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Judiciary Committee  
February 05, 2014

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[LB464 LB677 LR399]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 5, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB677, LR399, AM1674 to LB464, and AM1734 to LB464. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Amanda McGill; and Les Seiler. Senators absent: Al Davis.

SENATOR ASHFORD: We are...welcome to the Judiciary Committee. And we will be starting here in just a moment. Senator Mello is hopefully on his way. Is he on his way?

\_\_\_\_\_ : He's on his way.

SENATOR ASHFORD: He's on his way. So we're going to start with LB677, Senator Mello's bill, and then move on to Senator Wightman's resolution, LR399, after that. So just a show of hands, how many are here for LR399, which is the resolution on immigration Senate bill? Okay. How about LB677, Senator Mello's bill? All right. Many of you have been here before, I know; some maybe not. But we have a light system. We ask each of you to keep your testimony limited to 3 minutes, and when the yellow light goes on we'll have about a minute or so to sum up, and then we'll have questions after that. Let me introduce my colleagues. To my left here, Senator Les Seiler from Hastings, Nebraska; Senator Colby Coash from Lincoln; Oliver VanDervoort is committee clerk; Jenn Piatt is my committee counsel; Senator Ernie Chambers, to my right, from Omaha; Amanda McGill from Lincoln; and Steve Lathrop from Omaha and Ralston. Okay. We've been assured that Senator Mello is coming right now.

\_\_\_\_\_ : He'll be right here.

SENATOR ASHFORD: He's in charge of the money so we try to give him an extra few minutes. He's not spending it, is he? He's just...okay, just looking at it, kind of generally?

SENATOR CHAMBERS: You all may not be interested in this at all, but "Once upon a midnight dreary, while I pondered weak and weary, over many a quaint and curious volume of forgotten lore, while I nodded, nearly napping, suddenly there came a tapping, as of some one gently rapping, rapping at my chamber door. 'Tis some visitor,' I muttered, 'tapping at my chamber door, only this, and nothing more.' Ah, distinctly I remember it was in the bleak December, and each separate dying ember wrought its ghost upon the floor. Eagerly I wished the morrow; vainly I had sought to borrow from my books surcease of sorrow, sorrow for the lost Lenore, for the rare and radiant maiden whom the angels name Lenore, nameless here forevermore. And the silken sad uncertain rustling of each purple curtain thrilled me, filled me with fantastic terrors never felt before; so that now, to still the beating of my heart, I stood repeating 'Tis some

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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

visitor entreating entrance at my chamber door, some late visitor entreating entrance at my chamber door; this it is, and nothing more." It was Senator Mello.

SENATOR MCGILL: Hey. (Laughter)

SENATOR ASHFORD: Yeah, these things, we don't plan this stuff.

SENATOR LATHROP: While we're all happy you just got a new member of the Mello family, we were applauding Senator Chambers' recital of a poem.

SENATOR ASHFORD: Yes, we were. And congratulations on Angelina and...

SENATOR MELLO: (Exhibit 2) Thank you. Thank you. I apologize for being late. The Appropriations Committee was missing a member for a quorum, so we had to wait until we had a member come so we could start our hearing as well, so. Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. In today's fast-paced society we sometimes forget that before we had smartphones or scanners that send documents directly to our e-mail, some enterprising business or individual had to invent the technology that makes these devices possible. When we buy these devices we assume that the inventors who hold the patents on the underlying technology have been fairly compensated by the manufacturers. Unfortunately, utilizing everyday technology can make just about anyone a target for what are commonly referred to as patent trolls. While we expect our federal patent system to protect intellectual property of those who create inventive new products and services, a handful of companies have been acquiring groups of patents and then asserting patent infringement claims, essentially with the goal of extorting money from businesses and consumers in Nebraska and around the country. Also referred to as patent assertion entities or patent monetization entities, patent trolls employ a calculated demand letter campaign to seek settlements or licensing fees for patent infringement claims which often have little or no legal merit. In a typical case, an unsuspecting small business receives a letter from an unknown LLC alleging patent infringement through an everyday business activity, such as scanning documents to e-mail, and demanding that the business pay between \$900 and \$1,200 in licensing fees for each employee. In many cases, the letter looks like a scam, so the business throws the letter away. When the business doesn't respond, they typically receive a second letter, this time on letterhead from an out-of-state law firm. Just as with the first letter, the business is given an option: pay up, or hire a patent attorney and prepare for court. If they ignore the second letter, they receive a follow-up letter, this time including a dummy legal filing, naming the business as a defendant in a patent infringement lawsuit which has not yet been filed. Unfortunately, the cost of defending against even a meritless assertion of patent infringement can run in the thousands of dollars; so many people who receive these series of demand letters ultimately find it easier to pay the patent troll rather than

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

Judiciary Committee  
February 05, 2014

---

risk an expensive lawsuit. My office checked with the Nebraska State Bar Association, and there are only 17 licensed patent attorneys in Nebraska; so even if you can afford to defend against the patent infringement lawsuit, it can be difficult to find a lawyer. Currently there is no state law specifically designed to address bad faith assertions of patent infringement. Under LB677, which I introduced on behalf of the Attorney General Jon Bruning, these bad faith assertions would be a specific violation of Nebraska's existing consumer protection statute, the Uniform Deceptive Trade Practices Act. The bill provides criteria for courts to determine whether or not a bad faith assertion has been made, and also requires that any person sending 25 or more patent assertion letters within a one-year period notify the Attorney General's Office of each business and address to which a demand letter was sent. With the passage of LB677, Nebraska will join the state of Vermont and become just the second state to adopt legislation specifically aimed at cracking down on patent trolls. While the patent system is governed by federal law, LB677 is specifically designed to address aspects of the patent system that affect state concerns: consumer protection. Nothing in LB677 would impact the ability of any patent holder to bring legal action to enforce their patent rights. But notification requirements in the bill would give the Attorney General's Office valuable real-time knowledge of a patent troll operation that was currently underway in Nebraska, and allow them to take appropriate action. After LB677 was introduced, representatives from the pharmaceutical industry contacted both my office and the Attorney General's Office with concerns that the bill could potentially impact legitimate efforts to enforce biopharmaceutical patent rights. The committee should have just received a copy of AM1833 which provides a safe harbor from the provisions in the bill for biopharmaceutical patents. Representatives from the Nebraska Attorney General's Office will testify following me regarding the patent troll issue and their ongoing effort to protect Nebraskans from this disturbing nationwide trend. Otherwise, I'd be happy to answer any questions that you may have. [LB677]

SENATOR ASHFORD: Any questions of Senator Mello? Senator Chambers. [LB677]

SENATOR CHAMBERS: Senator Mello, I will ask mine to the representative of the Attorney General's Office, so I'm not ignoring you. [LB677]

SENATOR MELLO: Okay. [LB677]

SENATOR CHAMBERS: But after you get through and we have a chance to talk, I'm going to tell you why that child you had will forever be especially precious to me. [LB677]

SENATOR MCGILL: Interesting. [LB677]

SENATOR ASHFORD: Thanks, Heath. [LB677]

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

Judiciary Committee  
February 05, 2014

---

SENATOR MELLO: All right. Thank you. [LB677]

SENATOR ASHFORD: Are you going to return? [LB677]

SENATOR MELLO: I'm going to stay for a little bit, but I'm going to have to get back to Appropriations, so I'll likely waive closing. [LB677]

DAVE LOPEZ: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Dave Lopez, D-a-v-e L-o-p-e-z. I am an Assistant Attorney General with the Nebraska Department of Justice, and I offer my testimony today on behalf of Attorney General Bruning. Our office partnered with Senator Mello to design legislation which would enhance protections for Nebraska consumers, small businesses, and nonprofits against bad faith demands made by patent assertion entities, commonly known as patent trolls. A patent troll is an entity which acquires patents exclusively for the purpose of monetizing them by alleging infringement by others using possibly related technology. They manufacture or sell no product themselves. The underlying patents are often low quality, having been developed many years previous and bought for, possibly, pennies on the dollar. The scheme works because of structural issues which exist within the patent system, which tip the scale in favor of assertions of infringement regardless of whether they are made in good faith. The staggering cost of patent litigation, even to small defendants, particularly on the defense side, leads many who receive patent troll demand letters to pay up even if they believe the assertion is baseless. This silent extortion takes place out of court and out of view. Though patent law itself is inherently federal and preempted by the constitution, our office, along with a growing number of state attorneys general and the Federal Trade Commission, strongly believe that patent demand letter activities can violate existing state consumer protection laws if they are conducted unfairly or deceptively. For example, if a patent troll claims to have done adequate research to establish a target's infringement, even though no such due diligence has actually taken place, that can be a violation. A similar deceptive act exists if a patent troll insists that it will sue if its demands are refused, even though it has no intention of filing suit at all. We have seen such deceptive practices right here in Nebraska already. In the most egregious patent trolling effort we have uncovered here, a patent troll claimed it owned the patent for "scanning documents to e-mail." It sent demand letters to more than 100 Nebraska targets. Sent through a confusing network of shell companies, these letters threatened litigation, implied its due diligence, had established infringement, and suggested that others in the community had "responded positively" to the demand letter campaign. Not only did the initial demand letters, in this case, not even identify the patent owner; if a recipient called the number listed in the letter, no one answered the phone. Such letters were sent to targets, including an elderly man in an Alzheimer's care facility and a nonprofit choir in Omaha, demonstrating the almost total lack of research on the part of the patent troll. As Senator Mello described, LB677 would enhance our ability to take enforcement action against egregious patent trolls by specifically enumerating bad faith

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

Judiciary Committee  
February 05, 2014

---

demands within the Uniform Deceptive Trade Practices Act. It provides courts valuable guidance for such claims and would deter bad faith activity by establishing an Attorney General notification requirement if you send...if a patent assertion came through more than 25 demand letters in any one-year period. It is critical that we have the tools necessary to fight this growing consumer protection threat, and LB677 will provide an important enhancement to that effort. I look forward to your questions. [LB677]

SENATOR ASHFORD: Thanks, Dave. Any questions? Yes, Senator Chambers. [LB677]

SENATOR CHAMBERS: This seems to me like a mind-reader bill. How do you know whether somebody really intends to file a lawsuit or not? And before you answer that, I can threaten you with a lawsuit right now and then change my mind; and that becomes a crime or a deceptive trade practice under the language of this bill, doesn't it? [LB677]

DAVE LOPEZ: Not in...Senator Chambers, not in the cases we've seen; for example, with the scanner troll example. They had sent demand letters, more than 16,000 of them nationwide, including several hundred here in Nebraska. In none of those cases had they brought suit. So it is a subjective analysis in determining whether the claim of non...of threatening to bring a lawsuit is legitimate or not, but when you can normalize it over that many examples across the country and you determine that they haven't brought an actual case in any of them. [LB677]

SENATOR CHAMBERS: Would a person under the constitution have the right to free speech even if he or she is considered a so-called patent troll? [LB677]

DAVE LOPEZ: Absolutely. [LB677]

SENATOR CHAMBERS: Does a person have the right to make use of the mails if he or she chooses? [LB677]

DAVE LOPEZ: Absolutely. [LB677]

SENATOR CHAMBERS: And is it a crime, in and of itself, to put in the letter what you say is put in these letters? Is that a crime? Tell me what it said in the letter. Just generally, what will it say? [LB677]

DAVE LOPEZ: It will say: We have identified you as an entity who is infringing upon a patent that we own. It will say that they've conducted research. It will invite you to demonstrate how you're not infringing. So it puts the burden back upon you to prove that you're not. It will say that... [LB677]

SENATOR CHAMBERS: Is that a crime? [LB677]

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

Judiciary Committee  
February 05, 2014

---

DAVE LOPEZ: Not in and of itself, but again these are all subjective requirements that we think about in determining whether a particular instance is done in bad faith. [LB677]

SENATOR CHAMBERS: Have you been concerned about used car dealers who make extravagant claims that are absolutely false? I've never seen where the Attorney General was interested in doing anything about that; and these are people right here in this state. [LB677]

DAVE LOPEZ: Well, certainly if there was a scenario where someone was in violation of current consumer protection statutes or the Uniform Deceptive Trade Practices Act, that would be something our office would look into. [LB677]

SENATOR CHAMBERS: But it's a mere statement exaggerating the value of a car or things like that would not be a violation of any consumer protection provisions of the law? [LB677]

DAVE LOPEZ: In isolation...I would need to know more facts in order to be able to answer that competently, Senator. [LB677]

SENATOR CHAMBERS: And I need more before I would even go for something like this, and I'll tell you why. This is a capitalistic society as far its economic system. Is that true? [LB677]

DAVE LOPEZ: Correct. [LB677]

SENATOR CHAMBERS: It's based on capitalism? There are market forces that are at play in this kind of system, and some people say there shouldn't be any interference with those market forces; others say they should be regulated. But how can you establish that these are not just enterprising entrepreneurs who, in fact...before I go on, do these people actually hold patents... [LB677]

DAVE LOPEZ: Yes. [LB677]

SENATOR CHAMBERS: ...in the area they say? [LB677]

DAVE LOPEZ: The fact that they own the patent is not typically in dispute. They do legitimately own the patent. [LB677]

SENATOR CHAMBERS: And they are entitled to...if they think that somebody is infringing their patent, they have a right to give that person the opportunity to show that that person is not, before filing legal action. Is that true or false? [LB677]

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

Judiciary Committee  
February 05, 2014

---

DAVE LOPEZ: That is correct, Senator. And there's a distinction between what we want to address here. We do not want to inhibit the legitimate good faith prosecution of any intellectual property rights. What we're talking about is... [LB677]

SENATOR CHAMBERS: How do you determine if it's legitimate? [LB677]

DAVE LOPEZ: Well, that's the guidance that the bill would provide to courts. And it's not the...and I should be careful because the question is not legitimacy. We don't necessarily care, from a consumer protection standpoint, whether they are right or wrong after they file a federal suit. What we care about is if during the demand letter campaign or phase of the assertion, particularly with the sending of the demand letter, if they're acting deceptively or unfairly by using the full weight and force of the patent system to bully a target into paying a license fee or a settlement. [LB677]

SENATOR CHAMBERS: There are law firms in Omaha who will do that, and they're like collection agencies. They send threatening letters, they make threatening phone calls to people who actually don't owe even the underlying debt that is claimed. So why is the Attorney General going to go outside the state when he is not that interested in doing things within this state? I have intervened on behalf of people who get those kind of letters. One guy who has got a firm like that used to be a member of the Legislature and a member of the State Board of Education. So when I see this kind of thing, it looks to me like something other than what you're presenting, and I don't mean you personally--the Attorney General's Office. Let me put it like this: When you have a law that goes into people's minds and will determine what it is they're thinking, determine what their intention is, then I'm entitled to go into the Attorney General's mind and say what I think I believe he's thinking and what his intentions are. And I don't think they are what they ought to be. Did he try to send a letter to a law firm telling that he demanded that they cease and desist what they were doing? Did he send such a letter like that to a law firm or to a corporation, that you're aware of? [LB677]

DAVE LOPEZ: Earlier last year our office commenced an investigation into a law firm in Texas which we had identified was the hub of several patent assertion campaigns... [LB677]

SENATOR CHAMBERS: That's not what I asked you. [LB677]

DAVE LOPEZ: ...and as part of that there was a letter submitted to the law firm which instructed them to cease and desist patent infringement assertion efforts within Nebraska. [LB677]

SENATOR CHAMBERS: So the answer to my question as to whether the Attorney General's Office did send a cease and desist letter to one of these firms, is yes. [LB677]

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

Judiciary Committee  
February 05, 2014

---

DAVE LOPEZ: We did, Your Honor, or--Your Honor--Senator Chambers. (Laughter)  
[LB677]

SENATOR CHAMBERS: I'm glad you corrected that because I don't think as highly of judges as others, so I thought you were trying to take a backhand stab at me. [LB677]

DAVE LOPEZ: Not at all. Not at all. [LB677]

SENATOR CHAMBERS: Okay. I forgive you. I forgive you. And look, I understand you are representing the Attorney General's Office. You're not the Attorney General. But when you come as the representative, then for purposes of this hearing you are the one to question. [LB677]

DAVE LOPEZ: I should note, Senator, we have withdrawn that cease and desist letter since. [LB677]

SENATOR CHAMBERS: Well, you're getting ahead of me. It wasn't withdrawn voluntarily, was it? [LB677]

DAVE LOPEZ: It was withdrawn voluntarily. [LB677]

SENATOR CHAMBERS: Did a court...was a court involved in this, and did a judge make a declaration as to the validity of what the Attorney General was doing, or are you not aware of that? [LB677]

DAVE LOPEZ: I am aware that a federal judge made a ruling on a preliminary injunction. [LB677]

SENATOR CHAMBERS: And what did the judge rule; that the Attorney General was right or that the Attorney General was wrong? [LB677]

DAVE LOPEZ: He didn't rule either of those things. It was a preliminary ruling. [LB677]

SENATOR CHAMBERS: Then there was no ruling. Then the court said there is no controversy here, therefore no decision will be reached. Is that what the judge said? [LB677]

DAVE LOPEZ: Not in that particular context. [LB677]

SENATOR CHAMBERS: What did the judge say, paraphrasing? Paraphrase it for a layperson. It doesn't have to be in legalese. [LB677]

DAVE LOPEZ: The particulars of that litigation have to do with whether it was



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

Judiciary Committee  
February 05, 2014

---

appropriate for the Attorney General's Office to issue a cease and desist letter...order, to a particular entity who had already commenced litigation in federal court. The difference between what we're talking about with addressing bad faith... [LB677]

SENATOR CHAMBERS: But wait a minute, we're not through with that, my friend. You're reaching the point where it seemed like the judge may have made a decision that you're reluctant to acknowledge. Did the judge say that the cease and desist letter issued by the Attorney General was appropriate or not appropriate? [LB677]

DAVE LOPEZ: He indicated in his preliminary injunction ruling that it was possible that it violated the constitution. [LB677]

SENATOR CHAMBERS: The cease and desist letter. [LB677]

DAVE LOPEZ: That's correct. [LB677]

SENATOR CHAMBERS: So the Attorney General is not above, for whatever reasons, taking a step that would not just violate a law but actually the constitution... [LB677]

DAVE LOPEZ: I would disagree with that. [LB677]

SENATOR CHAMBERS: ...if I want to conclude that from what you've told me. So the...but you feel that the Attorney General was acting in good faith. [LB677]

DAVE LOPEZ: Absolutely. [LB677]

SENATOR CHAMBERS: And we'll assume the Attorney General believed that. But, in fact, the outcome was regardless of his belief and his feeling. What he did was a possible violation of the constitution. So if I go into the Attorney General's mind, I'll say, I think you deliberately did that; I think you have no regard for the constitution; and it's a good thing there's a court that told you, you cannot do this; so stop it. And that's why the Attorney General withdrew it, not by choice. He had no choice. So if it's fair...let's put it this way, if I would be stepping over the line to draw the kind of conclusions I did from the fact situation you laid out, then I think you're stepping over the line if you have this kind of authority where you are going to become a mind reader when your office cannot even properly read the constitution, which is out there written. I'm not going to keep asking you questions, but I'm not as sympathetic with what's being offered here as it might seem that I should be. If any kind of demand letter is sent to somebody with Alzheimer's, that shows, as you indicated, that a mistake was made. This person with Alzheimer's obviously is not guilty of anything. Even if the person with Alzheimer's did something, there's no mens rea, there's no criminal intent; so that person couldn't be charged with anything, could not be taken to court or anything else. It seems to me that what the Attorney General is saying, that we're going to make entry into the courts of

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

Judiciary Committee  
February 05, 2014

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the state of Nebraska so difficult that, in effect, the door would be closed. But the Nebraska Constitution says that the doors--and I'm paraphrasing--the doors to the courthouse shall be open to any person who feels he or she has been harmed in goods, reputation, and so forth. And it seems to me that this bill is going to stand in the doorway of the courthouse in Nebraska as a sentinel and say we don't like what you're doing so you can't come to court. And maybe I would say, I'm aware of so many things the Attorney General's Office has done which are not appropriate, that I don't want the Attorney General coming to court. One such example was persuading the Nebraska Supreme Court to set an execution date when they could not carry out the execution, and they knew they couldn't carry it out. But that's where the Attorney General, with knowledge of forethought, persuaded the court to set that execution date. And a district court in Douglas County said the Attorney General's Office should be called to account for that. And you know why I'm saying this? Some people that hear the name of an official or an office and they're put in awe and are intimidated. As a member of this committee, so far I haven't heard enough to make me feel the bill is justified. Now there might be others on the committee who feel that you should be given more time to do that, and they'll ask you questions. But I don't bite my tongue. What I said is a matter of record and that's all that I will put to you. And you ought to get a raise for the attorney...let me ask you, have you ever been before this committee before? [LB677]

DAVE LOPEZ: Not this committee; no, Senator. [LB677]

SENATOR CHAMBERS: Did the Attorney General give you any warning about the reception you might receive? (Laughter) [LB677]

DAVE LOPEZ: Not particularly, no. [LB677]

SENATOR MCGILL: Oh. (Laugh) [LB677]

SENATOR CHAMBERS: I don't have anything else. [LB677]

SENATOR ASHFORD: Thanks, Senator Chambers. [LB677]

DAVE LOPEZ: Thank you, Senator. [LB677]

SENATOR LATHROP: I have one quick question. [LB677]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB677]

