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Judiciary Committee
March 15, 2013

[LB247 LB355 LB503 LB580]

The Committee on Judiciary met at 1:30 p.m. on Friday, March 15, 2013, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB247, LB355, LB503, and LB580. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: Mark Christensen.

SENATOR MCGILL: We are waiting on one or two more senators. We will go ahead and get started. Folks, we're ready to go ahead and get started. Many of the other committee members are opening on other bills in other committees, so don't take it personally that they're not with us here yet this morning...or this afternoon. The committee members that are here: Senator Seiler over at the far end of the table; Senator Coash, and then...from here in Lincoln; and then myself, Amanda McGill. As I said, the other committee members will be joining us on and off throughout the hearing. If we could get everyone to silence their cell phones, please, go ahead and take a quick double-check and make sure that that's done. I know yesterday we had a lot of them going off, so...and we'd appreciate you checking on that. If you plan to testify, there are forms by the door. Otherwise I think we are...thank you. (Laugh) I think we're good to go otherwise. Senator Larson is here with LB247.

SENATOR LARSON: Thank you, members of the Judiciary Committee. I am Senator Tyson, T-y-s-o-n, Larson, L-a-r-s-o-n, representing District 40 from O'Neill, and I am here to introduce LB247. LB247 is a fairly straightforward bill. It removes the requirement that a county attorney has to file a petition before the court makes a determination of parental support for a juvenile who either is placed in the care or custody of someone other than his or her parent, or is ordered by...undergo medical, psychological, or psychiatric treatment or study. This bill would also make the support determination by the court at the court's discretion as opposed to requiring the court to make that determination. The first version of this statute was originally passed in 1981 and it was originally the sole decision of the court to make the determination of parental support, taking into consideration the cost of support and the ability of the parent to pay. It was never required that the court make this determination but was left as an option to the court to pursue if the judge felt the parent could afford to contribute to the juvenile's treatment and care. The statute was changed in 1987 to make any determination of parental support by the court contingent upon the county attorney filing a petition requesting that determination. The 1987 change also forced the court into making a determination of support if the county attorney's petition was properly filed. The goal of LB247 is to give the court the option to make a parental support determination if it feels the support determination is necessary or feasible, like the court was able to do when the statute was originally passed. Currently, if a judge wants to order a parent to pay support based on the facts of the case in the juvenile and parents' situation, the judge would only be able to make that order if the county attorney had asked for a

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determination of support. With these changes, the statute would still allow for a county attorney to petition the court to make the determination, but it would give the court an option to make the determination even without the county attorney's petition. The fiscal note attached to this bill indicates that HHS is concerned that judges will stop ordering child support in these cases because of a switch in the language that from that would no longer require the court to make these determinations. I do not believe this is the case. During the interim we surveyed both juvenile judges and county court judges about their use of this statute, and received mixed responses, with most of the juvenile court judges stating that parental support determinations are made in a majority of cases that come before them. County judges, however, were more varied in their responses. Some indicated they make parental support determinations often, and others said they never ordered support under this statute. I do not believe that this statute will be used less by judges because of the language changes in this bill. I do believe, however, based on some of the responses from those judges, that removing this requirement that the county attorney petition the court before the court can make a decision, in fact, increases the support determinations ordered by the court. Thank you, and I'd be happy to answer any questions the committee may have. [LB247]

SENATOR MCGILL: Thank you, Senator Larson. Any questions? No? Thank you very much. [LB247]

SENATOR LARSON: Thank you. [LB247]

SENATOR MCGILL: We will start with proponents. Anyone here in favor of LB247? All right, anybody here opposed? Anyone here neutral? This is my favorite type of hearing. (Laugh) Senator Larson, anything else you would like to share on that? No. Senator Larson waives closing, so we will go on to LB355. [LB247]

SENATOR LARSON: (Exhibit 1) Again, good afternoon, members of the Judiciary Committee. I am Senator Tyson Larson, representing District 40, and I am here today to introduce LB355. T-y-s-o-n L-a-r-s-o-n. LB355 would change Nebraska's age of majority from 19 years old to 18 years old for most statutes with an age-of-majority reference or requirement. I have an amendment that would remove the provisions of this bill that would change the age of majority under Medicaid. The amendment also adds a provision to those statutes relating to the Nebraska State Patrol retirement benefits that stipulates that changes made in this bill would only apply to officers hired on or after the operative date of this bill. Currently, Nebraska is one of three states who have an age of majority over the age of 18. Alabama also sets its age of majority at 19, while Mississippi sets it at 21. Other than these three states, the rest of the country allows 18-year-olds all the rights and responsibilities owed to those states' adult residents. In 1971, the country felt that 18-year-olds could handle the reserved, revered responsibility that comes with the right to vote by adopting the 26th Amendment to the Constitution and making the right to vote at 18 applicable both at the federal and state government

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level. At least 30 years prior to the 26th Amendment, the country felt that 18-year-olds could handle the very adult responsibility of choosing to serve in the country's armed forces. Today, all 18-year-old men are required to register with the Selective Service in case a draft is ever necessary, and any 18-year-old man or woman may choose to enlist in any branch of the armed forces. Even Nebraska thinks that 18-year-olds are able to handle some of the rights and responsibilities afforded to its adult residents. In 2009, which was the last time the age-of-majority question was brought before this body, the Legislature passed LB226. In its final, amended form, LB226 gave 18-year-olds the rights to make medical decisions if their parents transfer those rights to them but, more importantly, the bill gave 18-year-olds the right and responsibilities of entering into legally binding contracts or leases of whatever kind or nature. The right to enter into contracts or leases is a substantive right with legal implications that the Legislature felt 18-year-olds are old enough to assume. I understand that this bill will make a broad, across-the-board change to the age of majority in this state, with a few exceptions due to certain federal law limitations. The right to enter into a contract or to make medical decisions are serious responsibilities, especially compared to some of the other rights a person has to wait to have until they turn 19 years old. I believe that 18-year-olds should be given all the rights of an adult resident...receives in the state of Nebraska, instead of the piecemeal responsibilities the Legislature has decided to grant 18-year-olds every time this issue comes before us. That being said, I am willing to work with those who have concerns about some of the changes made in this bill. The amendment I offered addresses two of those issues presented to me after I introduced the bill. The portion of the amendment that would remove provisions of this bill relating to Medicaid would prevent Nebraska from losing federal aid under the Affordable Care Act provisions, as stated in the fiscal note. The other part of the amendment prevents the age-of-majority change from impacting the contractual rights that are...that current Nebraska State Patrol officers have with the state relating to their retirement benefits. I will be more than willing to work with anyone who sees additional issues with this bill. [LB355]

SENATOR MCGILL: Questions from the committee? Oh, I'm sorry. Senator Ashford is here. I didn't even see you come in. (Laugh) [LB355]

SENATOR ASHFORD: No, that's fine. I...go ahead. [LB355]

SENATOR MCGILL: I do, actually, have a question now. [LB355]

SENATOR ASHFORD: Go ahead. Yes, please, go ahead. [LB355]

SENATOR MCGILL: I think Appleseed is here to talk about it, but I know the foster care system is one where, you know, there's a concern. And I'm trying to make it so there are services for kids after 19, actually, because it's such an at-risk population. But I know that will be one of them we'll need to talk about. Otherwise, what are the biggest

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problems right now? I know we fixed the ability to sign a contract a couple years ago for cell phones and apartments. What do you see as, like, the continuing biggest issues? [LB355]

SENATOR LARSON: You know, I think there's obviously...part of the reason that there's issues...and, you know, you did the make the ability to sign a contract. But I've actually just heard a story from Senator Price that those cell phone companies still don't realize that 18-year-olds can sign those contracts, and they're turning people down. [LB355]

SENATOR MCGILL: Huh. [LB355]

SENATOR LARSON: So I think there's just a consistency. We've shown that we've just had piecemeal legislation, and consistency would be nice. [LB355]

SENATOR MCGILL: Any other situations? Just a... [LB355]

SENATOR LARSON: Just, you know, specific situations? No. [LB355]

SENATOR MCGILL: Okay. [LB355]

SENATOR LARSON: I think, you know, coming into line when it comes to foster care. [LB355]

SENATOR MCGILL: Um-hum. [LB355]

SENATOR LARSON: And I understand things like that. And obviously, I think, you know, phasing in to just say, once this bill comes effective, to kick every 18-year-old out that's currently in foster care I don't think is necessarily right. So I understand that there's... [LB355]

