritance tax and ask somebody the question of what is this. Right now the question was raised about how do we find out about this. Well, when you want to refinance, you're going to have a title commitment issued. There's going to be the same thing on a sale of the property and you're going to have the title companies require the completion of the inheritance tax determination. Another example where this could be used is in the revocable trust. If the trust is named as the beneficiary, you avoid the lifetime transfer, you don't have to change insurance coverage on the house, and there's a Nebraska Supreme Court decision that says a trust is not a protected person under the Construction Lien Act so there's actually even a way to use this with the revocable trust. With regard to the death certificate, yes, like with the affidavit for transfer of real estate, a death certificate would be required to be filed. With the affidavit, the registers of deeds require Form 521, which is the transfer statement to be filed. I would expect they would adopt a similar rule in this type of situation. That's all I have, unless there are any questions. [LB536]

SENATOR ASHFORD: Thanks, Bill. Senator Council and then maybe Senator Harr, huh? [LB536]

SENATOR COUNCIL: Thank you. And thank you, Bill, for testifying. This very quickly, getting to Senator Harr's question about inheritance tax determination and what triggers that liability, if my mother provided...transferred to me, transferred to the two of us on my father's death the real estate that they had held jointly, she signs a deed that transfers it to herself and myself with rights of survivorship. Okay. When she passes, arguably there are inheritance tax implications. [LB536]

WILLIAM LINDSAY: Was this having your father and yourself as well? [LB536]

SENATOR COUNCIL: No, my mother and myself. [LB536]

WILLIAM LINDSAY: Oh, your mother, okay. [LB536]

SENATOR COUNCIL: Yeah, we've already taken care of... [LB536]

WILLIAM LINDSAY: All right. [LB536]

SENATOR COUNCIL: My mom and my dad held it jointly. [LB536]

WILLIAM LINDSAY: Yes. [LB536]

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SENATOR COUNCIL: My dad passed. Everything occurred and my mother acquired title and then she signed a deed conveying her sole interest to the two of us with rights of survivorship. Then she passes. [LB536]

WILLIAM LINDSAY: Yes. [LB536]

SENATOR COUNCIL: Now that property then automatically is conveyed...becomes my sole property, correct, I mean just by... [LB536]

WILLIAM LINDSAY: That's correct. [LB536]

SENATOR COUNCIL: Now depending upon the value of that property, I could conceivably have inheritance tax issues, couldn't I? [LB536]

WILLIAM LINDSAY: Yes. The entire property will be taxable for inheritance tax because your mother provided all the consideration, all the payment for it. [LB536]

SENATOR COUNCIL: Okay. Now getting to Senator Harr's question, when is that determined? [LB536]

WILLIAM LINDSAY: When somebody files an inheritance tax determination... [LB536]

SENATOR COUNCIL: Okay, and if... [LB536]

WILLIAM LINDSAY: ...and whether it's joint tenancy or in a life estate scenario or a TOD scenario, this is a voluntary enforcement system and it's when somebody actually comes in and files a petition, goes to the county attorney and gets that taken care of. Usually, I've not seen very often the county attorneys actually go out and actively enforce it. [LB536]

SENATOR COUNCIL: So otherwise the only time it becomes an issue is if two years later I want to sell it and I go to get title insurance and the title insurance company says... [LB536]

WILLIAM LINDSAY: They're going to require you to complete it. [LB536]

SENATOR COUNCIL: ...give me some evidence that you've taken care of the inheritance tax issue, correct? [LB536]

WILLIAM LINDSAY: That's right. [LB536]

SENATOR COUNCIL: Fine. All right. Thank you. [LB536]

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SENATOR ASHFORD: Yes, Senator Harr. [LB536]

SENATOR HARR: All right. Let's start with your...first of all, are you here on behalf of yourself, the bar, or your firm, or... [LB536]

WILLIAM LINDSAY: I'm here on behalf of myself. [LB536]

SENATOR HARR: Okay. And I assume you haven't had a chance to read AM403 yet. [LB536]

WILLIAM LINDSAY: Yes, I've read it. [LB536]

SENATOR HARR: Okay. So if you can answer my earlier question about the warnings. [LB536]

WILLIAM LINDSAY: Okay. [LB536]

SENATOR HARR: So you say no other type of deed requires a warning such as this; however, on page 2, line 12, since there's no ramifications for not having the warnings...it says shall, but if I don't have it... [LB536]

WILLIAM LINDSAY: Well,... [LB536]

SENATOR HARR: ...nothing happens so...I mean I guess why would you? There would be no real reason to put it on there then. [LB536]

WILLIAM LINDSAY: No, the purpose of that, again, there have been several different versions and with this particular amendment I don't know that all that got through, but one of the provisions, at least in a prior version that I had seen, had said that the register of deeds shall reject any deed that does not have a proper warning on it. [LB536]

SENATOR HARR: And where is that? [LB536]

WILLIAM LINDSAY: I remember seeing it in the bill. I don't know if it made it through that amendment process or not. [LB536]

SENATOR HARR: Well, I'll come back to that. Well, I'll look for that. I didn't see it but I did glance at this only quickly. [LB536]

WILLIAM LINDSAY: All right. [LB536]

SENATOR HARR: I guess...and this is a way, as you say, a mechanism to get around

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probate. Is that correct? [LB536]

WILLIAM LINDSAY: Yes. [LB536]

SENATOR HARR: Why does probate exist? [LB536]

WILLIAM LINDSAY: Probate is a method of transferring assets at death. [LB536]

