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Transcriber's Office

Judiciary Committee
March 06, 2013

[LB320 LB342 LB464 LB471 LB562]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 6, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB320, LB342, LB471, LB464, and LB562. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: None.

SENATOR ASHFORD: Good afternoon. We have five bills today, starting with LB320, Senator McGill's bill, and then some juvenile bills, of course. We have two days of juvenile court-type hearings starting with Senator Coash's bill and actually Senator McGill's bill. So why don't we start with Senator McGill, if you would introduce LB320. [LB320]

SENATOR MCGILL: I would be happy to, Chairman Ashford. I'm Senator Amanda McGill, A-m-a-n-d-a M-c-G-i-l-l, and I'm here to introduce LB320, a bill that provides a probable cause standard for removal and detention of children by law enforcement officers. We are all aware that Nebraska takes children away from their parents at one of the highest rates in the nation. I bring this bill to you today because we have to scrutinize the harm we are causing our children by taking them away from their parents. So, you know, we take a very large number of children out of their home on neglect cases, for instance. But we could be doing a better job of differentiating between neglect and poverty and where we actually need to take a kid out of the home, because we're causing trauma in some cases that is worse than whatever that supposed neglect situation is. There are several ways that children can be taken away from their parents or removed from the home in Nebraska. The county attorney can initiate this removal, Health and Human Services can initiate the removal, or law enforcement can be the initiator. Regardless of who initiates the action, however, law enforcement will likely be involved at some point. In situations of alleged abuse or neglect, law enforcement officers are the only people who can physically remove children from the home. I don't know of any other pending legislation addressing a county attorney's discretion with respect to the removal of children from the home, and sometimes they are the ones to take that action; but if there isn't, perhaps that would be an appropriate addition to this bill or the juvenile justice package. I do know, however, that there is no pending legislation related to law enforcement removal of children, and I think that this is an area that we cannot fail to address. We must weigh the harm caused by taking a child from his parents against the need for removal. As a state we do not weigh our decisions in this manner, and the results are devastating. Under current Nebraska law, law enforcement officers may take a juvenile into temporary custody without a warrant or a court order under various circumstances outlined on page 2 of this bill. These circumstances require that an officer have "reasonable grounds" to act or that removal "appears to be necessary." The portion of this statute that likely needs to lead to the most child removals is 43-248(1)(b), the section that relates to situations of alleged

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abuse or neglect. This section seems to have the lowest threshold, requiring only that immediate removal "appears to be necessary." Given the catastrophic harm that can result when a child is removed from the home, the constitutional implications and Nebraska's high rate of out-of-home placement, we need to think carefully about this legal threshold. LB320 would create a clear threshold and provide that law enforcement must have probable cause to remove a child in the event that the child is seriously endangered or at imminent risk of harm. Section (1)(c) seems to have no legal threshold. An officer simply needs to believe that a juvenile is mentally ill and dangerous. LB320 would add a probable cause standard to this section also. Sections (1)(a), (d), and (e) are all sections that relate to juvenile law violations or status offenses. "Reasonable grounds" is the threshold used throughout these sections. Reasonable grounds is not defined in Nebraska statute or case law. The term is used in many areas of our law, most having to do with the discretion of law enforcement officers. Reasonable grounds is not defined in Black's Law Dictionary either, but under the definition of probable cause, reasonable grounds is listed as an interchangeable term. So maybe we can assume that use of reasonable grounds in Nebraska law means the same thing as probable cause; and if so, LB320 may not address my concerns with respect to those sections of (1)(a), (d), and (e). But with respect to these sections, maybe the more important question is how the reasonable grounds standard is applied. According to Beck v. Ohio, probable cause may not be established simply by showing that the officer who made the challenged arrest or search subjectively believed he had grounds for his action. "If subjective good faith alone were the test, the protection of the Fourth Amendment would be..." subject to the "...discretion of the police." Douglas County HHS administrators report that law enforcement does not perform any juvenile arrests or child removals without working collaboratively with HHS. HHS did not have specific data regarding these collaborative efforts but they did provide information regarding law enforcement removals in 2012. According to what was provided to my office, the police initiated 163 removals in Douglas County in 2012. As I said, it is unclear how many of these were completed collaboratively with HHS. I've considered adding a provision to the bill that would require a specific finding by the juvenile court at the initial hearing. Currently, the court must find that continued detention or continued out-of-home placement is in the best interests of the children in order for the child to remain out of home. We could add that the court must also make a finding that law enforcement have probable cause to detain or remove the child in the first place. Dr. Terry Lee from the University of Washington, who we all know and have been working with, has currently been consulting with Senator Ashford and the committee on juvenile justice stakeholders in Nebraska. And Dr. Lee recently raised a concern about the discretion used by law enforcement regarding where a juvenile is detained. Dr. Lee asked about the standard used to determine whether a juvenile would be detained in an adult facility or a juvenile facility. I've asked local experts about this process and have not been able to determine if a protocol or standard exists. A related provision may be an appropriate addition to LB320 or to another bill. My office has attempted to solicit feedback on this bill from local law enforcement and county

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attorneys, defense attorneys, Health and Human Services, child advocacy organizations, and other experts. I've not received any specific feedback or assistance from any of these groups, and so, frankly, I'm unsure if anyone will be here to testify on the bill today. With that, I would appreciate any input; and I'd like to thank Amy Williams for helping to put this together and identifying the problem. [LB320]

SENATOR ASHFORD: Yeah. And let me, at the outset, also thank Amy for all the work she's done collaboratively with our team throughout the year on this issue. Of course, it's very alarming that we are unable to get the kind of information that we need about these children, and it continues every time we...every time we bring a bill it seems as if nobody has any information to provide to us. And the public has to be very, very concerned about this lack of information and lack of data. So as we proceed through the juvenile justice reform package, of which this is a major part I think, hopefully we don't get that answer on every single topic; that we don't have data, we don't have anything to tell you, you know, we're just guessing. And one of the problems we have in Nebraska is that we haven't had that kind of data sharing, and we're going to get into that a little bit later. So, with that, do we have any questions of Senator McGill? Senator Seiler. [LB320]

SENATOR SEILER: Thank you, Mr. Chairman. Senator McGill, on page 3 at the top, section (2), it says a probation officer may take a juvenile into custody. Are you talking about the juvenile probation officer or are you talking about the adult probation officer? [LB320]

SENATOR MCGILL: Well, are we...? I think that this is a juvenile one; and we were looking at actually just taking that section out of the bill, so. [LB320]

SENATOR SEILER: Well, I can envision that an adult probation officer arrives, that one of the parents is under his custody or under his protection, and he then has authority to...? Did you intend that, or did you... [LB320]

SENATOR MCGILL: No. In fact, I think even in this green copy we've scribbled out this part as being something that we need to be looking at or maybe amend, so. [LB320]

SENATOR SEILER: Oh, okay. I would recommend you put the juvenile probation officer in there. [LB320]

SENATOR MCGILL: Yeah. All right, thank you. [LB320]

SENATOR ASHFORD: Thank you. [LB320]

SENATOR LATHROP: Can I just ask one question? [LB320]

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SENATOR ASHFORD: Yes, Senator Lathrop. [LB320]

SENATOR LATHROP: I'm looking at...I'm just reading this as we go, and on page 3...it looks like on page 1 we tell them if these are...a peace officer shall pick a juvenile up if they are (a), (b), (c), and (d). Then in Section 2 we say once you pick them up under (a) or (d), you shall (a) immediately release them. [LB320]

SENATOR MCGILL: I don't think that's my intention and I can work through... [LB320]

SENATOR LATHROP: Do you see what I'm talking about? [LB320]

SENATOR MCGILL: Yeah. Yeah. [LB320]

SENATOR LATHROP: The first thing they're supposed to do under (a) at line 17 on page 3 is release the juvenile taken into temporary custody. And if I read them, it looks like (a) you take them into custody and the first thing you're supposed to do is release them. Do you see that? [LB320]

SENATOR MCGILL: For those particular...for (a) and (d) and... [LB320]

SENATOR LATHROP: Okay. So it's for a child who's violated state law or a child who's run away from his parents, the peace officer shall pick them up. And then over in Section 2 we say once you pick them up you shall (a) release them. And I don't know if I'm missing something. [LB320]

SENATOR SEILER: I would suggest that you haven't finished the sentence. I would suggest: release them to a detention center or back to the custody of the parents or...it looks to me like you just stopped short there of who you're going to release them to. [LB320]

SENATOR MCGILL: All right. I appreciate that feedback. [LB320]

SENATOR DAVIS: Just a question about the...it looks like you're taking out a lot of the "mays." You know, the officer may do this or the officer may do that. [LB320]

SENATOR MCGILL: Yeah. [LB320]

SENATOR DAVIS: Can you tell me the reason why we really restricted that? [LB320]

SENATOR MCGILL: Well, what we're seeing is...well, the problem we're facing and that I'm trying to address--and feedback in helping to make this work that is needed and, you know, very helpful. But we are, right now, taking too many children out of the home, and so...and law enforcement just really have an attitude--and Senator Coash if he were

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here could back this up--of, you know, if there's any chance that something could be going wrong here, we're going to take them out of the home just to be sure. And that is causing trauma to children that are, in some cases, after a week or two, are sent right back to their parents. But you have created trauma in that child's life that didn't need to be there. You know, maybe an officer goes into the home and there are just appearances that there's neglect. Maybe it's not enough food or the house isn't very clean. But, in reality, there are poverty reasons for that, that aren't about the parent willfully being neglectful. And so we want to put a legal standard into statute to better identify when a law enforcement officer really should be taking a child out of the home. [LB320]

SENATOR DAVIS: Okay. Well, let me specifically ask you a question. [LB320]

SENATOR MCGILL: Okay. [LB320]

SENATOR DAVIS: So on page 2, line 14, the language you struck was "The officer believes the...", and then you left "juvenile." [LB320]

SENATOR MCGILL: Um-hum. [LB320]

SENATOR DAVIS: So the original sentence was "The officer believes the juvenile to be mentally ill and dangerous." So now it says the "The juvenile is mentally ill and dangerous." So how is that officer going to make that call? [LB320]

SENATOR MCGILL: We want it to change to...I'm trying to find in my opening where I talked about that part. Yeah, it changes it to a probable cause threshold, because "believes" is just so... [LB320]

SENATOR DAVIS: Okay. Okay. I didn't... [LB320]

SENATOR MCGILL: Yeah. [LB320]

SENATOR DAVIS: See, I was breaking those out and I...What? Thank you. [LB320]

SENATOR MCGILL: And any advice and feedback obviously is greatly needed. [LB320]

SENATOR ASHFORD: Yeah. And we can talk about it as we proceed through these bills, because this again is the threshold piece where there is removal and... [LB320]

SENATOR MCGILL: And I'm not the attorney. Amy is. So I know when it comes to much of this language, you know, it's been helpful having her on staff. [LB320]

SENATOR ASHFORD: Senator Seiler. [LB320]

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SENATOR SEILER: In your opening you said something about a county attorney or a deputy taking the children out of the home. [LB320]