SENATOR MCGILL: And even at 19, many of these kids are going from a group home to the homeless shelter. [LB355]

SENATOR LARSON: Oh, of course, of course. [LB355]

SENATOR MCGILL: And so...yeah. [LB355]

SENATOR LARSON: No, and I understand that, and it's... [LB355]

SENATOR MCGILL: Yeah. [LB355]

SENATOR LARSON: So... [LB355]

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SENATOR MCGILL: All right, thank you. [LB355]

SENATOR LARSON: Thank you. [LB355]

SENATOR ASHFORD: Do we have any proponents for this measure? Opponents? [LB355]

PATRICK CONNELL: (Exhibits 2-6) Thank you for the opportunity today to come and talk about the opposing LB355. In respect of the committee's time, I've been asked by three organizations to submit written testimony that documents their objections to LB355. First is a letter from Building Bright Futures, which is very concerned about the effect of this bill on educational benefits to children that are 18 to 19. Second is a letter from Father Steven Boes, national executive director of Boys Town. Third is a letter from the Nebraska Child Healthcare Alliance, and attached to that letter is an analysis by Susan Sapp, who is an attorney with Cline Williams. Susan has, in the past, done previous analysis of this...of that bill, and our alliance has been with the work group to modify the existing language for the right to sign leases, etcetera, that have been done in previous sessions of this Legislature. And then the last is a testimony from the Nebraska Behavioral Health Coalition, which I serve as chair, and I have attached the written testimony for your review. We, as a healthcare community providing mental health, physical health, child welfare, educational services, are very concerned that this bill will limit the availability of critical services that will make children effective adults and also joining the Nebraska taxpayer roles. And we see this bill--in its present form, without a substantial amount of rewrite--not to be in the best interest of Nebraska's children. And so, with that, I would like to conclude my testimony today. [LB355]

SENATOR ASHFORD: There's only one word in the bill, so I don't know how much rewriting we could do. (Laughter) [LB355]

PATRICK CONNELL: Yeah, well,... [LB355]

SENATOR ASHFORD: You mean, maybe we'd do some writing. [LB355]

PATRICK CONNELL: Well, I think that brings up a good question, because the bill is predicated on the fact that, you know, of the age majority and the word "19" to "18." It's where it starts cutting into medical benefits, you know, health benefits, child welfare service eligibility, juvenile justice. It changes that, and then, also, it changes the access to special education. So we've got kids that are...that have turned seniors and they're in foster homes and it's in the middle of the school year, and the last thing we want to be doing is telling them, you're no longer eligible for foster care, you're no longer eligible for special education, you're no longer eligible for Medicaid. [LB355]

SENATOR ASHFORD: The only problem I have is that's not the way the system works.

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The way the system really works is that we give up on these kids at 16 and 17, and it's...you know, theoretically, I agree with you. In practice that's not how it works. So we have 17-year-olds that the juvenile court will not take jurisdiction over and kids that are, you know, already in the system and then do something else, misbehave. And then, you know, they're 17, so they're automatically filed on in adult court. This just isn't the way the world works. That's a...you know, you're...I understand it's not you. But I understand what you're saying, in theory, in the abstract. But in reality, 17-year-olds in this state, and 18-year-olds, are in deep, deep trouble. [LB355]

PATRICK CONNELL: I concur. [LB355]

SENATOR ASHFORD: Yeah. [LB355]

PATRICK CONNELL: But we don't want to lower the bar as a... [LB355]

SENATOR ASHFORD: No, I understand what...your argument. [LB355]

PATRICK CONNELL: Yeah. [LB355]

SENATOR ASHFORD: I'm just saying, for the record, I...you know, if it were...if 17- and 18-year-olds were really being helped by the system. But hopefully, with all our efforts and your efforts of working together on all of what this committee is focused on, in part, this year, we can address that. But it just doesn't work that way. Any questions? [LB355]

PATRICK CONNELL: Thank you. [LB355]

SENATOR ASHFORD: Any other opponents? [LB355]

BRUCE RIEKER: (Exhibit 7) Chairman Ashford, members of the Judiciary Committee, my name is Bruce Rieker. It's B-r-u-c-e R-i-e-k-e-r, vice president of advocacy for the Nebraska Hospital Association, here in opposition to LB355. However, we appreciate Senator Larson's efforts to amend the bill so that it would not apply to Medicaid and look forward to seeing that amendment, as well as working with him on this particular effort, if it moves forward. Our concern is for those individuals that are truly being helped. And as Mr. Connell already mentioned, lowering the bar to 18 precludes many individuals from getting mental or physical health that they otherwise would be able to get, that care that they may desperately need or that...the appropriate care they need at the appropriate time. There are many instances in our hospitals where we are providing that care and that Medicaid is helping provide some of those benefits. And at such a critical juncture, where you have an 18-year-old that may be part of the way through their senior year of school, if they're in school, or out but looking to make that transition into adulthood and to do their best to become a productive member of society, when we get them so close, it is our contention that cutting them off at 18 is counterproductive and

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that the benefits should be there for them through 19, as currently available. [LB355]

SENATOR ASHFORD: You're not getting them that close. The system has failed miserably. So I...you're not...we're not getting them that close. Trust me, we're failing--utterly, totally, dramatically failing. So I understand you're representing the Hospital Association and need to get coverage for those kids, but they're not getting help. So thanks. Any other questions? Thank you. [LB355]

BRUCE RIEKER: You bet. [LB355]

SENATOR ASHFORD: Any other opponents? Neutral? [LB355]

JIM CUNNINGHAM: Senator Ashford and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I am executive director of the Nebraska Catholic Bishops Conference. And I'm here testifying in a neutral position on this legislation because I had a conversation with Senator Larson and I told him that that's what I was going to do, just because there were a couple of issues that I wish to raise for the committee's attention. We've analyzed this bill a number of times--because it's been before this committee before--from a family life perspective and identified what we thought were a few areas where the committee might want to consider some specification. I would ask you...first of all, Section 59 of the bill, that has to do with the ADC age. And this bill would reduce the ADC age from 19 to 18, and the fiscal note acknowledges that that could result in reducing the amount of cash assistance paid to families who qualify for Aid for (sic--to) Dependent Children. A lot of 18-year-olds, generally speaking, still live in the family household. A lot of 18-year-olds live in the family household and are attending high school and, in those particular situations, to make it even more difficult for the family to get by would seem to be a counterproductive policy. And so I'd like to bring that issue to your attention. ADC is a, you know, subsistence payment. It's for basic needs and is an important method or means of cash assistance for low-income families. The second area I'd like to point to is somewhat similar, and that would be child support. And again I would mention that a lot of 18-year-olds who are in high school still live in the household, and it might be that representing or recognizing that situation could be accommodated in the law. I know that, in the state of North Dakota, for example, they have a provision in their law that allows for the continuation of child support through graduation from high school or age 19, whichever comes first, and that might be a reasonable policy. And then the third area I want to mention is Section 39 of the bill, and that's the law with regard to durable power of attorney for healthcare. And again, with many 18-year-olds living in the household, it's...you know, that is a potential for conflict, it would seem, if an 18-year-old executes a durable power of attorney for healthcare that excludes the parents from any participation in those decisions. I don't know how realistic that situation would be but just wanted to mention it for the committee's consideration. And I appreciate that Senator Larson has indicated a willingness to look at a couple of these things. Thank you.