SENATOR LATHROP: Dave, did you research whether or not this area, because it involves patent law, whether it has been preempted by federal law? I understand Vermont has done this, but that doesn't tell me that it's not preempted. And you know it can be preempted expressly or by virtue of the fact that the...and it seemed to be the

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

Judiciary Committee  
February 05, 2014

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case here, where federal law on patent has so completely regulated the subject matter that the Congress didn't expect the states to engage or didn't leave room for the states to engage in any regulation. [LB677]

DAVE LOPEZ: So, candidly, the preemption question is the \$64,000 issue here. [LB677]

SENATOR LATHROP: Right. [LB677]

DAVE LOPEZ: We have to determine whether...and we believe that up to the water's edge of our jurisdiction, which is where, you know, if a case is filed in federal district court as a patent case, then the attorneys who file it are subject to Rule 11 sanctions and the protections of the federal court, and that likely ends where a state consumer protection enforcer would have jurisdiction. Up to that point, however, particularly with the scanner troll example where virtually the entirety of the campaign takes place opaquely and beyond the view of a court, where you're just sending the demand letters, we think...we don't see a distinction there between that and any other more common consumer protection... [LB677]

SENATOR LATHROP: Well, how about this? What if the letters are coming from Des Moines and not from inside the state of Nebraska? In other words, the activity that you're trying to prohibit is happening in Des Moines, and it's...the letters are coming to Nebraska. Don't you think that's preempted? [LB677]

DAVE LOPEZ: No, no. And, in fact, in the scanner troll example the letters are primarily coming from, we believe, Texas and possibly Delaware. [LB677]

SENATOR LATHROP: Do you think we can make an activity that starts in Texas, illegal in Nebraska? [LB677]

DAVE LOPEZ: If it is sent within the state, yes. Now, you're touching on something that could create a personal jurisdiction issue, but we believe similarly on that point that it's still actionable under our existing consumer protection law. [LB677]

SENATOR LATHROP: Okay, going back to my first question. I asked you if you had researched it. [LB677]

DAVE LOPEZ: Yes, we have. [LB677]

SENATOR LATHROP: Did you find cases that say where states have tried to regulate in the area of patent infringement? [LB677]

DAVE LOPEZ: Not on that specifically, because this is basically a new trail for state

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

Judiciary Committee  
February 05, 2014

---

attorneys general. [LB677]

SENATOR LATHROP: Okay. So we don't know if it will be... [LB677]

DAVE LOPEZ: No. [LB677]

SENATOR LATHROP: And it's not unconstitutional. It would just be preemption, federal preemption in the area. [LB677]

DAVE LOPEZ: Full disclosure: This is a new path for state consumer protection authorities seeking to address this type of consumer protection violations in the patent demand letter space. [LB677]

SENATOR LATHROP: Got it. [LB677]

DAVE LOPEZ: Yes. [LB677]

SENATOR LATHROP: Thank you. [LB677]

SENATOR ASHFORD: Senator Seiler, then Senator Chambers. [LB677]

SENATOR SEILER: I'm reading from a summary that was prepared for us. You had 25 or more individuals that the letters go out to. Do you count your individuals to include corporations, partnerships? [LB677]

DAVE LOPEZ: Yes, Senator. [LB677]

SENATOR SEILER: Okay. And in a partnership does it count just the partnership or all the partners? [LB677]

DAVE LOPEZ: It would be the entity itself. That would probably count as one. [LB677]

SENATOR SEILER: What's magical about 25? [LB677]

DAVE LOPEZ: You know, it's...we bandied about numbers, and it's not arbitrary by any means, but with some of the other patent assertion campaigns that we looked into, we identified that 25 would be a good threshold for us to determine if something is widespread, kind of like the scanner troll one was. [LB677]

SENATOR SEILER: Becomes cost effective. [LB677]

DAVE LOPEZ: Correct. [LB677]

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

Judiciary Committee  
February 05, 2014

---

SENATOR SEILER: Okay. That's all I have. [LB677]

SENATOR ASHFORD: Senator Chambers. [LB677]

SENATOR CHAMBERS: You have listed in this...first of all, did the Attorney General's Office come up with this language, or is it patterned on some other language... [LB677]

DAVE LOPEZ: I would... [LB677]

SENATOR CHAMBERS: ...on some other source? [LB677]

DAVE LOPEZ: Excuse me, Senator. The vast majority of it is patterned off of the Vermont statute. We modified some of the guidance provisions and we came up with the Attorney General's Office notification requirement. [LB677]

SENATOR CHAMBERS: Has the law in Vermont been subjected to analysis by any court? [LB677]

DAVE LOPEZ: I know that the Vermont Attorney General's Office is engaged in litigation on their ability to do this as well. [LB677]

SENATOR CHAMBERS: Has there been a determination with reference to the legitimacy of the Vermont law? By that I meant, it hasn't been found to be overbroad, ambiguous, and the types of things that would cause it to be unconstitutional? Have those issues been raised in the litigation? Well, let me ask this: Has any litigation on the bill, the law in Montana...I meant Vermont, reached a conclusion in any court, trial court, or appellate court? [LB677]

DAVE LOPEZ: I'm unfamiliar with the specifics of the Vermont litigation, Senator, but I know that they have not reached a final determination. [LB677]

SENATOR CHAMBERS: So you don't know whether that law is valid or not. You're just flying in the dark, so to speak, hoping that this will stand up. [LB677]

DAVE LOPEZ: I wouldn't characterize it like that, Senator. We've consulted both with federal consumer protection authorities and we've been in...we've worked in concert and consultation with our colleague attorneys general in other states. And we've given a lot of thought to this and we've determined that it's appropriate and legitimate for a state office charged with consumer protection and enforcement of the Uniform Deceptive Trade Practices Act to use those in this space. [LB677]

SENATOR CHAMBERS: I'm not going to ask you to show the differences between Vermont's law and this one because my questions don't require that. But you give a list

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

Judiciary Committee  
February 05, 2014

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of factors which can be a basis for determining that a demand letter is made in bad faith. If any one of those is absent, is that an indication that the demand letter was made in bad faith? [LB677]

DAVE LOPEZ: No. The court is empowered to use a subjective determination. [LB677]

SENATOR CHAMBERS: How many determine...how many factors are there altogether, if you know? And since you've given it a lot of thought, you should be able to tell me how many factors are there. You can refresh your memory as they would allow you to do even if you were on trial. [LB677]

DAVID LOPEZ: I appreciate that, Senator. There are I believe within...well, I should clarify, Senator, that it's not a...because it says that the court may consider these factors, these are guidance factors. It's not a dispositive number. So if you look at Section 3(2), "A court may consider the following factors as evidence that a person has made a bad faith assertion," and then it includes some of the factors that Vermont primarily came up with and we adopted. [LB677]

SENATOR CHAMBERS: Well, how does the court...the court is not giving any guidance as to how these factors should be applied. It doesn't say in the death penalty laws one or more aggravating factors can provide a basis for imposing a death sentence. Am I to understand that your intent, by listing these, is really telling the court any one or more of these factors may be deemed by the court to establish that the demand letter was sent in bad faith? [LB677]

DAVE LOPEZ: Senator, I think it would depend on the particular facts of the case. In some circumstances perhaps every factor would exist on both ends, both determining that a person has made a bad faith assertion and determining that a person has not. As I said, though, it's provided as guidance. [LB677]

SENATOR CHAMBERS: Okay. Are there any sanctions attached to this bill which could be considered criminal in nature? If a person is found to have sent a demand letter in bad faith, are there any criminal sanctions involved? [LB677]

DAVE LOPEZ: Because it becomes an enumerated provision of the existing Uniform Deceptive Trade Practices Act it would subject a person to whatever penalties are within that existing statutory framework. [LB677]

SENATOR CHAMBERS: When a crime is involved there are essential elements, as you know, and every essential element must be proved beyond a reasonable doubt. Which of these factors would be considered an essential element? And if the court may consider them or may disregard them, then it's saying that a person is not being given notice of what actually you're allowed to do without committing a crime and what you're

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

Judiciary Committee  
February 05, 2014

---

prohibited from doing without committing a crime. And if you cannot tell, and you are a reasonable person, what you're allowed to do under a law without being subjected to a criminal sanction, if you cannot tell what you are allowed to do or know what you're prohibited from doing, that is unconstitutional because it is vague, it is ambiguous. This is a criminal statute. I think it's overbroad. I think it's vague. And I think it's ambiguous. How do I know which of these factors will be a basis for bringing a charge against me? And if none of them will, then they shouldn't even be here. But I'm not going to make you go through all that. I want that into the record. But if you want to comment on it, I don't want to stop you from doing so. [LB677]

DAVE LOPEZ: The only thing I would say, Senator, is in the context of bringing this as a civil action it would be a different standard of proof and you would not have the essential elements situation that you're describing if an action like this was brought for a civil injunction or for civil penalties. [LB677]

SENATOR CHAMBERS: So then there is no criminal sanction involved. I thought you said there is. [LB677]

DAVE LOPEZ: It would be...since it's enumerated as one of the enumerated prohibitions within the Uniform Deceptive Trade Practices Act, to the extent there is a criminal penalty available in that statute, it's possible. I can tell you these cases are almost invariably brought as civil cases. [LB677]

SENATOR CHAMBERS: Are you very comfortable with this language that you copied from Vermont? Are you satisfied that they had very competent legal minds, that this language is carefully crafted and the bill is tightly drafted? That's your feeling about this? [LB677]

DAVE LOPEZ: I am, Senator. Yes. [LB677]

SENATOR CHAMBERS: Did you have any role to play in producing the final version of this? [LB677]

DAVE LOPEZ: I did. [LB677]

SENATOR CHAMBERS: And you're proud of your work? [LB677]

DAVE LOPEZ: I am. [LB677]

SENATOR CHAMBERS: I don't have anything else. Thank you. [LB677]

DAVE LOPEZ: Thank you, Senator. [LB677]

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

Judiciary Committee  
February 05, 2014

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SENATOR ASHFORD: Thanks, David. [LB677]

DAVE LOPEZ: Thank you. [LB677]

SENATOR ASHFORD: Do we have any other testifiers for the bill? How about anyone opposed? [LB677]

SENATOR MCGILL: We have someone else for. [LB677]

SENATOR ASHFORD: Do we have someone else for the bill? [LB677]

HARVEY SANKEY: For the bill, yes. [LB677]

SENATOR ASHFORD: Oh, for the bill. Yes, sir. [LB677]

HARVEY SANKEY: What I'm handing out here is testimony that was delivered by the... [LB677]

SENATOR COASH: Could you sit down and give us your name before you start? [LB677]

HARVEY SANKEY: Harvey Sankey, H-a-r-v... [LB677]

SENATOR MCGILL: You need to say it into the microphone. I'm sorry. [LB677]

HARVEY SANKEY: My name... [LB677]

SENATOR MCGILL: It's for the transcriber so they can type out your name. [LB677]

HARVEY SANKEY: (Exhibit 3) Okay. All right, fine. Sorry. Harvey Sankey, H-a-r-v-e-y S-a-n-k-e-y, 3204 North 157th Street, Omaha, Nebraska. What I'm passing out here is a statement that was submitted before the Senate Committee on the Judiciary and it was submitted by our CEO of the Printing Industries of America, and the title was "Protecting Small Business and Promoting Innovation by Limiting Patent Troll Abuse." This was submitted to the Senate Committee, December 17, 2013. What I'm going to talk about now are a few items, a few excerpts from this statement, and just say I support LB677, and there might be some changes to it that might be needed. Okay? The average print company in the U.S. employs just 27 workers, and more than 60 percent of the printing companies are family-owned businesses. Unfortunately, we are an industry that has attracted the damaging attention of patent assertion entities, PAE, or patent trolls. A PAE is a company whose business model is to obtain patents primarily to pursue licensing fees and/or litigation against manufacturers that are already using a patented technology. Patent trolls are increasingly aggressive and more and more predatory. A



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

Judiciary Committee  
February 05, 2014

---

study commissioned by the U.S. Government Accountability Office found trolls now account for almost 60 percent of patent infringement lawsuits in America. Given all of this activity, it was only a matter of time before trolls began targeting the printing and graphic communications industry, an industry in transition and one which employs new developing technologies every day. Prior to 2013, it was relatively unknown for printing companies to be accused of patent infringement. That is no longer the case. Owners of patents covering quick response codes, scanning, computer to plate workflow, and on-line ordering are all approaching printers demanding a licensing fee or threatening costly litigation. Currently, we know of eight patent owners, many of which may be considered patent trolls, that are seeking licensing fees from printers. All encounters follow a similar path with printers receiving a mailed letter, often from an attorney, alleging infringement of a specific technology used in the company's administration, production, or customer communications. The letter briefly describes the patents and technology in question, and offers to provide a license for their use. The fee may be identified and the threat of lawsuit is either stated or implied. Rarely will a patent owner provide specific evidence of the infringement and the specific claims at issue. For small printers, especially, this is often their first experience with patent law and civil litigation, not to mention trolling, and they are astounded at the dollar figures in these demand letters. One common demand letter issued to a printer with just 40 employees asked for \$75,000 licensing payment within two weeks of issuing its notice. After two weeks, the letters indicated the amount would go to \$95,000. Needless to say, threats of litigation are intimidating and place undue stress on an industry already struggling with low profits and challenging demand. The general estimate is that printers are forced to spend between \$10,000 and \$15,000 initially to hire lawyers to investigate the claims of their apparent infringement. The stock in trade of parent trolls are software and computer-related patents that have broadly written claims addressing the method of accomplishing certain activities. The patents are often years old with trolls asserting that their patents cover technology that already has advanced a generation or two since the patent was issued. [LB677]

SENATOR ASHFORD: Thanks, Mr. Sankey. Why don't we just...time out, just a second, and see if we have some questions from anybody here, because we have the material from the committee. I just have one question. Is there a federal prohibition... [LB677]

HARVEY SANKEY: I don't know where that stands now. He submitted that before the committee and they're looking into that right now. Okay? [LB677]

SENATOR ASHFORD: I mean, it would seem to me that the most effective way to enforce...and I understand that this could be terrible to get a letter asking for \$75,000 when it's unjustified. But what...isn't this a federal responsibility that the Congress should...? [LB677]

HARVEY SANKEY: I don't know. I'm not a lawyer so. [LB677]

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

Judiciary Committee  
February 05, 2014

---

SENATOR ASHFORD: Well, I mean, a lot of these people are from outside the state... [LB677]

HARVEY SANKEY: Right, they are. [LB677]

SENATOR ASHFORD: ...and they send the letters in. It would be difficult...it's difficult to get jurisdiction. I mean, you could maybe get a judgment, a civil judgment of some kind, but if you really want to put a stop to it you're going to need federal. [LB677]

HARVEY SANKEY: Well, we believe that reasoned and moderate reforms, okay, such as ensuring balance and discovery demands, will ensure that small printers and small businesses, in general, have a fighting chance in the current system. In other words, we want a fair playing field here. [LB677]

SENATOR ASHFORD: I get that part. I mean, I get the part of...and I'm aware of companies that come in and buy up patents and then make extravagant claims around the patent. I think that's a very legitimate concern. I just don't know if giving this to the Attorney General's Office or any local law enforcement office will be effective and it will make...I mean, it sounds good and it's got a basis in fact. I mean, it happens. But are you really going to be...is it going to help you? I mean, that's my main concern. But anyway, Senator Lathrop, do you have a...? [LB677]

SENATOR LATHROP: This just suggests to me that somebody is trying to get the feds to do something about it... [LB677]

HARVEY SANKEY: Yes, that's correct. [LB677]

SENATOR LATHROP: ...which is really probably where it belongs when you're talking about patent law. It's a little bit like immigration law. They're supposed to be dealing with it and it is the subject matter, uniquely federal, and it's...the fact that the testimony was presented to the Senator Judiciary Committee would suggest that somebody is trying to get it done on a national level. [LB677]

HARVEY SANKEY: Um-hum. Well, I figured since we're trying to do something here in Nebraska, I'd try to... [LB677]

SENATOR ASHFORD: No, I don't... [LB677]

SENATOR LATHROP: No, no, no. We're not critical that you're here. [LB677]

SENATOR ASHFORD: You're not critical. You're trying to do it. I just...you know, we're asked a lot to do these things on the state level because the federal government has

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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

failed to address many issues, and it sounds as if this may be one of those; so, in any event...Senator Chambers, do you have...? [LB677]

SENATOR CHAMBERS: Have you read this bill? [LB677]

HARVEY SANKEY: I've read parts of it but not in total. And I've... [LB677]

SENATOR CHAMBERS: Okay, then I won't question you about the specifics of the bill. [LB677]

HARVEY SANKEY: I know what you want to bring up but I'm not interested in criminality here. I'm interested in making it a fair playing field so that our businesses don't have to spend all that money to a lawyer to fight these allegations. [LB677]

SENATOR CHAMBERS: Well, have your members thought about banding together and in the same way that sometimes consumers will file a class action suit, they will kick in money and hire a lawyer and go after whoever is doing it, once and for all? Have they ever thought of doing that instead of trying to handle it each person alone? [LB677]

HARVEY SANKEY: I haven't heard of that, but that's not a bad idea. [LB677]

SENATOR CHAMBERS: Do you represent that group? [LB677]

HARVEY SANKEY: I represent the Printing Industries of the Midwest, Nebraska specifically. [LB677]

SENATOR CHAMBERS: And it didn't occur to you to say that in unity there is strength? Oh, well, okay. That's...okay. [LB677]

HARVEY SANKEY: Well, I understand that. I understand that and that's a good point. I mean, I'm not arguing... [LB677]

SENATOR CHAMBERS: I make a lot of good points but people don't pay attention to me. And, you know, I can see the... [LB677]

HARVEY SANKEY: It's a good point. It's a good point. We're always interested in good... [LB677]

SENATOR CHAMBERS: I can see the issue. But Senator Lathrop took the question that I was going to ask. The fact that this testimony was presented to the U.S. Senate indicates that something is being done. And if I were to make a suggestion, it would be that the five congressional representatives from Nebraska, two U.S. Senators, three House members, be contacted; and the Attorney General should know how to do that

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

Judiciary Committee  
February 05, 2014

---

because I think they are all members of his political party, and a lot of things he does are highly political and I will not agree to the state doing something while it's being considered by Congress. Nobody can tell us whether what we are doing has been preempted by the federal government. And the way the bill is drafted I think is very poor. I think the Attorney General's Office copied virtually verbatim--and this is an opinion--what was in the Vermont statute; and had Vermont no statute, we wouldn't have anything before us here today. That's my view. [LB677]

SENATOR ASHFORD: All right. Well, thank you, Mr. Sankey. [LB677]

HARVEY SANKEY: Quoth the raven: nothing more. [LB677]

SENATOR CHAMBERS: Touche. If you had said that at first, I wouldn't have hounded you. (Laughter) [LB677]

HARVEY SANKEY: Don't forget, I've got my equalizer. [LB677]

SENATOR ASHFORD: Oh, boy. Okay. [LB677]

ROBERT HALLSTROM: (Exhibit 4) Chairman Ashford and members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as a registered lobbyist for the Nebraska Bankers Association in support of LB677. The NBA believes that legislation such as LB677 is needed to curtail the risk of abusive patent litigation and the disingenuous license fee demands by nonpracticing entities, also commonly referred to as patent trolls. I've got additional information in my testimony. There were only two items that I would like to bring to the attention of the committee. Many of the examples that have been given by Senator Mello and by the Attorney General representative Mr. Lopez have been faced by financial institutions in Nebraska. Issues relating to ATMs, mobile banking, mobile payment technologies, the scanning of documents filed by e-mailing, are all examples of the types of situations that financial institutions have faced. In my testimony I've related the Automated Transactions, LLC, efforts in the eastern part of the country where they had made claims that ATM transactions infringed on certain patents. One of the items in the bill is if the nonpatent...or the NPE is making claims that they know or should have known were meritless, this would be an example of what had happened. In May 2013, some courts and the Patent and Trademark Office had invalidated some of the patents, and that company continued to levy claims against financial institutions in those states. So that would be an example of the type of conduct that would be addressed in part by LB677. The other issue is that the Suggested State Laws Committee of the Conference of State Governments has adopted the provisions of the Vermont antitroll legislation, after which LB677 is patterned, as a model bill recommended for adoption by the state legislatures. And with that I'd be happy to address any questions of the committee. [LB677]

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

Judiciary Committee  
February 05, 2014

---

SENATOR ASHFORD: Boy, this is...Bob, this is a federal problem. You've got companies in the east that are sending letters to people here or other parts of the country. This is a federal problem. You need to go to the U.S. Attorney's Office and ask them to look at the federal law and see if there's some sort of violation. I just don't...I mean, I'm not suggesting that there's not a problem. There is obviously. But isn't that...? I mean, this is...we've got so many other things to worry about here in Nebraska, don't we? [LB677]

ROBERT HALLSTROM: I wouldn't disagree completely, Senator, but I think there's a lot of states that are taking this action. Vermont was the first one to pass legislation. I'd have to go back and check, but I think there's at least 10 or 12 states, from my counterparts in the banking industry, that are supporting legislation in other states. [LB677]

SENATOR ASHFORD: Okay, fair... [LB677]

ROBERT HALLSTROM: And I think it's an issue Congress has acted but they have not stopped the... [LB677]

SENATOR ASHFORD: Well, can the U.S. Attorney file a civil injunction action? [LB677]

ROBERT HALLSTROM: That I'm not sure of. [LB677]

SENATOR ASHFORD: I mean, that would seem to me to be the threshold question, is you go down to U.S. Attorney Gilg and say our people are being deceived by somebody in New York State or Delaware or Texas, whatever; can you call the U.S. Attorney down there and see if he can stop...? [LB677]