SENATOR MCGILL: Yes. Yes--or them ordering it. [LB320]

SENATOR SEILER: I can't conceive of that idea. [LB320]

SENATOR MCGILL: Hum? [LB320]

SENATOR SEILER: I can't understand how that could happen where... [LB320]

SENATOR MCGILL: Well, ordering it. [LB320]

SENATOR SEILER: ...the county attorney could. He would have a police officer or a peace officer... [LB320]

SENATOR MCGILL: Yes. [LB320]

SENATOR SEILER: ...or a probation officer or somebody like that take it out. [LB320]

SENATOR MCGILL: I meant as the person to initiate the removal. [LB320]

SENATOR SEILER: Okay, I'll buy that. [LB320]

SENATOR MCGILL: That's what I meant there. [LB320]

SENATOR SEILER: Thank you. [LB320]

SENATOR MCGILL: Um-hum. [LB320]

SENATOR ASHFORD: Okay, thanks, Amanda. [LB320]

SENATOR MCGILL: All right. Thank you. [LB320]

SENATOR LATHROP: Maybe if I can, one more? It looks...I'm looking at what I've asked about before, and I may be...I may have done exactly what Senator Davis just did; I didn't read the whole section. So if I look at Section 2, "A peace officer who takes a juvenile into custody," and they can do one of three things with them it looks like; there's an "or" after (b). [LB320]

SENATOR MCGILL: Yes. [LB320]

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SENATOR LATHROP: And one is to release them, which would essentially be taking them into custody and releasing them immediately; two would be to take them into temporary custody; and (c) would be to retain them. What's the standard or when should they retain them versus...when should they do (c) instead of (a) and (b)? [LB320]

SENATOR MCGILL: I don't think that anything in my bill changes when...how that decision is currently made. [LB320]

SENATOR LATHROP: So whatever that law enforcement officer thinks is the best thing? [LB320]

SENATOR MCGILL: Yeah. I think that is what currently happens and I think that would still be the case, although maybe that's something we can discuss and dig deeper into. [LB320]

SENATOR LATHROP: If you're setting the bar for when they hang onto them, we might want to have some standard for when we go to option (c). [LB320]

SENATOR MCGILL: Where they're taken to. And I know that's something Dr. Lee talked about, too, that I addressed in the opening, is when they're brought to an adult facility versus a juvenile facility, for instance. And this bill could do a lot more than even what we're trying to do here. [LB320]

SENATOR LATHROP: Okay. Thanks. [LB320]

SENATOR ASHFORD: And I think...to Senator Lathrop's point, I think there's an obvious lack of standards and training in this area that's extremely obvious when... [LB320]

SENATOR MCGILL: Or at least in terms of best practices that are used in other parts of the country now. [LB320]

SENATOR ASHFORD: Best practices. And so as we talk through these bills, I think that will keep coming up over and over again, is what are the standards; how are they to be observed; and what sort of training is there in place for these juveniles. But anyway, thank you. I don't think there are any questions. Thanks, Amanda. Do we have any proponents for this bill? Any opponents? Any neutral testifiers? Senator McGill. [LB320]

SENATOR MCGILL: That's it. We'll just work on it. [LB320]

SENATOR ASHFORD: All right. Senator Coash is next. Okay, I suppose I could introduce LB464, Steve, if you want. [LB320]

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SENATOR LATHROP: Okay. This will begin the hearing on LB464. Senator Ashford. [LB464]

SENATOR ASHFORD: Thank you, Vice Chairman Lathrop. My name is Brad Ashford. I represent Legislative District 20 in Omaha. LB464 is a second bill in a long line of bills that will be, for lack of a better term, part of the juvenile justice reform package. As sort of a preliminary comment to all these bills, I think this committee, for the past seven years, has taken up juvenile justice as a major part of its work, and has enacted...and the Legislature has enacted many of the initiatives put forward by this committee over the last seven years. Having said that, I think the time is now for significant reform. The Annie E. Casey Foundation report, which came out last week, underlined what is a critical gap in how we in Nebraska deal with our juvenile, certainly, and generally with our criminal justice system, where it was found...in which it was found that Nebraska incarcerates, to a higher degree, juveniles than most every other state in the United States. And let me at the outset acknowledge the fact that we're a rural state with a population of 1.7 million people, with large--as Senator Davis will attest to--large areas of land without cities and towns; and that oftentimes it is difficult to provide the kinds of facilities or options for juveniles that are more readily available in urban areas. But having recognized that fact, still the rate of incarceration of juveniles is far, far, far greater than what should be a reasonable standard for the state of Nebraska. This particular measure, LB464, deals with the filing of criminal cases--misdemeanors and felonies--in juvenile court, as opposed to adult court. Those who have been on the committee for a while know that we have entertained bills dealing with this topic before as part of our approach to juvenile justice reform measures. As most of you know, cases against juveniles are filed in the...initially, in the adult court system, and then can be, and are on occasion, referenced back to the juvenile court. Most states, not all but most states...and each state has its own way of dealing with juvenile court filings. But most states require that the vast majority of cases involving juveniles be filed in the juvenile court system. One of the benefits and reasons for filing cases initially in the juvenile court is that oftentimes the offense that has been alleged to have occurred is, though to a degree certainly all offenses against...are alleged, can be serious, and...but many of them are less serious than others. And it is essential that, and certainly in the case of misdemeanors and many felonies, that juveniles who are alleged to have committed certain offenses need treatment as soon as possible. There needs to be an assessment. There needs to be a way to determine what the current situation, circumstance, is of that particular juvenile. When a case is filed in the adult court, that opportunity is less likely to occur. We, as part of this juvenile justice reform package, as we proceed into LB561 and other bills tomorrow, we will begin to discuss the different kinds of interventions that are appropriate for juveniles prior to the filing of a case...after the filing of the case, prior to disposition and after disposition. This stage where there has been an allegation of an offense is a critical stage to determine what is...number one, what's going on with this particular offense, but also what's going on with this particular juvenile. And it is, in my view, critical that the resources of the juvenile justice

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system and the juvenile court system be made available to this juvenile and the juvenile's family as early as humanly possible. I think the filing of cases in the juvenile court is a critical piece of making those initial determinations as to the circumstance that this juvenile finds him or herself in. I might just say that in Douglas County, Don Kleine, obviously the county attorney in Douglas County, has--and Marty Conboy before he retired just a few months ago--have worked out a, if not an MOU, at least a working process whereby many county court cases are filed now in juvenile court and not filed in the normal county court system but go to the juvenile court. And that has, I believe, resulted in--though I don't have any specific numbers; I know it's a large number of cases--has resulted in a large number of juveniles being sent into a diversion process rather than into an adjudicated process in the juvenile court. And this has been very helpful in finding out...again, I think our overriding goal in all these bills is certainly to ensure public safety, but at the same time understanding that, as we have done in a prior case involving juvenile sentencing--we've already heard the testimony and advanced the bill regarding sentencing of juveniles who have committed the most serious crimes--is the process of evaluation for juveniles as early as possible, and the process is critical. And so in Douglas County we've started this process of most, many, if not all of these, of the lesser offenses being filed in the juvenile court, which I guess makes up statewide around 90 percent of the cases...or the filings in the entire state. So I think we're already doing some of this, at least in Douglas County. And I think we probably...other counties are doing similar things. I think this is a critical piece and I would urge that we include this in our package. Think about it and talk about, but eventually include it in our package. Thank you. [LB464]

SENATOR LATHROP: Very good. Any questions for Senator Ashford on LB464?
Senator Seiler. [LB464]

SENATOR SEILER: Thank you, Senator... [LB464]

SENATOR ASHFORD: And I need to get the bill; I'm sorry, Senator Seiler, because I just brought my introduction over here. [LB464]

SENATOR SEILER: Okay. No, this is a general question. [LB464]

SENATOR ASHFORD: Okay. [LB464]

SENATOR SEILER: I believe Omaha, and maybe Lincoln, has juvenile courts. [LB464]

SENATOR ASHFORD: Right. [LB464]

SENATOR SEILER: But once you get past those two counties, nobody else has juvenile courts. [LB464]

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SENATOR ASHFORD: Well, Sarpy County...Sarpy does. [LB464]

SENATOR SEILER: Sarpy does? [LB464]

SENATOR ASHFORD: Yeah. [LB464]

SENATOR SEILER: Okay. So I think we've got to be a little careful about how we label in here juvenile courts, because there's only three or four of them in the state, and the rest of them all take place in county court and district court. [LB464]

SENATOR ASHFORD: Right. You're correct and I should have said that at the beginning. [LB464]

SENATOR SEILER: Okay. The other thing that concerns me a little bit was back in...where you're transferring courts. If you've got a felony being transferred to county court, that doesn't work. I think we've got to identify closer the felonies that are being transferred... [LB464]

SENATOR ASHFORD: District court. Correct. [LB464]

SENATOR SEILER: ...to district court rather than county court. [LB464]

SENATOR ASHFORD: Right. [LB464]

SENATOR SEILER: That's all I had. [LB464]

SENATOR LATHROP: I see no other questions. Proponents, anybody here to testify in favor of LB464? If so, you may come forward. [LB464]

DENNIS MARKS: (Exhibit 4) Good afternoon, Chairman, members. I'll try to speak up this time. My name is Dennis Marks. I'm one of the public defenders in Sarpy County. I've represented juveniles there for about 16.5 years, predominantly juveniles. And I'm here basically on behalf of myself. I'm not representing an organization or anybody else. I do support your bill, Senator Ashford. I think the fact that you're going to have filings starting off in juvenile court is a good thing. There's way too many filings that occur in adult court in the past. When I look at some of the statistics, 90 percent of the adult court filings on behalf of juveniles were misdemeanor-type cases. They can be easily handled in juvenile court. There were also approximately 45 percent of juveniles prosecuted in adult court in the year 2007; again, that's way too many. Those are cases that juvenile courts are equipped to handle. The more serious cases, they're going to end up in adult court. And as far as the portion of that bill having the juvenile court judges decide the transfer cases, again I applaud that as well. They have the training, for the most part, especially the Separate Juvenile Court judges, on concepts of

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adolescent development. Those are judges that are familiar with the rehabilitative services that are available in juvenile court, the time lines, the case managers. So I think that would be very helpful as well. The one reservation that I would ask the committee to consider is the standard for transferring cases. Under the current system, the case will be transferred to juvenile court unless a sound basis exists to keep it in adult court. Under LB464, the case will originate in juvenile court and will stay there unless a sound basis exists to transfer the case to adult court. Now, having done transfer cases in adult court, I don't really know what a sound basis is. Case law does not provide me any direction. When I polled the county court judges and a couple juvenile court judges and asked them what a sound basis was, I pretty much got a unanimous response, and that was a shrug of the shoulders and a "whatever you want it to be." So I would ask that you consider implementing a standard, and I do have something that I submit that I would like to make a part of the record. In that, I suggested a clear and convincing standard. I think beyond a reasonable doubt is too high of a hurdle. I don't think it's practical. I don't think it's reasonable. But mere preponderance I think is too low. I think clear and convincing is a standard that the judges are, quite frankly, used to dealing with. So with that. [LB464]