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[LB355]

SENATOR ASHFORD: Thank you, Jim. I don't see any questions. Thanks. [LB355]

JIM CUNNINGHAM: Thank you. [LB355]

SENATOR ASHFORD: Any other opponents? [LB355]

JIM CUNNINGHAM: Neutral. [LB355]

SENATOR ASHFORD: (See also Exhibit 8.) Neutral. I'm sorry, Jim. Tyson waives. Okay, moving right along. Senator Coash. [LB355]

SENATOR COASH: Thank you, Senator Ashford. Members of the Judiciary Committee, I am Colby Coash, C-o-a-s-h. I represent District 27 right here in Lincoln, here to introduce LB503, which is a bill to introduce a concept into HHS called alternative response for child welfare. Right now, what we have is a one-size-fits-all approach to investigating abuse and neglect. And let me give you an example to illustrate this. Let's say a little girl goes to...she's ten years old and she goes to school and she tells her teacher, I can't concentrate because I'm hungry. And the teacher says, well, why are you hungry? And the little girl says, well, I haven't eaten all weekend. That teacher has got a responsibility under current law to call child protective services and that case will be investigated. Let's say the investigation shows up that, yeah, in fact, the little girl was telling the truth, and the reason that she is not eating is because her mother feels that withholding food from her is a good way to address her grades, and says until you get your grades up you're not going to be eating. That mother is going to be found...could be charged criminally; but in addition, will be found to be neglectful and the mom may find herself on the abuse and neglect registry. That's what the investigation will lead to. Now picture another little girl. Same age, same school. Goes to school and says, I'm hungry. The teacher addresses it in the same way the teacher did in the first case. But this time the investigation finds out the reason that this little girl is hungry is because Mom doesn't have food in the house and she cannot afford to feed her child. So you have two cases where the outcome for the child is the same: you've got a hungry kid who shouldn't be hungry. The department, because of the way our law is structured now, must treat each one of those mothers the same. The department does not have the latitude to say, you know what, Mom who withholds food because she thinks it's a good discipline approach, we're going to treat you in a way that you're teaching your child and you're going to end up on the abuse registry because you are a neglectful mother. Under the current law, the mom who can't afford food is treated exactly the same way. What this bill is intending to do is to give a different tool to Child and Family Services so that they can take the second mom down a different track and help her rather than lean on her and nail her for being neglectful. So this is how it works--I'll give you a couple of definitions here. Alternative response is the name of the track that I'm

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trying to build for child protective services. It's defined as this: Reform that structures child and protective services to offer a minimum of two responses to screened-in and accepted children or child abuse and neglect reports. A new family assessment response pathway complements the existing investigation pathway. We have an investigation pathway; we're going to build an alternative response pathway. The assessment pathway does the following: It seeks safety through family engagement and collaborative partnerships; it allows and encourages agencies to provide services without a formal determination of abuse and neglect; it sets aside faultfindings and substantiation decisions; is usually applied to reports that do not allege serious and imminent harm; and links families to services more quickly. This allows the department to do social work rather than just be investigators of bad people. LB503 tailors this concept to the needs of our state, and here's how it would work. It provides a demonstration project to allow for alternative response to child abuse and neglect reports. These projects would be planned in consultation with the Nebraska Children's Commission. Following planning, HHS could use alternative response in up to five designated locations, with a report due to the Legislature in December 2014. They could then expand alternative response to five more locations on January 2015, with another report due to the Legislature in November 2015. Use of alternative response after May 2016 would require further approval of the Legislature. These demonstration projects would allow for low-risk child welfare to be handled by empowering families, by building on their strengths rather than investigating them for the purposes of a criminal charge or placement on the abuse and neglect registry. A caseworker would work with such a family by assessing their needs and strengths and working with them on obtaining community services. Such cases would not be shared with law enforcement. However, if a caseworker had reasons to believe that a child's safety is compromised, he or she would have to refer the family for a traditional investigative and law enforcement response. In addition, quarterly, aggregate, nonidentifying information about the individual cases would be shared with outside agencies such as county attorneys. However, only the DHHS and the Inspector General of Child Welfare in Nebraska would have access to identifying information about alternative response cases. While a family assessment track I just described would be helpful in many low-risk child welfare cases, there are, of course, many other highly unfortunate cases in our state. Per the bill, cases that would not qualify are those that involve allegations of a child fatality, physical abuse resulting in serious bodily injury, injury to a child sustained during a domestic assault, neglect resulting in bodily injury, the manufacturing and presence of methamphetamine, a report of an adult or caregiver residing in the home where such caseworker has had his or her parental rights terminated, an abuse or neglect allegation where there is already an investigation, or where the family is receiving services already pursuant to an abuse or neglect charge, and cases where a child has been removed for kidnapping. So the cases that are appropriate for this response are cases like the second example that I gave you where a mom needs help accessing food for her child. The first case is not appropriate. But right now, as I said, the department doesn't have an alternative track. So I hope you will give thoughtful consideration to this opportunity

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to, when it's appropriate, strengthen families in their homes as an alternative to our current method of dealing with child abuse and neglect. And following my testimony will be several groups who helped me work on this concept and what it could mean for Nebraska, and I thank you for your time. [LB503]

SENATOR ASHFORD: And this is in line with our whole idea of keeping the kids in the home and... [LB503]

SENATOR COASH: Yeah. The idea is serve the kid where they are. And if you don't have to pull the kid out because they're...make the situation safe, not just...by putting something in there that helps them be safe,... [LB503]

SENATOR ASHFORD: Right. [LB503]

SENATOR COASH: ...rather than pulling them out in the name of safety. I think... [LB503]

SENATOR ASHFORD: Because safety is sort of a grab...kind of a... [LB503]

SENATOR COASH: Right now, you don't have... [LB503]

SENATOR ASHFORD: ...Big Ten kind of approach. [LB503]

SENATOR COASH: ...we don't have the options. [LB503]

SENATOR ASHFORD: Right. I mean it's...right. [LB503]

SENATOR COASH: A child is in danger. Rather than just eliminating the danger, we pull the kid out. And I think no doubt we all know that Nebraska has a high percentage of children pulled out of their home. [LB503]

SENATOR ASHFORD: Right. [LB503]

SENATOR COASH: This allows a tool for a department to do what Child and Family Services is really designed to do, which is be social workers, help families, and not just look for bad guys. And that's unfortunately the track that they are mandated by our current law. They have to go in. They see a kid who's been neglected. They've got to find a bad guy there and they've got to put them on the registry; and that's just not appropriate for every family. [LB503]

SENATOR ASHFORD: Do we have enough therapy for families to meet those needs? [LB503]

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SENATOR COASH: Enough therapy? [LB503]

SENATOR ASHFORD: Therapy. Social workers can perform family therapy. But is there enough? Are we really focused enough... [LB503]

SENATOR COASH: We've got plenty of child and protection safety workers, and what they do is they spin their wheels trying to find places for kids who they now have to pull out of the home. These workers would just as soon work with the family in their home and provide the services that they need. So I don't think we have a lack of people to do the work. [LB503]

SENATOR ASHFORD: So we have enough family therapists to...I mean, I guess at the bottom, this is very simplistic, is that we want to keep families together and we want to have enough...try to rebuild these families. If we supposedly have all these families that are broken and dysfunctional, maybe the answer is they're not so much broken and dysfunctional as that they're put together in a class of families that makes it worse than it is. Is that possible? [LB503]

SENATOR COASH: Yeah. And to answer your question, Senator Ashford, about therapy: A lot of these families, they don't need therapy; they need food. Okay? And... [LB503]

SENATOR ASHFORD: And maybe a little therapy or...? [LB503]

SENATOR COASH: Maybe. Maybe. But... [LB503]

SENATOR MCGILL: (Laugh) We all need therapy. [LB503]

SENATOR ASHFORD: Yeah. I was going to say, that's quite a statement. (Laugh) No. [LB503]

SENATOR MCGILL: I have a quick thing to add to that. [LB503]

SENATOR ASHFORD: Yeah, Senator McGill. [LB503]

SENATOR MCGILL: One of the things...thank you, Senator Coash, for bringing this. I'm...yeah, I'm so glad you've been working on this. But one thing I saw in the Kids Count report was that for all of the kids who were taken out of the system, we actually have a high rate of reunification and we think it's because kids are being taken out just for, like, a two-week period. We're causing trauma to them during that two weeks; and then they need therapy, you know. So you're making the...we're making the problem worse. [LB503]

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SENATOR COASH: Let me speak to that trauma, because I used to run shelters. That was a position I had here in Lincoln for many years. And when I ran the shelters, I...we would get children pulled out of their home many times for reasons of poverty. Those children would often be back in their family home very quickly. And I...in the beginning of doing that work, I always slept well at night knowing that when that kid was in my shelter I knew that they were safe and fed and warm. But what I came to realize later on was that being in a dirty home with your mom and dad is less traumatic than being in a clean home without your mom and dad. And we were doing...in the name of safety, we were doing some pretty, some harmful things to kids where if we had a different way of addressing them we could have eliminated that trauma. We could have helped those families and probably never seen them again if we did it correctly, so. [LB503]

SENATOR ASHFORD: I mean, this is pretty good stuff. [LB503]

SENATOR MCGILL: Um-hum. It's tremendous. [LB503]

SENATOR ASHFORD: Good job, Colby,... [LB503]

SENATOR COASH: Thank you. [LB503]

SENATOR ASHFORD: ...again. You just seem to be...I mean, you've risen the bar. You've raised the bar on yourself... [LB503]

SENATOR COASH: We'll see what we can do. [LB503]

SENATOR ASHFORD: ...in my view. [LB503]