SENATOR HARR: It is a method, but why does it...what is the public policy behind probate then? Why do we even have it? [LB536]

WILLIAM LINDSAY: Well, part of it is historical. It derives out of English law. [LB536]

SENATOR HARR: Okay. This doesn't derive out of English law, right? [LB536]

WILLIAM LINDSAY: No, it does not. [LB536]

SENATOR HARR: Okay. I guess what I'm getting at is...and again, I don't practice probate law, I don't pretend to practice probate law, but as I understand from my very basic law school classes, probate exists so that all the assets and debts can be brought together, they can be shaken out and see what's left over, and then whatever is left over after all the debt, that can then be transferred. [LB536]

WILLIAM LINDSAY: Yes, it can still...it still does... [LB536]

SENATOR HARR: It's a filtering. [LB536]

WILLIAM LINDSAY: ...have some effect that way. There are certain types of things that do not pass through probate and would not be applied to the debts. For example, Senator Council's joint tenancy deed with her mother would not be subject to any debts of a decedent. A transfer on death deed, under this bill, would be subject to the debts of the decedent so there is a trade-off. [LB536]

SENATOR HARR: How would it attach? [LB536]

WILLIAM LINDSAY: How would it attach? [LB536]

SENATOR HARR: Yeah. When would it attach, yes, if there's no probate? [LB536]

WILLIAM LINDSAY: It would attach at death. [LB536]

SENATOR HARR: Okay. Maybe I need to study this a little longer but I just don't...I don't see the...well, real need for it. And then I guess my other issue is so, and going

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back to Senator Council's question, so if I never sell, never refinance the property, there would be no real way to capture that. [LB536]

WILLIAM LINDSAY: Well, first off, there's a lien on the property for ten years. The county can enforce that lien at any time it chooses to do so. [LB536]

SENATOR HARR: How would... [LB536]

WILLIAM LINDSAY: If the county does not enforce the lien, there's a personal liability that's also created and the Reed case, decided in 2006, said the ten-year statute of limitations does not apply to the personal liability on the transferee. [LB536]

SENATOR HARR: Okay. But again, the county wouldn't really...they'd have to go through all their records to find out if there was a death and a transfer. [LB536]

WILLIAM LINDSAY: They'd have to go through all their records but it also would be fairly simple to change the standard form that gets recorded with any deed to ask is this a transfer arising as a result of death, yes or no. Now the assessor knows about it and can communicate with the county attorney. [LB536]

SENATOR HARR: But that's not in the statute, right? [LB536]

WILLIAM LINDSAY: That's not in the statute,... [LB536]

SENATOR HARR: Okay. [LB536]

WILLIAM LINDSAY: ...but that's something that could procedurally be done. [LB536]

SENATOR HARR: Okay. But...well, I understand the purpose. I don't have a real problem with the concept, I guess. I do worry, and maybe I should have asked this of the prior testifier, this has been approved by a number of organizations but I don't know how many states. Maybe you know the answer. Do most states have inheritance tax? [LB536]

WILLIAM LINDSAY: No. [LB536]

SENATOR HARR: Okay. Do you know if that...how does this bill differ then from the Uniform Property Act, Property Transfer on Death Act? Do you know? [LB536]

WILLIAM LINDSAY: Well, it differs by the warnings with regard to inheritance tax that we are having in there. [LB536]

SENATOR HARR: And that's it? [LB536]

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WILLIAM LINDSAY: No. There are several other differences further on in the bill. For example, Section 14 is a specific reference to the disclaimer provisions and some other provisions that came over from our Probate Code to try to fit it in with Nebraska law. [LB536]

SENATOR ASHFORD: Let me do this. [LB536]

SENATOR HARR: Yeah, maybe I should do this off the record. Yeah. [LB536]

SENATOR ASHFORD: Well, what I'm going to do is we have people going to have to leave soon so what I'm going to do is we're going to end this hearing at 4:00. I don't know, how many people do we have to testify? Okay. We're going to end this hearing at 4:00 so let's...we have another bill after this so we're going to end this hearing at 4:00. Thanks, Bill. [LB536]

WILLIAM LINDSAY: Okay. All right. [LB536]

SENATOR ASHFORD: I'm going to be...I'm not going to have a quorum, then we really won't have any more hearing, so go ahead. [LB536]

KORBY GILBERTSON: Good afternoon, Chairman Ashford, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association in support of LB536. The realtors have a longstanding policy of supporting proposals that would aid in the ease of transferring property and that's why they chose to support LB536. I do want to touch on one comment made by Senator Harr and Mr. Lindsay regarding the register of deeds having the ability to reject filings. That would quickly turn the realtors to the other side of the legislation as they also have a very longstanding policy of believing that the register of deeds serves a ministerial position, not a judicial one; therefore, they should not be judging whether or not documents are ready to be filed. Be happy to try to answer any questions. [LB536]

SENATOR ASHFORD: Thanks, Korby. [LB536]

KORBY GILBERTSON: Thank you. [LB536]

SENATOR ASHFORD: Next proponent? Opponents? Neutral? [LB536]

JON EDWARDS: Thank you, Chairman Ashford and members of the committee. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s, and I'm here today representing the Nebraska Association of County Officials. As you've heard, we are here today in opposition to LB536 and I certainly, obviously, since time is of the essence here, I'm not