SENATOR LATHROP: I do have a question. It seems like if it's going to juvenile court and you have to have a sound reason, that the phrase "sound reason," while it may not be defined or may not be clear, already establishes the hurdle to get out of juvenile court. And making it clear and convincing is like adding two hurdles. One is you have to have a sound reason, and then the other is you have to show it by clear and convincing. And we know, as lawyers, that sometimes when you set the standard of review or the standard for a determination, that it in many cases determines the outcome. And I just wonder if the sound basis isn't enough, or maybe that's where it needs to be beefed up, but letting the judge make it on a preponderance. [LB464]

DENNIS MARKS: Well, I think it has to be a different standard than sound basis. My suggestion was clear and convincing. It's kind of the middle of the road. It's not... [LB464]

SENATOR LATHROP: But a sound basis is what you have to show, and a clear and convincing is the standard of proof. [LB464]

DENNIS MARKS: My suggestion is to substitute sound basis for clear and convincing. Make it one standard as opposed to... [LB464]

SENATOR LATHROP: If they have to show it by clear and convincing...if they have to show something by clear and convincing to take it from juvenile court, what do you think they should show? [LB464]

DENNIS MARKS: Well, that's why we have... [LB464]

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SENATOR LATHROP: That used to be a sound basis, isn't it? [LB464]

DENNIS MARKS: Well, we have those 14 factors and that's what's used right now to determine sound basis. Those 14 factors would be utilized in order to determine whether or not a clear and convincing standard was cleared in order to send it to adult court. I think you want to have a hurdle. It's a question of how high of a hurdle that you have. Because I think the presumption is that you want to keep juveniles in juvenile court. And the height of that hurdle is going to determine whether or not it's a presumption that that's the way it should be, or whether it's wishful thinking. And I'm not suggesting that the hurdle be too high, but on the other hand, it shouldn't be so low that what we have is wishful thinking and a lot of these cases are going to get transferred up to adult court. That is my experience and that's my thought on that. [LB464]

SENATOR LATHROP: Okay. [LB464]

SENATOR ASHFORD: Senator Chambers. [LB464]

SENATOR CHAMBERS: I think we need to set, to change the mind-set of judges and the way the criminal justice system looks at juveniles, period. They generally are viewed as throwaway individuals, and a higher standard is placed on them when it comes to what is deemed misconduct than is placed on adults. There's a case in Sarpy County now, and I'm not going to go into any details because I don't want the person's identity to be known, that four people were involved or allegedly involved in a burglary. One guy was 19 years old. One of them was 13 or 14 at the time, maybe even 15, and he was what might be called a special education child. It wound up with Sarpy County charging him with greater culpability than all the others, and all of them are out now, including the 19-year-old. And he's still there. I was called by his therapist and some other people who were worried. And since his case was handled by the public defender, you might be familiar with it. So I am going to be talking to somebody in Sarpy County, because I think it's grossly unfair. I saw where Mr. Polikov charged a student as an adult who took an air pistol to school, and they said a terroristic threat may have been made to somebody. Well, I've seen cases in Sarpy County involving adults, and there was almost a dismissive attitude toward the entire matter. And I'm just giving you that kind of background because you might be the person they will refer me to. And if so, then I will talk to you in greater detail; and if not, after I talk to some of those in the county attorney's office, then I will probably talk to you. And I can't say how soon it will be, because things are kind of hectic around here; unless you stay at work as late as 8:00 at night, which you probably don't. [LB464]

DENNIS MARKS: No, I'm... [LB464]

SENATOR CHAMBERS: Okay, so I'm going to find a day when I've got some time.

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[LB464]

DENNIS MARKS: Seven days a week, Senator. Seven days a week. I'm not familiar with the first case. I am familiar with the second case that you were referring to. [LB464]

SENATOR CHAMBERS: Okay. Yeah, that was... [LB464]

DENNIS MARKS: That was a Bellevue East boy. [LB464]

SENATOR CHAMBERS: ...emblazoned everywhere. [LB464]

DENNIS MARKS: Yes. I'm familiar. [LB464]

SENATOR CHAMBERS: Okay. That's all I had. [LB464]

DENNIS MARKS: And I do agree with you about the education piece. I think the adolescent development piece is a vital key to understanding juvenile court work; so I agree with you there. [LB464]

SENATOR CHAMBERS: Okay. Thank you. [LB464]

SENATOR ASHFORD: Thanks. [LB464]

DENNIS MARKS: Okay, thank you. [LB464]

SENATOR ASHFORD: Do we have any other proponents? [LB464]

SARAH FORREST: (Exhibits 5 and 6) Good afternoon. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t, and I'm the policy coordinator for child welfare and juvenile justice at Voices for Children in Nebraska. Voices for Children strongly supports ensuring that all youth who come into contact with our justice system start their cases in juvenile court or under the juvenile code. Children aren't little adults and research has consistently shown that treating them as such acts neither as a deterrent to crime nor as a preventer of further crime and violence. Unfortunately, here in Nebraska, we have the distinction of being one of the few states that prosecutes children in adult court at an extremely high rate. In 2011, the cases of over 4,000 Nebraska children were filed in adult court; a little less than a fifth of those were transferred back to juvenile court. Compare this to the state of California, which filed just shy of 1,000 cases altogether in adult court. Ninety percent of the youth in Nebraska's adult court system are misdemeanants. These youth may otherwise have been eligible for diversion, which would get them access to services sooner and prevent them from entering our justice system altogether. Adult court simply isn't set up to meet the needs of our youth. Dennis mentioned it before me, but a growing body of research shows that adolescents are

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different. Their brains are developing. They're uniquely capable of change and of rehabilitation, but they're also uniquely vulnerable. Juvenile court was created for just this reason, acknowledging the difference between children and adults. And in order to allow our justice system to work to the best of its ability, Voices for Children believes that we really need to change our approach here in Nebraska and ensure that as many children as possible are served by juvenile court. This will result in better treatment for our youth and greater efficiencies for our court system as a whole. I provided you with a fact sheet on Nebraska's kids in adult court systems. It provides numbers of total filings by county, and then also the rate of misdemeanants filed in adult court by county. We have over 30 counties in Nebraska where 100 percent of their charges against juveniles were for misdemeanor offenses, and many of these counties are counties that actually lack a juvenile diversion program. So our suggestion is that we really need to invest in building these services within the juvenile system and serving our kids in different ways. And I would be happy to answer any questions. [LB464]

SENATOR ASHFORD: I would just...Sarah, just you made a point that will be carried over throughout the next day and a half of our hearings, and that is--and Senator Seiler has alluded to it in his question--is the lack of capacity throughout the state for these juveniles that should be, even though there is not a Separate Juvenile Court, there is a juvenile code. And to Senator Seiler's point, they're in county court but they're being adjudicated under a separate section of the statutes, the Separate Juvenile Court...or the juvenile code, not the Separate Juvenile Court part, but. So these juveniles should be entitled to the same quick, thorough screening and treatment that children in Douglas County or Lancaster or Sarpy have. [LB464]

SARAH FORREST: Absolutely. We shouldn't be leaving children behind. And it's a real shame that we have so many children and youth, primarily 16- and 17-year-olds--but still 16- and 17-year-olds who may need some services--and they're falling through our cracks right now. [LB464]

SENATOR ASHFORD: Well, especially the 16-year-olds, I mean--and the 17's, clearly. But at 16, you know, that used to be sort of the magical cutoff point, and... [LB464]

SARAH FORREST: Right. [LB464]

SENATOR ASHFORD: But now we're starting, as we've done in other areas of the law, recognizing that it's not 16 anymore, but, for example, attendance in school is now 18, isn't it, I believe. Senator Wightman's bill was 18. So I think we are recognizing it, but we still have to think about how we get resources to those areas of the state. [LB464]

SARAH FORREST: Absolutely. And I think this really builds on a trend that we've been seeing nationally, too, for where some time the trend was towards putting more and more youth in adult court. And we've seen the harmful consequences of that across the

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country. And over the past five years, states across the country have been rolling back the numbers of youth that are eligible for transfer to adult court and doing their best to keep as many kids in juvenile court as possible, understanding the risks to youth, the harm to society, and ultimately, the cost of having kids enter the criminal justice system at such a young age. [LB464]

SENATOR ASHFORD: And then also the lack of therapy for juveniles who are placed then back in the community after they have been in some other type of out-of-home or out-of-community placement is lacking. Correct? [LB464]

SARAH FORREST: Um-hum, yes. So the adult court system really isn't set up to give children the treatment that they need. And so keeping kids in juvenile court ensures better outcomes because it means access to developmentally appropriate (inaudible). [LB464]

SENATOR ASHFORD: But even in the juvenile system, sometimes... [LB464]

SARAH FORREST: Yes, that's true. [LB464]

SENATOR ASHFORD: ...as we've seen with the results from Kearney, and especially with...it's a problem. So okay, thank you, Sarah. [LB464]

SARAH FORREST: You are welcome. [LB464]

SENATOR ASHFORD: Any other proponents? [LB464]

ANNE HOBBS: Good afternoon, members of the Judiciary Committee. My name is Anne Hobbs. It's A-n-n-e H-o-b-b-s. I currently serve as the director of the Juvenile Justice Institute with the University of Nebraska-Omaha, but my testimony should be viewed as probably the director of the Juvenile Justice Institute. I wanted to come and share some findings that a colleague and I made in a recent report that we conducted for the Nebraska Crime Commission. All of these findings are applicable to the state of Nebraska. In my capacity as the director of the Juvenile Justice Institute, we do a lot of evaluation of programs and state systems. In this report, one of the chapters we specifically looked at the youth filed in adult court. In fiscal year 2011, in Nebraska, 2,600 youth were prosecuted through adult court. The ages ranged from 11 to 17, with the median age being 16.5. About 70 percent of the youth filed in adult court are males. We also found that black and Hispanic youth were significantly overrepresented in the youth that are filed in adult court. Of these cases, roughly 20 percent of them ended up eventually transferring down to juvenile court. Another really interesting finding in this study was that of the youth that remained in adult court, 95 percent of them pled guilty either by admission or by waiver. So 65 percent pled guilty by admission and 30 percent by waiver. At first glance, this pattern may suggest that perhaps a prosecutor wants to

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hold a youth accountable and to teach the youth that there are consequences that attach to criminal behavior, and perhaps the youth accepted that responsibility by pleading guilty. However, when we discussed this with stakeholders in the juvenile justice system and juveniles, what we found was the exact opposite. Juvenile court often requires more accountability, more time. It's more costly. A youth may be required to complete classes or programming or therapy. All of these are the end of teaching the youth to be accountable for their behavior but also preventing future law violations. Years ago, when I was the director of the juvenile diversion program in Lancaster County, I recall a similar case where a youth was charged with a trespass, and the fee at that time was \$75 to do diversion and \$65 to go through court. And the youth, straight up, said I'd rather just go to adult court, pay the fee, and be done with this, so. I'd ask that you consider some of this relevant research and recent research as you consider whether or not juveniles should start in adult court or in juvenile court. Thank you, and I will take any questions that you might have. [LB464]