SENATOR COASH: Thank you. [LB503]

SENATOR ASHFORD: I don't see any other questions. [LB503]

SENATOR COASH: Okay. [LB503]

SENATOR ASHFORD: Okay, proponents? [LB503]

MELANIE WILLIAMS-SMOTHERMAN: (Exhibits 9 and 10) Good afternoon. My name is Melanie Williams-Smotherman, M-e-l-a-n-i-e, Williams hyphen S-m-o-t-h-e-r-m-a-n. I am the founder and executive director of the Family Advocacy Movement, a grass-roots organization from Omaha that advocates for Nebraska families and their children who have been unnecessarily caught up in the child welfare and juvenile court systems. And I must say there are a lot of them, which is why I travel to Lincoln to testify whenever possible and why I am especially appreciative of LB503. The materials that I've handed out, if there's time at the end or if members of the committee would like further

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explanation, I can give that. However, it's pretty self-explanatory and it supports my testimony. What I witness every day underscores exactly why a competent differential response is so necessary. The Family Advocacy Movement is unique. Families who reach out to FAM, without exception, are families who should never have had their children removed from their homes or suffered through a system that treats everyone as guilty unless proven innocent. Through our efforts to learn about these families, I listen to their stories and experiences. I review their case documentation and attempt to mediate concerns between them and agency officials. I accompany them to so-called team meetings and the routine factory line juvenile court proceedings which to me always resemble my understanding of what a kangaroo court is, more than what a U.S. American center of due process and fact-finding should be. Over the past four years, we have discovered, firsthand, exactly why the Nebraska child welfare system is so fundamentally broken and why any initiatives intended to throw more money at it simply to create more positions, hire more caseworkers and judges, etcetera, is exactly the opposite of what we should be doing. We must stop taking so many children away from their homes, and we must stop pulling families into a system simply because they are poor, they lack education, lack resources to meet some contrived standard of care, or are actually innocent of the allegations but unable to afford competent legal representation. Differential response expert Caren Kaplan informed the Health and Human Services Committee this past October that for more than a decade the great majority of maltreatment reports in the U.S. involved neglect rather than physical or sexual abuse, and the most recent child maltreatment report shows that children who experience neglect comprise approximately three-quarters of all child victims. And in 2010, the state of Nebraska identified 96.5 percent of all so-called victims--I would say victims of need--as being victims of neglect. I will...she concluded by saying: I will tell you that I have not seen such a high percentage in all of my work across the nation. It is a clear liability to be a parent or a child in a system such as this. No Nebraska parent or child is safe from our current "grab the child and run" system. But most horribly, I have learned firsthand how being poor... [LB503]

SENATOR ASHFORD: Melanie, we're going to... [LB503]

MELANIE WILLIAMS-SMOTHERMAN: Oh, we only had three minutes. I expected five. Sorry. Okay. [LB503]

SENATOR MCGILL: (Laugh) [LB503]

SENATOR ASHFORD: Do we have any questions of Melanie? Yes, Les. [LB503]

SENATOR SEILER: On the first page on your handout... [LB503]

MELANIE WILLIAMS-SMOTHERMAN: Yes. [LB503]

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SENATOR SEILER: ...what are you talking about when you say total abuse and neglect reports assessed? Do you mean the...it's the second and third, or third and fourth columns at the bottom. [LB503]

MELANIE WILLIAMS-SMOTHERMAN: So with regard to the Health and Human Services statistics? Is that what...is this the page that you're looking at, Senator? [LB503]

SENATOR SEILER: Yes. [LB503]

MELANIE WILLIAMS-SMOTHERMAN: Okay. [LB503]

SENATOR SEILER: And that's the bottom chart. [LB503]

MELANIE WILLIAMS-SMOTHERMAN: Right. What concerns us about what these statistics are showing is that numbers to the hotline have increased year by year. And as of 2011 statistics, based on the annual Health and Human Services' own data, 33,500 calls were made or reports were made. And that's, you know, teachers and anyone who has some suspicion that there may be child maltreatment. Of those, approximately half are screened in for investigation, which is an incredibly intrusive process that could have children being removed for a couple of weeks, to years, or maybe never being returned home. And that's the figure, 15,175. Those are the... [LB503]

SENATOR SEILER: So that's just basically your follow-up reports... [LB503]

MELANIE WILLIAMS-SMOTHERMAN: That's right. Those are the... [LB503]

SENATOR SEILER: ...of the people that had initial calls made to your center. [LB503]

MELANIE WILLIAMS-SMOTHERMAN: Right. And then the number of actual investigations. [LB503]

SENATOR SEILER: Okay. [LB503]

MELANIE WILLIAMS-SMOTHERMAN: And then of those, 66.1 percent are eventually deemed unfounded. Of the 22.5 percent--which I believe is still a high figure and misrepresentative of the reality--those are agency-substantiated figures. I believe it's much lower. [LB503]

SENATOR SEILER: Thank you. [LB503]

SENATOR ASHFORD: I don't see any other questions. Thanks, Melanie. [LB503]

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MELANIE WILLIAMS-SMOTHERMAN: All right. Thank you. [LB503]

SENATOR ASHFORD: Sarah. [LB503]

SARAH FORREST: (Exhibits 11-13) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t, and I'm a policy coordinator for child welfare and juvenile justice at Voices for Children in Nebraska. We're here in support of LB503 and would like to thank Senator Coash for introducing it, and we believe that this bill will allow Nebraska to better respond to child maltreatment in our state. As Senator Coash said, one size certainly doesn't fit all in our child welfare system. And unfortunately, we have a current system which is really set up with only one response. It was created with serious abuse in mind when, in fact, most families and children who come to the attention of our child welfare system do so because there's a failure to meet children's basic needs. It's called neglect and it's made up about 75 percent of our cases nationally and makes up over 82 percent of all of our substantiated cases of child abuse and neglect in Nebraska. More than anything, it's often related to poverty. I have distributed a map showing how other states approach child maltreatment. And you will notice that Nebraska is one of the few states who have not increased the effectiveness of the front door of our child welfare system by implementing reforms that create some sort of form of alternative response where we're responding to families' needs in new and unique ways. We have a chance to use our resources here in Nebraska more effectively. We have about 11,000 reports which we investigated in 2011, which were found to be unsubstantiated, which means the families receive no services and exited the system. Think what we could do if those families who have risk factors were assessed and, instead, offered community-based resources and supports. We have a chance to work collaboratively with families in an alternative response system to keep their children safer sooner. We really believe that this response implementing LB503 in a careful way that increases, that ensures that oversight and evaluation is in place, can really strengthen our child welfare system as a whole; and we would urge the committee to advance the bill while keeping in mind the need for transparency, accountability, oversight, and careful and "planful" implementation. We think that this approach has a wonderful impact...can have a wonderful impact on our child welfare system. And I would welcome any questions that you have. [LB503]

SENATOR ASHFORD: How do you like the bill? [LB503]

SARAH FORREST: I think the bill... [LB503]

SENATOR ASHFORD: Now, let me ask you this, Sarah. [LB503]

SARAH FORREST: Yes. [LB503]

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SENATOR ASHFORD: You know, of all the years I've been here, why is it that this seems too obvious, and why does Senator Coash have to think about doing this? Why can't this just be done by...I mean, don't we have this whole department full of professionals that are supposed to... [LB503]

SARAH FORREST: Sure. So the reason... [LB503]

SENATOR ASHFORD: ...that are supposed to do this, like...because they...it's what you do. [LB503]

SARAH FORREST: So in Nebraska's current statute, we have a couple of things that are preventing us from... [LB503]

SENATOR ASHFORD: Yeah, but...I get the statute. [LB503]

SARAH FORREST: Okay. So you get that. [LB503]

SENATOR ASHFORD: I understand why we need to do a statute change. But why is it that, you know? We all know. This is so obvious. Why is it...? [LB503]

SARAH FORREST: It is very common sense. So the way our child welfare system... [LB503]

SENATOR ASHFORD: There's so many years, all the time, it's always 10 years or 20 years. Why is it always that many years? [LB503]

SARAH FORREST: That we're sort of picking up on reform. So the way our child welfare system was set up in Nebraska and nationally was really based on the idea of responding to these serious allegations of abuse and neglect. And so both federal and state law tend to reflect that, which is why we have the one assessment...the one investigatory track here in Nebraska. It's why our federal statutes govern it the way they do. And in the past, you know, folks around the nation have been looking at the numbers and they have been saying we aren't catching the people we were expecting to be catching with our child welfare system. Instead we're catching families who are struggling with poverty, with other family stressors, and so we need to look at ways of doing this differently. [LB503]