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going to take the time I probably would have in general other than I think with some of the line of questioning you really see our problem. For us, ultimately this boils down to our concern about having the ability to capture inheritance tax which in the state of Nebraska is a revenue source for counties. And as you can understand, given this year's current climate and the financial state of Nebraska, we have to be very careful in looking at both how we do our budgets and how we cut our budgets, cut back, and also protecting our resources in terms of revenue. And with that, we have to be very careful with situations like this and bills that may cut into that source of revenue. And so based on all the questions that have come up already today, that's kind of where we're at. If you move these transfers out of probate, there becomes no clear way, if all the parties involved don't do their due diligence and act as they should under the law, that inheritance will be captured. And I would ask, you know, I would pose the question if that's a policy that we want to put into statute whereby we'll have schemes in place that might provide for the ability of individuals to violate current Nebraska state statute. So I don't want to take any unnecessary time but we are very concerned about this and we are opposed to LB536 at this point in time. And I should mention as well, I want to thank Senator Wightman because he certainly...he came to us and he has explained this to us and he's been a great resource and I certainly appreciate all of his help with this. And certainly have issues with the bill and the amendment and so forth and we're willing to continue to keep talking with Senator Wightman. And with that, I just wanted to make sure that that was clear and we appreciate his help on this. [LB536]

SENATOR ASHFORD: That's clear except that Senator Wightman is...this report is dated November. When did you let Senator Wightman know that you were opposed to this bill? [LB536]

JON EDWARDS: We expressed, Senator, and I'm not aware of the report, I have to apologize. I'm... [LB536]

SENATOR ASHFORD: Well, when did you let Senator Wightman know you were opposed to this bill? [LB536]

JON EDWARDS: We've let Senator Wightman know that we were opposed to the bill this morning officially, officially. We did... [LB536]

SENATOR ASHFORD: That's... [LB536]

JON EDWARDS: And I have to tell you...I have to tell you, Senator,... [LB536]

SENATOR ASHFORD: Then that's all right. That's fine. That's fine. [LB536]

JON EDWARDS: ...we had a meeting with him on Tuesday and told him our... [LB536]

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SENATOR ASHFORD: That's fine. That's fine. Thank you very much. Thanks. Any questions? [LB536]

JON EDWARDS: ...official position. [LB536]

SENATOR COUNCIL: Okay. I just have a quick question, Jon, and I appreciate the counties' concerns, but representing a district where you don't have a lot of high-asset estates,... [LB536]

JON EDWARDS: Sure. Yeah. [LB536]

SENATOR COUNCIL: ...okay, and I have a pretty good feel that a number of people don't have wheels, property is being not even lawfully transferred, it's just been assumed. [LB536]

JON EDWARDS: Right. [LB536]

SENATOR COUNCIL: People are...the property tax statements keep coming to the house and the occupant pays the taxes and it's not for years, when they try to go get...borrow against the house or try to sell the house, that there's any question about inheritance taxes. And I guess when I'm looking at this, I'm trying to weigh...I guess in my opinion, the people with a lot of assets, they're going to attorneys and they're having wills,... [LB536]

JON EDWARDS: Sure. [LB536]

SENATOR COUNCIL: ...which means they have to go through probate, or they're preparing revocable trusts and which means they're going to be going through probate. But for people with small estates where the only property involved may be the small piece of real estate and, more often than not, doesn't have an assessed value greater than \$50,000, they really have no avenue other than risking, exposing their present-day interests to the debts of their beneficiaries in a deed for a joint tenancy deed. I guess I'm just trying to weigh how much is at risk to them, and I appreciate the counties, how much is at risk to counties in terms of lost inheritance tax particularly with the exemption levels where they're at, at this particular...on a \$100,000 estate, if you're the sole heir, do you pay \$100? [LB536]

JON EDWARDS: Right, and... [LB536]

SENATOR COUNCIL: I don't even think...I mean most of that is exempt, isn't it? [LB536]

JON EDWARDS: Yeah, it would depend on who it's transferring to and the total value of

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the estate, that's correct. [LB536]

SENATOR COUNCIL: Right. Right. So I mean...and I do appreciate the concern but I'm also concerned about the amount of inheritance tax that you lose ab initio because people don't have an affordable alternate to having wills prepared and going through probate. [LB536]

JON EDWARDS: Sure. Sure and I can appreciate that, and in some of those instances you were describing I think of properties just kind of moving through the family... [LB536]

SENATOR COUNCIL: Yeah, somebody just keeps paying the taxes but they... [LB536]

JON EDWARDS: ...lots of time...you know, well, and lots of times, unless somebody wants to do their due diligence, they're probably not going to do the inheritance tax form and go through the process of making sure that's all up to date, may or may not, but I see your point certainly in that situation. But I will tell you, as a general matter, last year I believe Douglas County had in the neighborhood of \$8 million or \$9 million in inheritance tax, so it's a substantial part of that county's, and the counties across the state, you know, part of their budgeting process and trying to keep their heads above water and do those things that are mandated of them. [LB536]

SENATOR COUNCIL: And do you think the warning requirement regarding inheritance tax mitigates that concern? [LB536]

JON EDWARDS: Well, you know, we've been down the road. I mean Senator Harr had a lot of questions about that. That's exactly the same thing that comes up for us, you know, what does that mean ultimately. I mean if you choose to try to circumvent the system, the warning makes no difference. I mean it's merely there as...there's warnings every day that many of us in day-to-day life violate in terms of different things. And so I would...while I can appreciate that and I certainly appreciate Senator Wightman working towards that sort of a solution, I think ultimately what does it mean. So that's our concern with that. [LB536]

SENATOR COUNCIL: Thanks. [LB536]

JON EDWARDS: Certainly. [LB536]

SENATOR ASHFORD: Senator Harr. [LB536]