SENATOR ASHFORD: Just as an aside, we...this...I don't know if Senator Chambers was here when this occurred, but we did commission a study on guardians ad litem and defense attorneys in juvenile cases, or cases involving juveniles. And one of the major findings...in fact, Senator McGill and I, we went to a conference in Chicago, maybe a couple, dealing with these and similar issues. And it became...it was so...the findings were so clear and so much in line with what you're suggesting, and that is that 95 percent of the 2,600 juveniles, there's no trial; there is no litigation. And one of the findings of this study, which we paid \$300,000 for, I believe, or at least the state of Nebraska did, that it was...that Nebraska was at the bottom of the barrel when it came to defending cases involving juveniles, and for whatever reason, that there are just so many cases or the practice is not...is for juveniles to plead. They plea...and that's why we were, in LB...I think it was LB800 when we passed the sealing of the records statute, and I think Senator Chambers was still here, or maybe he wasn't, but was because we had all these cases that were tried, many of them in adult court, or most of them in adult court. They never tried--I mean, filed in adult court. These kids all have records now. They can't get jobs. They're disproportionately African-American and Latino, and they can't get jobs. Is there any wonder why we have a 47 percent youth unemployment rate amongst African-Americans in Douglas County? There...is it some kind of wow moment? Gee. I mean, this is just a very broken system and this is a part of it. So thank you, Anne. I don't see any other questions. Any other proponents? Any opponents? Any neutral? Okay. Senator Coash, do you want to go to the next bill? [LB464]

SENATOR SEILER: Excuse me. Senator, if I may ask a question of the Chair? [LB464]

SENATOR ASHFORD: Okay. May I answer it from this place here? [LB464]

SENATOR SEILER: Yes, yes. On page 5 and further on, when you use the term "county attorney," you say "or city attorney." [LB464]

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SENATOR ASHFORD: Right. [LB464]

SENATOR SEILER: To my knowledge, the city attorneys in Nebraska have no authority in... [LB464]

SENATOR ASHFORD: They do in Douglas. [LB464]

SENATOR SEILER: In Douglas? [LB464]

SENATOR ASHFORD: Um-hum. [LB464]

SENATOR SEILER: Okay. [LB464]

SENATOR ASHFORD: And I think they do in Lancaster too. [LB464]

SENATOR LATHROP: Do they call them city attorneys or city prosecutors? [LB464]

SENATOR ASHFORD: Yeah...or, I'm sorry, city prosecutors. But the city prosecutor officially is a part of the city...I mean works for the city attorney. I think that might...but we'll check that. [LB464]

SENATOR SEILER: Okay. [LB464]

SENATOR ASHFORD: (See also Exhibits 1-3) Yeah. Senator Coash, LB342. [LB464]

SENATOR COASH: LB342. Thank you, Chairman Ashford. I didn't expect the first bill to go so quickly. I was in Appropriations. [LB342]

SENATOR ASHFORD: Well, everybody agrees with us. [LB342]

SENATOR COASH: (Exhibit 7) Thank you, Senator Ashford, members of the Judiciary Committee. For the record, my name is Colby Coash. I represent District 27 right here in Lincoln, and I'm here to introduce LB342 today, a bill that I have introduced after conversations during the interim with our local Lancaster County Board of Commissioners. LB342 is a clarification of statute. It clarifies that in cases of a termination of parental rights proceedings, a custodian, guardian, or stepparent of a child does not have a default right to court-appointed county-funded counsel. Rather, per the amendment AM490, which I passed around, the judge may use discretion as to whether or not to make county-funded counsel available to such a person. However, if there is an allegation made against such person, he or she does retain the right to court-appointed counsel. In addition, it clarifies that a person whom the court has appointed county-funded counsel must make contact with such counsel and/or attend

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court hearings in order to retain such counsel. The costs for legal representation are rising. In the past five years, the amount spent on court-appointed counsel in Lancaster County has increased by almost 20 percent. A variety of factors influence the cost of indigent defense. The number and type of filings, the number of cases diverted, the number of people who waive their right to counsel, the efficiency of court processes, diminishing community mental health resources, privatization of child welfare system, etcetera. In 2011, Lancaster County undertook an assessment of its costs of legal services. Both Lancaster County's leadership--and I understand how fundamentally important quality legal services are to the administration of justice--and we both committed to providing quality legal services mandated by our constitution in the statutes. However, the county would also like to provide these services in the most cost-effective way. The study conducted for Lancaster County made a number of recommendations for how the county could both improve the quality of legal services while also improving the efficiency of its system. The county is currently in the process of implementing those changes. LB342 represents one recommendation that required legislative action that may be of benefit to all counties. Many of you know that a child welfare case can have a number of attorneys involved. Stakeholders involved in the Lancaster County study, which included judges, prosecutors, and defense attorneys, discussed whether a statutory change should be explored in order to clarify whether or under what circumstances certain groups have a right to a court-appointed attorney. Through stakeholder discussions and research of existing case law, this bill clarifies when it is appropriate to provide court-appointed counsel using public dollars in these types of cases. Consistent with case law, notably Lassiter v. Department of Social Services, this bill clarifies that custodians, guardians, and stepparents do not have a default right to a court-appointed attorney in these cases in the same way that a parent does. However, if a custodian, guardian, or stepparent is unable to hire an attorney and has an allegation against them, the court can appoint an attorney. Because the current practice has been to err on the side of appointing counsel, sometimes the party will never show up for court, never contact their attorney, or have any involvement in the case. The court-appointed attorney will continue to show up on that party's behalf at the county's expense, despite that they've had no contact with their client. Oftentimes, the attorney will eventually ask to be removed from the case. The current practice in Lancaster County is to notify individuals that if they do not maintain contact with their court-appointed attorney, the court may discharge the attorney from the case. There are individuals today who will follow me who are much more familiar with both the specifics of how the court appointments work as well as why this clarification is so important. So I thank you for your attention and will answer any questions. [LB342]

SENATOR ASHFORD: I don't have any. Thanks, Senator Coash. Seeing none, Liz. [LB342]

ELIZABETH NEELEY: (Exhibit 8) Hello. Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Liz Neeley. I am an applied

sociologist by training, and I frequently do assessments and evaluations regarding the justice system here in Nebraska. In response to the large increase that Lancaster County saw in its court-appointed counsel fees, I was asked by the county to conduct an assessment of the costs of legal representation and identify ways in which the county could both improve the quality of representation and identify some system efficiencies. Clarifying the right to counsel in child welfare cases was one of the issues addressed in this report. While there is clear guidance in place for when a defendant has a constitutional right to a court-appointed attorney in a criminal matter, the law is less clear for the right to counsel for child welfare cases. Stakeholders involved in the study, included judges, prosecutors, defense attorneys, guardians ad litem, and people providing representation for parents, suggested that a statutory change be explored to clarify under what circumstances groups have a right to a court-appointed attorney in child welfare cases. Basically, under the current statutory framework, if a party to the case appears without counsel, the court is to inform them both of the nature of the proceeding and the right to engage counsel of their choice at their own expense or to have counsel appointed if they are unable to hire a lawyer. However, in a different section of the statute, a party is defined as the juvenile, his or her parent, a guardian, or a custodian. This establishes just a very, very broad framework for who is entitled to court-appointed counsel in child welfare cases. And I'd like to use custodians as an example. By definition, a custodian is a nonparent...a nonparental caretaker that has physical custody of the child. And in our statutes, physical custody simply means that they're in the physical care of that person or has supervision of a child. And so a nonparental nonparent with physical custody could be a number of people. That could be mom's boyfriend or the dad's girlfriend or a stepparent or a grandparent. Technically, it could be someone who provided day care to a child would be considered a custodian. So the question here is, should the default be that counsel is appointed in every instance? And basically I believe that this bill attempts to bring our statutes into compliance with current case law, clarifying that custodians, guardians, and stepparents do not, in fact, have a default right to a court-appointed attorney. However, if a custodian, guardian, or stepparent is unable to hire an attorney, has an allegation against them, or is trying to intervene on behalf of the child, then the court may appoint an attorney. In many counties, judges may already be following the framework provided by case law; in others, the statutory clarification will be of assistance and may provide...could potentially result in cost savings for counties. So as the author of the report, I just wanted to make myself available for questions if you have any. [LB342]

SENATOR ASHFORD: Just, can you explain to us...I know this is more on the juvenile side than the child welfare side, but there's crossover. So can you explain some of the underlying reasons for the numbers that Anne was talking about: the lack of trials in juveniles cases, the pleas, just the lack of any adjudication in a formal sense. I mean, the explanation I always hear is, well, the rules of evidence don't apply and so there's no reason to have a trial sometimes, which seems like sort of an odd reason. But anyway, do you have any thoughts...because you know about that report obviously.

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[LB342]

ELIZABETH NEELEY: Okay. I just want to...okay, so your question is actually in regards to LB464. [LB342]

SENATOR ASHFORD: Yeah. [LB342]

ELIZABETH NEELEY: And I guess my comment is that the NACC study that you just discussed a moment ago, one of the primary findings of that is that Nebraska has a substantially high percentage of youth that waive their right to counsel. And whether that is encouraged by the way we do our advisement of rights or by parents that kind of want to teach their kids a lesson or try to hold them accountable, the reason for that is not clear. But I think that that has a large part to do with the issues that you were saying, that we have just an extremely high rate of people waiving counsel and pleading guilty in adult court, so. [LB342]

SENATOR ASHFORD: And those are generally adult...and that's what Anne was speaking about, the adult court filings. [LB342]

ELIZABETH NEELEY: Right. [LB342]

SENATOR ASHFORD: They then have a record. [LB342]

ELIZABETH NEELEY: Yes. [LB342]

SENATOR ASHFORD: And there's a lot of them. [LB342]

ELIZABETH NEELEY: Yes. Stacey and I kind of relooked at the numbers this morning. Another way to think about it is that of all juveniles in Nebraska with an offense, more are prosecuted in the adult court system than in all three Separate Juvenile Courts combined, so it's substantial. [LB342]

SENATOR ASHFORD: And they're prosecuted and 95 percent of them plea. [LB342]

ELIZABETH NEELEY: Plead guilty. [LB342]

SENATOR ASHFORD: So they're guilty... [LB342]

ELIZABETH NEELEY: Yes. [LB342]

SENATOR ASHFORD: ...in that case. Wow. Yeah, in the adult court they'd be actually tried and convicted because it's a conviction. It's not even an adjudication. [LB342]

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ELIZABETH NEELEY: Correct. [LB342]

SENATOR ASHFORD: Okay. Thank you. [LB342]

ELIZABETH NEELEY: Yep. Any other questions about LB342? [LB342]

SENATOR ASHFORD: No, but I mean there are crossover cases. [LB342]

ELIZABETH NEELEY: There is. [LB342]