SENATOR ASHFORD: I mean, it seems like it can be a spiral because as more and more kids are in poverty--70 percent of the children at OPS are free and reduced lunch--that this just spirals and spirals and spirals. And then it's...and then...so is it really the...I guess I keep coming back to this: Is it the families that are deteriorating or is it that the system pushes them into a place where they deteriorate? I mean, poverty

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should not equal loss of a family, but I'm wondering if the system helps them along the way to deterioration. [LB503]

SARAH FORREST: Well, so I think, you know, when a call is made, whether or not it's substantiated, there's probably some sort of risk factor going on in that family for child abuse or neglect. And unfortunately, the way our system works now, is that when that call comes in, if we screen it out because we don't deem it rises to a certain level, we don't have an option to provide services to that family. We don't have an option to check in and make sure that they have the things that they need. The same thing for when we investigate but don't substantiate a report, that family isn't offered services. So we're missing opportunities to help families before their needs rise to a level. [LB503]

SENATOR ASHFORD: Okay. So these aren't...these aren't...these aren't the abuse cases that we dealt with in Senator Coash's bill on the child...I think it was...or maybe it was Senator Howard's bill on the child advocacy centers. [LB503]

SARAH FORREST: So this could apply to some of those cases, although most of the cases it would apply to currently, you know, are not really receiving anything if we implement a differential response system. And there are different choices that we can make. I think this bill sets a very basic framework. All the pieces are not there yet. That sort of remains to be determined. And I know that there are other testifiers who will be speaking neutrally today... [LB503]

SENATOR ASHFORD: Well, that's fine. It's just frustrating, year after year after year after year, to hear the same thing. [LB503]

SARAH FORREST: Right. Well, I think we have a great opportunity to make changes. [LB503]

SENATOR ASHFORD: I think we do because I think we have people like Senator Coash who fully understand what's happening here. Okay, thank you. That's all I have. [LB503]

SARAH FORREST: All right. Thank you. [LB503]

SENATOR SEILER: I have a question. [LB503]

SARAH FORREST: Oh, yes. [LB503]

SENATOR SEILER: On your map of...your Montana dot for tribal planning and implementation... [LB503]

SARAH FORREST: Yes. [LB503]

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SENATOR SEILER: ...what...where's...is that at Crow Agency? [LB503]

SARAH FORREST: You know, I can get back to you on the specific tribe, but there are tribes across the nation who have been working with folks to implement this at the tribal child welfare level. [LB503]

SENATOR SEILER: Oh, that's what I was going to ask,... [LB503]

SARAH FORREST: Yes. [LB503]

SENATOR SEILER: ...is this tribal-started or is it government-started. [LB503]

SARAH FORREST: So the blue dots would be tribal governments who are implementing alternative or differential response. [LB503]

SENATOR SEILER: Thank you. [LB503]

SARAH FORREST: Yes. Okay. [LB503]

SENATOR ASHFORD: I don't see any other. Thanks, Sarah. [LB503]

SARAH FORREST: Thank you. [LB503]

TIMOTHY REGLER: (Exhibit 14) Thank you. My name is Timothy Regler, R-e-g-l-e-r. On June 4, 2010, our five children were removed from our home after I slapped my 17-year-old daughter during a heated argument. That was the only time I had ever done that. It had never happened before and it has never happened since. Two and a half years later, our case was closed; the incident expunged from our records with an "I'm sorry" from the judge. Meanwhile, our children returned home in worse shape than when they had left. Our savings were depleted and my job working with youth in teenage alcohol prevention gone. From a position of saving taxpayer money through prevention of teenage drinking, drugs, and drunk driving, I find myself now a burden on the state. We are now collecting food stamps and Medicaid coverage for our children as I work as a clerk at a convenience store. Had only the options presented under LB503 existed when my children were removed, as you can imagine the incident with my daughter was a huge wake-up call. That's why the day before our children were removed, my wife and I had met with a family therapist in order to arrange intensive family preservation therapy in our home. This would have been covered under our family's insurance but unfortunately was instituted months later at the expense of the Nebraska taxpayers. Furthermore, under LB503, attempts could have been made to place our children with immediate family members who lived in our town. I have two sisters. One has been the personal secretary to the county attorney since she

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graduated high school. The other sister runs a countywide prevention, mentoring, and juvenile diversion program serving all of Otoe County. Their reputations are impeccable. Neither were contacted. It also would have allowed time to speak with our children's doctors, our pastor, the teachers, the school officials, and police whom I work side by side with in my prevention work. When I first spoke with Senator Coash, it was an attempt to make something, anything, positive out of what had been my wife and my darkest years of our lives. That is why I am here. The Nebraska Department of Health and Human Services ranks statistically among the worst of our states in services to its most vulnerable. Its workers are overburdened, underfunded, and unfortunately, undertrained. This bill will not fix that but it will move us forward. Currently, Nebraska Health and Human Services takes a standardized approach to the very complex problems of struggling families. That approach cannot be successful because there is no such thing as a standardized family. There's no such thing as a standardized child. There's no such thing as a standardized community. I don't just say these things as a parent who experienced unfortunate events. My wife and I stand together as the adoptive parents of six children, as foster parents to dozens more children, and as people who have literally dedicated our lives to give children a better life. It is time for our state to move forward. It is time for options that can help families. LB503 does this. It absolutely deserves your support. [LB503]

SENATOR ASHFORD: Thank you. Thanks. [LB503]

TIMOTHY REGLER: Thank you. [LB503]

VICKI MACA: (Exhibit 15) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Vicki Maca, V-i-c-k-i M-a-c-a, and I'm the deputy director of the Division of Children and Family Services at the Nebraska Department of Health and Human Services, and I'm here to testify in support of LB503. LB503 calls for the renaming of the Child Protection Act to the Child Protection and Family Safety Act, and authorizes the Department of Health and Human Services to develop an alternative response implementation plan, in consultation with the Nebraska Children's Commission, and to implement alternative response in up to five demonstration sites on or after January 1, 2015. Nebraska currently has one response to accepted reports of child abuse and neglect received by the hotline. That response is to investigate. This investigation is an assessment focused on making a determination whether or not child maltreatment occurred and to identify who is responsible for the maltreatment. When allegations are substantiated, the responsible party's name is placed on the central registry for child abuse and neglect. LB503 authorizes a second type of response to accepted reports, called alternative response. Alternative response incorporates family-centered, strength-based practices into child protective services by assigning low-risk families to an assessment track rather than an investigation. The premise behind alternative response is that because there is no formal investigation, faultfinding, or connection to the central registry, and because the worker would possess strong

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family engagement and strengths-based assessment skills, family members would be more open to collaboratively identify those supports and services that promote family stability and would be more likely to engage in those supports. Should threats to a child's safety be identified during an alternative response, the department's assessment would immediately shift to a traditional investigation. Thirty-four states currently utilize an alternative response pathway for reports of abuse and neglect in some capacity. Alternative response is an innovative system response designed to prevent child maltreatment by strengthening families and reducing trauma to children. Alternative response allows protective services to engage with families early by providing an opportunity for families to identify and receive the supports and services they need before child safety is compromised. As you may know, the Division of Children and Family Services recently submitted an application to the federal government for a IV-E demonstration waiver. In this waiver application, Nebraska identified alternative response as one of the major system interventions to improve child safety outcomes. The department's alternative response efforts will be moving forward in anticipation of the Title IV-E waiver being approved. This will allow the department to use flexible federal dollars to fund services for families receiving an alternative response. I feel confident that we are moving in the right direction with the federal waiver, and we hope to have an answer in the next few months. The department's support of LB503 is based on our belief that the federal waiver will be granted and that services authorized under the bill will not require additional state General Fund expenditures. [LB503]

SENATOR ASHFORD: Thanks, Vicki. [LB503]

VICKI MACA: Thank you. [LB503]

SENATOR ASHFORD: Do we have any questions of Vicki? Yes, Senator Seiler. [LB503]

SENATOR SEILER: Yes, ma'am. Did you...have you read the fiscal note? [LB503]

VICKI MACA: Yes. [LB503]

SENATOR SEILER: Did you help prepare it? [LB503]

VICKI MACA: I did not. [LB503]

SENATOR SEILER: Okay. Did you...when they talk about an estimated \$200,000 for an independent entity to evaluate, wouldn't the department have enough people to do that? [LB503]