SENATOR HARR: Thank you. Joint tenancy was brought up earlier as another way of transferring. Do you have problems collecting state inheritance tax on joint tenancies currently? [LB536]

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JON EDWARDS: Yeah, and I don't have a figure for you, Senator Harr, but you're right, it is a problem currently. Currently, properties that don't go through probate, we have an extremely difficult time in certain cases. We don't ever capture that inheritance tax and so that is currently a problem under the current schemes we have provided for in the state of Nebraska. [LB536]

SENATOR HARR: I have nothing further. [LB536]

SENATOR ASHFORD: Okay. Next testifier. [LB536]

SEAN KELLEY: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Sean Kelley, S-e-a-n K-e-l-l-e-y, appearing here today in opposition of LB536 on behalf of the Douglas County Board of Commissioners. I'm not going to repeat testimony of Mr. Edwards. Douglas County has the same financial concerns. Having said that, we would be happy to work with Senator Wightman and to see if there is any way we can alleviate their concerns. [LB536]

SENATOR ASHFORD: I think it would have been helpful if you'd worked with Senator Wightman before this morning. [LB536]

SEAN KELLEY: In fairness, the Douglas County Board of Commissioners passed a resolution in opposition on Tuesday. [LB536]

SENATOR ASHFORD: Sean, that doesn't cut it with me, but thank you for your... [LB536]

SEAN KELLEY: Okay. Thanks. [LB536]

SENATOR ASHFORD: Thank you. Next testifier. [LB536]

JOE KOHOUT: Chairman Ashford, members of the Judiciary Committee, Joe Kohout, K-o-h-o-u-t, appearing on behalf of the Lancaster County Board of Commissioners. Testimony has already been offered. I'm going to just register our opposition. We again will offer, as it has in the past, I believe Senator Wightman mentioned that we had concerns but we're happy to work with him. And I understand the concern, Senator Ashford. We commit ourselves. [LB536]

SENATOR ASHFORD: Senator Wightman put a lot of work into this and he deserves more than some sort of notice this morning. [LB536]

JOE KOHOUT: I understand. [LB536]

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SENATOR ASHFORD: First of all, he's an expert in this area, he's worked with the uniform laws group all summer, he's come up with a voluminous report that's dated November 10. That's not the way we do business in this committee. And it's...you're just the messenger... [LB536]

JOE KOHOUT: Right, right, and... [LB536]

SENATOR ASHFORD: ...and I don't want to belabor it because it's five of 4:00. [LB536]

JOE KOHOUT: Sure. No, and I appreciate it, Senator. [LB536]

SENATOR ASHFORD: Okay. Thank you. Thank you. Okay. Any other opponents? (See also Exhibit 12) Okay, Senator Wightman. [LB536]

SENATOR WIGHTMAN: I'll try to hold my comments to a minute or two here. I did want to try to answer one of Senator Harr's questions here, and if you'll read (2) that he was referring to previously under Section 9, I think it would be (4) of sub-subsection (2) probably, it does only go to the warnings, the defects in the wording and not the lack of the warning itself, because it specifically provides that, this bill does, that that deed should be rejected by the register of deeds for filing if it does not contain the warnings. Now just because of a difference in a word here or there from the warning, it's saying that it won't be invalidated because of that. And with that, I would continue to say that I think that we have provided far more in the way of warnings in the way that would call attention to the people receiving this property than under any of the other types of transfers that we've talked about. [LB536]

SENATOR ASHFORD: And I think that point has been very well made, Senator Wightman, by you and the testifiers, and so if there's an issue on the county side, obviously I wish they'd brought it to you before now, but we can continue to work on this. Thank you very much. [LB536]

SENATOR WIGHTMAN: Thank you. [LB536]

SENATOR ASHFORD: Next bill is Senator Howard's bill, LB324. [LB324]

SENATOR HOWARD: Whoa! Thanks for waiting around for me. I feel like I'm batting cleanup here. (Laugh) These are some handouts. We'll get to rolling so you don't have to stay any longer than necessary. Good afternoon, Senator Ashford. You ready? [LB324]

SENATOR ASHFORD: Yeah. Sorry. [LB324]

SENATOR HOWARD: (Exhibit 9) Okay. And members of the committee, for the record,

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I'm Senator Gwen Howard, that's spelled H-o-w-a-r-d, and I represent District 9. LB324 would require state wards under the age of ten to receive an evaluation for fetal alcohol spectrum disorders, or FASD, if there is an indication of maternal alcohol use. The bill refers to fetal alcohol effects and fetal alcohol syndrome, which is also known as fetal alcohol spectrum disorders--same thing, a couple of different names. FAS/FAE disorders is a spectrum that includes fetal alcohol syndrome, alcohol-related neurodevelopmental disorder, alcohol-related birth defects, and other effects that occur because of maternal alcohol consumption during pregnancy. Fetal alcohol spectrum disorders affect the physical, mental, and behavioral health of children and cannot be cured. Although the chief disabilities associated with this spectrum of disorders are brain damage and physical defects, in the most extreme cases facial abnormalities, this can also have...there can also be organ or skeletal defects and vision and hearing problems. What you generally see are cognitive and behavioral issues such as learning disabilities, attention deficit disorder, issues with impulse control, social interaction, language, and memory. Unfortunately, these disabilities often lead to other challenges, including disruption of schooling, alcohol and substance abuse, mental illness, inability to live independently, problems with employment, and ungovernable sexual behavior, and often involvement with the criminal or juvenile justice system. The purpose of this bill is to address the lifelong needs of state wards who suffer from these disorders. The permanent effects of fetal alcohol spectrum disorders do not disappear simply because children are adopted. Many parents of children with FASD are not biological but adoptive or foster parents. Indeed, one Washington State study found that a rate of children with FASD in the child welfare system is 10 to 15 times higher than the general population. As a case manager, I frequently recommended an evaluation for FASD so that the adoptive parents would be able to seek services for issues that might arise later in the child's life. Adoptive parents, particularly those who do not know their child suffers from FASD, are not always aware of how significantly FASD will affect their children, how many services will be required, and how expensive those services can be. One estimate from the Substance Abuse and Mental Health Services Administration estimated the lifetime cost for one child with FASD could be as much as \$2 million. The key to giving a child with FASD the best future possible is to identify the problems early and pursue services and intervention as quickly as possible. LB324 will ensure that adoptive parents of state wards are not without the information for timely identification of FASD and the tools to organize services to help their child succeed. (Laugh) Look up and they're gone. Thank you for your time and your attention to LB324. I wanted to also offer you an amendment. It's in the packet. In reading through this and looking at this, I realized that they hadn't...and I'll claim responsibility for this... [LB324]