ROBERT HALLSTROM: Yeah, I'm not certain on that, Senator. I think it's an issue that to the extent we can act, should we act? And if so, if it's a consumer protection issue, we should look at it. [LB677]

SENATOR ASHFORD: But clearly, clearly so. But also have to be effective. And just passing a law, a law becomes a law, then it's on the books, and if it's never used then it's just the paper in a book. And where we have U.S. Attorneys that are...I'm not critical of what you're saying. I'm just saying, what's the most effective way to get at the problem? So, in any event. [LB677]

ROBERT HALLSTROM: And I think it would be a combination of those, Senator. [LB677]

SENATOR ASHFORD: Well, yeah. [LB677]

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

Judiciary Committee  
February 05, 2014

---

SENATOR CHAMBERS: Mr. Hallstrom, you're a lawyer, correct? [LB677]

ROBERT HALLSTROM: That is correct. [LB677]

SENATOR CHAMBERS: Mr. Hallstrom, I've listened. You're familiar with the existence of a mail fraud statute at the federal level, aren't you? [LB677]

ROBERT HALLSTROM: Yes, I am familiar there is one. [LB677]

SENATOR CHAMBERS: Any time the mails are used in furtherance of a scheme or artifice to defraud anybody, that constitutes mail fraud. It can carry a jail sentence up to 20 years and a fine of \$100,000. So if it's so clear that fraud is being committed, there is a mail fraud statute that is a general law and covers all frauds. Why have the banks, which have high-powered law firms, and they use them to lobby Congress to get benefits, why don't they pursue or talk to the U.S. Attorney in their given state about pursuing a wire fraud...a mail fraud case? Why haven't they done that? [LB677]

ROBERT HALLSTROM: Senator, I've not investigated that. I'm not aware that that particular avenue of defense or action has been utilized. [LB677]

SENATOR CHAMBERS: Is there fraud involved in what's going on? [LB677]

ROBERT HALLSTROM: Yes. Deceptive trade practices. [LB677]

SENATOR CHAMBERS: If they're not committing fraud, then they're legal. They're legitimate. What they're doing they have a right to do, and they're protected by the constitution; and you all are trying to hinder and take away from them a right under the constitution. On the other hand, if it is fraudulent it is in violation of federal law right now without getting this that they're talking about. There are more than one, ways to crack a nut. And I'm surprised that all these high-powered lawyers, the Attorney General of this state, have not thought of the things I, whom am not a practicing attorney, thought of immediately. But let me get to the area you represent. You are here on behalf of the bankers, correct? [LB677]

ROBERT HALLSTROM: Correct. [LB677]

SENATOR CHAMBERS: And if I am reading correctly, this language in your statement on page 2, it starts with "Banks," and it says "Banks are now one of the top ten industries targeted by NPEs and like many industries, when faced with threats of expensive patent litigation many banks, especially smaller institutions, find that their only option is to settle rather than face paying even higher litigation costs to defend themselves against frivolous claims of patent infringement." You know where I find irony here? Banks are constantly manufacturing fees that they charge on every imaginable

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

Judiciary Committee  
February 05, 2014

---

service. So I'm not sympathetic to the banks. The "Bible" says--some people say the Bible--as a man soweth so shall he also reap. So the banks have indicated to me, for the first time, that the scriptures may be fulfilled, and these ones you call trolls are merely carrying out the scriptures. Are you an antireligious man, Mr.... [LB677]

ROBERT HALLSTROM: Hallstrom. [LB677]

SENATOR CHAMBERS: ...Mr. Hallstrom? [LB677]

ROBERT HALLSTROM: Yes. No, I'm not. [LB677]

SENATOR CHAMBERS: So you would not be opposed to the scriptures being fulfilled, would you? [LB677]

ROBERT HALLSTROM: In most circumstances, certainly not. I'm not sure they're being fulfilled in this particular instance. [LB677]

SENATOR CHAMBERS: And they didn't send you here to take an antireligious position, did they? [LB677]

ROBERT HALLSTROM: No, they did not. [LB677]

SENATOR CHAMBERS: Do banks impose many fees for various services? Let me ask you this: Have banks been formulating new fees that had not been common in the industry in years past? [LB677]

ROBERT HALLSTROM: There are new fees associated with new products and services. [LB677]

SENATOR CHAMBERS: That's all I have to ask you. Thank you. But tell your clients that they ought to ask the U.S. Attorney, whose name is Deborah Gilg, and she's located downtown I think in a big bank building. Isn't she located in the 14th floor of that big bank downtown in Omaha? [LB677]

ROBERT HALLSTROM: I'm not familiar with where she's located. [LB677]

SENATOR CHAMBERS: Well, they can just go up on the elevator, tell their lawyer to go up the elevator, and say Senator Chambers said that the federal government has a mail fraud statute; and as a matter of fact, he invoked it and you acted on it. [LB677]

ROBERT HALLSTROM: We will consider sending someone to rap on her chamber door. [LB677]

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

Judiciary Committee  
February 05, 2014

---

SENATOR CHAMBERS: And I will not even charge a fee because this is my responsibility as a public official doing the work of the public. [LB677]

ROBERT HALLSTROM: Thank you, Senator. [LB677]

SENATOR CHAMBERS: That's all that I have. [LB677]

SENATOR ASHFORD: Thank you. Thanks, Bob. Any other proponents? Any opponents? How many opponents do we have to this bill? One, it seems. Any neutral testifiers? Okay. [LB677]

CHRISTAL SHEPPARD: Hello. I'm Christal Sheppard. That's Sheppard, S-h-e-p-p-a-r-d. I'm going to start with a very brief statement and I'll tell you my five points that I'm going to skip through. No one likes abusive patent litigation. Maybe a few subset of lawyers like it, but mostly people don't like abusive patent litigation. So Nebraska has the moral high ground on this one. The problem is they do not have the legal high ground. The patent troll matter is, until Congress changes the law at the federal level, we're stuck with it. The Attorney General's Office said they came up with this law because of structural issues written into the patent system--I wrote that down. And those structural issues written within the patent system are federal. You can't change those laws by putting in state laws that contradict those. The Vermont bill, which I'll get to in a minute...I'm trying to stay on topic because I am actually prepared to answer all the questions that you asked these gentlemen before me who they didn't answer. But first let me tell you who I am so you'll understand why I have extensive expertise in this area. I have a Ph.D. in molecular biology from the University of Michigan; I have a J.D. from Cornell University. I am one of the 17 patent attorneys that was mentioned that are in Nebraska who practice in this area. I teach patent law at the University of Nebraska. I also teach science and law, the legislation and political process, and international intellectual property law. Where I came from before I came to Nebraska was Congress, the United States Congress. I was chief counsel on the Judiciary Committee for...I was chief counsel of patent and trademark and competition policy for the Judiciary Committee. I left there in 2011. That year is a big year in the patent community because that's the year the AIA was passed, the America Invents Act, which was first started to deal with patent trolls at a federal level. I've helped with legislation policy, I've worked with the administration and still do, on these issues. So that is where I'm coming from and why I'm testifying here today on my own behalf; not for the administration and not for anyone other than myself. I did bring some of my students with me so they could legislation in action. [LB677]

SENATOR ASHFORD: Ms. Sheppard, could I...what's your...do you have any background in this? [LB677]

CHRISTAL SHEPPARD: Yes. (Laughter) So, you know, I might be a random person



just showing up on this issue, but I've spoken a lot about it and I'm going to jump ahead. I was going to speak about why LB677 is likely not constitutional. I was going to talk to you about how the courts will probably react to LB677, using Vermont law as a harbinger. As you all mentioned earlier, Vermont did do this first. The bill is primarily the Vermont law with an addition of a notification provision that Nebraska put into place. That notification provision has some problems, but so does the Vermont law. The Vermont law has so many problems that they have been sued in court. The state court then transferred it to the district court, and the district court is now looking at it. So even if Nebraska were to do it, it would be transferred to federal court, which I don't think the Attorney General wants to do. The next thing is...and I can go through the statute and I have it here, but I don't think you want to do that. I'd rather answer your questions. So the next thing is how Congress and the administration is attacking this patent troll problem. The last gentleman who spoke was from the banking industry. As I mentioned, the America Invents Act was actually put in place initially to address the patent troll problem. It did not go far enough because the people involved could not agree. The one thing that did get put into the bill was a section that was specifically called the business methods postgrant review provision that was specifically put in place, if you really read the language, for the banks. The banks are... [LB677]

SENATOR ASHFORD: Ms. Sheppard, let me just...could you just...let me ask you this: How is this matter being resolved on the federal level regarding the banks? [LB677]

CHRISTAL SHEPPARD: I'm glad...well, on the federal level the banks have the...under the AIA act, they were given a provision that allows them to challenge, in a postgrant proceeding, at the Patent and Trademark Office, any claims that they feel are erroneously granted or invalid. They have...they can go backwards in time and forward in time. They can go and attack any patent. Unlike some of the previous testimony that talked about how there were fraudulent claims that were being put forth, claims that were not actually owned by the people writing the letters, that's not what this bill does. This bill also goes to claims that the people actually own. So in that case, this bill becomes problematic because what then happens is the courts in the state level would have to then look to see whether or not the claim was valid and covered the patents that were being asserted against the infringers, which are actually the rights that the patent law gives them. And I can give you Section 271, 273(e). There are so many provisions within the patent law that says this is their right to do. [LB677]

SENATOR ASHFORD: Let me ask...let me just stop you for a second. Senator Lathrop has a question and... [LB677]

SENATOR LATHROP: Can I just ask one simple question? Can you just tell me, briefly, what your judgment is on preemption? Is this an area that is so thoroughly regulated that it is preempted either explicitly or by virtue of the action of Congress? [LB677]

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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

CHRISTAL SHEPPARD: I'd say Article 1, Section 8, Clause 8 of the constitution would say that it's preempted. Then Article 6 of the constitution would say it's preempted. However, there are two recent cases in 2013 that if I was the Attorney General's Office I would have brought up. The first was Gunn v. Minton which says that in certain cases state courts can, in legal malpractice cases, keep that state malpractice case in their own court. So the courts...that's a Supreme Court case that said sometimes those cases can stay in court if it's not substantially related to patent law. The other case is Forrester Environmental Services v. Forrester (sic--Wheelabrator), another 2013 case in May that said that a case, in this case, was a tort claim, a state tort claim that said that in those cases the...again the state is allowed to keep it in their own state courts. That said, the way this bill is written now, I don't that will fly. [LB677]

SENATOR LATHROP: So, in short, do you believe that this would be...violate the preemption? [LB677]

CHRISTAL SHEPPARD: Absolutely. [LB677]

SENATOR LATHROP: Okay. Thank you. [LB677]

CHRISTAL SHEPPARD: Congress is dealing with this right now. There are nine IP bills... [LB677]

SENATOR ASHFORD: Time out. [LB677]

CHRISTAL SHEPPARD: Sorry. [LB677]

SENATOR ASHFORD: You have so much information and I want to hear all of it, but maybe we have another question. Does anyone have a...? [LB677]

SENATOR CHAMBERS: The question that I would have asked has been answered. [LB677]

SENATOR ASHFORD: Ms. Sheppard, I know you have a lot of information. And, you know, Jenn can work with you if we need additional information. I appreciate you bringing your students with you, and thank you for your comments. [LB677]

CHRISTAL SHEPPARD: Can I say one other thing? [LB677]

SENATOR ASHFORD: Okay. [LB677]

CHRISTAL SHEPPARD: If you intend to go forward with the bill, I do have some suggestions for how to change the language and I'd be happy to work with anyone. [LB677]

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Transcriber's Office

Judiciary Committee  
February 05, 2014

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SENATOR ASHFORD: Okay. [LB677]

CHRISTAL SHEPPARD: Or if you want to do a message piece, I'm fully for a message piece. But there are some things in the language that really would harm patent law if they went forward. [LB677]

SENATOR ASHFORD: Thank you very much for coming down. [LB677]

SENATOR LATHROP: Thanks for coming down. [LB677]

SENATOR MCGILL: Yeah. [LB677]

SENATOR ASHFORD: Wow. Man. We have a lot of qualified people in this state. Anybody who is neutral on the bill? Senator Mello, what are your thoughts? [LB677]

SENATOR MELLO: I'll be brief. Chairman Ashford, members of the Judiciary Committee, I appreciate your time. Of course, myself and the Attorney General's Office would be willing to work both with the opponents as well as Senator Chambers and others in the committee who have concerns about the legislation. But while myself, not being an attorney--unfortunately I get confused as being one, unfortunately--the reality is that this really is a consumer protection issue, though. And the FTC gives the authority to the states to be able to go after consumer protection-related issues across state lines. So the argument and concern that this is...that a business or a company would do this outside of Nebraska, whether Delaware or Texas, that we couldn't go after a business and stopping them from sending demand letters, I think that's currently already being done in a variety of other consumer protection statutes and authority in the Attorney General's Office. So this is, I think, an extension of what we currently do in the Uniform Deceptive Trade Practices Act as well as the consumer protection programs in the Attorney General's Office. But with that, I'd be more than willing to answer any questions any senators may have. [LB677]

SENATOR ASHFORD: Senator Chambers. [LB677]

SENATOR CHAMBERS: Just one question. Senator Mello, as a member of the Legislature, you know that I will often say if this legislation is not needed, we shouldn't do it. If this that the bill is attempting to do is currently being done, which you've said and that's what the Attorney General told you, what do we need this bill for? [LB677]

SENATOR MELLO: I think...I asked the Attorney General's Office that question in the sense of, can this already be done now under current statute? And to some extent the argument or the issue or the answer they gave me was they could possibly try to go after an entity under the existing Uniform Deceptive Trade Practices Act with a couple of

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Transcriber's Office

Judiciary Committee  
February 05, 2014

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the three top criteria. But the challenge, more than anything else, is giving guidance to the courts in regards to what essentially...what a bad faith assertion is. [LB677]

SENATOR CHAMBERS: But the court doesn't need guidance from the Attorney General's Office. If this is a deceptive trade practice, use the law that exists. Does he think that judges don't know the law? That's a rhetorical question. But the one I will ask you is this: Are you persuaded that this is good legislation as it exists now? [LB677]

SENATOR MELLO: I am persuaded that the Vermont statute, which this is based off of, is good law. I think the challenge is, and you heard the opposition, there is concern of whether or not it's a preemption issue. I think the Attorney General's Office, working in conjunction with other attorneys general across the country, have looked at the Vermont law and feel that that is where states can go to the edge of that preemption argument. Now there will be some that say states are crossing that line, and thus federal law should preempt them. The challenge though is, particularly with the demand letter component of the legislation... [LB677]

SENATOR CHAMBERS: Here's what I'm getting to. You are the one who will defend this on the floor of the Legislature. [LB677]

SENATOR MELLO: Absolutely. [LB677]

SENATOR CHAMBERS: Can you defend it? [LB677]

SENATOR MELLO: I'll do my best; you know that. [LB677]

SENATOR CHAMBERS: That's not good enough. Can you defend it? [LB677]

SENATOR MELLO: Oh, I think it's defensible. Absolutely, I mean... [LB677]

SENATOR CHAMBERS: Can you answer the questions? [LB677]

SENATOR MELLO: ...but now the question is, is whether or not others will believe me or argue against me. That's something that's out of my control. [LB677]

SENATOR CHAMBERS: Can you answer the questions then that I put to these gentlemen who have been up here before? [LB677]

SENATOR MELLO: I will...obviously, I will probably have to answer those questions if the bill comes to the committee. [LB677]

SENATOR CHAMBERS: That's not the way I asked the question. You don't get the break that your daughter gets. You're her father and you're not the daughter. You

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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

couldn't answer those questions, really, I don't believe, because I don't think the Attorney General's representative really answered them. And he's looking at the bill and I think when they look at it again they're going to say, yeah, a lot of this stuff can be taken out of it. And if I wanted to rewrite it based on what they say they want, I could do it; but I'm not going to do it for them. I think it is not an area the Attorney General's Office ought to be involved in if Congress is working on it now. He can try to get us to waste our time, but I will not be one who will sit idly by and let the Legislature waste its time so the Attorney General can make hay while he's going to run for Governor. And we'd be up there arguing, and you'd have to say, well, I will argue for this eight hours, when you are in good faith trying to do something you're convinced is good and the Attorney General, I think, is using it to run for Governor. And I say it here. And if he thinks that's not true, he should have been here himself because he knew what I would say. He knew the questions I would ask. And that's why he doesn't come and it's his bill and his fault, and I feel sorry for you, but now you're among the downtrodden, so I'm going to leave you alone. (Laughter) [LB677]

SENATOR ASHFORD: Thanks, Heath. [LB677]

SENATOR MELLO: Thank you. [LB677]

SENATOR ASHFORD: (See also Exhibits 1, 6, and 23) Senator Wightman came in, I believe, a few minutes ago. We're now going to LR399. Welcome. And this has nothing to do with wills and trusts or...? [LR399]

SENATOR WIGHTMAN: What? [LR399]

SENATOR ASHFORD: Nothing to do with wills and trusts or any of those things? [LR399]

SENATOR WIGHTMAN: Not this time. [LR399]

SENATOR SEILER: I'm not the clerk. I'm not the clerk. [LR399]

SENATOR CHAMBERS: I think it has everything to do with him. He is a man of goodwill and we can trust him. [LR399]

SENATOR ASHFORD: Yes, that's... [LR399]

SENATOR SEILER: I know I've been downtrodden since I got here, but not to clerk level. [LR399]

SENATOR WIGHTMAN: You aren't the clerk? My gosh. [LR399]

SENATOR SEILER: He's higher than I am. [LR399]

SENATOR WIGHTMAN: (Exhibit 5) Good afternoon, Chairman Ashford and members of the Judiciary Committee. For the record my name is John Wightman, spelled J-o-h-n W-i-g-h-t-m-a-n. Control of the international borders and immigration policy are the responsibility of the federal government. That's why I'm bringing an LR rather than an LB, in case anybody wonders. After 28 years, Congress should address the major problems and make changes to the nation's immigration laws. By adopting this resolution, Nebraska would join 31 other states that in 2013 passed resolutions urging Congress to take action on critically needed changes of immigration policy. As a resident of Lexington, Nebraska, I have had firsthand experience with the impact of immigration on a community. Although the arrival of new immigrants creates some challenges for community services and school systems, the net benefit to the economy and contributions of immigrants to the community, its culture, and tax base more than offset the cost of overcoming these challenges. The community Lexington works diligently to engage, integrate, and retain new residents into the state. Communities particularly in rural areas are thriving if they have growing immigrant populations, unlike some of their neighboring communities. Population decline is a critical issue for rural communities because it leads to economic decay. Immigrants help reverse that trend. Nebraska, like the rest of the United States, needs immigrants to replenish the labor force. Roughly 77 million baby boomers, one quarter of the United States population, are starting to reach retirement age. Census numbers for Nebraska show that the number of persons over 65 is projected to grow from 246,277 in 2010 to 323,620 in '19-20, a 31.2 percent increase, and then to 411,527 in 2030, a 27.7 percent increase. Rural communities face a bigger challenge as its native-born young people are attracted to urban areas. The trend in demographics indicates ongoing and future labor shortages in some of the state's key economic sectors--agriculture, meat processing, construction, skilled trades, and professions requiring advanced education. Nebraska needs immigrants to meet the state's future work force needs and support economic growth. What has happened in Lexington is an excellent example that immigrants do not compete with native-born workers for jobs and creates jobs as entrepreneurs, consumers, and taxpayers. Immigrants go to where the jobs are or they create jobs on their own. It should be emphasized that the definition of "immigrant" includes people that came to the U.S. in search of a better life or people that acquired an advanced education in the U.S. or elsewhere and would like to work in the United States and fill a shortage area. Many immigrants complement the work of native-born workers and increase their productivity. For example, low-skilled immigrant laborers allow native-born farmers, contractors, and craftsman to expand production. Businesses adjust to new immigrants by opening stores, restaurants, or production facilities to take advantage of the added supply of workers. More workers translated into more businesses. When the U.S. Chamber of Commerce determined that 2014 is the year that immigration reforms should finally be enacted, it illustrates the benefit to the economy by creating new jobs and complementing the skills of native-born workers. In

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Judiciary Committee  
February 05, 2014

---

conclusion, the facts as supported by the research are: Nebraska and the United States need immigrants to meet its population and work force needs; immigrants do not compete with native-born workers and create jobs as entrepreneurs, consumers, and are taxpayers; immigrants actually give a slight boost to average wages by increasing the productivity of native-born workers and stimulate investment. Congress should enact comprehensive and forward-looking immigration reform in order to create a strong foundation for the future of the United States, the state of Nebraska, families, and the economy. Following me you will hear from members of the Nebraska Coalition for Immigration Reform. They've taken this issue across the state and heard repeatedly how the current immigration laws of the United States are creating barriers to healthy community development and undermining the success of Nebraska communities. I urge you to advance LR399 and urge Congress to take needed action. Thank you. [LR399]

SENATOR ASHFORD: Yes, Senator McGill. [LR399]

SENATOR MCGILL: Thank you, Senator Wightman, for being here and allowing me to sign onto this piece of legislation or this resolution. What do you think the economy in Lexington would be like without immigrants? [LR399]