VICKI MACA: Well, I believe the bill calls for an independent evaluator, someone external to the department so it's fair and neutral. [LB503]

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SENATOR SEILER: The bill itself does. Okay. [LB503]

VICKI MACA: Right. Right. [LB503]

SENATOR SEILER: Okay. The question...the question though is, do you have it, if we change the bill that you could do it yourself? Or you don't think that's appropriate? [LB503]

VICKI MACA: No, that would not be appropriate. We would want an independent evaluator. [LB503]

SENATOR SEILER: And then it goes to about \$690,000. Is that correct? [LB503]

VICKI MACA: Correct. [LB503]

SENATOR SEILER: How many children would you be servicing for that? [LB503]

VICKI MACA: Actually...that's a great question. We haven't made any of those specific decisions yet. We're still in the planning part of the process. [LB503]

SENATOR SEILER: So that would be just spent on staff then. [LB503]

VICKI MACA: That's training and the evaluation. Yeah. [LB503]

SENATOR SEILER: Do you have staff or is this additional staff? [LB503]

VICKI MACA: We have staff. [LB503]

SENATOR SEILER: Thank you. [LB503]

VICKI MACA: You're welcome. [LB503]

SENATOR ASHFORD: Thank you, Vicki. [LB503]

VICKI MACA: You're welcome. [LB503]

KIM HAWEKOTTE: (Exhibits 16 and 17) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Kim Hawekotte, it's K-i-m H-a-w-e-k-o-t-t-e, and I'm the executive director at the Foster Care Review Office. Coming around for you is our written testimony and also a copy of our quarterly report that was just filed today with the state. But the Foster Care Review Office agrees with the concept of alternative response. It provides a more flexible response for appropriate

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cases, and we also agree there needs to be oversight. I want to point out a couple of statistics that will be apparent within the report but also in our testimony. We took a specific look as to youth that were removed from home in the last quarter of 2012, and saw how many of those youth returned home during that same quarter. What we found was that about 18 percent of those youth were returned home during the same quarter that they were removed. We then looked at all the youth that were removed from home during 2012, and what we found, out of the 1,622 children, their average length of stay out of home in 2012 was 84 days. But we also found that for 606 of these youth, or 37 percent, they were left out of home care for less than 30 days. So reality as a system is we have one-third of our youth that are being removed from home that could be returned home within 30 days; what do we as a system need to do to ensure or stabilize that home to keep them home? We just felt that it was very important that we point out that data and statistic. Like I said, it is more detailed within our quarterly report, so you can take a closer look at that. There are a couple of issues with regarding implementation in the bill that I also have outlined in our written testimony that I do want to bring up for consideration. First is a look at page 11 of the bill where it discusses oversight and that it's our belief that the Foster Care Review Office should be included in that. Under our federal statute and guidelines, even in an alternative placement, if for some reason that youth is removed from the home or placed in a voluntary placement, under federal law we do have an obligation to review that, so we would need some access to that information. The second thing is there's nothing specified within the bill as to the length of time that a case would be an alternative response. So there is some concern, would it be in for a year, would it be in for 60 days, 90 days? Some states have regulated the length of time that a case would be involved in this. The third thing has to do with the cases that would not apply for or be available to be used with alternative response, and that deals with repeat episodes. Some states have put a provision in that would define a maximum number of repeat episodes of alternative response that would be done within a set time period that they wouldn't be eligible for alternative response again. Fourth, one of the concerns that we have seen and it is...oh, sorry. I can stop. [LB503]

SENATOR ASHFORD: Okay. Do we have any questions of Kim? [LB503]

SENATOR SEILER: Kim, is there a correlation between the number of placements a child is in and his ability to get back to normal? [LB503]

KIM HAWEKOTTE: We believe there is. Yes, Senator. [LB503]

SENATOR SEILER: And what level is that? [LB503]

KIM HAWEKOTTE: Research isn't as specific as we would like it to be in that area. A lot of it depends upon with regards to the number of change of placements, Senator. If a youth is removed out of home and placed in a higher level of care, and then they have

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three or four placements and go home, that's a positive change. Even though that might be four placements, it's always a lower level of placement, which is a different youth than the youth that is placed in foster care and has four different foster homes in that same time period. [LB503]

SENATOR SEILER: And that's where you lose them. [LB503]

KIM HAWEKOTTE: And that's where you lose them. [LB503]

SENATOR SEILER: Okay. Thank you. [LB503]

KIM HAWEKOTTE: Any other questions? [LB503]

SENATOR ASHFORD: I don't see any other. Thanks, Kim. [LB503]

KIM HAWEKOTTE: Thank you. [LB503]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? [LB503]

KAREN AUTHIER: (Exhibit 18) Good afternoon, Senators. My name is Karen Authier and I serve as chair for the Nebraska Children's Commission, and I'm testifying in a neutral capacity regarding LB503, which would provide for development of capacity for alternative response to reports of child abuse and neglect. I will explain that the neutral capacity is in part because the Children's Commission decided that there would be some areas that we would endorse or oppose a concept which we have, but that the commission meets monthly, may not have enough opportunity to study all the details as a body. And so it's taking it through our process of actually approving may take longer. In phase 1 of the strategic plan, the commission endorsed the development of differential or alternative response--it can be called by either term--developing that capacity as one of our strategic recommendations to achieve one of four goals. The goal that this falls under is supporting a family-driven, child-focused, and flexible system of care through transparent system collaboration, with shared partnerships and ownership. Those goals and strategic recommendations were reached through a process of strategic planning. We had a professional consultant that was providing services to lead us through this. I would like to thank Senator Coash for introducing LB503 as an initial necessary step in embracing and adopting practices that have improved response to situations of child endangerment in other states. The use of alternative response has been effective in assisting families where children may be at risk because of poverty, lack of parenting skills, or difficulty accessing resources. The focus is on strengthening families rather than removing children from families. While there may be some difference of opinion on details of implementation, there is consensus in the commission on a general plan. And I am confident that agreement can be reached on the details of that implementation by focusing on the end goal of

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strengthening families and protecting children. We have representatives on the commission from all of the key stakeholder groups that are involved in implementing alternative response, decisions, and services; and we are now working on phase 2 of the strategic plan which will provide more detailed recommendations. And alternative response will definitely be included in that discussion as to how, as an element that would improve capacity at the community level to provide child well-being and support families. I think just as a final comment I would just underline that system of care. We have really focused on looking at not just a solution, one solution after another, but how that fits into a system of care. [LB503]

SENATOR ASHFORD: Okay. Senator Seiler. [LB503]

SENATOR SEILER: Yes, ma'am. I have a question that, and all the speakers have alluded to it, they're quick to grab onto poverty as one of the key elements. [LB503]

KAREN AUTHIER: Um-hum. [LB503]

SENATOR SEILER: Is that a fact that you are seeing those because families with wealth or money would be going to the private sector for...? [LB503]

KAREN AUTHIER: Say the last, because of seeing families...? [LB503]

SENATOR SEILER: That the state- or the federal-supported programs would see poverty quicker than a family that had a problem child but would use private placement or a private home? [LB503]

KAREN AUTHIER: I think that's part of it but I think the other part of it...and my day job is as executive director of Nebraska Children's Home, so I work with this day in and day out. We see many families where there would be...they lack...they may lack transportation to get to resources. They may lack ability to pay for those resources, and it's not necessarily...therapy was mentioned. I would guess that for most of these families it's not so much therapy but parenting skills. It may be some very simple hooking up to resources they're not aware of that can help provide for some of the basic needs that the child requires. So a school might report for neglect but it's basically the school may not be aware of it but the family simply can't afford to pay for some very basic needs, whether it's food or clothing or other necessities. In cases such as domestic violence, it may be...and we certainly have worked with some of those cases where the person who is being abused and the children would leave that situation if they knew how to get connected to resources. So the system of care needs to be there obviously for those...to provide those resources. [LB503]

SENATOR SEILER: Okay. Thank you. [LB503]

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SENATOR ASHFORD: I don't see anything else. Thank you. [LB503]