SENATOR COASH: Do you have copies of the amendment or just... [LB324]

SENATOR HOWARD: I'm sorry, what? Copies of the amendment? [LB324]

SENATOR COASH: Yeah. [LB324]

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SENATOR HOWARD: Yeah. It's in the information they handed out. [LB324]

SENATOR COASH: Oh, sorry. Got it. [LB324]

SENATOR HOWARD: I'm not sure what order that's in but it... [LB324]

SENATOR COASH: We got it. We got it. [LB324]

SENATOR HOWARD: Okay. This really...this bill really serves a narrower population than every child that's going to be adopted. This is if there is information in the child's file that indicates the mom used alcohol, that's the really important factor that you use as your benchmark. If the mom used alcohol...well, she used it during pregnancy, that's a big issue. If there's an indication that she was a chronic consumer of alcohol or she had a history of a lot of alcohol use, then you really need to look at that. Not every child suffers from this. Not every child needs to be evaluated. The amendment just reads, if service coordinator, which is how case managers are now known, finds any indication in the child's file of maternal alcohol use or upon the request of the adoptive parents then an evaluation would be done which will cut this down a lot. [LB324]

SENATOR COASH: Okay. Thanks. [LB324]

SENATOR HOWARD: (Laugh) See, that was my first clue that we needed to realize what that bill encompassed. [LB324]

SENATOR COASH: Thank you, Senator Howard. [LB324]

SENATOR HOWARD: You bet. [LB324]

SENATOR COASH: Your amendment answered the question that I was going to ask, which is... [LB324]

SENATOR HOWARD: Yeah, no, you're right on the money with that one. [LB324]

SENATOR COASH: Okay. Thank you, Senator Howard. [LB324]

SENATOR HOWARD: Thank you. [LB324]

SENATOR COASH: And believe me, even though we're not here, we're listening. [LB324]

SENATOR HOWARD: It's sparse, sparse and few here. Thank you. [LB324]

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SENATOR COASH: That's okay. We're going to take testifiers in support of LB324. [LB324]

SENATOR HOWARD: And I think you've received some letters. They may be in the packet. [LB324]

SENATOR COASH: Yes, we have. [LB324]

SENATOR HOWARD: Good. [LB324]

SENATOR COASH: I'll read them into the record now. (Exhibit 10) We've got... [LB324]

SENATOR HOWARD: And I think there are three testifiers in support. One woman had to leave. One person had to leave. [LB324]

SENATOR COASH: Okay. Thank you. [LB324]

SENATOR HOWARD: Thank you. [LB324]

SENATOR COASH: Come on up. [LB324]

JOAN KINSEY: (Exhibit 11) Senators, thank you for this work you do and the opportunity to speak with you today. My name is Joan Kinsey, K-i-n-s-e-y. I am here today on behalf of the Nebraska Foster and Adoptive Parents Association. NFAPA works in a collaborative partnership with Right Turn, offering support to postadoptive parents. My role in that partnership is to mentor and provide peer mentors for our families. On a daily basis, I hear from parents whose children are affected by alcohol. As parents of these children, we seek out others like ourselves who understand the behaviors and frustrations of parenting our children. We develop what may seem to others an odd sense of humor when sharing stories, because if we did not laugh we would cry at the frustration and realities that our children behave differently from their peers, may never drive a car, hold a job, or live independently. The effects of fetal alcohol are permanent. Early knowledge of alcohol exposure by our children provides families with the ability to gain information that would enable them to appropriately parent children with alcohol effects. It will help them advocate for the educational needs for their children and gain an understanding of the child's capabilities and make decisions that best support their child. Nebraska Foster and Adoptive Parent Association supports LB324. [LB324]

SENATOR COASH: Thanks, Joan. Do you have any questions? Senator Council. [LB324]

SENATOR COUNCIL: Yes, thank you. And thank you, Joan. I apologize to Senator

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Howard that I was out of the hearing room when she opened on this bill because I have a question. I don't disagree about fetal alcohol syndrome but what about the effects of other substance abuses, like, you know, if the mother was using methamphetamine or if the mother was using crack cocaine? I mean the effects on the development of the child are as severe as fetal alcohol syndrome. So I mean I guess I'm trying to determine, you know, do we need to require that all of those be reported or is it something that elevates fetal alcohol syndrome above the effects of crack cocaine or methamphetamine?
[LB324]

JOAN KINSEY: I'll answer that as best I can. [LB324]

SENATOR COUNCIL: Okay. Thank you. [LB324]