SENATOR WIGHTMAN: Well, you have to look at what Lexington was having immediately before our big immigration population came in, and that was about 1989 when we'd lost a meat packing...or not a meat packing plant but a combine manufacturing plant, Sperry New Holland, who hired about 800 people. So here we were in a town of, by that time, probably, 5,000 people. Today we're a town of 10,000 people. But the economy was not good, as you can imagine, with an industry of 800 people having left the community in the last three or four years prior to the meat packing plant moving there, which was IBP at the time. So that's what it's done in Lexington and I think that's what it's done in many communities across the state. I think we have one of the highest minority populations in the state of Nebraska. There are a couple of others that have been involved in meat packing, as well, that might be somewhat close, but I think we have the highest. [LR399]

SENATOR MCGILL: Well, it certainly seems to me that immigrant populations have helped keep some of our cities going... [LR399]

SENATOR WIGHTMAN: Right. [LR399]

SENATOR MCGILL: ...and the sizes that they are. [LR399]

SENATOR WIGHTMAN: And while a lot of them think it's in Omaha and perhaps Lincoln, it also is in outstate Nebraska. [LR399]

SENATOR ASHFORD: I mean, Senator Wightman, just...and I've said this many times

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Transcriber's Office

Judiciary Committee  
February 05, 2014

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and I'll say it again. Thank you for your leadership in this matter and especially your leadership in your community of Lexington. I...my trip to Lexington that you hosted, invited me to come out and to visit with the...this was four or five, maybe six, years ago now. We got to look...visit the schools, the superintendent, the bankers, especially the priest at St. Ann's who has five masses on Sunday and he barely could get one a few years before that. It's an...it's so impressive and I think it's over 80 percent of the kids in the school are Latino, at least, or...and the...what has happened to your community and the way your community has welcomed the immigrant population, it's just an amazing thing. I mean, I invite every Nebraskan to go to Lexington. I mean, it's just a...it's really impressive. And you and the other leaders in that community should take a great deal of credit for the welcoming attitude, which is really the Nebraska way of dealing with these issues. So thank you very much. [LR399]

SENATOR WIGHTMAN: Thank you, Senator Ashford. [LR399]

SENATOR ASHFORD: I don't see any other questions. Thanks. Any...let's go with the proponents. Okay. [LR399]

JIM PARTINGTON: (Exhibits 7 and 8) Senator Ashford and members of the Judiciary Committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I appreciate the opportunity to represent the Nebraska Coalition for Immigration Reform and the Nebraska Restaurant Association and testify in support of LR399. In 2013 our coalition conducted a series of forums in five Nebraska communities--Crete, Omaha, Norfolk, Lexington, and Scottsbluff--to discuss the impact of immigration and learn how each community approached the associated challenges and opportunities. Participants in these discussions included community leaders, educators, business owners, cattlemen, farmers, and interested members of the community. The lessons learned and recommendation for action are consolidated in our report which has just been distributed, along with my testimony, and it's called "Immigration in Nebraska, Part II." Also in that packet is a short summary about the Nebraska Coalition for Immigration Reform. Our first conclusion from these discussions is that much of the debate over immigrants and immigration reform has been based on imperfect or inaccurate information regarding who immigrants are, where they come from, why they are here, what they do, what they want, and what they contribute to our country. It was very clear in these discussions that recent generations of immigrants came to our country for the same reason that our great-grandparents came--they want an opportunity to work and build a better life for their children and the generations to follow. We learned that community leaders recognize that the arrival of new immigrants created some challenges for community services and school systems, but they believe that the net benefits to the economy and contributions of immigrants to the community more than offset the cost of these challenges. We also heard concerns expressed about our outdated immigration laws and how they are creating barriers to economic development in rural Nebraska and that communities with growing immigrant populations were



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Judiciary Committee  
February 05, 2014

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thriving. Those with declining populations were not. Based on what was learned from the forums we conducted, the Nebraska Coalition for Immigration Reform recommends that the Nebraska Legislature enact a resolution requesting the United States Congress to act on comprehensive immigration reform legislation that will provide for future labor requirements and the integration of our immigrant population into our communities. There are also several legislative actions outlined in our report that can be taken at the state level which will benefit Nebraska businesses and communities. We recommend that you consider enacting these recommendations. Immigration reform has become an emotional hot-button issue driven by political rhetoric and uninformed opinion. If you strip away the emotion and the rhetoric, you get down to the basics of what immigration is. It's just population growth, and this growth is the foundation for economic development. The descendants of the Norwegians, Swedes, Hungarians, Germans, Irish, and English and Hispanics and others who settled the ethnic enclaves scattered across the Nebraska plains have succeeded beyond the most optimistic dreams of the original settlers. By the second generation some stayed behind on the farm, but others became tradesmen, businessmen, educators, and the third generation moved on into medicine, engineering, law, and military careers. One notable result of this success... [LR399]

SENATOR ASHFORD: Jim, time-out. [LR399]

JIM PARTINGTON: I'm sorry. [LR399]

SENATOR ASHFORD: We're going to have to stick... [LR399]

JIM PARTINGTON: Okay. [LR399]

SENATOR ASHFORD: The reason I'm asking people...your testimony is important but we've got to...there's many people here. [LR399]

JIM PARTINGTON: Sure. [LR399]

SENATOR ASHFORD: So any... [LR399]

JIM PARTINGTON: That concludes my remarks. [LR399]

SENATOR ASHFORD: Yeah. Thank you for your comments. Any questions of Jim? Okay. Thank you. [LR399]

JIM PARTINGTON: Thank you. [LR399]

DAVID BROWN: (Exhibit 9) Good afternoon, Chairman Ashford and members of the Judiciary Committee. I have some written testimony I'm going to share with you. I'm

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Judiciary Committee  
February 05, 2014

---

going to try and be as brief as I can. I'm also a member of this coalition and I want to thank Jim for getting this group together about six years ago to talk about issues related to immigration reform. I'm a lawyer. I practice in the area, specifically in immigration law, and I started... [LR399]

SENATOR MCGILL: Can you say your name for us? [LR399]

SENATOR ASHFORD: Yeah, we're going to... [LR399]

DAVID BROWN: Oh, sorry. It's David Brown. David, D-a-v-i-d, Brown as in the color. I appreciate the opportunity to speak to this group. I've been practicing immigration law professionally for 15 years. I've started my practice in Canada, so I deal with Canadian issues, international issues... [LR399]

SENATOR ASHFORD: And you've been here before talking to us. [LR399]

DAVID BROWN: And I've been here before, yes. This is obviously an issue that's very passionate to me given what I do. I wanted to reflect on how the system is so broken because it quite frankly...there are...I've got a number of points in my testimony that highlight where there are problems. I'll give you two key aspects. We deal with a lot of technology companies throughout the country. If you hire an Indian national with a U.S. bachelor's degree and you want to keep that Indian national with your company long term, it's about 50 years right now under the current system to get someone a green card. I'm going to be retired or dead before... [LR399]

SENATOR LATHROP: Did you say 50? [LR399]

DAVID BROWN: About 50, 5-0. It could be longer depending upon the calculation. There are just too many people in the system and the system doesn't accommodate enough people. So we're actually telling a lot of the folks who have been educated here that, you need to go, we don't care if you're educated here, we don't know if you're the best...we don't care if you're the best and the brightest, but you need to go if you want to have a future. And we've got a whole generation of folks who are stuck in this system. I was hoping to have one of my clients here to testify. He lives in Kearney. He was unable to testify but he asked me to relay his story. He was brought to the U.S. as a seven-year-old. His parent paid someone to bring him here and they had that someone use a U.S. passport. So he made a false claim of being a U.S. citizen at the age of seven. Under government requirements that was imputed to him. He had no idea what was going on. He was taken in a car and he was told later on by me when he sought adjustment of status that, you made a false claim 20 years ago to be a U.S. citizen. We couldn't at the time do anything to solve that problem. That's an absolute bar from becoming a permanent resident currently. He was married to a U.S. citizen. They had a child together. On a drive back from visiting people in Lincoln they were run off the road

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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

by someone who was on meth. His wife was killed in the accident. He himself was in a coma. He recovered but he still has severe injuries and he is now a single father. He's in the unusual situation where our current legislation suggests he needs to go. Thankfully, DACA came around and we were able to file a DACA application for him so he could get work authorization, although he's not entitled to drive in the state currently. [LR399]

SENATOR ASHFORD: He's under 21 but... [LR399]

DAVID BROWN: He was seven when he came in. [LR399]

SENATOR ASHFORD: But he's under 21 now. [LR399]

DAVID BROWN: And he was under 30 at the time of the application, correct. [LR399]

SENATOR ASHFORD: Okay. [LR399]

DAVID BROWN: And so the end result though with this particular piece of legislation in front of the house, if that were to be enacted, there is actually a provision in there that because his marriage is...the death of his spouse was less than two years ago, she could still petition for him for permanent residence. And that absolute bar based on him claiming citizenship as a seven-year-old, the U.S. government has reinterpreted that so that it's not imputing that to the seven-year-old child. [LR399]

SENATOR ASHFORD: Dave, it's time. [LR399]

DAVID BROWN: Yes. [LR399]

SENATOR ASHFORD: Let's...again, I don't...everyone has a lot to say, but we've just got to get through the group. So any questions of David? Okay. Good point. [LR399]

DAVID BROWN: Thank you. I appreciate you helping get people unstuck. [LR399]

SENATOR ASHFORD: Thank you. Next proponent for the resolution. [LR399]

SENATOR MCGILL: Somebody. [LR399]

LAURA FIELD: (Exhibit 10) Thank you, Chairman Ashford, members of the Judiciary Committee. My name is Laura Field, L-a-u-r-a F-i-e-l-d, and I'm the director of legislative affairs for the Nebraska Cattlemen. Nebraska Cattlemen is proud to be here in support today of LR399. More than two years ago a task force within Nebraska Cattlemen came together to study immigration issues for the beef industry. Over the course of 11 months, this group heard from state and national experts on these issues as well as from beef producers from across the state. The result of their work was a policy calling

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Transcriber's Office

Judiciary Committee  
February 05, 2014

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for comprehensive immigration reform that was unanimously adopted at our annual convention by our membership in December of 2012. As small business employers, we want to do things legally. We want to hire legal, authorized employees. But we know from experiences...our experience when we go out into the employee marketplace and look for employees, we need all workers. Oftentimes immigrants are more willing, have requisite skills, and want to live in rural Nebraska and are available to work. You've heard from others today that the immigration system in this country is broken. One of the biggest flaws for agricultural workers is they are only allowed to work for less than one year at a time in this country. Ranches and feedlots in Nebraska rely on employees year round to feed and care for animals in order to produce quality food for all of us. As a result, we invest a lot of time and training in our employees and keeping them long-term is a priority for us. This also allows us to get to know our employees on a personal level. They live down the road from us, our kids play together, they play sports, go to school, and worship together on Sundays. And just like the first immigrants to settle and raise cattle in Nebraska who came here to make their lives better and provide for their families, we know from our employees they want the exact same things. But the system that allowed our ancestors to come to this country doesn't exist anymore. There is no longer a line to get in. The immigration problem is not small business versus big business. It's not rural versus urban either. It impacts each and every one of us because, as we like to say, immigration is a food on the table problem. Immigration reform is necessary to fill labor requirements across agriculture and to bring food to all consumers. Nebraska Cattlemen strongly encourages the committee to advance LR399. I thank you for your time, and I also would like to submit written testimony for one of our members, Jerry Kuenning, from Imperial who is out of town today and couldn't be here. And I have copies of that. [LR399]

SENATOR ASHFORD: Thank you, Laura. Any questions of Laura? The only comment I would make--and you make a good point--historically, I think our borders were generally open to everyone until the 1890s when the anti-Chinese immigration restrictions were put in place and then in the 1920s when even further restrictions were put into place. So we had open borders. My relatives from Sweden or Ireland or wherever came here in a fairly open way to take jobs. And I know in traveling around the state that certainly the Hispanic Latino population of people I've met all these years now, so many of them came to take jobs that were not...they were in demand. They were in demand just like our relatives in the 1870s and 1880s. So you're right. Federal law has changed dramatically over the years and has become much more restrictive and has been used as a political tool, so, anyway, thank you for your comments. [LR399]

LAURA FIELD: Thank you. [LR399]

SENATOR ASHFORD: Any other proponents? [LR399]

DARCY TROMANHAUSER: (Exhibit 11) Good afternoon. My name is Darcy

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Transcriber's Office

Judiciary Committee  
February 05, 2014

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Tromanhauser, and I'm the director of Nebraska Appleseed's Immigrants and Communities Program. Sorry, it's D-a-r-c-y T-r-o-m-a-n-h-a-u-s-e-r. We're here to testify in support of LR399 and to thank the many bipartisan cosponsors for introducing this important resolution. Fixing our outdated immigration laws is long overdue. In the words of one Nebraska pastor, it doesn't have to be this hard. Our antiquated laws are moving our country away from the values that make us great and the practical, workable policies that make us strong. Today I'd just like to draw your attention to a few recent studies, also in a fact sheet that I just distributed, showing the enormous economic and social benefits we stand to gain from bringing our policies up to date. Commonsense immigration laws can cut our national deficit significantly. As just an example, the bipartisan 2013 Senate immigration bill would cut the deficit by close to \$175 billion in just the first ten years. For Nebraska, the passage of immigration reform would mean an increase in tax contributions of more than \$10 million per year. This is in addition to the \$42 million per year already paid in state and local taxes by undocumented Nebraskans. Commonsense immigration laws will keep thousands of families together. More than 400 U.S. citizen children per day are separated from a parent by detention or deportation. And finally, a decade of polling shows that the American public recognizes the importance of fixing our outdated laws. Last year's 2013 polling by the Public Religion Research Institute showed bipartisan cross-religious support; 63 percent of people, including 60 percent of Republicans, support immigration reform with a path to citizenship. And an additional 14 percent support reform with noncitizen legal status. A recent Fox News poll last month showed that 68 percent support a clear process for citizenship. And again, the polling on this has been consistent for a decade. So these are just a few of the reasons why so many Nebraskans from a wide range of perspectives have come together in the past year. More than 40 Nebraska organizations representing thousands of people--the Cattlemen, restaurants, landscaping, family businesses, faith leaders, youth, civic groups, civil rights leaders, you name it--to say that we can't afford to wait any longer on this. Our immigration policies are about much more than our borders. As you've heard already, they have a real and practical impact on many aspects of our community, family, and economic life every day in communities across Nebraska. It's a strength, an asset and, more personally, a part of our families at home. So thank you for your support of this resolution. [LR399]

SENATOR ASHFORD: Thank you, Darcy. I don't see any questions. [LR399]

DARCY TROMANHAUSER: Okay, thanks. [LR399]

SENATOR ASHFORD: Next proponent. [LR399]

DAVE PIESTER: (Exhibit 13) Chairman Ashford and members of the committee, my name is David Piester, P-i-e-s-t-e-r. I testify as an individual. Before I retired, I was a United States Magistrate Judge for 28 years. Of all of my duties, I was the most

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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

privileged to naturalize in all hundreds of new United States citizens. The fruition of years of work, resilience, persistence, patriotism, and hope beamed on those faces. The histories of those new citizens were sometimes wrenching, and they showed deep devotion to this country even as they parted with their countries of origin. The energy from the din of different accents heard at postceremony receptions loudly demonstrated that our diversity is indeed the strength of this nation. This country needs that energy and we need that strength. I am convinced that our country needs comprehensive immigration reform and now is the time to address it. There are lots of legitimate interests concerning immigration reform. Businesses, farmers, ranchers, nurserymen, restaurateurs, and other economic interests need permanent laborers. Union members want to protect jobs. Others do not want undocumented immigrants to get an unfair advantage in the quest for citizenship. Undocumented workers want to put an end to being unfairly treated because they cannot speak out. These and other interests have already been brought to the table and heard in crafting currently pending legislative proposals in the House of Representatives. We need comprehensive processes that recognize these immigrants' existence, recognizes the rule of law by penalizing past unlawful entries, and provides hope for future legal participation in our society, even to the point of citizenship. If given legal status, these immigrants would be buying more houses, paying more taxes, starting more businesses, and otherwise contributing to this country's great engine of economic growth, cultural diversity, and participatory democracy. Comprehensive immigration is also a moral issue. It is simply wrong for this country to orphan children by deporting their parents and caretakers. It is wrong to exploit laborers because they are too afraid of disclosure to stand up for their rights. It is wrong to penalize children and young adults for unlawful acts of their parents. It is wrong to preclude bright, aspiring Americans from fully participating in this country's abundance. Now is the opportunity to address and rectify these problems with our present immigration laws. Please support LR399 and urge our congressional delegation to enact comprehensive immigration reform this year. [LR399]

SENATOR ASHFORD: Judge, you're needed in Washington with your mediation skills (laughter) to bring this matter to a positive conclusion. [LR399]

DAVE PIESTER: Thank you. (Laugh) They didn't ask me. They didn't call me. [LR399]

SENATOR ASHFORD: They didn't...well, that's because they don't ask the right people. Senator Chambers. [LR399]

SENATOR CHAMBERS: I disagree. He'll do much more good here because he'd go there and get lost and the federal court's loss is our gain. I'm glad you're still working. [LR399]

DAVE PIESTER: Thank you. [LR399]

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Transcriber's Office

Judiciary Committee  
February 05, 2014

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SENATOR ASHFORD: Yes. Thanks, Judge. [LR399]

DAVE PIESTER: Thank you. [LR399]

SENATOR ASHFORD: I don't see any other questions. Jim. [LR399]

JIM CUNNINGHAM: (Exhibit 14) Senator Ashford and members of the committee, good afternoon. My name is Jim Cunningham, that's J-i-m C-u-n-n-i-n-g-h-a-m. I'm executive director of the Nebraska Catholic Bishops Conference, and I'm here to express the conference's support for LR399. I just have to make a little aside. I first knew Judge Piester when he was head of Legal Aid and we worked together on public assistance issues. And I appreciate the fact that our common interest in immigration reform has given me a chance to reconnect with him. I'm going to distribute my statement and I'm going to be very brief. You know, there isn't a lot that this Legislature can do to fix the broken immigration system. But this is something that you can do and it's important even though it's largely symbolic. And so also important are the statements and sentiments that are being expressed here today in support of it. In 2009, the bishops in Nebraska issued a statement on immigration, and that was a major pastoral statement. And at the conclusion of that statement, they made this statement: We look forward to the day when a comprehensive, innovative, and effective framework of reforms improves and revitalizes our nation's immigration system. And on behalf of the conference, I would like to add that we'd like to see immigration reform happen sooner than later, and there are some hopeful signs. The reports from Washington are cautiously optimistic but the opportunity seems realistic. Genuine progress needs a boost, and we're going to be involved in working on that and so are the others that you've heard here today. But we really would appreciate and value the Legislature's leadership on helping us to accomplish what so many feel strongly about. Thank you. [LR399]

SENATOR ASHFORD: Thanks, Jim. Any questions of Jim? Senator Chambers. [LR399]

SENATOR CHAMBERS: Mr. Cunningham, I told you we'd be together on an issue again, and I'm glad it's this one. It's worth the effort. And there will be more times we're together than when we're apart. And when we are together, I think we get a lot accomplished, don't you? [LR399]

JIM CUNNINGHAM: Oh, I hope so. I believe that. [LR399]

SENATOR CHAMBERS: So on those other issues where we're apart, just come over to my side. (Laughter) [LR399]

JIM CUNNINGHAM: Ain't gonna happen. (Laughter) [LR399]

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Transcriber's Office

Judiciary Committee  
February 05, 2014

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SENATOR ASHFORD: I've seen it happen, things weirder than that. I have, really.  
[LR399]

JIM CUNNINGHAM: Thank you very much. [LR399]

SENATOR ASHFORD: Thanks, Jim, and thank the archbishop for his leadership.  
[LR399]

JIM OTTO: Senator Ashford, members of the committee, my name is Jim Otto, J-i-m O-t-t-o. I'm here on behalf of the Nebraska Retail Federation and as an individual in support of LR399. It's been my pleasure to work with Mr. Partington on the coalition and very thankful and want to thank him for what he's done. I could go ahead and quote statistics, but you've had a lot of facts quoted to you. I'd just like to relate a personal story that really impacted to me as to how much trouble we are in on immigration. I have a nephew; he's 45 years old. He's half Filipino, half whatever we are. He's my brother's son, and my brother was stationed as a U.S. Air Force officer in the Philippines in the late '60s, had a very serious romance with a Filipino lady and almost married her but did not. But my nephew Michael was born as a result of that relationship. My brother stayed in contact, stayed in support, always was there communicating with the mother of Michael and Michael all through the years. Anyway, and Michael is a U.S. citizen. My brother made sure of that. At age 35, his opportunities in the Philippines were very limited and so my brother decides, let's bring Michael to the United States, which was no problem because Michael was a U.S. citizen. But Michael is married and had three children. And bringing his wife and three children with the...all of the background of our family. And I think some of you know and I'm sure Senator Chambers knows, my late father, Norm Otto, who passed away a little over a year ago at age 94, but he had some influence, a little influence, you guys probably know it, but...and so putting all of our family wealth behind it, putting the influence of the family behind it, Senator Hagel's help, Senator Nelson's help, we actually got the family over here in about two and a half years. My point is...and that was not citizenship, that's just legal status for some kind of a green card that allows you to stay for two years and then improve it. But I guess my point is, if it takes two and a half years for our family to do that, with the assets and resources we had, it's just hopeless for anyone that doesn't have that. And you can say all you want about building fences. If you're starving to death, you're not going to come...you're going to figure out another way over here if it's going to take you years and years and years and years to get here legally. That's all I have. [LR399]