SENATOR ASHFORD: Yeah. [LB342]

ELIZABETH NEELEY: Thank you. [LB342]

SENATOR ASHFORD: Thanks. Any other proponents? [LB342]

ELAINE MENZEL: Chairman Ashford and members of the Judiciary Committee, for the record my name is Elaine Menzel, and it's M-e-n-z-e-l. I'm here appearing in favor of LB342. We appreciate Senator Coash, as the introducer, bringing this issue to your attention. And while I've not seen the report or the amendment specifically proposed, they do sound like issues that we are supportive of. We ask you to favorably consider the issues that the introducer and Liz Neeley brought to your attention, and ask you to favorably advance this legislation. If you have any questions, I'll attempt to answer them. [LB342]

SENATOR ASHFORD: Any questions of Elaine? I don't see any. Thanks. (Cell phone ring.) It's kind of catchy. It's kind of catchy. [LB342]

SENATOR LATHROP: Just a little rule we might cover in Judiciary Committee. Turn your cell phones off so you're not interrupting the hearing. [LB342]

SENATOR ASHFORD: Okay. And we will...yeah, we'll just have a little...we're going to have a quiet time. We're going to listen to the music. We're going to...(laughter). So it causes me not to want to do this pounding of the fist thing that I do whenever we get into these juvenile matters. Any other proponents of these things? Any opponents? Any neutral testifiers? Senator Coash. [LB342]

SENATOR COASH: Thank you, Senator Ashford. I did also pass around to the committee with regard to this bill a copy of that case law that says that basically if you're not the kid's parent, you don't have a right to court-appointed counsel. And what's happening is judges are reading the statute and they're...it's a little bit confusing. And we want to make sure the resources that we spend are on the people who are entitled to them, and I think this bill is clarification that's needed and I appreciate your time on

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that. [LB342]

SENATOR ASHFORD: Yeah, it's interesting. My son is a public defender in Douglas County, and he was relating a story to me of a crossover kid who had...he was in a hearing maybe this last week. And the adjudication occurred four years ago, and it's now sort of in the child welfare side. Family stuff. And there are 11 lawyers in the hearing, and it was...four years, the case. And everyone agrees the actual underlying offense that the mom committed was...and she admitted to; and regarding the child, she's done everything she was supposed to do but it's still in court and it's still...because of all the relatives now that all have lawyers who are adjudicating this child's welfare for four years. [LB342]

SENATOR COASH: Well, I love lawyers, Senator Ashford,... [LB342]

SENATOR ASHFORD: Eleven lawyers though. [LB342]

SENATOR COASH: I serve with plenty of them, but... [LB342]

SENATOR ASHFORD: Eleven lawyers. Yeah, that's a lot. [LB342]

SENATOR COASH: And sometimes there's too many cooks in the kitchen. [LB342]

SENATOR ASHFORD: Right. I mean, that's more than... [LB342]

SENATOR LATHROP: You know, the other thing is, is that when you have that many people in a hearing, nobody is accountable. They're all like, well, I'll just show up and somebody else will have prepared for the hearing. [LB342]

SENATOR COASH: I think if you defuse enough responsibility, pretty soon nobody has any. [LB342]

SENATOR ASHFORD: Yeah. Yeah. And when there aren't rules of evidence...and I realize why they aren't...why there are not, but everybody is throwing evidence at the judge from all directions and you have no idea what's going on. And this poor child, as my son said...and once in a while he says things that I listen to, you know, (laughter)--all the time actually. But he said it's just unbelievable, Dad; I mean, you just sit there in just disbelief that this poor child has been, you know, waltzed around and back and forth. And there are 11 lawyers being paid by the...well, in that case I think probably all being probably paid by Douglas County, and... [LB342]

SENATOR COASH: It was an example of that type brought to me by a judge in our county, who said, you know, a step-dad showed up and asked for counsel. It's not the child's real father. [LB342]

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SENATOR ASHFORD: Right. [LB342]

SENATOR COASH: Married to the child's mother. But ended up the judge did appoint counsel. [LB342]

SENATOR ASHFORD: Right. [LB342]

SENATOR COASH: And he said this is a clarification that I wouldn't...he didn't like to have to do that but felt that was what he was mandated to do. [LB342]

SENATOR ASHFORD: Right. [LB342]

SENATOR LATHROP: Here's the other thing, too, is that when one of them has a conflict, just say they have one lawyer shows up sick, they cancel the hearing and move it off 60 days, and then you hope all 11 guys can be there. It's always astonished me how many lawyers show up at a juvenile court proceeding. [LB342]

SENATOR ASHFORD: Yeah, aunts and uncles and...all have lawyers. [LB342]

SENATOR COASH: Yeah. And they all want to...you know, they want to show up and advocate for the kid, which I think is good, but they also want to have...be represented in front of the...in the eyes of the court. And I... [LB342]

SENATOR ASHFORD: I mean, this thing is getting...every time...all of these issues that are brought to our attention in the juvenile system are just so burdensome. [LB342]

SENATOR COASH: Maybe the answer is less attorneys, not more. But I don't... [LB342]

SENATOR ASHFORD: Well, I think it's less attorneys is one of the answers, and maybe...I don't know. Thanks, Colby. [LB342]

SENATOR LATHROP: Come on, Colby. That's not always the answer. [LB342]

SENATOR COASH: I said maybe...maybe. [LB342]

SENATOR LATHROP: Well, some of it suggests that the solution is probably to try to resolve things before it turns into a court proceeding... [LB342]

SENATOR ASHFORD: Right. [LB342]

SENATOR LATHROP: ...and not turn everything into a juvenile court proceeding. [LB342]

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SENATOR ASHFORD: Right. Exactly. [LB342]

SENATOR LATHROP: And I know that they do more of that in Douglas County than they do in Lancaster. [LB342]

SENATOR ASHFORD: Well, it's interesting in Lancaster, when I look at the numbers on...when we're looking at Kearney, the number of the percentage of the Kearney juveniles in Kearney exceeds that in Douglas County, which...and I know all the reasons for that. But I mean that's kind of an odd piece of data too. Why is that? I mean, you would think it would be the other way. I mean, I don't know the answer but that's what we have. So anyway, thanks, Colby. And I think you have the next bill as well. [LB342]

SENATOR COASH: I do. So I'll stay right here and we will do LB471. So once again, good afternoon. My name is Colby Coash. I represent District 27 right here in Lincoln. This is LB471. Okay. LB471 is a very simple bill that can save the Office of Juvenile Services time and money. Per statute, a juvenile must undergo an evaluation prior to his or her commitment to OJS. Some juveniles, however, are committed on multiple occasions and over a course of time, yet each time they are committed they must undergo another evaluation even if a previous one has already been completed, sometimes recently. This bill will allow a waiver of another evaluation if a couple things happen: (1) if there's been a substantial equivalent evaluation within the last 12 months that make a reevaluation unnecessary, or (2) an addendum to the previous evaluation would make more sense. That's it. [LB471]

SENATOR ASHFORD: Just...okay. Any questions of Senator Coash? Senator Seiler. [LB471]

SENATOR SEILER: Colby, just quickly, does your exception, which I agree with, have any wiggle room for the judge in case there's a change in circumstance? [LB471]

SENATOR COASH: I don't read it that way, Senator Seiler. [LB471]

SENATOR SEILER: Okay. [LB471]

SENATOR COASH: But I think the judge retains that ability anyway. [LB471]

SENATOR SEILER: Okay. I didn't know if that was a... [LB471]

SENATOR COASH: I mean, routinely...my experience has been routinely if a judge wants an evaluation, he just tells HHS, get me an evaluation regardless. So they're doing that already. [LB471]

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SENATOR SEILER: Okay. That's fine. [LB471]

SENATOR ASHFORD: Thanks, Colby. [LB471]

SENATOR MCGILL: I just have a... [LB471]

SENATOR ASHFORD: Oh, I'm sorry, Senator McGill. [LB471]

SENATOR LATHROP: I think that's a good point though, by the way--Senator Seiler's point--which is what if the kid is in there for something kind of small the first time, and then six months later his life goes to hell and, you know, Mom died, and now he's living with an alcoholic uncle or something, and you actually need something else done. [LB471]

SENATOR COASH: What I can tell you, Senator Lathrop, is there's no lack of people who will advocate for that child and say, hey, something is different here; we need to get our heads wrapped around what's going on. Here's the problem I'm trying to solve: Because of the current statute, you have a kid who's got an evaluation. Then he comes back for something else and we have to wait for another evaluation. These evaluations take time and money to get, and it pushes a case off 60 days, when everybody will stand around this child and say, but we have one here, Judge; we have an OJS evaluation, we know what's going on; can we make some decisions to get this case and this child moving in the right direction? And then they go, well, no, we have to order another one. And so they set a hearing date 90 days out to get another evaluation which may not be needed. [LB471]

SENATOR ASHFORD: Senator Seiler. [LB471]

SENATOR SEILER: Colby, you already have it in here. It's your second part of it: "or (b) an addendum...previous evaluation rather than a reevaluation would be appropriate." So it's in there. [LB471]

SENATOR ASHFORD: And I think Senator Coash has landed on another thing, another issue we'll be talking about a little bit in LB561 which is with the probation project, the idea there is to reduce the need for these elongated evaluations and to allow probation, the probation officer or whomever, to have...provide an evaluation that's modeled to the kid's needs and it's not one of these weeklong or whatever it is,... [LB471]

SENATOR COASH: These evaluations are good, but sometimes they serve as a barrier to getting what's going on...you know, to getting the issues addressed, because when the kid comes back in and they have to order a new one, then it kind of starts the ball over again. And I've seen kids who will come to court with three of the same evaluations that are state-paid-for or taxpayer-paid-for. [LB471]

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SENATOR ASHFORD: And they're the same evaluation but... [LB471]

SENATOR COASH: Basically the same evaluation, maybe over the course of ten months, and the first one was identical to the second one. It's also a barrier when you get outside of Lincoln and Omaha, because the access to the folks who will provide these is a challenge. And so when you add on another evaluation and the fact that you don't have the providers to do them, it really can delay cases. [LB471]

SENATOR ASHFORD: And maybe someone else can talk to this issue, but it is a factor in the detention of juveniles, as well, because if they can't be placed back in the home and they're in a detention environment or secure environment waiting this evaluation, they're not at home. They're in this sort of...and then it starts to... [LB471]

SENATOR COASH: Depending on what's going on, yeah, sometimes a kid is sitting in detention waiting for one of these, which isn't always the best thing. [LB471]

SENATOR ASHFORD: Senator McGill. [LB471]

SENATOR MCGILL: My question...I guess I totally agree, this is a problem and I'm glad you brought this. What do you think of the fiscal note? It seems to me like there should actually show a savings, I would think. [LB471]

SENATOR COASH: Well, I think the savings would mostly be to the counties... [LB471]

SENATOR MCGILL: Okay. [LB471]

SENATOR COASH: ...who a lot of the times I believe is the counties who are picking this up. And so I don't think that showed up on the fiscal note. [LB471]