JOAN KINSEY: As a foster and adoptive parent, a foster for over 20 years, it's been my experience that you're correct. The outcomes are oftentimes similar. The brain damage is there. Oftentimes when I've had children placed with me, the term "substance abuse" comes up and a lot of times there isn't a distinction that they were known only to use drugs or only to use alcohol. Generally, it's a combination, from my personal experience. [LB324]

SENATOR COUNCIL: Okay, because that's what I'm looking at. Maybe that, you know, what we're looking at, where the bill says the child shall be evaluated for fetal alcohol spectrum disorders, maybe it should be...I don't know if there's a medical term that covers... [LB324]

JOAN KINSEY: Substance abuse. [LB324]

SENATOR COUNCIL: ...all of those substance abuse disorders,... [LB324]

JOAN KINSEY: Okay. [LB324]

SENATOR COUNCIL: ...but that would be... [LB324]

JOAN KINSEY: Yeah. [LB324]

SENATOR COUNCIL: ...that would be my concern, is that. And I certainly know that a number of children suffer from fetal alcohol... [LB324]

JOAN KINSEY: Right. [LB324]

SENATOR COUNCIL: ...syndrome but I also know that a number of youngsters who wind up in foster care are there because their parents abuse other controlled substances. [LB324]

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JOAN KINSEY: Absolutely. [LB324]

SENATOR COUNCIL: All right. Thank you. [LB324]

SENATOR COASH: Thank you, Joan. Any other questions? Seeing none, thank you. [LB324]

JOAN KINSEY: Okay. Thank you. [LB324]

SENATOR COASH: Come on up. [LB324]

JESSYCA VANDERCOY: (Exhibit 13) Good afternoon. It's 4:00, I know you've been here all day, but I brought my brain so I'm hoping that... [LB324]

SENATOR COASH: We can't have... [LB324]

JESSYCA VANDERCOY: And you know what, I'm going to... [LB324]

SENATOR COASH: ...we can't have visual aids. You can leave it there but... [LB324]

JESSYCA VANDERCOY: I'm going to tell you all about it because it's... [LB324]

SENATOR COASH: ...you're just going to have to explain it. [LB324]

JESSYCA VANDERCOY: Okay. That's great. [LB324]

SENATOR COASH: The reason for that is we can't find a way to put visual aids in the official record. [LB324]

SENATOR COUNCIL: In the record. [LB324]

SENATOR COASH: So... [LB324]

JESSYCA VANDERCOY: All right. Well, good to know. [LB324]

SENATOR COASH: ...you'll have to explain that as you go. [LB324]

JESSYCA VANDERCOY: My name is Jessyca Vandercoy, V-a-n-d-e-r-c-o-y. I am the program director for a program called Right Turn. Right Turn is a program for postadoptive and guardianship families who have adopted children who are previously in foster care. Any of you who were involved in the passing of LB603, Right Turn is a result of that money that was appropriated for that. And I'm here today to testify on...in

support of LB324. Unfortunately, you are not going to be able to put your hands on my brain; however, the smaller brain that's here that's less defined is a brain that has been exposed to alcohol. I'm not a doctor, I'm not a nurse, but wanted to give the visual as far as the constructs of the brain actually changes when there is exposure to alcohol. Thirty-eight percent of Right Turn families are parenting a child with a diagnosis or suspected fetal alcohol syndrome. This means that during our Right Turn intake process families either report that they have adopted a child that has been prenatally exposed to alcohol or has a formal diagnosis of fetal alcohol syndrome. Right Turn supports the passing of LB324 and it's our belief that...and our experience that early intervention results in better outcomes for children, greater success, and stability of families. It's important to note that a child exposed to alcohol in utero can have significant delays and challenges. The degree to which a brain is impacted by prenatal alcohol exposure is dependent on a variety of factors, including the child's genetics, how long the exposure happened, and how much the exposure was. LB324 states a child who shows indications of possible fetal alcohol effects or syndrome will have an evaluation prior to adoption finalization. The passing of LB324 would allow adoptive parents to make well-informed decisions when choosing adoption and give adoptive parents an opportunity to be knowledgeable, trained, and prepared to parent a child with fetal alcohol syndrome. Children with fetal alcohol syndrome have damage to the brain's frontal lobe primarily. This portion of the brain is responsible for controlling impulses, judgment, problem solving, sexual urges, planning, verbal self-regulation, working memory, empathy, and regulation of emotion. So if you can imagine impairments in all of those types of things and then that child being a teenager, we see that a lot in Right Turn, families who are parenting teenagers who have fetal alcohol, who have difficulty in making...in their judgment so that's making decisions basically. The other consequences, if you look at problem solving, inability to figure out...or be able to figure out things spontaneously, regulation of emotions, so moody, exaggerated emotions. The damage that happens to that frontal lobe directly affects the behavior of a child, ultimately making it very difficult for a parent to parent that child unless they have some specialized training, they're creative, and they are accessing timely intervention. So nearly 40 percent of the Right Turn families are parenting a child who has had potential fetal alcohol. Right Turn families are also, on average, seven years postadoption. So it's important to remember that, that seven years postadoption, after a child has been adopted, families are calling us and saying, I need support, I need help. And so imagine if there was evaluation prior to adoption, a family knew what they were getting themselves into, could be prepared, and access intervention at that point instead of, on average, seven years later. Thank you. [LB324]

SENATOR ASHFORD: Thank you, Jessyca. Senator Council. [LB324]