SENATOR ASHFORD: Thanks, Jim. Senator Chambers remembers Norm Otto, so...  
[LR399]

SENATOR CHAMBERS: I'll just say that when you use lowercase letters to spell his last name it's the same forward, backward, upsidedown, but he's always forward looking



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

Judiciary Committee  
February 05, 2014

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and I appreciate it. [LR399]

SENATOR ASHFORD: And your father was a great leader, so thanks, Jim. [LR399]

JIM OTTO: Thanks. [LR399]

SENATOR ASHFORD: Okay, over here and then over there. [LR399]

LAZARO SPINDOLA: (Exhibit 15) Good afternoon, Chairman Ashford and members of the Judiciary Committee. For the record my name is Lazaro Spindola, L-a-z-a-r-o S-p-i-n-d-o-l-a. Thank you for receiving me today, this afternoon. I am the executive director of the Latino American Commission and, guess what, I'm in favor of this resolution. I will not repeat the economic and demographic advantages that will result from immigration reform. I will not talk about the lack of decency and respect that our current immigration system exhibits. Other testifiers have done so or will do so. Instead, I will focus on our situation now, what we're doing, and the possible consequences of our current immigration system. According to Homeland Security, there are 11.5 million persons in the United States not authorized to do so. This, by the way, includes 1.5 million Asians and about half a million Canadians and Europeans, nationals. During the past five years President Obama's administration has deported 1.9 million. At this rate it would take 30 years to deport every current unauthorized person without considering new arrivals. Senators, these 13 million people are here to stay. They're working, raising their families, helping to build this country, and contributing to the economy. They're not going anywhere unless we send them back to whatever hell they came from, which brings us to our current situation. We have a subcategory of people living in the United States living in fear--fear of the law enforcement agency, fear of the neighbors, fear of their working sites, of walking the streets, but, most especially, fear of being sent back to the situation that made them leave in the first place. They are willing to face these fears 24 hours a day, 7 days a week, rather than go back. They are here to stay. People come to this country searching better opportunities or freedom from persecution or violence. At the beginning we are all infatuated with the material benefits offered by this country, but slowly other feelings develop. In my case it was little things--my neighbor scooping the snow from my sidewalk, the clerk at the convenience store remembering my favorite brand, you senators stopping to say hello and even visiting sometimes while I stood outside of the Capitol. All these little things made me feel like I was being acknowledged and considered as a person and as a human being. Slowly my infatuation began to turn into love, love for this country and for the way our people are, our compassion, our respect for others, our willingness to collaborate and help our neighbors, and many other things. My initial infatuation turned into a full-fledged love affair with the United States. I've been out of the country several times and I just couldn't wait for the time I could come back home. We currently have 11.5 million people who are being persecuted and live in fear of their surroundings. They have little hope of achieving higher education and, in some cases, obtaining a driver's license. We

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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

do not offer them a choice; we force them into a situation of illegality because the only alternative, returning to their countries, is much, much worse. They desperately want to love and be part of this nation, but love can hardly stem out of fear. Let's get rid of the fear and turn it into love, and let's ask our congressional delegation to vote in favor of immigration reform. [LR399]

SENATOR ASHFORD: Okay. Thanks, Lazaro. [LR399]

LAZARO SPINDOLA: You're welcome. [LR399]

SENATOR ASHFORD: Any questions? Yes, Senator Chambers. [LR399]

LAZARO SPINDOLA: Yes. [LR399]

SENATOR CHAMBERS: One comment. [LR399]

LAZARO SPINDOLA: Ooh, I am afraid of this. (Laugh) [LR399]

SENATOR CHAMBERS: My brother, I want more than anything else for a pathway to citizenship to be established. And when we get that pathway to citizenship for the group that we know is usually considered when we talk about it, I want to hitch a ride so that I can get first-class citizenship also. We are in this together. And when you get yours, I hope I get mine. And if I get mine before you get yours, I'm not going to forget you. [LR399]

LAZARO SPINDOLA: We're definitely in this together. We are riding this boat and if it sinks we'll both go down. You love history. The Roman Empire reigned for a thousand years and the way that they did it was that every time they'd conquer a nation they offered Roman citizenship. As soon as they met the barbarians from northern Europe--most of your ancestors--they decided not to do that anymore and eventually the empire fell. So that is a sure way to guarantee the love and the faithfulness and the loyalty of your new citizens. [LR399]

SENATOR CHAMBERS: Thank you. [LR399]

SENATOR ASHFORD: You know, those northern Europeans, Lazaro,... [LR399]

LAZARO SPINDOLA: Si. [LR399]

SENATOR ASHFORD: ...they can be a problem. (Laughter) You get a bunch of them and...yeah, thank you. Thanks. [LR399]

EMILIANO LERDA: (Exhibit 16) Good afternoon, Senator Ashford and members of the

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Transcriber's Office

Judiciary Committee  
February 05, 2014

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Judiciary Committee. My name is Emiliano Lerda, E-m-i-l-i-a-n-o, last name is L-e-r-d-a. I am an immigrant and proud to be a U.S. citizen as of 2009. I appreciate the opportunity to speak in support of LR399. I am the executive director of Justice For Our Neighbors of Nebraska, a faith-based, nonprofit organization that was started by the United Methodist Committee On Relief in 1999 to welcome immigrants to our communities by providing free, high-quality immigration legal services, education, and advocacy. Our organization is also proud to be a member of the Nebraska Coalition for Immigration Reform. In 2013 our organization provided legal services in approximately 1,100 cases of individuals that needed help navigating the extremely complicated and outdated immigration legal system. We provide immigration legal services to low-income immigrants from across the state with monthly clinics in Omaha, Columbus, and Lexington. We work every day with people that want to do the right thing. They want to live in this country with lawful status. Just like many of your ancestors, our clients want an opportunity to work and build a better life for their children and the generations to follow. Unfortunately, our current immigration legal system makes it virtually impossible for people to do the right thing. Our broken immigration legal system not only destroys immigrant families every day, but it ultimately hurts the well-being of our communities. We sometimes hear people in the community say that immigrants should get in the back of the line if they want to come to the United States. The problem is there are no lines for most people to get into. There are very few narrowly defined lines that allow only those with very specific familial relationships to qualify to wait for a family-based immigrant visa. Even if one is lucky enough to fit within one of these narrowly defined lines, the wait can exceed one's life expectancy. For example, a brother or sister of a U.S. citizen from Mexico will have to wait more than 20 years to have an immigrant visa available to them. A brother or sister of a U.S. citizen from the Philippines will have to wait close to 30 years for an immigrant visa. Employers are not being able to meet their labor needs with the limited number of employment-based immigrant visas currently available every year. In sum, our outdated system is working against our country's own economic best interest. The current immigration legal system is not giving people the opportunity to do what is right. It is in our country's best interest to pass comprehensive immigration reform. It is in our country's best national security interest to pass comprehensive immigration reform. Our religious leaders have also spoken on the issue urging the passing of comprehensive immigration reform to protect family unity and welcome the stranger among our midst. Thank you for your leadership and for your support of passing LR399 and for being a good example of how just and fair the Nebraskan community is. [LR399]

SENATOR ASHFORD: Emiliano, let me just comment... [LR399]

EMILIANO LERDA: Yes. [LR399]

SENATOR ASHFORD: ....or just follow up on one point you made, and that is the restrictions on immigration from certain parts of the world. My understanding, correct me

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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

if I'm wrong, in the 1920s when we started to restrict immigration to a great, great extent, during the Harding Administration, that the...we...the quotas that were first developed in the 1920s for all nations were based on the population in the United States at that time. So the British... [LR399]

EMILIANO LERDA: As of 1910. [LR399]

SENATOR ASHFORD: As of 1910. [LR399]

EMILIANO LERDA: Yes. [LR399]

SENATOR ASHFORD: So if you were British or German or Swedish, you had a large number of quota. [LR399]

EMILIANO LERDA: Right. [LR399]

SENATOR ASHFORD: If you were from countries that didn't have a large population, their quota...and those quotas really to a certain...they've been changed a little. [LR399]

EMILIANO LERDA: Yeah. [LR399]

SENATOR ASHFORD: But to a great extent that has not changed. Is that...? [LR399]

EMILIANO LERDA: That particular quota used to be 3 percent of the existing population at that time, as of 1910. So you couldn't exceed that. [LR399]

SENATOR ASHFORD: I know it's changed, but those numbers... [LR399]

EMILIANO LERDA: And there were exceptions for people from the Western Hemisphere... [LR399]

SENATOR ASHFORD: Right. [LR399]

EMILIANO LERDA: ...and white Europeans immigrating as well so...yeah. [LR399]

SENATOR ASHFORD: Right, but a lot of the restrictions kind of date back to that. [LR399]

EMILIANO LERDA: Yes. A lot of the restrictions that we see today have their roots in the early 1900s when the first restriction periods of legislation started to happen to take place. [LR399]

SENATOR ASHFORD: With the Chinese, and then... [LR399]

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

Judiciary Committee  
February 05, 2014

---

EMILIANO LERDA: The Chinese Inclusion Act as well, yes. [LR399]

SENATOR ASHFORD: All right. But those numbers were based on the population. There were more Germans here than anybody else. [LR399]

EMILIANO LERDA: Um-hum, right. [LR399]

SENATOR ASHFORD: So they had a larger--or British or Irish or whatever--so they had a larger group. [LR399]

EMILIANO LERDA: Right. Nowadays it is it is not exactly that way. [LR399]

SENATOR ASHFORD: I understand it's not exactly that way, but it...there's some remnants of that. [LR399]

EMILIANO LERDA: Right. But it's still...right, because there are some countries that will have more demand for immigrant visas than others, and there is a percentage restriction on the overall number of immigrant visas that are...and there's a big difference between an immigrant visa and a nonimmigrant visa but that's...we could... [LR399]

SENATOR ASHFORD: Right. And I know there's all that. [LR399]

EMILIANO LERDA: Yeah. [LR399]

SENATOR ASHFORD: But I mean some of the thinking is what I'm getting at. [LR399]

EMILIANO LERDA: That's right. [LR399]

SENATOR ASHFORD: Date back to a kind of irrational kind of...Congress passed a law but we might as well base it on the population that we have now... [LR399]

EMILIANO LERDA: Right. [LR399]

SENATOR ASHFORD: ...which is going to encourage immigration from Sweden, Germany, those countries, but it's going to discourage from countries that didn't have a large population at that time. [LR399]

EMILIANO LERDA: Patchwork of legislation, right. [LR399]

SENATOR ASHFORD: Right. Okay. Thank you. [LR399]

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

Judiciary Committee  
February 05, 2014

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EMILIANO LERDA: Thank you. [LR399]

JASEL CANTU: (Exhibit 17) Good afternoon. My name is Jasel Cantu, J-a-s-e-l, last name C-a-n-t-u. I am the public information officer with the Latino American Commission, as well as a member of the Minority Justice Committee, the Department of Justice's advisory committee on hate crimes, and we are appointed members of the Governor's Task Force on Human Trafficking. I am here to request your support of LR399 to have Nebraska Legislature recommend their federal representatives would support a comprehensive legislative reform. Each district in Nebraska has constituents who will...who are affected by immigration reform--children, adults, and elderly individuals of all ethnic backgrounds. As you are aware, there needs to be more people in labor and agricultural work force now and in the future as indicated by recent research. You can help your constituents by requesting for federal representatives to help all immigrants with this bill. Immigration reform bill is lengthy and covers many areas, such as human trafficking and environmental factors, both of which are examples that need to be taken into account concerning border enforcement and immigrants. How this bill would affect Nebraska would include encouraging more students to seek a higher education. I have spoken with educators who have shared stories of exceptional students who want to go to college and get a degree but they are deterred by their status and lack of available options. There are also many students who would like to join the military and serve this country but they're not eligible due to their status. I cannot speak for all immigrant groups, but I can speak for the Latino population here in Nebraska where many students, children, and parents have spoken to me with their concerns. They all have one thing in common: They just want to live in Nebraska, raise their families here, go to school here, and work in Nebraska without the fear of deportation or the deportation of their family and friends. This fear of deportation causes anxiety and is not good for the mental health of these constituents. I have already heard of many people, including young children, who have to seek therapy due to their parents being deported. You have an opportunity to step in the right direction to help this local/national issue as it affects thousands of people in Nebraska and millions across the nation. And I would also be here as a private citizen as I am from the border area, from south Texas. My father is a Border Patrol agent. I was a journalist. It was one of the issues I covered. And the border wall was built alongside my grandmother's house. So I've been very familiar with immigration basically my entire life. [LR399]

SENATOR ASHFORD: Any questions? I...yes, Senator McGill. [LR399]

SENATOR MCGILL: I just want to thank you for your work with...on human trafficking in particular. I know that we have adults and children who are labor trafficked in this state, it's not just sex trafficking, and we don't have a pathway to citizenship. Then we have people being abused and enslaved like that. So thank you very much. [LR399]

JASEL CANTU: Well, thank you, Senator. And a few months ago we did a phone call

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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

from Omaha where this man has seen women who are undocumented, including an eight-months-pregnant woman who was been psychologically abused due to their status, being forced to work basically in voluntary servitude as domestic labor, and their status is used against them and they are just too afraid to come to the police to seek help. [LR399]

SENATOR ASHFORD: Thank you. [LR399]

JASEL CANTU: Thank you. [LR399]

SENATOR ASHFORD: Any further proponents, those in favor of the bill? Anyone opposed to the bill? Doug. [LR399]

DOUG KAGAN: (Exhibit 18) Good afternoon. My name is Doug Kagan, D-o-u-g K-a-g-a-n, 12320 William Street, Omaha, and I represent Nebraska Taxpayers for Freedom. I think we're all in agreement we have a broken immigration system. But the question is, how do we reach needed comprehensive immigration reform? We strongly oppose this resolution because it not only would signal Congress that the state Legislature supports amnesty for illegal aliens but also would encourage illegal aliens to migrate here. HR15 contains many provisions detrimental to the state and its taxpayers. It would offer a road to amnesty first, border enforcement later, precisely like the 1986 bill that led to blanket amnesty and little or no enforcement. Nebraskans should not be suckers twice. This bill offers millions of new visas and green cards to "illegals" while hundreds of Nebraskans still seek full-time employment. The unlimited access to temporary workers would drive down wages. "Illegals" would gain access to Social Security cards, placing additional pressure on our almost depleted Social Security fund. These aliens could rectify their former illegal use of Social Security cards, another amnesty provision not available to our citizens. "Illegals" would gain probationary visas, amnesty before border enforcement. Blanket amnesty would cover minors under the DREAM Act, those illegally residing here for at least five years, younger than 16 when entering the U.S., and holding a diploma. These youth would become eligible for higher education benefits and scholarships, competing with legal Nebraska youth. Federal grants would subsidize poor illegal students in DREAM accounts. Proponents complain that children should not suffer because of the transgressions of their parents, that all illegal children should win automatic amnesty, as if when parents default on a mortgage their children automatically win title to the house. Amnesty of "illegals" could bring in large numbers of family members and become eligible for federal housing assistance. The provisions to prohibit the amnesty from gaining welfare benefits are a farce because many households of "illegals" in Nebraska already exist comfortably by relying on welfare benefits collected through their American-born children. Amnestied "illegals" will become eligible for subsidized healthcare benefits under federal and state Obamacare plans. Legal status would cover "illegals" not convicted of a felony or three or more misdemeanors. However, "illegals" sometimes use more than one name, so

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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

their criminal records are unreliable. Although bill proponents claim that legalization would not lead to full citizenship with voting privileges, immediate pressure in Congress would guarantee that result. The Obama DREAM amnesty began the legalization of about 500,000 illegal youth and the crush overwhelmed background check ability. Total amnesty would make impossible complete background checking. The provision for...okay, I'll just conclude now. In conclusion, we believe that endorsement of HR15 would only exacerbate the fiscal nightmares we already have in Nebraska by illegal aliens flooding our school systems, prisons, healthcare services, and welfare system. Thank you. [LR399]

SENATOR ASHFORD: Yes, Senator Chambers. [LR399]

SENATOR CHAMBERS: Mr. Kagan, in the latter part of your statement you used the term "illegals." Is that correct? [LR399]

DOUG KAGAN: Yes. [LR399]

SENATOR CHAMBERS: That was not a misspelling or a typo? [LR399]

DOUG KAGAN: You're talking about next-to-the-last sentence? [LR399]

SENATOR CHAMBERS: Where you say...you used it more than once, "illegals." [LR399]

DOUG KAGAN: Yes, illegal aliens. [LR399]

SENATOR CHAMBERS: So you're a "legal," correct? [LR399]

DOUG KAGAN: I'm a legal citizen, yes. [LR399]

SENATOR CHAMBERS: And all of these white people in here are legals. [LR399]

DOUG KAGAN: I can't speak for them. [LR399]

SENATOR CHAMBERS: You presume they're legals though, don't you? [LR399]

DOUG KAGAN: I'm not presuming anything. [LR399]

SENATOR CHAMBERS: Well, who is a...who are the "illegals"? [LR399]

DOUG KAGAN: You're either a legal citizen of this country or you're an illegal alien. [LR399]



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

Judiciary Committee  
February 05, 2014

---

SENATOR CHAMBERS: Are white people who are citizens, are they referred to as legals? I'm trying to get you to improve my education here... [LR399]

DOUG KAGAN: Well,... [LR399]

SENATOR CHAMBERS: ...because I've never used that term to describe anybody. I don't even use it to describe the Mafia members who are citizens and they engage in murder, rape, extortion, human trafficking. But they're legals, aren't they, if they're citizens, despite what they do? [LR399]

DOUG KAGAN: If they're citizens, they're legal. [LR399]

SENATOR CHAMBERS: So they're legals. [LR399]

DOUG KAGAN: That's right. [LR399]

SENATOR CHAMBERS: Even though everything they do is illegal? [LR399]

DOUG KAGAN: That's right. [LR399]

SENATOR CHAMBERS: Okay. [LR399]

SENATOR LATHROP: All right. That's it. Thank you, Mr. Kagan. Next opponent, please, if any. [LR399]

MARTY BROWN: (Exhibits 19-21) Good afternoon. Marty Brown, M-a-r-t-y B-r-o-w-n. I'm a citizen, a legal citizen of the United States. I know my ancestors came across on a ship, landed in New York on Ellis Island. I have the data back from 1492 from the Browns, the Martins (phonetic), the Steinbrucks (phonetic), and the Warnocks (phonetic). We were Germans; we were Jews; we were Irish; we were all sorts of people. We landed in the great city (sic) of Ohio. We made our farm in Kansas. Born and raised in Abilene, Kansas, Eisenhower's home--great general, great President. He's the only one that solved the immigration issue back in 1954, the only President. In regards to my testimony, I'll...I'm getting off guard here because I've heard a lot. I spent three years of studies on this. I'm a cost accountant by trade. What intrigued me is that I just invested with my son in Denver, Colorado, in a business, and he's being put out of business simply for he can't match the illegal cost that is going on in landscaping and hardscaping. He pays for the insurance; they don't. He pays a good wage; they don't. He pays to be in business. They don't. They borrowed equipment from a rental place. He's got a quarter million dollar investment. He can't stay in business. I don't know if it's because of the marijuana there or it's because of "illegals." But we're going to sell the equipment because it's not profitable in Colorado to stay in business dealing with illegal aliens that don't have to pay workmen's comp, unemployment insurance, health

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

Judiciary Committee  
February 05, 2014

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insurance, and all those issues. I am a marketing person with my background. I travel the state. I've traveled to north Omaha. I travel to south Omaha. In south Omaha I was at 24th and Leavenworth. I saw an illegal alien, a couple, come in, hand the clerk at a C store their SNAP card, get a candy bar, get \$20 back in cash. What did they do? Bought two six-packs of beer. Then you walk over to the federal housing. It's a shame. It's really a shame. Other thing, I had \$15,000 done of roofing damage in Omaha. I had to call 12 contractors because I couldn't understand; 11 contractors couldn't speak English. There's a scam going on in the insurance business on roofing. Contractor puts up the shingle. What they do, they said, I will hire you as a general contractor, Mr. Coach (phonetic), I'll pay you 50 percent of the profit, I'll pay for the insurance and the shingles, you go out and hire anybody you can. So you see seven "illegals" up there on the roof. [LR399]

SENATOR LATHROP: Mr. Brown, we have to have you wrap it up. You've got the red light. [LR399]

MARTY BROWN: Okay. Thank you. So you have seven "illegals" up on the roof that don't pay any workmen's comp, any insurance, and so forth. I do appreciate...I do have some other documentation if you like. [LR399]

SENATOR LATHROP: Okay, and we'll be happy to have that passed around to the... [LR399]

MARTY BROWN: Well, I noticed that other people have gone over three minutes. Normally it's five that I'd seen so. [LR399]

SENATOR LATHROP: We have four bills today and I...this is our second one. [LR399]

MARTY BROWN: Yeah. I understand. I appreciate your time. [LR399]

SENATOR LATHROP: A lot of interest in the subject matter, but thank you for your testimony. [LR399]

MARTY BROWN: Yeah, I'm sure there is. Okay. Thank you. [LR399]

SENATOR LATHROP: Yeah. Thanks for coming down. Any questions for Mr. Brown? Okay. I see none. Thank you. Anyone else here to testify in opposition to the resolution? Anyone here in a neutral capacity on the resolution, LB...pardon me...LR399 that wants to be heard? Seeing none, Senator Wightman to close. [LR399]