SENATOR MCGILL: Okay. I was going to say it should show some sort of savings somewhere in the system. [LB471]

SENATOR COASH: Yep. Yep, at the county level. [LB471]

SENATOR ASHFORD: And some of that savings we're seeing in the probation project with those 11, 12, in Douglas County, where there has been some savings because of some of this process has been unwound, so to say. Okay, thank you. Thanks, Colby. Proponents? Thomas. [LB471]

THOMAS PRISTOW: (Exhibit 11) Good afternoon, Senator Ashford and members of the committee, the Judiciary Committee. My name is Thomas Pristow, T-h-o-m-a-s P-r-i-s-t-o-w. I'm the director of Children and Family Services for DHHS and I am here to

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support LB471, Senator Coash's bill. When a juvenile is adjudicated as a juvenile offender, the court may temporarily place the juvenile with DHHS-OJS for an evaluation prior to the dispositional hearing. The predispositional evaluations coordinated by OJS include an in-depth psychological, educational, mental health, drug and alcohol abuse assessment to identify each juvenile's program and treatment needs. The evaluations are completed by contracted clinical providers within a 30-day time frame. If there are no major changes in the juvenile's behavior or treatment needs, the information provided in the evaluation should be applicable for up to 12 months. The ability of the court to utilize evaluations completed within a 12-month time frame reduces duplication of assessment information as well as the time needed to complete other evaluations. DHHS has followed this practice and supports the courts in utilizing, as much as possible, evaluations or their addenda for up to 12 months. Frequently, new evaluations contain equivalent information. The added language under LB471 clarifies the time frame that the courts may use evaluations or addenda to determine an appropriate disposition for juveniles adjudicated as offenders. Thank you for the opportunity to provide testimony. I'd be glad to answer any questions you may have. [LB471]

SENATOR ASHFORD: (See also Exhibit 10) Any questions of Thomas? Seeing none, thanks, Thomas. Any other proponents? Opponents? Neutral? Senator Coash? Waives. Okay, moving right along. [LB471]

SENATOR LATHROP: Welcome, Senator Ashford. [LB562]

SENATOR ASHFORD: Thank you, Senator Lathrop and members of the committee. My name is Brad Ashford. I represent Legislative District 20 in Omaha, and I am here to introduce LB562, which has within it a series of provisions that deal with, to some extent, other bills that we've passed over the years to make some modifications and to respond to certain questions and concerns that have been raised. First of all, on information sharing, and it's been sort of a journey for us on this committee to try to figure out how to get access to information on juveniles as quickly as possible, especially crossover kids, for the probation or juvenile justice to get access to HHS records. It's my understanding that the...and Thomas is here and he may be testifying. But it's my understanding that a lot of this work has started and they're working through the...have been working over the summer on information sharing. The one sort of difficult piece, we go back five years or six years on this, trying to get this sort of early alert system designed so that when, for example, when we have a truancy situation and the probation officer is called in or we can then be able to access records from the education side and the HHS side quicker, more quickly, in order to get the proper services to these juveniles. And obviously I know everybody I've talked to for six years on this issue all agree we need to have it, but when we sit down it always gets to be complicated. I know we do have databases available through HHS and the Crime Commission and the school systems, as well, most of which talk to each other. So again maybe we won't...I won't see completion of data sharing but it would be nice in my time

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here...but it would be nice to see that this issue continues to be handled in a positive way. There's a minor provision about fingerprints and accessing fingerprints into the AFIS system, which is the system we use for fingerprint identification and handling. There is the next provision in the bill deals with extended jurisdiction, and this is a very substantive, important piece. It indicates that if the juvenile is in the juvenile justice system at age 19, currently the system loses jurisdiction of that juvenile. And I don't want to get anecdotal, but there are cases that many of them have had a lot of publicity over the years of juveniles who, in effect, age out of the system, don't have access to a worker, a probation officer and sometimes necessary medications, and have committed very violent acts. Each case is different and there may be circumstances in...there are circumstances in each one of those cases that make them different from the others. But still I think the idea of keeping the juvenile in the system until age 21 is critical. It seems as if, interestingly enough, when we...I and Senator Council actually conducted a study with UNMC and the Omaha Community Foundation on the average age of a gunshot victim--at least, gunshot victims that were taken to the UNMC emergency room. The average age of the victim is 19. There are numbers of juveniles that are victims of violence taken to the emergency room who are older than 19; and by implication the perpetrators are most likely older than 19 in many cases, as well. Now that doesn't mean that increasing the age to 21 is going to stop that from happening, but I think it is a factor that can be addressed by extending the age. The civil citation program, which is something that we learned about, and I think probably Senator McGill was at the same conference that we went to--these years just flow together but I'm thinking it's maybe six years ago or whatever--we learned about what was being done in Miami-Dade County with juveniles, a rather aggressive juvenile assessment system, a JAC system; and we have a similar system in Douglas County to divert kids into the Juvenile Assessment Center to avoid going into the court system. We have in LB800, which was the truancy bill actually, LB800 did provide for a civil citation process for police officers to give a civil citation to an offender, a juvenile offender who has committed a minor and nonviolent offense, which would allow them to then go directly to the Juvenile Assessment Center without having to go into the juvenile court system. I think there's a similar kind of system that goes on in Omaha, though I'm not clear how it works exactly; but the actual civil citation program has not been utilized in Douglas County up to this point. But in any event, what this provision would do would be to extend the civil citation program to the entire state. There is no reason why we shouldn't have civil citations available to law enforcement in the courts and to juveniles across the state. Since we passed LB800, again the truancy bill also dealt with some sealing of the record--we had a tendency to Christmas tree these bills, Senator Seiler. I mean, they didn't necessarily all go together, we just put them in the one bill. I don't know if we're going to...but anyway, we did that with the truancy bill, and we included the sealing of the records. There have been questions raised about how this process would work and making sure that records aren't sealed until a case is actually finalized and finished and...but it might...at least in talking to Judge Gendler, for example, in Sarpy County. Sarpy County has done a great job with the sealing of the records. It doesn't have any real objection to how it works. It

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does provide an avenue for juveniles to be able to obtain employment without having to disclose their records. And with 2,600 statewide juveniles tried as adults, that's a lot of kids who may be precluded from finding work. So it's work, but I think this would clean it up some more. I don't know...I've had reports back from Douglas County that it's working but there are some concerns. But anyway, hopefully these provisions will work to correct those. Lastly--I think lastly, hopefully lastly--we utilize seclusion in our juvenile justice system and the youth detention facilities, certainly in Kearney and Geneva. And this bill would require that providers of residential placement, detention, or incarceration of juveniles have rules and regulations that prohibit the use of seclusion for disciplinary purposes and have standards for the use of seclusion as a short-term emergency procedure to protect the safety of a juvenile. I think we have to hear testimony on this and think about, number one, what is seclusion, when should it occur, under what circumstances. If you over place a...we already know...we know...we absolutely know that we incarcerate too many juveniles in our state. So if...and we need to address that. But as part of that process, seclusion can occur, does occur; and hopefully there will be some testifiers that can talk about when it is, in their view, appropriate and when it's not, so that we can understand it better. [LB562]

SENATOR LATHROP: Any questions for Senator Ashford? Before you get away, do you want to talk about the fiscal note, or do you have a thought about that? [LB562]

SENATOR ASHFORD: Sure. [LB562]

SENATOR LATHROP: And I will say that Thomas Pristow did leave right after you sat down. [LB562]

SENATOR ASHFORD: Oh, he did. Because the fiscal note is actually wrong, isn't it? [LB562]

STACEY CONROY: Well, for the other one. This is for the extension of jurisdiction to 21. [LB562]

SENATOR ASHFORD: Oh, that's right. The extension jurisdiction bill where the \$6 million fiscal note is in this bill and it's not...that was a mistake, so. [LB562]

SENATOR LATHROP: Oh, okay. We'll talk about that tomorrow then? [LB562]

SENATOR ASHFORD: Yeah. Or some other time. [LB562]

SENATOR LATHROP: All right. You don't need to talk about it today then. [LB562]

SENATOR ASHFORD: Well, Stacey can explain it. Stacey, would you like to explain it? You told me and I forgot, so. [LB562]

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STACEY CONROY: There was a piece left in LB464 to extend jurisdiction under...for kids in OJS. That should have been in this bill. But I think what's in this bill, to extend the jurisdiction to 21 at the discretion of the judge, that's what they're responding to in the fiscal note and I think that's, you know, accurate for their...HHS (inaudible). [LB562]

SENATOR LATHROP: So this thing is carrying around a \$6 million anchor? [LB562]

SENATOR ASHFORD: Right. But we're going to have to...that's going to obviously raise a lot of discussion. And Thomas has left behind my back, did he? [LB562]

SENATOR LATHROP: Yes. [LB562]

SENATOR ASHFORD: Okay. Well, we'll have to think about it more. [LB562]

SENATOR LATHROP: Okay. I just wondered if you wanted to talk about it. [LB562]

SENATOR ASHFORD: Well, I mean, I think they took... [LB562]

SENATOR LATHROP: This is the...the idea is that we keep these kids longer because we know that if you hang on to them longer... [LB562]

SENATOR ASHFORD: Right, right. [LB562]

SENATOR LATHROP: ...than just cutting them loose at 19, that your outcomes are going to be better. [LB562]

SENATOR ASHFORD: Well, you get situations like Von Maur where...and again, it could be anecdotal. I don't know what all the facts of the Von Maur shooting are or were. But at the time he was older, but he was...he had been in the juvenile system. He aged out. Whether or not that would have impacted this case, I don't know. I think the \$6 million is based on extending jurisdiction for all juveniles at age 19. [LB562]

SENATOR LATHROP: Okay. [LB562]

SENATOR ASHFORD: And I just don't...I don't see that as being...that's not going to happen, so we'll have to talk further about it. [LB562]

SENATOR LATHROP: Okay, thanks. I see no other questions. Those who are here to testify in support of LB562. [LB562]

SARAH FORREST: (Exhibit 12) Good afternoon, Senator Lathrop and members of the committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t. Again I'm the policy

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coordinator for child welfare and juvenile justice at Voices for Children in Nebraska, and we're here today to specifically support the sections of LB562 which ban the use of seclusion as a punishment at residential placements which serve youth in our juvenile justice system and require facilities to develop clear rules and regulations for its proper use. This summer, Senator McGill had introduced an interim study, LR535, which looked at our youth rehabilitation and treatment centers. One of the things that was very surprising to us was to see the extreme duration of times that youth were spending in seclusion for relatively minor infractions. And studies have shown--adolescent psychiatrists have weighed in on this--that solitary confinement causes anxiety, depression, and psychosis, especially in the case of juvenile defenders. They recommend that it should only be used for the least amount of time possible in emergency situations and shouldn't be used as a means of coercion or discipline; and a lack of resources should never be an excuse for placing in seclusion or solitary confinement. The Nebraska Administrative Code currently allows youth to be placed in solitary confinement or seclusion at the YRTC's for up to five days. Results of this interim study revealed that some youth were staying up to as long as ten days. The Division of Children and Family Services has made some changes to reduce that. But again, by our rules and regulations, this is still possible. Our Jail Standards Board also has rules and regulations which govern conditions at our juvenile detention facilities, and these allow youth to stay in solitary confinement for up to seven days. We believe at Voices for Children that the point of our juvenile justice system is rehabilitation, and that these harmful practices shouldn't be used as a disciplinary measure. We need to find other ways to respond to youth behavior when they require residential placement, and that we need a new system in our state that really emphasizes that rehabilitation is the goal of all of our placements in the juvenile justice system. And with that I'd be happy to answer any questions. [LB562]