SENATOR COUNCIL: Just quickly, and thank you, Jessyca. This is very informative. Does Right Turn keep similar data on children who were exposed to methamphetamine or crack, and how do those percentages compare to fetal alcohol syndrome and the

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adoptive parents that you... [LB324]

JESSYCA VANDERCOY: It's about equal. Right now it's...I actually figured the numbers this morning but it was about 60 percent of the...and it's not children, it's parents that we have are parenting a child that has either had drug and alcohol exposure or has been formally diagnosed with fetal alcohol syndrome. So that all lumped together, it's about 60 percent of the families that we serve in Right Turn are parenting that type of child. Now that family may have more than one child with that, so it's not numbers of children. But Right Turn, with all the families that we have served, have impacted or worked with 650 children in the families that we have served, so it's quite a few children. [LB324]

SENATOR COUNCIL: So that nearly 60 percent of the families that Right Turn has worked with have adoptive children that have alcohol and/or substance abuse... [LB324]

JESSYCA VANDERCOY: Exposure. [LB324]

SENATOR COUNCIL: ...exposures. [LB324]

JESSYCA VANDERCOY: Exactly. [LB324]

SENATOR COUNCIL: Okay. [LB324]

SENATOR ASHFORD: Thank you, Jessyca. [LB324]

JESSYCA VANDERCOY: Yeah. Thank you. [LB324]

SENATOR ASHFORD: Next proponent. [LB324]

JOE KOHOUT: (Exhibit 14) Chairman Ashford, members of the Judiciary Committee, Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing on behalf of March of Dimes, Nebraska Chapter. I'm passing a letter around. My apologies, due to the late hour our folks from Omaha were not able to stay but wanted to offer this letter into testimony. [LB324]

SENATOR ASHFORD: Thanks, Joe. Any questions of Joe? Thank you. Next proponent. You were able to stay. Thank you for your... [LB324]

ELIZABETH CONOVER: Cancelled clinic to come today. [LB324]

SENATOR ASHFORD: Well, thank you for your patience and sitting all day. [LB324]

SENATOR COASH: We're glad you're here. [LB324]

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ELIZABETH CONOVER: (Exhibit 15) Thank you. My pleasure. Senator Ashford, you represent my district. Nice to see you again. [LB324]

SENATOR ASHFORD: Yes, I do. It's good to see you. [LB324]

ELIZABETH CONOVER: My name is Beth Conover, C-o-n-o-v-e-r. I'm a nurse practitioner at Munroe-Meyer Institute in the division of clinical genetics, and I coordinate the Nebraska Teratogen Service. I provide information on exposures to hazardous things during pregnancy and breast-feeding, and I also provide the evaluation services at the Fetal Alcohol Syndrome, and other drug exposure, Clinic which is located at Munroe-Meyer Institute. So I'd love to address a couple of your questions, Senator Council, in a minute. Just to make a couple of points that alcohol is in fact one of the known teratogens, that it's permanent, and as a genetic counselor I think the most important thing here is that it's best treated when it's diagnosed early. And so I see a variety of children at my clinic. Some of them have already been adopted. Some of them are still in the process of being adopted. I would say that parents of people who have already been adopted, many times a problem has been going on for years and never really been addressed. We've lost the...people keep waiting for it to go away and problems that are from in utero exposures are going to be permanent. They're not going to go away and they really do need to be addressed. There's no silver bullet but school system services, better healthcare, behavioral services are really going to help this child achieve their full potential, or you really will end up with them--I've been sitting through all the other testimonies--on the street, in jail, in the mental healthcare system. What do we do in the evaluation? It is a physical exam and then a history, pregnancy history, developmental history, health history. One of the things that's a little different about alcohol is it does leave--ooh, I got a yellow light--it does leave a physical stigmata behind so there are characteristic facial features in the most affected kids--growth retardation, characteristic facial features, things that we can actually look for that are specific to the exposure. But I see lots of kids with other kinds of exposures. The literature is not quite as clear on things like mental retardation with meth and cocaine, which is really...it's fortunate that we don't see that kind of cognitive problem. We do see some behavioral problems that go with intrauterine cocaine and meth and we see sometimes some speech delays and cognitive. But when compared, alcohol really is the most severe teratogen and it is one that we can look for physically. So although in my clinic I see the combination and most people use both, to be honest, there is a little difference in the outcome in terms of doing that. So kind of, in summary, I work with wonderful caseworkers. We do get a lot of referrals. We do a lot of continuing education with the foster care system and with the adoption agencies and with medical personnel trying to teach them how to pick up fetal alcohol syndrome and how to address it. But there are inconsistencies. There's a lot of turnover in caseworkers. There's a lot of turnover just in the people that are addressing this and some kids fall through the cracks. We really don't know how many but I can tell you that every single FAS clinic I do we see people who have already adopted the child,

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problems have gone on, and they really say they probably would have adopted the child anyway but they would have appreciated knowing what they were going to have to address. And that is truly why I support this bill. Thank you. [LB324]

SENATOR ASHFORD: Thank you for all you do. [LB324]

ELIZABETH CONOVER: Well, thank you. And it's my pleasure to do it. [LB324]

SENATOR ASHFORD: It's obvious that that's the case. [LB324]

ELIZABETH CONOVER: Yeah. Any questions? [LB324]

SENATOR COASH: I'll ask a question. [LB324]

ELIZABETH CONOVER: Yes. [LB324]

SENATOR ASHFORD: Go ahead, Senator Coash. Ask away. [LB324]

SENATOR COASH: Thank you, Chairman Ashford. You did mention that besides just having adoptive parents informed, knowing this can...knowing the child has fetal alcohol syndrome can lead to interventions that can be helpful for parents. [LB324]