SENATOR WIGHTMAN: If I go over 75 seconds, shut me off, please. [LR399]

SENATOR LATHROP: You're a senator; you can go as long as you want. [LR399]

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Transcriber's Office

Judiciary Committee  
February 05, 2014

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SENATOR WIGHTMAN: First of all, I want to tell you a little bit about immigrants at Lexington, Nebraska. We have, outside of Omaha, the only dual-language program in a school system in the state of Nebraska in which I have two granddaughters that have taken both Spanish and English since they were kindergartners; even their mathematics is half of the time in Spanish. The people out there, I can tell you that they need the work of the immigrants that we're talking about. So I think that's very important. But it has been amazing seeing out there what they've done. We have a lot of teachers that went through the dual-language program and now are teaching in our public schools. So with that, you know, I'm not going to try to contradict what the last two people have said. But a lot of good things are happening out there. Thank you. [LR399]

SENATOR LATHROP: Thanks, John. [LR399]

SENATOR ASHFORD: Yeah, I just want to, just for the record, I love this quote by Father Rodriguez that says: Lexington has life now. There is more brotherhood, more friendship. I'm not talking about immigrants; I'm talking about communities coming together. It is a lot of fun. You know, that's from Father Rodriguez, so that's kind of what I felt when I went to Lexington anyway. So thanks, John. [LR399]

SENATOR WIGHTMAN: Thank you, Senator. [LR399]

SENATOR ASHFORD: (See also Exhibit 12) Thanks for your leadership and thank your entire community. Yes, Senator Krist is here. I saw him in the hall. All right. Now we're going to go to...okay, we're now...just...we're going to go over two...in effect, two...there's a bill on the floor, LB464, and these are two amendments that...to LB464. It's not always our practice to have hearings on amendments. But in this case, there is some...the changes I believe are substantive enough so that we can...we'd want to get the input from the public. So with that, Senator Krist is going to talk about AM1674. Senator Krist. [LR399 LB464]

SENATOR KRIST: (Exhibit 22) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th District in Douglas County, and I bring today AM1674. This amendment, in its current form, was filed with the Clerk on January 23. It has not been changed since then, so you can see it on your machine and on your gadgets. There are three relevant areas of this amendment. One, the first part, is a compromise of LB464, through my amendment AM1674, intended to address the major concerns of the county attorneys that we heard from the hearing last year. And first, before I go any further, special thanks to Jenn Piatt, legal counsel for the Judiciary Committee. Senator Ashford allowed me to solicit her services so that we could move this thing along, and it was really fantastic working with her. And I think over the meetings over the past year, we have come to this point. Not to say that this is a perfect product yet, but it's better than it was. The second part is the

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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

cleanup legislation to LB561, which, you will all remember, was our juvenile justice bill for last year. And then this amendment also contains a small tweak in the current truancy law which is intended to clarify for school districts that excused absences are not the focus of the attendance concerns. The reason for the amendment: As the committee remembers, LB464 was originally introduced last session by Chairman Ashford, and ended the session last year on Select File. As originally introduced, it removed prosecutorial discretion from the equation with respect to which court a juvenile would be prosecuted in. I'd refer you to the handout that I gave you. It very clearly runs down the current law as we exist; the original LB464, which is on Select; and then what the amendment does and changes the issues in LB464. As you can imagine, there were many concerns expressed at the hearing last year; and as a result, I spent a considerable amount of time addressing those concerns to the extent possible while preserving the spirit of the bill. Realizing the state may not yet be ready or capable of transitioning most youth into juvenile court, we tried to find a way to get most of the juveniles in the juvenile court system who belong there while maintaining the balance and concerns of those county attorneys and weighing the potential fiscal implications to the state. Before you is a summary, as I said, and I won't bore you with the details, but I would like to hit a few high points. We know that we have a better...a less rate of recidivism if a juvenile starts in juvenile court and stays in juvenile court. That is a matter of fact. And I'll save some of the rest of that for my closing. We know the studies that DOJ has examined tell us clearly, juveniles convicted in the adult court have a higher rate of recidivism, and that it is true even for those juveniles who receive probation in the adult court system. In other words, we know that the convictions in adult courts for juveniles increase the likelihood that the juvenile will reoffend and is undeniably connected to our exploding prison population as a result. We are costing ourselves more money while doing little to increase public safety. At this point I would go back to something that I learned from attending several symposiums and conferences: If you put money in the playpen, you avoid putting money in the state pen. Up-front, if you can get the kids in juvenile court system, spend the money on them in juvenile, along with education, you'll have less recidivism and less people in jail (inaudible). The second major piece of this amendment includes cleanup legislation resulting from the major changes in the juvenile justice system brought by LB561. As with the large systems change, there are always some issues. What we've done is created a bright line approach. That approach is that pre-adjudication it stays with the county; post-adjudication it goes to probation; and there's some minor change in between there that we can discuss. The LB464 portion: All misdemeanor offenses in juvenile court, the prosecutor will retain authority to file on those juveniles aged 16, 17, and 18 where it is alleged the juvenile committed an upper level felony. If the juvenile has been convicted in adult court once, other than traffic offenses, the prosecutor can choose to initiate changes. For lower level felonies that start in juvenile court, the prosecutor can request a transfer. For cases where the prosecutor can file in adult court, the juvenile can request a transfer. The LB561 portion: As I said, pre-adjudication, county; post-adjudication, OPA, with some exceptions. Transportation in dually adjudicated

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

Judiciary Committee  
February 05, 2014

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youth to DHHS: we wrestled with that today in terms of the fiscal note that you may or may not have seen, and there had to be some changes there. I'll save the rest of my comments until after to make it short and sweet. I'll take any questions if you have any. [LB464]

SENATOR ASHFORD: Any questions of Senator Krist? I don't see any. Thanks, Bob. [LB464]

SENATOR KRIST: Thank you. [LB464]

SENATOR ASHFORD: Those proponents, those in favor of the bill? What about all you guys in the front row (inaudible)? [LB464]

DENNIS MARKS: (Exhibit 25) Chairman and fellow committee members, my name is Dennis Marks, M-a-r-k-s. I've been a public defender in Sarpy County for 17.5 years, where I've represented juveniles. The last couple of years I've represented juveniles charged with felonies who are looking to get their cases transferred back to juvenile court. I'm here to talk on behalf of the Nebraska Criminal Defense Attorneys Association. And this is a...this particular bill that I want to focus my attention on is really the transfer mechanism that's contained in the bill. I think that the amendments to this particular bill dovetail very well with two bills that were passed last year. One was which was LB44, which dealt with the LWOP cases. As you recall, Dr. Kayla Pope sat in this chair a year go and talked about concepts of adolescent development. Those same concepts apply with this bill. LB561, which Senator Krist referred to previously, which Senator Ashford, you know, you sponsored, tremendous bill, that bill was designed to change juvenile behavior thereby reducing recidivism, thereby making our communities much safer. This particular transfer mechanism I think can achieve the same result. As part of my memo I have got two studies that I attached. The first study is from the Task Force on Community Preventative Services. And they are a nonpartisan group who got assistance through the United States Department of Health and Human Services, and the Centers for Disease Control. And what they looked at was the effect of juvenile transfer policies from juvenile to adult court on serious cases. And their conclusions were basically threefold. One was that transferring juveniles to adult court did more harm than good; that it did not reduce recidivism; and it is not effective for the purpose of reducing violence. The second study that I attached is from the Office of Juvenile Justice Delinquency and Prevention, the OJJDP; and they're a branch of the U.S. Department of Justice. And their desistance study looked at juvenile reoffending, and came to the conclusion that as juveniles aged and matured and developed, their activity and involvement in criminal activity decreased. I want to give my compliments for two changes in here before I'm done. One is I like the fact that you've put that standard for clear and convincing in there. That's going to be very helpful for the judges. And I have to tip my hat to whoever put number eight in there as far as juveniles having the capacity to understand the seriousness and the nature of their conduct. That is really

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

Judiciary Committee  
February 05, 2014

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going to capture the lower functioning juveniles. I call them the 17-year-olds going on 12. They have low IQs, low processing speed, low receptive skills, low expressive skills. So with that, I'll take questions. [LB464]

SENATOR ASHFORD: Thanks, Marty (sic--Dennis). Any questions of Marty? Thank you. I don't see any questions. The next proponent. Thanks, Marty. [LB464]

COREY STEEL: Senator Ashford, members of the Judiciary Committee, my name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I am the deputy administrator for the Office of Probation Administration, and I'm in charge of the Juvenile Services Division. I want to thank Senator Ashford, Senator Krist, and Jenn Piatt for all their work on this juvenile justice legislation over the past several years. I want to take a minute to briefly talk to the Judiciary Committee as to where probation is on implementation of LB561, since the AM1674 has a lot of LB561 cleanup language in that. Probation Administration, to date, has hired over two-thirds of the 191 new positions, and hiring will be complete by March 1, 2014. All existing juvenile probation staff prior to the passage of the legislation has gone through new training on the new legislation that was imposed last year. We continue to build our provider base for all in-home and out-of-home services for juveniles across the state of Nebraska. We have great providers in this state that are willing to step up and provide more services. Probation has transitioned 400 of the 1,400 cases that are with the Department of Health and Human Services. We have about 1,000 cases left to transition between the two entities before June 30, 2014. We strongly feel that we will be able to have that transition successful by June 30, 2014. The first year of implementation process of LB561 is on schedule and will be completed, as I talked about. Now I will touch on the AM1674. Probation strongly supports the concept, as Dennis Marks had talked about, of the philosophy of all juvenile cases should start in the juvenile court; and we'll work with the Legislature and other stakeholders to implement this practice in Nebraska. One piece of this amendment in AM1674 that is of great importance to us in Probation is the IV-E language that will allow DHHS and Probation to enter into an agreement so Probation can have access to those federal IV-E drawdown dollars. Currently, at this point in time, our state legislation does not allow for the Department of Health and Human Services and Probation Administration to enter into that agreement. So without that piece of legislation, we will be passing up federal funds that could be drawn down to use for out-of-home care. Some of the things that we need to work on are clarity around definitions and processes. AM1674 does a lot of that clarity. We can continue to work to clarify some of those issues such as payment for services at different points in times, staff secure and detention services, medical care and costs, commitment processes to YRTC and reentry processes from YRTC back into the community. We believe if we can put clarity and definition into those areas, that will strongly help us in the field that are putting this into practice. The last thing I want to add is adequate resources. The success of the juvenile justice system relies on adequate resources. This means juveniles must be able to access the needed mental health, substance abusing treatment, and

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

Judiciary Committee  
February 05, 2014

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community-based services statewide. This also means providing adequate staff resources for those in the field. That's all I have today. So thank you to the Judiciary Committee for your leadership around juvenile justice system reform over the past several years, and I'll be happy to answer any questions. [LB464]

SENATOR ASHFORD: Corey, only just to you and your whole team, thank you for being able...to be able to implement something like LB561 in six months is an incredible achievement for you and also HHS, and the cooperation that you've had together has been a huge benefit to kids. So thank you. I won't get that many more chances to thank you publicly so I'll thank you again. [LB464]

COREY STEEL: I appreciate that. Thank you, Senator Ashford. [LB464]

SENATOR ASHFORD: Any other questions of Corey? Thank you, Corey. [LB464]

COREY STEEL: Thank you. [LB464]

SENATOR ASHFORD: Other...I guess we're on proponents of the amendments, and then over here. The Sarpy County group is over on the left after Sarah. [LB464]

SARAH FORREST: (Exhibits 26 and 27) 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 the policy coordinator for child welfare and juvenile justice at Voices for Children in Nebraska. Voices for Children supports AM1674 because it is essential to continue our ongoing work for juvenile justice reform. It carries work forward that will hold our state's children and youth accountable for their actions in effective and appropriate ways that will put them on the path to a successful, productive adulthood, in two ways mainly. First, it builds on the important work clarifying from LB561 last year. And then we'd like to spend most of my time today talking about a more essential reform of bringing more youth back to the juvenile justice system and allowing them to access evidence-based services and treatment that this Legislature has spent a number of years creating. Every year in Nebraska a few thousand youth are processed through the adult court system. We're one of the few states that uses our model of sort of deciding how youth go to the adult court system, and studies have shown that involvement in the adult court system exposes young people to lifelong consequences that limit their opportunity to succeed, get education, find employment, and it also makes them more likely to commit crimes and be involved in the criminal justice system in the future. Kids are different than adults, and treating them in a way that fails to take their developmental differences into account produces poor outcomes and ultimately higher long-term costs and public safety risks. A recent study in Washington State found that every time the state treated a young person like an adult in the criminal justice system, it ended up costing the state over \$70,000 in long-term costs. So this amendment would be a significant first step towards ensuring more kids access to the juvenile justice system, and would allow

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

Judiciary Committee  
February 05, 2014

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Nebraska to follow in the footsteps of over 23 states, which in the last eight years have taken similar action based on the evidence and research. That being said, I also do want to acknowledge that this amendment takes a much more modest approach than the bill that you considered last year, and includes some concessions to prosecutors that have actually been removed in other states; for example, the once and adult, always an adult provision was actually just repealed in Missouri this year. Voices for Children also recently conducted an in-depth analysis of some data from JUSTICE for youth charged in adult court in 2012. You have a handout. But basically it shows that this amendment will have a small, modest effect. About 1,200 youth who would have been previously charged in adult criminal court will probably have the benefit of their cases starting in juvenile court. And I'd also like to address jail terms. Over 200 youth were sentenced to jail terms. On average, the length was 44 days in adult court in 2012. And 185 were placed on adult probation. While some youth served their sentences in juvenile detention facilities, I want to acknowledge that others served them in adult jails and lockups where they were exposed to greater risk of suicide, assault, and sexual abuse. Hopefully, this bill will also help to reduce those numbers and allow more youth to access appropriate services, so our children and our communities will be safer and more prosperous when we hold youth accountable for their actions within the juvenile justice system. We'd really like to thank the committee for their leadership on juvenile justice issues, and urge you to advance this amendment and this bill as part of that ongoing effort for juvenile justice reform. And I'd be happy to take any questions. [LB464]

SENATOR ASHFORD: Let me just make a comment, Sarah,... [LB464]

SARAH FORREST: Yes. [LB464]

SENATOR ASHFORD: ...and I obviously support...have...appreciate the support of Voices for Children throughout this eight-year period,... [LB464]

SARAH FORREST: Sure. [LB464]

SENATOR ASHFORD: ...though I want to make one little...give you one little caveat. [LB464]

SARAH FORREST: Okay. [LB464]

SENATOR ASHFORD: When we talk about concessions to prosecutors, I think what we're trying to do here is we're trying to address the needs of the public and address the needs of juveniles in this committee. And we listened to prosecutors and we listened to defense attorneys and judges and to you, and to come up with something that really works for Nebraska. I...we...I think...and I just want to make this point, I think both on the defense bar and on the prosecutorial side, in my view, you know, and I've been doing



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

Judiciary Committee  
February 05, 2014

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this for 16 years, I think we are indeed fortunate to have on the prosecutorial side people that are willing to do new things and explore new areas, and I've seen this in all aspects of the law. And the amount of commitment that we get from that side of the aisle is really incredibly important to this committee and to this Legislature and to the people of this state. Likewise, on the defense side, raising issues that are important, for example, as we look at...you know, even as we look at prison reform and we look at...there are some offenses that the penalties have...or the underlying offense hasn't been changed. So many offenses haven't been changed for years. Well, the defense bar is bringing that to our attention. There are lot of things we can do to make our system better. But it's not an issue of concessions; it's an issue of working collaboratively, because we're all...I think everybody in this room, I'm certain of this, care about the children, the juveniles. They may look at it differently or come at it from different experiences, but they're all here for one reason, and that is to make the lives of children better for Nebraskans in Nebraska. So I'm not at all remotely scolding you... [LB464]

SARAH FORREST: No, that's... [LB464]

SENATOR ASHFORD: ...but I want you to understand that we do value the views of prosecutors and defense attorneys. [LB464]

SARAH FORREST: That's quite all right, and we are neither prosecutors or defense attorneys. [LB464]

SENATOR ASHFORD: Right. [LB464]

SARAH FORREST: Our interest is obviously what's best for kids. And I think...you know, I referred to that just because that is one area of this amendment that is a little bit concerning to us. So, for example, if a young person had previously come into the juvenile justice...or the adult court system for, say, possessing drug paraphernalia, they would then be ineligible from accessing juvenile court services. [LB464]

SENATOR ASHFORD: But the trade-off, Sarah, is that there are going to be 1,200 or so juveniles, and I think the number fluctuates...been talking to Corey, around 1,200 individuals that will be into...that will go into the juvenile system, and at an appropriate time. [LB464]

SARAH FORREST: Yes. [LB464]

SENATOR ASHFORD: So we try to do this... [LB464]

SARAH FORREST: And I appreciate that and I really don't want to minimize that I think that this is a wonderful step forward and that... [LB464]

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

Judiciary Committee  
February 05, 2014

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SENATOR ASHFORD: Right. And I don't either. I just want to make sure that when we...it's not so much concessions. What we're trying to do is come up with something that works for public safety on the prosecutorial side, that works for the juveniles on the defense side and on the advocacy side, and come up with a package that works, so. But I appreciate you, obviously, and your support is great; so thank you. [LB464]

SARAH FORREST: Yes, okay. Any other questions? Okay. [LB464]

JON BRAATEN: Thank you, Senator Ashford and the committee. My name is Jon Braaten. I'm an attorney in Lincoln, Nebraska. I'm also on the executive council of the Nebraska Criminal Defense Attorneys Association. I've been practicing in criminal and juvenile law since I began practicing law in 2001. I appreciate the legislative bill and the amendment. The question is not whether a certain case should be in juvenile court or adult court. The question is, who should be making the decision as to whether that case ends up in juvenile court or adult court? I understand that there may be some thought process that says that the prosecutor should have that discretion. Ultimately, the courts always have that discretion. And under the current system, if I have a youth that's charged in adult court, I can file the motion to transfer and it's up to a court to decide whether that stays in adult court or goes to juvenile court. Under the legislative bill and the amendment, the juvenile court would make that decision except for some minor circumstances. It is always difficult when we appear before a district court judge to try to explain why juvenile court is a better option for the youth. The juvenile court is changing on a daily basis or a weekly basis. There are different services available all the time. Clearly, to me, the juvenile court is best in place to make that decision to know what's best for the youth. That's not to say that the juvenile court won't transfer cases to adult court. If there are certain circumstances in which a youth does not seem to be appropriate for the services available in juvenile court, it will be transferred. As I understand it, approximately 25 percent of the cases that are currently in adult court in which motions to transfer are filed, 25 percent are transferred to juvenile court. The hope would be, as Senator Krist said, is that most juveniles belong in juvenile court. They don't belong in adult court. The adult court system is not equipped to deal with them, and it's a system that is, frankly, over their heads and above what they can understand and how we can help them. I struggle to come up with really any contra argument to the bill or the amendment as to why we should not go in line with 48 other states and have the system start in juvenile court. Prosecutors do not lose their discretion. Simply put, they have to show by clear and convincing evidence that a case should transfer to adult court. And if there is a legitimate reason for that to occur, the prosecutors can present their evidence and let a juvenile court judge decide as to whether or not they've met the standard set forth in the legislative bill. If there are any other questions? [LB464]

SENATOR ASHFORD: Any questions of Jon? I don't see any. Thank you very much

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

Judiciary Committee  
February 05, 2014

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for...yes, Senator Seiler does. I'm sorry. [LB464]

SENATOR SEILER: Do you think the test--clear and convincing--should be...is the right test? Or should it be preponderance? [LB464]

JON BRAATEN: As I believe the current statute, it says if good cause shows to exist to transfer the case to a juvenile court, either a clear and convincing or a preponderance of the evidence standard would put the burden on the prosecutor to show whether a case should stay in juvenile court or go to adult court. The preponderance of the evidence standard is 50.01 percent. It would seem to me on a scale of something as substantial as this, the clear and convincing standard is something that we're well equipped in juvenile court to deal with, and it's a standard on a variety of other issues. [LB464]

SENATOR SEILER: Okay. [LB464]

SENATOR ASHFORD: Thanks, Jon. [LB464]

JON BRAATEN: Thank you. [LB464]

SENATOR ASHFORD: Any other proponents? [LB464]

FRED UHE: (Exhibit 28) Senator Ashford, members of the committee, my name is Fred Uhe, F-r-e-d U-h-e. I'm the director of government affairs for Sarpy County and am here to testify on behalf of the Sarpy County Board of Commissioners. We would like to thank the efforts of several people over the interim, and my remarks will be directed towards the LB561 portion. Senator Krist, Senator Mello, we've had several senators meets with us. Special thanks to Jenn Piatt, who's spent more time in the Sarpy County Courthouse than she ever probably dreamt, and put up with us. Internally, thanks to Judge Gendler; Dick Shea, head of juvenile services. We have been meeting internally to brainstorm and discuss options. What we are proposing is some suggested changes to maybe additionally clarify the line between where Probation and the county's responsibilities lie. There are a couple things specifically which I think, in prior conversation with Jenn, that may be. One of them was using the county aid for existing programs. I think...and Sarpy County is very proud of being proactive on some of these issues, and I really do not feel we should be penalized for having taken the risk to establish some of these programs, but it's kind of like, or I guess in comparison, maybe some jurisdictions who have not taken anything. Also we would like to request the flexibility on those same dollars to use for space. I think office space was eliminated. In Sarpy's case we were actually having a lease that was expiring. We were relocating our public defender's office from leased space to our Law Enforcement Center, with the addition of up to 13 juvenile probation officers. We renewed that lease. But I think as we develop programs and resources, unfortunately, if we don't have some place to house them, that still becomes an issue. So I don't think office space should be...you know,