GENE KLEIN: Good afternoon. I'm Gene Klein, G-e-n-e, Klein, K-l-e-i-n. I'm the director of Project Harmony in Omaha, and I'm here in support of the concept but will be testifying as a neutral. Alternative response is...we first really do need to thank Senator Coash for his leadership on this. This really is something that we need to implement in Nebraska. My hesitation is we may not need the level of changes in the statute that are in it today to implement it in this state. When looking at other counties or states around the country that have implemented alternative response, there were four key things that each did or some didn't do that made it successful. The first was there was a very good assessment of the system, and the system was stable. Alternative response wasn't implemented to stabilize the system; it was already stable. The second piece was that the model was very clearly defined. In some states...and in Illinois it's the private agencies that are actually delivering the services to families. In Colorado...in Ohio, it's actually state employees. The model here hasn't been defined. The third piece is that the outcomes are very clear on what we're trying to accomplish and that a budget is very clear. While there is a fiscal note tied to this, which is more about the research or the evaluation component, we don't see dollars being put into the service array. In Missouri, for example, they didn't put funding into their initial run of alternative response, and it didn't work because services were needed for these families but they didn't have the dollars to implement those. And so my recommendation is that we keep the momentum going. Thanks, Senator Coash, for making this get on the agenda. I think HHS and a number of stakeholders are committed to making this happen. I think the bill is premature. I think...I hope to be back with lots of other folks behind us in support of this in the next year, with specific changes to the statute that need to be made in order to push this forward. [LB503]

SENATOR ASHFORD: Okay. Thanks, Gene. How's your capacity doing on the new...on our bill we passed last year? [LB503]

GENE KLEIN: It's going well. [LB503]

SENATOR ASHFORD: I mean, how many more families are you serving? [LB503]

GENE KLEIN: You know, I don't have the numbers right now, but I believe that the number of kids in out-of-home care that are noncourt involved--I'm looking to Vicki--may have... [LB503]

SENATOR ASHFORD: Yeah, the kind of noncourt involved. [LB503]

GENE KLEIN: It's drastically improved. The number of kids that were being removed are now going down a different track of noncourt involvement. [LB503]

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SENATOR ASHFORD: Well, that's okay. Not...but just a general number, I mean, are you....thousands? [LB503]

GENE KLEIN: Hundreds. [LB503]

SENATOR ASHFORD: Hundreds. [LB503]

GENE KLEIN: Hundreds of families at any given time are in the noncourt involved process. So it's working... [LB503]

SENATOR ASHFORD: So these are kids that there was no filing, court filing? [LB503]

GENE KLEIN: That's correct. HHS is involved in Omaha. NFC is involved providing case management to those families. But there's no court involvement and the children are in their home getting services through the system; so hundreds of families. I don't know the exact number but we can get that. [LB503]

SENATOR ASHFORD: It was like zero. I mean, there was zero before, and now hundreds. [LB503]

GENE KLEIN: There were zero. And I want to say at one point we had 400, I believe, in Omaha. [LB503]

SENATOR ASHFORD: Okay. Good job. Thanks, Gene. [LB503]

SARAH HELVEY: (Exhibits 19-21) Good afternoon. My name is Sarah Helvey, S-a-r-a-h, last name H-e-l-v-e-y, and I'm a staff attorney and director of the child welfare program in Nebraska Appleseed. In addition to Appleseed's testimony, we're also providing you with an attachment that outlines some guiding principles that we think about with regard to alternative response. I'm also submitting testimony for the Nebraska Children and Families Foundation. On behalf of Nebraska Appleseed, we generally support, as others before me here have said, the concept of alternative response and a more collaborative response to working with families. We're testifying neutrally today to raise several issues we believe should be considered going forward and to emphasize the need to, you know, proceed with caution. With regard to some of the issues that are highlighted in the attachment, I wanted to mention just a couple of those; specifically, that we believe that comprehensive reform of the child welfare system can only be successful when adequate services are in place. And we fully support the idea of local community ownership of child well-being and believe that the state is ultimately responsible to ensure that there is an adequate service array in place for at-risk children and families and that the state must address some of those existing gaps as a first step. And I guess circling back to the dialogue in the opening with Senator Coash, I think we do see that there are some families that need access to

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treatment and that there are some gaps in treatment and access to treatment in our state. But also we do see families as well that have...are struggling to meet their basic needs. And so we very much support the integration of the public benefit system and the child welfare system but think that we need to look on that side as well about some shortcomings in our ADC program and look at our SNAP program and how we can better integrate those programs as well. We also are concerned that there is still, I think, some lack of clarity about the state's plan for alternative response at this time and that there has very much been opportunities for stakeholders to come together on this. And we thank Senator Coash and the department and other advocates for bringing stakeholders together but think that there is still room for clarity on some key details with regard to this process moving forward. And this is not just a shortcoming for Nebraska. I think it's a challenge for differential response as a model in terms of making sure we're clear about definitions and implementation across and within jurisdiction. I see that I am short on time so I'll just stop there and be happy to answer any questions. [LB503]

SENATOR ASHFORD: I don't see any. Thank you. [LB503]

SARAH HELVEY: Thank you. [LB503]

JULIE ROGERS: (Exhibit 22) Good afternoon. My name is Julie Rogers, J-u-l-i-e R-o-g-e-r-s. I'm the Inspector General of Nebraska Child Welfare here to testify in a neutral position on LB503. The Office of Inspector General of Nebraska Child Welfare was enacted to provide an independent form of inquiry for concerns; provide a process for investigation and review to determine whether individual complaints and issues inquiry reveal a system problem which may necessitate legislative action; and conduct investigations, inspections, and other reviews. LB503 is in line with such intent. Under LB503, whether a family enters the child welfare system through the investigative authority-based intervention or the nonmandated protective or alternative response route, my office would have jurisdiction to investigate the following: (1) any allegation or incident of misconduct, misfeasance, malfeasance, violation of statute, or violation or rules and regs by an HHS employee, a person under contract with HHS, a private agency, a licensed childcare center, foster parent, or a child welfare service provider; or (2) death or serious injury in a foster home, private agency, childcare facility, program under contract with HHS, or any case where services are provided to a family by HHS. Any and all reviews of the alternative response cases would be reported in the office's annual report. Currently, the office receives notice of any death or serious injury that would necessitate a full investigation through the Department of Health and Human Services Division of Children and Family Services critical incident reporting. Record requests--those records that are not found on N-FOCUS--needed for investigations are made through the Department of Health and Human Services Legal and Regulatory Services. The office has full access to N-FOCUS. Accountability is key to maintaining public trust. An Inspector General is entrusted with fostering and promoting accountability and integrity in government--specifically, in this instance, the child welfare

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system. Adding alternative response to the office's jurisdiction would fall under such principles. I am happy to answer any questions. [LB503]

SENATOR ASHFORD: If we have a child that is in the child welfare system and they're truant from school, is there...have we got our...do we have our...I know you have N-FOCUS. But are we doing the data sharing we need to do to be able to react to that truancy situation, or not...their absence from school? The school shows them to be absent. Is there...have we completed our data sharing initiative that we started seven years ago? [LB503]

JULIE ROGERS: You know, my office hasn't, since July, hasn't received any complaints about data sharing, but... [LB503]

SENATOR ASHFORD: Well, I guess my...here's what I'd request that you do. There is no data sharing between education and N-FOCUS; and until we have that, we're never going to have the kind of real-time response we need for the needs of these children. So you might, if you would, just sort of...I know you've got a lot to do, but in the next few weeks if you could take a look at (1) do we have any data sharing with schools and HHS and/or related agencies, number one; and if we don't, why not? [LB503]

JULIE ROGERS: Okay. [LB503]

SENATOR ASHFORD: Great. I don't think I have anything else. Thanks. Anybody else want to talk about this bill? I don't think so. Senator Coash. [LB503]

SENATOR COASH: Well, thank you, committee. I'll just...a few closing comments here, and I think it was mentioned in the testimony, this isn't new. We're not inventing something here that Nebraska would...a path Nebraska would go down. We'd be the thirty-fourth state to have this type of system. I certainly don't want to be the fiftieth. But I think it's a good...what we can do is we can take the experience of the 33 states before us and use that. I mentioned in my opening that I used to run a couple of shelters, and it wasn't that long ago. And when I would work with workers from Child and Family Services and there was an underlying phrase that I heard a lot, and I understand why they operated in this way, and the phrase was: When in doubt, pull them out. In other words, if you thought the kid might--might--be unsafe, just get them out of there. And that's just not working and we've got to give them a different alternative to say to pull them out. We've got a lot of struggling parents out there and this will help them. Most kids...a lot of kids are being...that are pulled out, are back home within 30 days. We do not need to be pulling them out in the first place. That is the reason for this bill, so. And then finally, we've learned some things about child welfare over the past five years, and one of the things we've learned is you've got to be cautious; you've got to do things with evaluation; you've got to step it out; and you've got to have oversight. In this bill it's stepped out from a pilot perspective, demonstration perspective. We're only going to do