SENATOR LATHROP: I do have a question for you. The bill would prohibit seclusion except for emergency for the safety of the person. Is some seclusion okay? I mean, it's almost...you know, I heard when we had this interim study, I think somebody called it the equivalent of time-out and we said, well, ten days is not time-out; that's seclusion. Is there a certain amount of that, that should be employed? Telling somebody to go to their room for the rest of the day? Is that seclusion; or if it's seclusion, is it a bad idea? [LB562]

SARAH FORREST: It depends on the circumstances. You know, a young person who's presenting a danger to themselves, a danger to others, perhaps for a short period of time in order for them to calm down for them to receive the services and evaluation that they need, we don't see a problem with that. At the same time, you know, what we're saying is don't replace...five days isn't good. One day isn't good either if it's for the wrong reason. So if it's saying, well, Jimmy, you made a threatening gesture, no youth or staff were harmed, this could have been dealt with in a different way. Seclusion isn't the answer. But for some youth, especially with severe behavioral health needs, mental

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health needs, perhaps in some situations it would be justified. What we're saying is that we need policies that are clear for all these facilities that spell out its use as a part of rehabilitation as opposed to a part of punishment. [LB562]

SENATOR LATHROP: But the only exception, literally, in this bill is for emergency procedure to protect the safety of a juvenile. So should there be some other, you know, category three? Like never the safety of a child and maybe a little bed or an afternoon? I mean, I just wonder if you could have a kid filing a habeas corpus proceeding because he's in seclusion at all as long as he's not...no longer...his safety is no longer in jeopardy. [LB562]

SARAH FORREST: I understand your concern and I think...I can look more into that and get back to you, as I know that.. [LB562]

SENATOR LATHROP: I'd be interested in what the national standards are for seclusion. If the national standard is zero, then maybe I could learn something. [LB562]

SARAH FORREST: I think, as a discipline, zero. [LB562]

SENATOR LATHROP: I know I got a little bit of seclusion when I was growing up. I think everybody does. You just say... [LB562]

SENATOR ASHFORD: And look what we got, I mean? (Laugh) [LB562]

SENATOR LATHROP: Yeah, and here's the product of some seclusion. [LB562]

SARAH FORREST: Right. And I would say that, you know, time-out in a home with a parent is very different than being placed in a jail cell in a detention center or in the YRTC in a room all by yourself,... [LB562]

SENATOR ASHFORD: Right. [LB562]

SARAH FORREST: ...especially if you're a young offender who's perhaps experienced trauma in your life. So I think it needs to be looked at carefully, and I can get back to you on other standards. I know that this was a large shift. Seclusion isn't really allowed anymore except as an emergency procedure in all facilities which accept Medicaid. [LB562]

SENATOR LATHROP: Yeah. Putting somebody in the cooler is one thing. And nobody should be there, even the old standard which was, what, five days? [LB562]

SARAH FORREST: Yes. [LB562]

SENATOR LATHROP: And we were stretching it out to ten? [LB562]

SARAH FORREST: Um-hum. [LB562]

SENATOR LATHROP: That...I understand why we want to prohibit that. But I'm just not sure if you're trying to run a place, if the only time you can put them...or send them to their room--the equivalent of sending them to their room--is if they're..to protect the safety of the juvenile or one of the other juveniles. Anyway, just a thought. [LB562]

SENATOR SEILER: I just have a question. What if the person has a...a 14-year-old has a shiv and he's threatening the teacher and the guards? Under your scenario where does he go? [LB562]

SARAH FORREST: I think...so that's an emergency procedure. I think every facility... [LB562]

SENATOR SEILER: Yeah, I know it is. [LB562]

SARAH FORREST: Yeah. It's an emergency procedure for the safety of the juvenile, for the safety of the staff. We're not saying it... [LB562]

SENATOR SEILER: When you say you can't put him in a seclusion, where are you going to put him? Back in the general population? Are you going to give him his shiv back and be nice to him and pat him on the back, tell him it was just a mistake? [LB562]

SARAH FORREST: Obviously, you know, youth need to be held accountable for their actions... [LB562]

SENATOR SEILER: Absolutely. [LB562]

SARAH FORREST: ...even at residential facilities. That's an important part of it. What we're saying is that the way we respond to those youth actions is sometimes counterproductive. And in the case of our current use of seclusion where youth are spending time by themselves for days at a time, the studies have been conclusive in the harm that that can do. What I would say is that many facilities across the country that deal with these populations have effectively reduced and even eliminated their use of seclusion. They've had to look very carefully at staffing, at training of staff. But we know that seclusion and restraint have impacts on juveniles, and so if we can respond to the needs of those children in different ways. Every behavior has a story and so we really need to look at if the purpose of our juvenile justice system is rehabilitation, and we would argue that it needs to be. We need to find different ways of doing that. And so, you know, this provision is really aimed at decreasing our use of disciplinary seclusion and saying this isn't about an emergency and that we need to look at modifying

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juveniles' behaviors and securing facilities in new and different ways. [LB562]

SENATOR ASHFORD: The reality though, here in Nebraska, is that we have...at the Kearney YRTC, they have no individual rooms. They're in a dormitory situation which makes...I mean, there is...when we visited the Washington State facilities, and we'll hear more about those tomorrow, but they have a graduated...to your point, they have a series of graduated measures to take. So if there's an argument going on between two juveniles, what will happen is they'll go to their room, so to say, which is a locked...their rooms are locked. But they're in their room. So they have, you know, their pictures on the wall or whatever it is. So they're not in a sterile place. And they can be there for an hour or they can have...there are a couple of cases...the other interesting thing is this is...you asked a great question, Senator Seiler, because that was the question I had when I went to Seattle was, how do you deal with...I mean, these kids are troubled kids and they have had...and some of them...there were two sisters there who had literally tried to burn their house down to kill their mother. I mean, these kids have very troubled...very, very troubled lives going on. And so, you know, but they...and, you know, they had issues when they were at this facility. I mean, these...so. But they were given...they had these sort of graduated ways. For example, the kids that were really acting out were required to wear a different orange, almost a correction-type, outfit so they would be...the other kids knew that these particular kids had really done something against the rules. But they weren't in seclusion per se. They would go to their particular room. They wouldn't be able to eat with their other...you know, their other people...the other people at the facility. And there was a constant, constant therapy and training going on all the time with these kids. So seclusion, though it existed, was in this sort of milieu of other things that were going on with this child, so. But when you have a dormitory with 45 juveniles, and we've seen it in the last month with all these various, you know, acting out and behavioral issues there, you have one person assigned to take care of that 45-person dormitory at 2 in the morning or 12 in the morning, you know, and 11 of the kids or a certain number of the kids were in seclusion. The other thing you see at Kearney, which you never see in the facilities in Washington, at least, because I asked this specific question, how many, you know, prosecutions occur for events on the facility grounds in the town, you know, where the...because there are...there could be felonies committed. And in Kearney, these kids are filed on all the time as adults. The county attorney is filing on these kids because there really is no place...they can't keep order and the people who work there are constantly under threat. And so it just...and we'll hear more about it tomorrow, but seclusion in that sort of situation where there's no place else to put them really becomes a challenge because there is no place else to put them other than in seclusion. The next step is having them filed on for some sort of felony or an assault or something, which happens all the time. [LB562]

SENATOR LATHROP: But here's the question though, I think, which is, is there a national standard, a best practice, when it comes to seclusion? [LB562]

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SENATOR ASHFORD: Right. [LB562]

SENATOR LATHROP: And should that be what we incorporate in the statute instead of assuming that it is zero seclusion? Because it may be that you send somebody to wherever, out of the dormitory setting, so that they can just chill for awhile and, you know, gather themselves and let their, you know, anger or blood pressure or whatever return back to normal. [LB562]

SENATOR ASHFORD: And it seems like there are all sorts of different practices on how to do that and it's probably hard to write a statute that incorporates all the different ways of doing it. But clearly, in Washington, I mean, Senator Seiler is absolutely right and Senator Lathrop, there are occasions where these kids need...something needs to happen other than just, gee, don't do it again, so. [LB562]

SARAH FORREST: Absolutely. [LB562]

SENATOR ASHFORD: But when you have a facility that has three dormitories with 45 kids in each dormitory, there's very little opportunity other than putting them in a place away. [LB562]

SARAH FORREST: Right. And so since December 1, Director Pristow actually issued new regulations on the use of seclusion at both YRTC's. They haven't been fully institutionalized but kids now are only placed in seclusion if they are sort of a threat; and then they're allowed to reenter when they're calm, collected, and sort of have corrected their thinking errors. And so far, what we're hearing... [LB562]

SENATOR ASHFORD: Maybe we don't need a statute then. [LB562]

SARAH FORREST: Yeah. What we're hearing from Geneva is that that's working very well and that there are still things that need to be done at Kearney. I think it hasn't fully been institutionalized. And so I will certainly look more into national standards. But again, everything that we found really said that most...especially when you're talking about treatment-oriented facilities, accreditation like the Joint Commission, which I have cited here in my memo to you, is that it should only be used for the least amount of time possible and never as a means of coercion or discipline. So not that it can't be used for a juvenile's well-being, but that we shouldn't be relying on this to provide a lesson to a kid. It's not... [LB562]

SENATOR LATHROP: And as I read this...as I read the bill, that's a different standard. [LB562]

SARAH FORREST: Okay. [LB562]

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SENATOR LATHROP: You've described something different than what's in the bill. [LB562]

SENATOR COASH: Senator Ashford, I could... [LB562]

SENATOR ASHFORD: Yeah. [LB562]

SENATOR COASH: ...maybe use Sarah for...I have experience in this and I think this might help you understand, the committee understand; and you can comment on this. There's taking a kid and removing them from stimulus, which has a therapeutic value to it. It's saying this is not an environment that is helping you with the issue, so we're going to remove you from the stimulus. That's one. Then you have a removal because it's dangerous. I've got to get you out of here for your safety or the safety of others. And then there's a third type which is I'm sick of what you're doing; you're going to go spend some time away from everybody for awhile, not because it's therapeutic and not because you're unsafe but because this is how I'm going to manage you. [LB562]

SARAH FORREST: Right. [LB562]

SENATOR COASH: And I think what Senator Ashford is trying to address is that third category. [LB562]

SARAH FORREST: Um-hum. [LB562]

SENATOR COASH: Is that...? [LB562]

SARAH FORREST: That's my understanding. [LB562]