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

Judiciary Committee  
February 05, 2014

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we're not building a Taj Mahal or anything of that nature. So this should again grant counties flexibility to meet the needs. I suppose we're talking about mingling of dollars. But to renew that lease actually is drawing dollars from other areas of the juvenile justice system. So with that I will close. I know you've had a long afternoon. And if there would be any questions. [LB464]

SENATOR ASHFORD: Just to comment, Fred. I think we're increasing this...we're going to \$10 million in this appropriation. Last year, we had...I think there was \$1.2 million, and now we're at \$10 million. So, I mean, I think it is a substantial increase in funding. [LB464]

FRED UHE: Yes. [LB464]

SENATOR ASHFORD: But I get that. But I also want to thank you for...and all the people in Sarpy County who have worked so hard on this bill. I know you have spent a lot of time, your team has. Judge Gendler has been great. Shea, the whole team, has done a great job. And I know the office space is an issue. We are fortunate in Nebraska that we have state Probation. I mean, most states have county-by-county probation. They pay the entire cost. So I think that was a...you know, that was a decision made, you know, I think Chris Beutler's bill years ago. But, I mean, so it is a shared partnership. I realize it's additional cost but you're making great strides in Sarpy County and are the example, in many respects, for a lot of this stuff, so. [LB464]

FRED UHE: Well, thank you. We've tried to work very, very hard, and I think echoing what Corey had said, I mean, definitely the additional resources are one of our high priorities, and I'm glad you brought that up, so. [LB464]

SENATOR ASHFORD: Right. Thanks. Oh, come on up. And then Joe. You don't have to go all the way back, Joe. [LB464]

BRENDA VOSIK: Sorry. I didn't mean to cut him off. [LB464]

SENATOR ASHFORD: No, no, come on up. Joe, come on up in the front here. [LB464]

BRENDA VOSIK: Thank you. I'm going to be very brief. I'm Brenda Vosik, B-r-e-n-d-a V-o-s-i-k, and I would like to state, first of all, as a private citizen, I support the changes in LB464 in their entirety. I believe that most juvenile offenses belong in juvenile court, not adult court; and I completely support this bill. I'm also the director of the Nebraska Family Forum. The NFF is a grass-roots group of more than 700 Nebraska citizens, and we're primarily parents of school-aged children, and we've come together to call for change to our state's excessive absenteeism law. And there's a small piece of that in this bill, as you all know. And I would like to thank Senator Christensen and Senator Ashford and Senator Krist for attempting to fix the problems that have occurred with this

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

Judiciary Committee  
February 05, 2014

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law, and I think most of you are well aware of some of the issues that have come up. We wholeheartedly support that change to 79-209 that requires schools to consider only unexcused absences in the 20-day referral to the county attorney. We also support AM1734, and I will offer our support and speak a little bit longer on the record during the hearing on that amendment. We do ask that you vote today to bring this amendment, in conjunction with AM1734, out of committee. We think those two amendments combined will be a huge step toward fixing the problems with the attendance law. And the members of the Nebraska Family Forum and I personally stand ready to assist in any way that we can to get the law right and offer help instead of punishment to the kids who are really struggling to get to school. Thank you. [LB464]

SENATOR ASHFORD: Thank you, Brenda. And thank you for your leadership. And I, too, want to thank Senator Christensen for his willingness to help and kind of get the conversations going and thank you for your leadership in this matter. And we can...and we will take the amendment up later, yeah, the other one. [LB464]

BRENDA VOSIK: Yes. Okay, thank you. [LB464]

SENATOR ASHFORD: Yes, Joe. [LB464]

JOE NIGRO: Good afternoon. I'm Joe Nigro, it's N-i-g-r-o. I'm an attorney in the Lancaster County Public Defender's Office and I'm here to speak in support of AM1674 to LB464. I think that what the Legislature did last year with LB561 was a huge improvement in our juvenile justice system, and I think that this will improve it even more. Regarding juvenile transfer hearings, in my experience, there are a number of criteria that are set out that are the basis for transfers. But the primary criteria that courts usually focus on are the seriousness of the offense, the juvenile's prior record, is there enough time to work with the juvenile, and what...and then the last is kind of two parts, what programs are available and what has already been tried. Now the reality is, both judges in adult court and juvenile judges can evaluate the seriousness of the offense in the juvenile's prior record. But the time to work with the juvenile I think is really contingent upon the last criteria, which is what programs are available and what's already been tried. And the juvenile judges are uniquely qualified to decide that criteria. What goes on in juvenile court and what programs work and what have been tried with a juvenile, I just don't think that the judges in the adult court have the expertise to be able to evaluate them. I've been a public defender for 30 years. It's been a long time since I was assigned to juvenile court. I don't pretend to be familiar with all of the programs that are available there. It's a very specialized docket and it seems to me that...and I have to assume that's the reason why 48 states do it that way. The juvenile judges are better situated to make those judgments. And this doesn't prevent the state from filing the most serious cases in adult court and the defense asking for a transfer. And it doesn't prevent the state from asking to transfer felonies. It just puts the judge best situated to make those judgments in control of the situation. It makes sense. And

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

Judiciary Committee  
February 05, 2014

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so I hope that you will adopt this amendment and move that bill forward. I know that I was in front of the Lancaster County Board last week, and the county board was definitely concerned about costs. And I told them that I would be happy to speak to people here at the Legislature. And, Senator Ashford, I talked with your staff some about...some of their concerns were about clarification of who's responsible for costs, and it seems to me that this bill does clarify that pre-adjudication, the costs fall on the county, except for evaluations; post-adjudication goes to Probation and sometimes HHS. And hopefully, the additional \$5 million will be sufficient to help the counties. But I'm always concerned whenever there's something in the criminal justice system about burden falling on the counties. And so it would be my hope if that doesn't turn out to be adequate, that the Legislature would be willing to look next year at increasing that. But ultimately I think that this bill makes communities safer because the juvenile justice system is better prepared to deal with all of this. And so I would urge you to adopt this amendment, pass this amendment, and pass the bill. Does anybody have any questions? [LB464]

SENATOR ASHFORD: I don't have any, Joe. Thank you. [LB464]

JOE NIGRO: Thank you. [LB464]

SENATOR ASHFORD: Thanks for your comments. [LB464]

JOE NIGRO: You're welcome. [LB464]

SENATOR ASHFORD: Next...I think we're on the proponent side of the bill. Yes. Oh, go ahead. Then you can come right up. Okay. [LB464]

BETH MEYER: Hi. My name is Beth Meyer, M-e-y-e-r. I'm representing myself today. I'm a mom of a daughter who has had issues with the truancy law, and some of you are already familiar with me. The last time I was sitting here, two years ago, we were currently in the court system for my daughter being sick. And they had dropped that case. The next school year she had got meningitis. Took us back to court. Seven court dates it took for them to finally drop the case two days before the actual trial date. So I'm here in support of this. I would like the law to be changed--my daughter has not done nothing wrong--and to keep her out of the court system. She doesn't need to be in the juvenile system. And I was going to say something else, and then it's been a long day sitting here. (Laugh) [LB464]

SENATOR ASHFORD: Well, I know you've been here before... [LB464]

BETH MEYER: Yes. [LB464]

SENATOR ASHFORD: ...and we appreciate your comments. And thank you. [LB464]

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

Judiciary Committee  
February 05, 2014

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BETH MEYER: Thank you, Mr. Ashford. And thank you for, you know, all your support. [LB464]

SENATOR ASHFORD: Well, we're getting there, hopefully, so working together on this. [LB464]

BETH MEYER: Thank you. [LB464]

SENATOR ASHFORD: Thank you. Yes, ma'am. [LB464]

ANNE HOBBS: Good afternoon, members of the Judiciary. My name is Dr. Anne Hobbs; it's A-n-n-e H-o-b-b-s. I'm the director of the Juvenile Justice Institute, which is part of the Research Consortium through the College of Public Administration at UNL--which is a mouthful. And I'm here in support of the amendments to LB464. Specifically I'd like to highlight two things: first of all, keeping youth in juvenile court or transferring them back to juvenile court; but also combining this with evidence-based practices and the services that we provide. I thought it might be good to start out with some numbers, and these are a little bit dismal because a project that Dr. Liz Neeley and I worked on two years ago, what it showed was that in fiscal year 2011, 2,600 youth in Nebraska started out in adult court. What we know through research is that a large number of those youth are now in our adult system, meaning our county jails and prison system. So those youth that were filed on in 2011 and started out in adult court, they were not 18- and 19-year-old violent offenders. Most of them were about 16 and a misdemeanor; so misdemeanor offenses that were in adult court. As a state we really need to work with juveniles when they're young and still amenable to making changes, so. This amendment, I think what some people worry about is that it would open the floodgates or cause youth with serious criminal histories to end up in court. But the amendment clearly allows that good cause would need to be shown for youth not to go to juvenile court. So I think there's provisions that would protect that from happening. One of the ways, though, or one of the important aspects of all of this work in juvenile court is clearly using evidence-based approaches in the work that we do with youth. Right now, the Juvenile Justice Institute is working with the Crime Commission on measuring evidence-based approaches for all the programs that are funded through county aid dollars. And it is a huge undertaking. But I think that in the long run it will reduce the work load of the state and it will reduce the number of people that will end up in the adult system. If I can really quickly tell you one last story with regard to diversion. About 10 or 15 years ago I was the director of diversion. What I found was many young people would choose, instead of going through diversion on a very minor offense, they would actually go to the adult system because it's faster and easier. So take, for instance, a trespassing offense or a minor in possession or drug paraphernalia. So if you can pay a fine and be done, parents and youth would ask their attorney to make sure that they would get this in adult court. Now the long-term consequence is that

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

Judiciary Committee  
February 05, 2014

---

youth would have something on their record. But short term, they were exactly right; there was less they had to do in court. They didn't have to take a class, they didn't have to go to therapy, they didn't have to have an evaluation done of whether or not this was a problem. If we, however, use that against them now and if they've ever been through adult court, if that penalizes them from being considered in juvenile court, I think that causes some ongoing problems. I see that I'm out of time, so I'd be happy to answer any questions that you have. [LB464]

SENATOR ASHFORD: Well, Anne, I think that's what...I mean, we saw the same thing. And I think that this is what this is attempting to address to a great extent, because we're talking about around 1,200 juveniles that would be processed primarily in the juvenile court; it could be waived, but primarily in the juvenile court under this amendment and...or some number close to that. So there are always going to be...you're right, there's some that are going to be processed in the adult court, but...first, and it could stay there. But you're right, there are numbers...and we found the same thing, that there are numbers of young people that just pled or whatever they did. But there also is diversion, and diversion does work and in many cases. So, you know, we're moving in the right direction I think, because we've got this...but you're right. I mean, one thing about this area of the law is that next year there will be another 25 issues for us to work with. But hopefully, we've got the platform in place, so. Thanks, Anne. Thanks for all your good work and... [LB464]

ANNE HOBBS: Thank you. [LB464]

SENATOR ASHFORD: Yes. Luckily, Senator Krist will be here to ensure that; and Senator Seiler. Okay, any other proponents? Any opponents? Opponents? Thomas? Oh, my, my. [LB464]

THOMAS PRISTOW: (Exhibit 29) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Thomas Pristow, T-h-o-m-a-s P-r-i-s-t-o-w. I'm director of Children and Family Services for DHHS. I'm here to testify in opposition to AM1674. AM1674 makes sweeping changes to the juvenile justice system that were not contemplated in LB561. The department is opposed to the passage based on four major areas of concern. First, the new language makes OJS responsible for all costs of juveniles committed to the YRTC's, including evaluations, services, detention, and transportation. This will have a fiscal impact on the department, since all the funds for this population, other than for the YRTC's, have already been transferred to Probation. In addition, the amendment would require the department to assume the costs for all dual status youth. This is concerning for two reasons. First, not all services and costs in a delinquency or status offense case are proper to be ordered to be paid through an abuse or neglect case. Services such as detention, electronic monitoring, drug testing of juveniles, and many others, are restrictions on liberty that are inappropriate for a court to subject to the child in the context of an abuse or neglect case. In addition, because



the department is not a party to the delinquency and status offense cases, it would mean the department is responsible for costs without any due process or the ability to be heard on, object to, or to appeal such orders. The second reason. The amendment defines dual status youth, a dually adjudicated youth, or dually involved youth, as quote, any juvenile who comes into contact with both the child welfare or child protection system and the juvenile system or who has an open case with both systems, end quote. That's page 38, line 5-8. This language is too broad and ambiguous. It would imply the term "contact" means any past historical contact a child may have had with the department. If applied, it could significantly increase the population that the department is responsible for while the funding to carry out this responsibility has already been transferred to Probation. This amendment strikes language sunseting OJS parole functions on June 30, 2014. This means OJS can continue parole functions after that date, although the funding again for this population has been statutorily directed to Probation. Our third major area of concern is that the amendment removes from OJS the authority to discharge a juvenile committed to the YRTCs and gives discharge authority to the court. This means that YRTCs will have no control over the admission or discharge of juveniles, which could have a major impact on our ability to address capacity issues, staffing levels, and lengths of stay, all which could increase costs. Our last major area of concern relates to Section 2 of the bill regarding Probation's ability to enter into an agreement with the department for Title IV-E funding. Corey talked about that earlier. It's important to make a distinction that the department is the Title IV-E agency for Nebraska and is ultimately responsible; and we're working with Probation on that now to clarify that language. In closing, the department remains committed to a successful transition from OJS to Probation for these services as in LB561. And I'd be happy to answer any questions you may have, Senator. [LB464]

SENATOR ASHFORD: Well, keep working. [LB464]

THOMAS PRISTOW: We are, sir. [LB464]

SENATOR ASHFORD: As you know, the dual status stuff is coming out of the bill, so that's one reason for you not being opposed to it. [LB464]

THOMAS PRISTOW: Yes, sir. [LB464]

SENATOR ASHFORD: And then as far as the court having jurisdiction over when the juvenile leaves Kearney and the notice provisions and all of that sort of thing, that's the best...that's the foundation for our change in the juvenile justice system, because we want those judges to be involved in those decisions so that we don't take people out of Kearney, for example, just because there isn't enough space there. Or we don't...you know, we...the foundation...I don't know, but let's just keep working. Let's just keep working. [LB464]

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

Judiciary Committee  
February 05, 2014

---

THOMAS PRISTOW: We just need to talk some more, Senator. We're not opposed to that. It's just we don't want to... [LB464]

SENATOR ASHFORD: I know. But we've got two agencies of the same government and we've got children, and we have to work together to make sure we get this done. And I'm not...I realize you've got a budget and you've got to work through that budget. But the most important thing are the kids, and...as you know, and I know you believe that. But... [LB464]

THOMAS PRISTOW: Yes, sir. That's why I closed in saying we are committed with Probation to working through this. [LB464]

SENATOR ASHFORD: Okay. [LB464]

THOMAS PRISTOW: I just wanted to make sure that these issues are important to us. You're right, I have to stay to a budget. [LB464]

SENATOR ASHFORD: Of course, they're important to you. And you need to...we need to get them resolved. So let's just keeping plugging away and see if we can do it. [LB464]

THOMAS PRISTOW: Okay. Thank you. I just...for the record, sir. [LB464]

SENATOR ASHFORD: But you can be opposed if you wish. All right. Thank you. Any other opposition to this bill? Any neutral? John, are you going to...? [LB464]

JOHN BONAIUTO: Members of the committee, John Bonaiuto, J-o-h-n, representing Nebraska Council of School Administrators, Nebraska Association of School Boards. And we appear in a neutral capacity only because we know this is a work in progress. And Senator Krist and I did not have a chance to visit about an issue that we question on page 62, line 2, of the bill that deals with changing "may" to "shall" and then eliminating the excused absences. And because this is a law where boards are developing policy, it can be different from community to community and school to school. And I would hope that if there's an issue with how the policy is written, having a conversation with the administrator is a piece of it, but the school board is responsible for adopting the policy. And I would hope parents would go to their local school board and say, you know, we've got an issue with this policy and here is our issue, and we would hope the board would be responsive. But the administrators have to follow the policy the board adopts, and from my conversations with school attorneys and school districts and boards, they're trying to enforce what the spirit of the law was and have the students at school as much as possible rather than not. So I mention that as we work on this, a combination of excused and unexcused may not be a bad idea for that local policy. [LB464]

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

Judiciary Committee  
February 05, 2014

---

SENATOR LATHROP: Senator Christensen. [LB464]

SENATOR CHRISTENSEN: Thank you, Chairman. I guess, John, I'm the one that wanted that change and I'll just be... [LB464]

JOHN BONAIUTO: Okay. And I stopped at your office on another issue, but we missed each other. (Laugh) [LB464]

SENATOR CHRISTENSEN: But I think the issue will come in to the number of kids you heard people testifying getting into the system that were doctors, vacation with family, different things this way, that where the administrations weren't making the corrections they needed to, they weren't applying common sense with it. And that's why this particular change is there. I wished I could look back over the last year or two and say that common sense had been applied and we didn't need this. But that's why that's there. [LB464]

JOHN BONAIUTO: I appreciate that. And I know that there are those circumstances that arise, and I know that when Senator Ashford brought this originally as all of this was being put together, we were hearing, you know, it's so important to have those youngsters at school. [LB464]

SENATOR CHRISTENSEN: It is. [LB464]

JOHN BONAIUTO: But there are other circumstances and I recognize that, and it's not the same for every student; it's not the same for every school district. [LB464]

SENATOR CHRISTENSEN: Correct. And that's why this is there, and, you know, even when you look in the part where it goes back to the school's policies, being the excused part is giving you guys some flexibility. [LB464]

JOHN BONAIUTO: Yes. And I appreciate what you're saying, Senator, so. [LB464]

SENATOR CHRISTENSEN: Okay. [LB464]

SENATOR ASHFORD: Thanks, John. [LB464]

JOHN BONAIUTO: Thank you. [LB464]

SENATOR ASHFORD: Yeah, we're going to opponents, I guess. [LB464]

SENATOR LATHROP: No, you're neutral. [LB464]

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

Judiciary Committee  
February 05, 2014

---

SENATOR CHRISTENSEN: You're neutral. [LB464]

SENATOR ASHFORD: Neutral. I'm sorry. [LB464]

KIM HAWEKOTTE: (Exhibit 30) Good afternoon, Chairman Ashford and members of the Judiciary Committee. I'm Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e. [LB464]

SENATOR ASHFORD: Well, I agree with you, by the way. I got your e-mail and I...okay. [LB464]

KIM HAWEKOTTE: Thank you. And I'm the executive director at the Foster Care Review Office. There is some testimony going around that I just wanted to point out. Under AM1674, it does give the state Office of Probation the ability to apply for IV-E funding, which our office is certainly in support of. But you all know that under Nebraska statutes, the Foster Care Review Office is the oversight agency for all case file review audits with regards to IV-E. We have talked to Jenn a little bit about the fact that in our opinion Section 2 needs to be amended just to require that with regards to these probation youth that all IV-E eligibility requirements are also met by Probation just like they are with the abuse and neglect cases. Currently, most of the statutes are written just for abuse and neglect, but we feel we just need to add sentence in there. And at the bottom of the testimony it does give an example of what maybe that sentence should be, just to ensure that we meet all the IV-E eligibility requirements for this youth and draw as many federal funds as we can. So, any questions? [LB464]

SENATOR ASHFORD: Thanks, Kim. I don't see any. [LB464]

KIM HAWEKOTTE: Thank you. [LB464]

SENATOR ASHFORD: That's a...it's a big...IV-E is a big issue. [LB464]

MICHELLE SCHINDLER: (Exhibit 31) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Michelle Schindler, S-c-h-i-n-d-l-e-r, and I serve as director of the Lancaster County Youth Services Center. I appear before you today on behalf of Lancaster County in a neutral capacity on AM1674 to LB464, which will assist in clarifying the fiscal responsibilities for the counties and the state in regard to pre-adjudicated and post-adjudicated youth. Let me begin by stating that we appreciate the efforts of Senator Krist, Senator Ashford, and your staff in preparing this amendment that is under consideration today. Lancaster County continues to support the path that LB561 put Nebraska on to address the many different issues affecting youth. In reading the amendment, it appears to clarify the intention of LB561 that responsibility for pre-adjudicated youth is that of the county, and post-adjudicated youth is that of the state. In regard to post-adjudicated youth that are detained, we would ask that language be added to clarify this population of adjudicated youth is included within the state's

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

Judiciary Committee  
February 05, 2014

---

responsibility for, and the actual costs for detention services are to be reimbursed to the county. This amendment will require the county to establish supervision and providers for evaluations, services, treatment, and transportation for all pre-adjudicated youth. This includes youth both in the community and detained. This will require community planning and collaboration among all system stakeholders. I encourage the Legislature to fully fund aid dollars to ensure youth have research-based services to meet their needs and precludes them from further involvement in the judicial system. Lastly, youth in detention and community-based alternatives is a service provided to other agencies and localities throughout contracts or local agreements. We would ask that the committee consider an amendment that clarifies which entity would be responsible for situations in which more than one jurisdiction applies. We suggest clarification needs to be made regarding who will make decisions and consequently paying for the services. If this is not made clear, services may be delayed or denied. This might be best explained through an example. A youth may be under the guardianship of HHS for an open neglect file while Probation is supervising due to a law violation. Without guidance regarding which entity is financially responsible, there could be disagreement regarding subsequent billing and payment. One final note that I would suggest, from my experience in working with families through detention I have seen cases where the changes regarding guardianship can have possible ramifications. With the change in supervision going from OJS to Probation, guardianship now resides with the parents or other custodial guardians. Questions do arise as to transportation responsibilities when the family cannot conduct the transportation. [LB464]