ELIZABETH CONOVER: Uh-huh. [LB324]

SENATOR COASH: I mean it's more than just knowing. I mean... [LB324]

ELIZABETH CONOVER: That is correct. [LB324]

SENATOR COASH: ...knowing what your child has is one thing but being able to take that information and turn it into some meaningful intervention is something that is possible. [LB324]

ELIZABETH CONOVER: Yeah, there's really two issues. I think that not...that adopting a child with special needs like this isn't for everyone and every once in a while we see someone who changes their mind about the adoption and that's a sad thing but in the long run probably the best thing for the child. You really do need to be prepared emotionally in terms of consistent parenting, in terms of your financial and personal resources when you take on a child that's going to have special needs. So I do think knowing is important. I think a lot of parents talk about the fact that they worry, and sometimes we provide reassurance we don't see fetal alcohol syndrome. In fact, in my clinic yesterday a couple of the kids were not affected, which is wonderful. They need monitoring, they're at risk, but we don't see any physical signs. They're doing pretty well. Good. I mean that's important too. But on the other side of it, yes, there are curriculum

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that are designed for children with fetal alcohol syndrome. There are definitely recommendations that we make. It often is the impetus for getting the school evaluation, some really important things that are going to help change this child's life. [LB324]

SENATOR COASH: Thank you, Beth. [LB324]

SENATOR ASHFORD: Thanks, Senator Coash. Thank you very much. [LB324]

ELIZABETH CONOVER: Okay. [LB324]

SENATOR ASHFORD: Have a good night. [LB324]

ELIZABETH CONOVER: Can I leave? [LB324]

SENATOR ASHFORD: You can leave or not. Next proponent? Do we have any opponents? Neutral? Senator Howard. She deserves applause on these issues. [LB324]

SENATOR HOWARD: Oh, thank you. Thank you. (Laugh) [LB324]

SENATOR ASHFORD: She's done a lot of it. [LB324]

SENATOR HOWARD: I appreciate that actually. [LB324]

SENATOR ASHFORD: You've done a lot of this, well, your whole life. [LB324]

SENATOR HOWARD: Thank you. Well, I don't do it alone. I, fortunately, have a lot of concerned people here that really do care. The effects of fetal alcohol spectrum disorders are significant and lifelong. Children who suffer from FASD face considerable challenges, as do the parents who adopt them. And I think there's an important thing that I need to tell you here because I'll forget if I don't just put it out here. The department does an adoption contract with a family and if potential issues with that child are not spelled out in that contract, after the adoption the department is not providing any services, which is one reason that if I've found...the big reason that if I found any indication in the child's file that the mom had used alcohol during the pregnancy, excessively prior to, have a habitual problem, I wanted that child evaluated at Munroe-Meyer because then we could write that into the contract and if problems developed in the future those folks could call and say, you know, I'm concerned about this, this is a behavior. It left that door open for them, which is very, very critical. And when you're in love with a child, you're not thinking about this. You want that little one to be yours and not to have to deal with the department anymore. But there's lifelong ramifications. LB324 would ensure that parents have the knowledge to identify FASD and the marshal services necessary to give their child the best chance of success in life.

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I know you want to go home. Let me tell you just a quick story. A family that adopted a child called me years later and they said, he's a teenager now, he stole the car, we understand that he stole the car. He brought the car back and it was on fire. Then he put the car in the garage because that's what he was supposed to do. There's a reasoning, there's a consequential reasoning lacking there with these kids and it's very sad and it's very unfortunate, but they deserve services. [LB324]

SENATOR ASHFORD: Senator Council. [LB324]

SENATOR COUNCIL: Thank you, Chairman Ashford. Thank you, Senator Howard. You heard my question to Jessyca. What about children whose parent, whose mother was heavily using crack cocaine or methamphetamine during the pregnancy? [LB324]

SENATOR HOWARD: You know, I appreciate that question and I've seen many, many children who have been exposed prenatally to a lot of different conditions and the reason I'm so adamant about this is because doctors have said to me this is the most critical. And, you know, research may still be out on some of the other usages. This we know about. One doctor spelled it out really plainly and he said it's like pickling that fetus in alcohol for nine months, and you can imagine. [LB324]

SENATOR ASHFORD: Senator Harr. [LB324]

SENATOR HARR: And I just want to build off of what you said right at the end. This has a fiscal note of \$52,000. [LB324]

SENATOR HOWARD: Yeah, I'm trying to pare that down. [LB324]

SENATOR HARR: Yeah. Is there a long-term savings for society with this bill? [LB324]

SENATOR HOWARD: Oh absolutely, absolutely. [LB324]

SENATOR HARR: Can you address that? Yeah. [LB324]

SENATOR HOWARD: I've had families bring children back because the department has so adamantly turned them down for any sort of services that would have kept that child in the family. I mean the worst thing you can have is a child coming back as a teenager. What resources is that child going to have when they age out? We've heard stories about how they're referred to the mission. [LB324]

SENATOR HARR: Thank you. [LB324]

SENATOR ASHFORD: Thank you, Senator Harr. Thank you, Senator Howard. [LB324]

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SENATOR HOWARD: Thank you. Thank you. Thanks for sticking around. [LB324]

SENATOR ASHFORD: Well, we're...that's our job. We just... [LB324]

SENATOR HOWARD: It's a great committee. [LB324]

SENATOR ASHFORD: It is. It's the best committee. [LB324]

SENATOR HOWARD: No, it's great. [LB324]