SENATOR COASH: And you don't have a problem with their removal from stimulus? [LB562]

SARAH FORREST: No. [LB562]

SENATOR COASH: Or the removal from safety? [LB562]

SARAH FORREST: Absolutely not. [LB562]

SENATOR COASH: Okay. All right, got it. [LB562]

SENATOR ASHFORD: Yes, Senator Christensen. [LB562]

SENATOR CHRISTENSEN: I know this is a little bit different subject, but at the same

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time sometimes I think we need to look at the drugs we've got the kids on. [LB562]

SARAH FORREST: Sure. [LB562]

SENATOR CHRISTENSEN: I can take an example of a kid that was in and out of a lot of homes. He wasn't incarcerated. But he was on \$1,100-a-month drugs. And in a matter of 90 days, by a strict diet and exercise, got him on zero drugs. He's now adopted into a family in Imperial and just an all different kid, a kid that was way behind in school, a kid that most people had wrote off. I watched him this last week. He can play sports in Little League. I watched him. You just wouldn't even know it's the same kid. Sometimes I wonder if we aren't going the wrong direction, because what you see...and the same thing happens to adults too. They give them a drug for a certain legitimate reason. Well, then they give them another drug to counter the reactions of the first drug and they start piling them up. And sometimes I wonder if we aren't creating our own problem. And I know that doesn't necessarily...it does affect this bill but it doesn't. But sometimes I think we're just doing it backwards. [LB562]

SENATOR ASHFORD: I think you're right on. One of the things...I think that's exactly...it's totally relevant. I think Senator Christensen brings up a...one of the most glaring things I saw in Washington at Echo Glen was we medicate the kids at Kearney, I think it's eight times more...we spend eight times more money, and I don't have the data in front of me, but at the Kearney facility for medicating juveniles than they do at the Echo Glen facility in Seattle, which is...it's outside Seattle and it's in kind of a rural area but it's near Seattle. And when we started talking there about how much medication...in fact, we called...Stacey, do you remember what the number is? It's a lot. I mean, we medicate those kids significantly at Kearney way more than the norm. And that when we called in to find out much they were medicating the kids are Kearney when we were out in Washington, because it seemed like such a low amount, to Senator Christensen's point, and it was just...the... [LB562]

STACEY CONROY: I think \$25,000...(inaudible). Almost \$25,000 to \$35,000. [LB562]

SENATOR ASHFORD: Twenty-five to thirty-five thousand a year, or whatever. [LB562]

STACEY CONROY: A month (inaudible). [LB562]

SENATOR ASHFORD: Or a month. That's right. It is per month for medications, versus \$8,000. I think that was the contrast. But it was the psychiatrists at the University of Washington that we were dealing with. All said, well, that's just ridiculous; I mean, that can't possibly be; you can't be medicating kids to that degree. So that's just another factor, that Senator Christensen is right on I think on that. [LB562]

SARAH FORREST: Yeah, absolutely. I think it really speaks to the importance of

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developing therapeutic practices that address the underlying needs that are responsible for children's behavior. Sometimes some medication is appropriate. We know that state wards are much more likely to be medicated and on psychotropic drugs than their counterparts. And I know there are some committees at the Children's Commission who have been looking into that. But I think it really does speak to our need to build that therapeutic programming at our juvenile facilities here in Nebraska. [LB562]

SENATOR CHRISTENSEN: Because, you know, I guess in this example I gave, it was a zero sugar diet and then a balanced diet in different food groups and mandatory exercise twice a day of running. [LB562]

SENATOR SEILER: Were they talking to my wife? [LB562]

SENATOR CHRISTENSEN: (Laughter) And it was an all-different kid. And with the doctor's supervision, backed it off of all the drugs. And I think sometimes we've got to realize kids have built-up energy in them... [LB562]

SARAH FORREST: Sure. [LB562]

SENATOR CHRISTENSEN: ...and whether it's solitary or very minimal movement is detrimental. [LB562]

SARAH FORREST: Yes. [LB562]

SENATOR CHRISTENSEN: Where if we had a track that they had to run on would give a lot more benefits. And the balanced food and, you know, some...I'm sorry. I think sometimes if we treat kids for ADD is nothing more than sugar highs, and if we had the right diet we'd be off of it. And...oh, I just... [LB562]

SENATOR ASHFORD: Well, it certainly is the case in our trip to Seattle where they talked a lot about how they get these kids off...they try to do that consciously, to reduce their reliance on medication. So thank you, Sarah. [LB562]

SARAH FORREST: All right. Thank you. [LB562]

SENATOR ASHFORD: Any other proponents? Any opponents? Any neutral? Neutral? [LB562]

JULIE DAKE ABEL: Thank you, Senator Ashford and members of the committee. My name is Julie Dake Abel, J-u-l-i-e D-a-k-e A-b-e-l, and I'm the executive director of the Nebraska Association of Public Employees, which is the union that represents the majority of the employees at Kearney and Geneva. I did just want to speak just very briefly. My concern with this bill did lie in the part that talked about the use of seclusion.

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And just for information purposes, I do think it was kind of touched on that what we see, especially out in Kearney, is that we have kids that actually request to be put in seclusion as a protection to themselves and as a protection from some of the other youth out there. So I did just want to bring that up as another part of the discussion. We do have some concerns with...that seclusion would be prohibited for disciplinary purposes, but I think Senator Seiler, you know, brought that up very well that, you know, if there were any threats against staff or other youth, that seclusion would be an option. But like you said, Senator Ashford, there aren't a lot of options for the children at that point. But I did just want to bring that, you know, there are some other reasons that maybe we don't always think about that kids may actually ask for seclusion for some period of time. [LB562]

SENATOR ASHFORD: Senator Lathrop. [LB562]

SENATOR LATHROP: I've got to...you know, while I'm listening to this, we talked about the drugs and then we talk about the people acting out, and I...it seems like some of the problems mirror exactly some of the problems that were going on at BSDC when we started down there. And what we concluded, and you're familiar with that too; a lot of the people that work down there belong in your organization. [LB562]

JULIE DAKE ABEL: Yes. [LB562]

SENATOR LATHROP: And what we learned is that the people who get in trouble or the people that cause the trouble at BSDC, for example, are the people that aren't getting the habilitation in the first place. If you park them somewhere or you don't pay attention to them, you're not giving them treatment or you don't have enough staff to attend to them, then they're going to get into mischief. And so the answer, at least at BSDC, for a time, was they were getting more medications and they were using restraints. And I think the conclusion of our committee, and what was evident from the Department of Justice coming in and CMS, was that if you have enough staff and the staff is actually engaged in habilitation, then you don't have near the problems that you're using the drugs and the restraints for. And so maybe this is an opening for you to tell us about the staffing there and whether there's adequate staff to do the things...in other words, has seclusion at the YRTC's become a crutch for not having enough people there providing some form of rehabilitation for these young people? [LB562]

JULIE DAKE ABEL: I don't know that seclusion itself has become a crutch for that. What I do know is that I do think that there could certainly be a lot more work on rehabilitation with the youth if they had more staff, because so much of their time is spent in trying to prevent these things from happening, because there has been...you know, unfortunately, there continues to be somewhat of a high level of assaults there. So I think the more...not only the more staff that they would have there but also using resources they have and maybe additional resources--whether that's a monetary value

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or not, I don't know--but training for the staff, really working with them on what are the things that we can do to best protect ourselves and habilitate the youth I think is really important and a piece that's probably missing. [LB562]

SENATOR LATHROP: Can you tell me, at BSDC...that's, obviously I'm familiar with that, so--as a state institution. They have the feds come in and they have the state come in and then when they got in trouble they had the Department of Justice and CMS. Who does an evaluation or who is responsible for evaluating the YRTC's? Is that...do they have inspections or surveys, as they call them, in the... [LB562]

JULIE DAKE ABEL: There is. I don't think I have that with me, but there is some sort of an accreditation that they go through. I believe it's a similar accreditation to what the Department of Corrections has for some of their prisons. [LB562]

SENATOR LATHROP: Did we sign up for that accreditation? Is that...? [LB562]

SENATOR ASHFORD: Yeah. There is an accreditation. [LB562]

SENATOR LATHROP: I just wondered. If we go through an accreditation process, how we had kids that were spending ten days in seclusion? [LB562]

SENATOR ASHFORD: Well, I think it's because it's more of a corrections accreditation. They're accredited by the same...in the same sort of way that a corrections facility would be. That's sort of what they do. I don't think there is another accreditation that would be juvenile-centric or rehabilitation-centric that I'm aware of. [LB562]

SENATOR COASH: There is. [LB562]

SENATOR ASHFORD: There is? [LB562]

SENATOR COASH: And I'm not sure what Kearney or Geneva, how they are accredited, but it's more in the mental health accreditation healthcare. [LB562]

SENATOR ASHFORD: Okay. Because I think... [LB562]

SENATOR LATHROP: But you think they hold that accreditation? [LB562]

SENATOR COASH: I believe so but I'll have to check. [LB562]

JULIE DAKE ABEL: And I can certainly... [LB562]

SENATOR ASHFORD: And I think the youth development centers have similar accreditation too. I know I see Brad back there, but I know they go through some kind of

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process. [LB562]

JULIE DAKE ABEL: And I can certainly try...excuse me, Senator. [LB562]

SENATOR COASH: I think those are questions we should ask when we have your bill up. [LB562]

SENATOR ASHFORD: Well, tomorrow we're going to go have all these people talking about it; and hopefully, Thomas won't leave. [LB562]

JULIE DAKE ABEL: And I was just going to bring up, we'll have some other folks here that would probably be able to help answer that question as well. [LB562]

SENATOR ASHFORD: Right. But I do...I think your point is very well taken. I mean, the juveniles do ask for seclusion. They have no place to go. They have absolutely no privacy. You can't take a 14-year-old kid and throw them into that environment and not have a room for them to go to, to even deal with their own remorse or their own grief about being away from their parents. I mean, they're in a dormitory. And that's not the fault of your members. They're trying to...at all. They're trying to make it work in an environment that's impossible. [LB562]

JULIE DAKE ABEL: No, exactly. And for some kids, for them too, it's so they're not bothered by other kids. I can be in here. I can read my book. [LB562]

SENATOR ASHFORD: Right. [LB562]

JULIE DAKE ABEL: I can listen to my music and just be left alone for awhile. [LB562]

SENATOR ASHFORD: I was so impressed by the...and, of course, Geneva has more of that. They have more individual places for the girls to be. But...and I think the facility...the juvenile...I get the acronyms mixed up, but the juvenile corrections facility has individual, I guess if it's a correctional facility I guess you technically call them...I don't know what you call them, but they are rooms. They are secure rooms that they have. And in Kearney they don't even have that, so. And that's...and these are kids that have been tried and convicted in adult court for adult crimes. Okay. We get it. You're right on to talk to us about it. Thanks. [LB562]

JULIE DAKE ABEL: Thank you. [LB562]

SENATOR ASHFORD: Any other neutral testifiers? That concludes the hearings today. [LB562]