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it in five places, then maybe five more, and then the Legislature has to decide if we're going to do it again. The oversight is by the Inspector General, it's built into the bill. The oversight is by the Nebraska Children's Commission. That's a body that was given birth by this Legislature. And then there's oversight of the Legislature. The components are in place. We can do this and we can do this right. So I'll leave it at that. [LB503]

SENATOR ASHFORD: Senator Seiler. [LB503]

SENATOR SEILER: Colby, when we're talking about training and working with parents, they're caught in the system late. Is it something that Al and I should be talking about at the Education Committee of doing those parent trainings way before they're caught in the system? [LB503]

SENATOR COASH: Well, what happens now, Senator Seiler, is the trigger is a hungry kid. You know, that's the trigger that gets the system in there. And what...and you would like to think that when the system gets involved with your family, your family is better off; but that's just not always the case because the department just has limited ability to do things for you. And right now, under our current statute, they're mandated to find the bad guy and to stick them on a registry. And that's the reason for this bill. Catching them early, sure, we do--but sometimes to the detriment of their family. Sometimes, frankly, families would be better off if we didn't get in their business. But if we're going to and we have a responsibility to, and the responsibility is when somebody sees a kid who is being neglected, we have to get in there. The question is, what do we do once we get in there? Do we help them? I mean do we help them with the issue that caused that call to be made into the department in the first place, or do we pull them out, try to do some things with the family, and then put them back in, at great trauma to the child, so. [LB503]

SENATOR SEILER: Well, I'd just like to take you back one more step back up the chain. When we hear children raising children, where do they get the parental instruction before they get into our system that you just described, which is a great system? [LB503]

SENATOR COASH: Yeah. You know, there's plenty of community-based providers out there that will be glad to help families like this, but they don't do it for free. And they need...because a lot of these issues are tied to poverty. They need resources to get hooked in there and in a proactive way. But the department can play a role there and they can play a role to say, hey, we see what's going on; you just need some parent training and let me connect you with a provider in your community. Oh, maybe they have the...this is the very likely scenario: They have the means to pay for it but not the transportation to get there; so the department plays the role of providing the transportation. But under the current scheme they kind of just say, well, we've got a neglected kid, who's in trouble here? So that's what we're trying to solve. [LB503]

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SENATOR SEILER: Thank you. [LB503]

SENATOR ASHFORD: And we're watching to make sure how many of these are crossover kids and that's...the commission is doing that. So they would be able to tell us how many of these kids we're talking about are in the crossover. Can you do that, Vicki? [LB503]

VICKI MACA: Yes. [LB503]

SENATOR COASH: We can catch these kids before they become a crossover kid, you know. [LB503]

SENATOR ASHFORD: But it would be interesting to know, like now, and maybe if you could...I would like to know that for our juvenile justice thing, is how many of these children we're talking about that are in neglect situations, how many of those are crossover by percentage or numbers or some sort of...? Okay, that would be helpful. Thanks for everything you're doing on this, Colby--really. [LB503]

SENATOR COASH: Thank you. [LB503]

SENATOR ASHFORD: We're just very fortunate that you hang out with us in this committee. Okay, I guess that concludes the hearing. We'll move on. Senator Johnson. I think he has a bill that doesn't need much discussion. [LB503]

SENATOR JOHNSON: I think so. [LB580]

SENATOR ASHFORD: Senator, welcome. [LB580]

SENATOR JOHNSON: Thank you, Senator Ashford and members of the Judiciary Committee. My name is Jerry Johnson, J-e-r-r-y J-o-h-n-s-o-n. I represent the 23rd District, here to introduce LB580. LB580 would amend the law regarding claims based on inverse condemnation. A recent Nebraska Court of Appeals decision held up that a sewer backup case was inverse condemnation because it damaged a homeowner's property. LB84 was introduced to establish a process for filing a claim of inverse condemnation. Just this morning, the Nebraska Supreme Court issued a decision that partially upheld and partially reversed the Court of Appeals decision. Because of this, LB580 may not need to be presented in its current form. The interested parties, thus, have not had a chance to review this decision in full. I have one representative from the interested party that would be here to answer any of your questions. At the end of the day, what we would ask is that the committee indefinitely postpone the bill. If changes in the law are needed, a bill can be introduced next year for discussion. That's the end of the introduction. [LB580]

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SENATOR ASHFORD: Thanks, Senator Johnson. Is Margaret going to testify? [LB580]

SENATOR SEILER: You can come and testify anytime. [LB580]

SENATOR LATHROP: Yes. Thank you. [LB580]

SENATOR DAVIS: Thank you. [LB580]

SENATOR JOHNSON: We just about cleared out the house. [LB580]

SENATOR ASHFORD: Pretty much, but it's all right. [LB580]

MARGARET BLATCHFORD: Senator Ashford,... [LB580]

SENATOR ASHFORD: Yes, Margaret? (Laugh) [LB580]

MARGARET BLATCHFORD: ...good afternoon. Members of the Judiciary Committee, my name is Margaret Blatchford. I'm the city attorney with the city of Lincoln, and I'm here to testify in favor of LB580; and also I am in favor of pulling it. (Laugh) I do want to thank Senator Johnson for introducing the bill. He is right, this decision came down just this morning. [LB580]

SENATOR ASHFORD: What did it say? [LB580]

MARGARET BLATCHFORD: The issue is a little complicated, but the issue on the Court of Appeals regarding inverse condemnation was the court focused on proximate causation and when inverse condemnation is applicable. The Supreme Court came down and said your focus on proximate causation is premature. You really need to focus on was there a taking and was there a taking for public use. And so they clarified it for us. And it's a good ruling for the city but we do need time to look at the decision. There are still some procedural issues on inverse that I would like to address, but I think it's better if we do it in a separate bill. [LB580]

SENATOR ASHFORD: Good news. Yes. [LB580]

SENATOR LATHROP: Can I ask a question just so that I better understand this? Can you give me an example, or what's the difference between inverse condemnation and doing something negligently that damages somebody's property? [LB580]

MARGARET BLATCHFORD: Sure. A lot of our cases involve sewer cases, which is what was involved in this case; and so if you have a sanitary sewer line and it backs up and it causes damage into a property owner's home. So, many times, they will file in tort

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and they file an inverse condemnation. So they're filing separate causes of action. On the tort side, they have to prove that the city was negligent, and on the inverse side they have to prove...now, they have to prove that we had...we did an intentional act for a public use. So there are two separate causes of action. Under the Henderson case, it likely was easier to get to the city for liability than it was for negligence. But now with the reversal, we're kind of back to where we were on inverse in our understanding. [LB580]

SENATOR LATHROP: So if the city is negligent and it backs up the sewers, then it's a tort action. [LB580]

MARGARET BLATCHFORD: Right. [LB580]

SENATOR LATHROP: And if they deliberately did it and said, shut the valve; I don't care what happens, we can't have it open. [LB580]

MARGARET BLATCHFORD: They can still file under both and they likely would. Most people file under every cause of action that they can. [LB580]

SENATOR LATHROP: Is there another example besides the sewers, or is that generally where you see... [LB580]

MARGARET BLATCHFORD: That's generally the main one is your sewer and your water mains. [LB580]

SENATOR LATHROP: Okay. [LB580]

SENATOR ASHFORD: Thanks, Margaret. [LB580]

MARGARET BLATCHFORD: Thank you, Senator. [LB580]

SENATOR SEILER: Don't take them on a contingent fee. [LB580]

SENATOR LATHROP: What's that? [LB580]

SENATOR SEILER: Don't take them on a contingent fee. [LB580]

SENATOR ASHFORD: No, I remember...those are tough ones to win, aren't they. Thank you, Senator Johnson. Do you want to...? [LB580]

SENATOR JOHNSON: I may...or, well, I'll close. But here's an e-mail I got from the city attorney from Wahoo, and basically it says the Hendersons failed to establish a claim of inverse condemnation because they failed to provide evidence that the city knew or could have foreseen that its actions would lead to damage to private property; so that's

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how they found the city. Basically, if you shut the valve off and try it, it's an issue. So I guess in closing I would ask that you indefinitely postpone LB580. [LB580]

SENATOR ASHFORD: Okay. [LB580]

SENATOR MCGILL: All right. [LB580]

SENATOR LATHROP: We will do our best to accommodate you. [LB580]

SENATOR ASHFORD: (See also Exhibit 23) We'll see what we can come up with. [LB580]