SENATOR ASHFORD: Michelle, I'm going to ask you to just... [LB464]

MICHELLE SCHINDLER: Oh, sorry. [LB464]

SENATOR ASHFORD: We've got your comments,... [LB464]

MICHELLE SCHINDLER: Okay. [LB464]

SENATOR ASHFORD: ...and I'm not cutting you off,... [LB464]

MICHELLE SCHINDLER: No worries. [LB464]

SENATOR ASHFORD: ...because they're certainly important comments. But do we have any questions of Michelle? I don't see any. We've got it. [LB464]

MICHELLE SCHINDLER: Thank you. [LB464]

SENATOR ASHFORD: I'm sure we will work through these. [LB464]

MICHELLE SCHINDLER: Thank you. [LB464]

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

Judiciary Committee  
February 05, 2014

---

SENATOR ASHFORD: Thank you. Any other neutral? Don, do you want to...? [LB464]

DON KLEINE: Yes. Good afternoon, Chair, members of the committee. My name is Don Kleine, K-l-e-i-n-e. I'm here in the capacity of the Douglas County Attorney and also the Nebraska County Attorneys Association to testify about LB464, specifically the aspect of transferring...or where we start cases that are felonies, whether we start them in juvenile court or district court. And, first of all, I want to thank you, Senator Ashford, and Senator Krist, legal counsel, for all the work that you've done in this area. It's very much appreciated. We...I think Senator Krist put it very good in a conversation that we had the other day, that kids need to be treated like kids, and we firmly believe in that. That's why I have 16 lawyers, out of our lawyers in Douglas County, working in the juvenile court system with all the programs that we have, Juvenile Assessment Center, and I believe in that totally. However, the reason I'm testifying neutral at this point in time is that the way the bill is written I'm unequivocally, and our County Attorney Association is unequivocally, opposed to starting Class I, II, or III felonies in the juvenile court system and having then...then the county attorneys have to go to juvenile court and pull them back into the district court. Currently, as you are aware, those cases start in district court or the prosecutor can send them to juvenile court right off the get-go, which we do; and the district court judge then can change our decision-making process and send the case to juvenile court. On those serious offenses, I think those should remain as charged as adults, of course, with prosecutorial discretion. I know that term doesn't...it's something that people like to hear, but that's a term that we use because that's what we have. And prosecutors have to answer to the public every four years. It's an elected position. So if we're doing things that are way out of line with prosecuting young people that shouldn't be prosecuted as adults, then I think we have to answer to that. I don't see that happening. So I think as a compromise, and we've talked about this, that we would be willing to let all the misdemeanors start in juvenile court, other than traffic, and then Class IV and IIIA felonies start in juvenile court; but the I's, II's, and III's we are opposed to that. So I...and I think that we've had conversations. I understand the fluidity of the bill and the legislation as it's being done. That's where I think that we're at, and I think that, Senator, you and I have had conversations about that, as Senator Krist also, about that possibility. And I think if that's the case, then we could be supportive of that part of the bill that if we start just the IIIA's and IV's in juvenile court. And when we're talking about the I's, II's, and III's, we're talking about murder cases. Class II's are robberies, use of firearms, sexual assaults, kidnappings. Class III's would be attempted robberies, attempted sexual assaults. Those are very serious cases. The district court judges do know what they're doing with handling those cases, and I think that those cases could still be transferred if a district court judge finds so. The other thing I want to just briefly mention is I've heard these statements made about, well, 48 other states do it the way that it's being proposed. That's not accurate. The Department of Justice did a study in 2011, "Trying Juvenile as Adults: An Analysis of State Transfer Laws and Reporting," and it sets out every state, the way every state does it. And there's a

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

Judiciary Committee  
February 05, 2014

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very...a tremendous variance, because some states might say, okay, we'll start it in juvenile court, but all these offenses are exempt and they automatically come back down to adult court; or there's 14 states that say prosecutorial discretion. There's some that it's an automatic waiver back or it's an automatic waiver there. So to say that, well, 48 other states do it differently, isn't accurate. They might do it differently but it doesn't differentiate really with what we do here. And I think we have a good system on those serious offenses, and I can't point to any cases that I've heard somebody say, well, gee, I've can't believe this juvenile was prosecuted as an adult on this serious case. So that's where our association is at. If we can come together on that aspect of the cases starting in juvenile court, just IIIA's and IV's, then I think we can go along with it. And I'd be happy to answer any questions. [LB464]

SENATOR ASHFORD: Senator Seiler. [LB464]

SENATOR SEILER: On your cases that are III's--I'm sure on I and II it probably doesn't happen--how many defense counsels file a motion to transfer it back to county...? [LB464]

DON KLEINE: To the juvenile court? [LB464]

SENATOR SEILER: Or juvenile court. [LB464]

DON KLEINE: I think most of them do. I think it's incumbent on them to, as... [LB464]

SENATOR SEILER: And then based on that, how many are actually transferred? [LB464]

DON KLEINE: Well, it depends on...I think the criteria set out in the statute, as the public defender said earlier,... [LB464]

SENATOR SEILER: Defense counsel. [LB464]

DON KLEINE: ...the criteria is set out in the statute and the district court judge looks at that and makes a determination. I think if it's a property offense...and most of the time, we're going to send those cases to juvenile court in my jurisdiction, because if you're an adult who's charged with a theft case, and you don't have a prior history and it's not over \$6,500, I think is our criteria, they're going to go into diversion anyway. We divert those people as adults. So we're going to send them to juvenile court. We're not out to prosecute juveniles. If it's a juvenile act and it's not a serious gun offense, if somebody didn't shoot somebody, if it's not a sexual assault, that's the criteria that I'm going to look at as a prosecutor. So those cases, sure, they're going to get a motion to transfer and then it's up to the district court judge if they want to overrule our decision-making process on those III's. [LB464]

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

Judiciary Committee  
February 05, 2014

---

SENATOR SEILER: Okay. [LB464]

SENATOR ASHFORD: Yeah. And obviously, Senator Krist and I will confer on this, but it's my belief that the direction we're going with the IIIA's and the IV's is the proper way to go, and we can build in and see how that goes. I also...I do agree that the...each state is different, and there may be a direct filing in juvenile court but the specific crime may necessitate a transfer to the adult court, I think. So it is correct that it's...in deference to my good friend, Joe Nigro, back there, I think that each state is different; and those cases, even though they may start in juvenile court, are required to go to adult court. [LB464]

DON KLEINE: Yeah. [LB464]

SENATOR ASHFORD: And so it's a different way of starting but it gets to the same place. I also want to say one other thing, and again every case is different and every jurisdiction is different, and it's difficult to generalize. My experience has been that our prosecutorial team across the state, our county attorneys, are very reluctant to file or to try a case with a juvenile in adult court unless it's absolutely necessary. I mean, that's been my experience. It happens and...but with this change...I know when the Chief Justice and I went to Douglas County four or five years ago and trying to figure out a way with Marty Conboy--and Marty would come here and talk about this as well--to try to get some of these--of course, he doesn't do felony IV's--but try to get some of these lesser--they're serious, but they're lesser--crimes into juvenile court, into the, you know, the Assessment Center or whatever it is, through diversion, the better off we are. And that's what this will do. It's not going to cover everything, obviously. So I feel comfortable with leaving the discretion in the county attorneys on this matter. I think they do a good job. I think...obviously, you probably have opposition in your group that you don't...that some people don't want any of this, but... [LB464]

DON KLEINE: Absolutely. [LB464]

SENATOR ASHFORD: So I think our goal here is to just come together on some, and I think this is a good start. And I think you've correctly stated our discussion, so. [LB464]

DON KLEINE: And the misdemeanors, you know, we may need some help with that because, you know, there's a lot of MIP cases... [LB464]

SENATOR ASHFORD: Right. [LB464]

DON KLEINE: ...those kinds of criminal offenses, that if they all come to juvenile court, you know, we may need some help dealing with those kind of cases. And, of course, we'd certainly need the resources on every end of the spectrum in the juvenile court



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

Judiciary Committee  
February 05, 2014

---

system, mostly in the mental health area. [LB464]

SENATOR ASHFORD: Well, what's interesting to me, Don, and when you look at the 1,100 youth that are in our--not youth--young adults in our prison system today, you know, an awful lot of them had...you know, had lesser prior offenses, you know, or they wouldn't be in the system. So if we can continue to work on intervening with that group, which is what we're talking about, I think it's going to hopefully have a long-lasting impact on the prison population as well, but... [LB464]

DON KLEINE: I would hope so. [LB464]

SENATOR ASHFORD: Yeah. Thanks for your comments. [LB464]

DON KLEINE: Sure. [LB464]

SENATOR ASHFORD: How many other neutral testifiers do we have? One more? Two more? Two more. Three more? Okay. [LB464]

PATRICK CONDON: Good afternoon, Chairman Ashford and members of the Judiciary. My name is Patrick Condon, C-o-n-d-o-n. I am the chief deputy prosecutor for Lancaster County, and here on behalf of Lancaster County and the Nebraska County Attorneys Association. I would echo the other people that have testified their thanks to Senator Ashford and Senator Krist and the legal counsel for coming forth with this and working with the prosecutors...and both sides, basically, in regards to this bill. Some of the things that we wanted to hit on that have current concerns for us, I, like Mr. Kleine, are opposed to the bill as written, but neutral on the aspects of the bill; in particular, one of the things that is concerned is the exclusive jurisdiction of all individuals under the age of 16 in the juvenile court. Again, what Don Kleine testified to in regards to I's, II's, and III's, we think that should be the same for any juvenile. Also, we did have some concerns in regards to the payment and who pays or who's going to be responsible for these. We did give some proposed changes in the language to the legal counsel. I think we're looking at that to maybe better define who is going to be responsible for those costs. I think they're willing to work with us on that, Senator Krist and Senator Ashford. And also in regards to the method, the standard of proof, we think clear and convincing is not the correct standard. Basically what we have now is the presumption...or preponderance, excuse me, the preponderance, which we feel is the correct burden that the state must prove. And again, it is the burden of the state to prove...to hold these in adult court. As the members probably know, there is a statute that basically sets out the criteria of things that we can consider as prosecutors to hold the case in adult court, and we follow those; and the court, that's one of the things that the district court can look at to make that decision. The other thing that we want to make sure of is we have a lot of programs here in Lancaster County, Hall County, that aren't evidence based but are proven programs that have proven to work. What we don't want to see happen is just

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Judiciary Committee  
February 05, 2014

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automatically go to an evidence based and then these other programs that work, pilot programs like what's going on here in Lancaster County, are, therefore, not programs that could be used in the juvenile...in this bill. There are a couple other things, concerns. It does say that the Legislature is to determine what programs are to be used for the juvenile system. We believe that would be better set with the Crime Commission. I'm trying to go fast here to make sure we get everything, but I think that hits the main... [LB464]

SENATOR ASHFORD: Yeah, and we can...we'll continue to dialogue, and off the record, too, so. [LB464]

PATRICK CONDON: So that's what I have. If there's any questions, I'll entertain those. Thank you. [LB464]

SENATOR ASHFORD: Okay. Any questions? Thank you. [LB464]

PATRICK CONDON: Thank you. [LB464]

SENATOR ASHFORD: Okay. [LB464]

ELAINE MENZEL: Chairman Ashford and members of the Judiciary Committee, for the record, my name is Elaine Menzel; it's M-e-n-z-e-l, and I'm appearing here today on behalf of NACO in a neutral capacity. First, I would like to take the opportunity to thank Senator Ashford, Senator Krist, and Jenn and others, as so many other people have mentioned their work on this issue, and for the betterment of the juvenile justice system. Additionally, we appreciate the receptiveness of senators and their staff to consider the issues of concern to counties in our association. From our perspective, there are benefits to the passage of LB561 last year and provisions of this amendment, including such things as further clarification of the responsibilities of counties, Probation, and OJS following the passage of last year's legislation. Additionally, the recognition of issues such as transportation costs are a concern to counties, and that is recognized in this legislation. There are now approximately...this is just for informational purposes. There are now approximately 72 counties or a combination of counties and two tribes that have community-based plans; and of those, about 67 have applied for the community-based juvenile services aid this last year. This is an increase from prior years. I don't recall what the numbers were when this initiated in roughly 2000. Some of the community-based juvenile services aid money is used for programs such as truancy prevention, diversion, additional training, reporting centers, DMC issues, and similar items. Additional funding for community-based juvenile services aid is intended in this amendment, and that is certainly appreciated. And then while some of these factors have been addressed by the amendment and intend to be further discussed, I just wanted to identify some of the concerns to us and that's pre-adjudication costs, transportation costs, medical costs, including prescriptions, probation office space

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

Judiciary Committee  
February 05, 2014

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costs, and evaluation costs. Again, thank you for your consideration of these comments, and appreciate you contemplating these issues as you move forward. If you have... [LB464]

SENATOR ASHFORD: Well, we're going to contemplate them for a while, but then we're going to move forward. We don't have a whole lot of contemplation time. [LB464]

ELAINE MENZEL: No, I understand that and appreciate your... [LB464]

SENATOR ASHFORD: But we will contemplate though, as we proceed. (Laugh) Thank you. I'm just... [LB464]

ELAINE MENZEL: Long day. [LB464]

SENATOR ASHFORD: I'm kidding you, and I appreciate all your work on these matters. [LB464]

ELAINE MENZEL: Thank you. And any other questions or...? Thank you. [LB464]

SENATOR ASHFORD: All right. Hey, Chief. [LB464]

GREG GONZALEZ: Good afternoon, Judiciary Committee members. My name is Greg Gonzalez. I'm a deputy chief with the Omaha Police Department. Certainly, first of all, I want to applaud Senators Ashford and Krist for the proposed legislation. We do have a couple concerns that we just want to bring to your attention. One was already addressed by County Attorney Don Kleine. And I think we're all looking for the appropriate recipe to reduce crime in our communities, and we certainly don't want to stifle good efforts when it comes to rehabilitation. However, as the bill is written, we do have a concern when it comes to violent crime, and we do encourage, like was mentioned before by Don Kleine, that the bill be amended to reflect Class I, Class II's, and Class III's. I think it's appropriate because I think there's teamwork going on, at least in our jurisdiction, and I think everybody has mentioned that. Every jurisdiction is a little bit different and I would agree with that. However, to add on to that, in our community right now in Omaha, I just want to give you a quick snapshot of some violent crime that we address every day. And I think the accountability rests for law enforcement and the chief of police every day when there's a shooting in Omaha. So with that, I want to let you know that in 2013, 865 firearms were seized in Omaha. Out of those firearms, 145 were seized from gang members--documented gang members by our gang unit; and 93 of those firearms were seized from minors under the age of 21--gang members. Twenty-nine of those firearms were seized from juveniles under the age of 18--also documented gang members. Some of those firearms were used in shootings and felony assaults. So as we all strive for juveniles to be back and return to the community to gainful activity, we also want individuals to be responsible and

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

Judiciary Committee  
February 05, 2014

---

accountable for crime. And that's why I'm here today in a neutral capacity, just to give you our input and our position. So I appreciate your time. If you have any questions, I'd be more than happy to take those. [LB464]

SENATOR ASHFORD: Yes, Senator Coash. [LB464]

SENATOR COASH: Thank you, Chairman Ashford. And this is just a comment not so much for you but we've had now six testifiers come up in a neutral capacity and say, we're neutral, but this doesn't work, this doesn't work, this doesn't work. And if you don't like it, say you don't like it. This is driving me nuts. [LB464]

GREG GONZALEZ: I would agree with that. If I could add on to that, I was under the impression, I've been told that there was some discussions going on already or else I would have actually testified in opposition. [LB464]

SENATOR ASHFORD: (Laugh) Been opposed. [LB464]

GREG GONZALEZ: So just to clarify: I would have. [LB464]

SENATOR COASH: Well, I don't know what the deal is. They come in, because everyone wants to play nice, but nobody wants to tell you what... [LB464]

SENATOR ASHFORD: Well, I think I... [LB464]

SENATOR COASH: I've had it with the neutral testifiers. I'm going to introduce a rule to say that you can't have it, because nobody ever comes in neutral. [LB464]

SENATOR ASHFORD: I know. Well, we could do away with neutral testifiers. I mean, we don't have to have them. [LB464]

SENATOR COASH: Nobody comes in neutral. [LB464]

SENATOR ASHFORD: All right. Well, there you go, Greg. [LB464]

GREG GONZALEZ: All right. Appreciate it. [LB464]

SENATOR ASHFORD: But thanks for your... [LB464]

GREG GONZALEZ: Yeah, thank you. [LB464]

SENATOR LATHROP: Thanks for your neutral testimony. [LB464]

SENATOR MCGILL: (Laugh) [LB464]

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

Judiciary Committee  
February 05, 2014

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SENATOR ASHFORD: Hey, Greg, thanks for your great work. [LB464]

GREG GONZALEZ: Yeah, you're welcome. [LB464]

SENATOR ASHFORD: Seriously, Greg. Okay. Let me...before we go any further, how many more testifiers...how many are here? Time out just a second. How many are here that want to talk about the attendance issue? Not too many, hopefully. We've got a few. Okay. Go ahead. Then you're neutral on... [LB464]

LAURA McCORMICK: I apologize. [LB464]

SENATOR ASHFORD: ...on the bill. (Laughter) You're neutral on Senator Krist's? [LB464]

LAURA McCORMICK: Here's my form. Yeah. My name is Laura McCormick. Shall I spell it? M-c-C-o-r-m-i-c-k. I'm from Omaha, Nebraska. My comments are for Avance (phonetic) and Giovanni (phonetic). One child I will speak about today was born to a 15-year-old mother while she was incarcerated at the Geneva YRTC for truancy. The child's father was also incarcerated in Kearney, and Dad is right now in the Nebraska penitentiary. The child was removed from his grandparents at 7. He has endured at least 20 placements, maybe more. He was driven across Douglas County lines with no court order, to Fremont, Nebraska. He's a black child. He was placed in a temporary shelter and that's where he spent this past Thanksgiving and Christmas. He was locked up with teenagers twice his age. His family was told they could not visit him. The state of Nebraska did not take him to school for nearly three weeks, and yet no one hauled the state or the county to court for educational neglect. Any parent in this state would have been charged accordingly. This child is a second-generation client of the Douglas County GAL, Thomas Incontro. He is the second generation to come before Judge Kelly. He is far behind in school and has lost contact with his biological family, his friends, and his teachers. He is alone. If his life continues on this track, he will likely be the second generation of his family to be incarcerated at one of the youth treatment facilities and, I imagine, the penitentiary. This child right now, he's 11 years old. He's locked up at the DCYC right now, today. It is alleged that he is noncompliant and he is acting out. Maybe. But maybe he acts out because he has no stability in his life, courtesy of the state of Nebraska and child welfare reform. Maybe he acts out because no one listens to him when he says, again and again and again, I want to go home; home to Grandma. Wraparound? Commitments to keeping kids in the home? That's not what really is going on in Douglas County. What this young boy fails to understand is that he is the meal ticket for the juvenile court system in my county. They need a never-ending stream of children to maintain caseload. The guardian ad litem needs the case to go on. He needs the body count for his monthly caseload report so he can be paid \$26,000 every month by the taxpayers of my county, which is \$600,000 a year.

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

Judiciary Committee  
February 05, 2014

---

And this gentleman does not pay his federal incomes taxes. The eight other state- and county-paid attorneys who attend this child's court hearings need their meal tickets punched as well. He has no voice. What about JDAI and reform to child welfare and juvenile justice? All rhetoric with no teeth. We allocate funds to programs that sound good but have little direct benefit on youth caught up in this system. Kids are held in detention when they should be sent home. Families are not strengthened by the removal of kids. Wraparound is rhetoric. The kids spiral further and further down. I am often criticized... [LB464]

SENATOR ASHFORD: Laura, I'm going to have to... [LB464]

LAURA McCORMICK: ...for not being politically incorrect,... [LB464]

SENATOR ASHFORD: I'm going to...time out, time out. [LB464]

LAURA McCORMICK: ...failing to pander to politicians' egos and best intentions. I am not motivated by any desire to embarrass elected officials or governmental representatives. This is for Avance (phonetic) and Giovanni (phonetic). My passion comes from the direct observation of truancy hearings, juvenile court proceedings, and district court hearings. Poorly written legislation has profound impact on youth in our state. The truancy law is a perfect example of poorly thought-out legislation that unintentionally caught thousands of children in the juvenile justice system. Child welfare reform has accomplished little, at least in Douglas County. I would encourage each of you to attend juvenile court hearings, NFCT (phonetic) meetings, and truancy diversion hearings so you can get firsthand experience with how the system really works. Right now, there are kids locked up in the DCYC... [LB464]

SENATOR ASHFORD: Laura, Laura, Laura, I'm sorry. [LB464]

LAURA McCORMICK: ...for truancy. And I imagine I'm going to be asked to leave. [LB464]

SENATOR ASHFORD: Yeah. [LB464]

LAURA McCORMICK: And I apologize for that. Again, this is for Giovanni (phonetic). [LB464]

SENATOR ASHFORD: Thank you. Okay, here's what we're going to do on the AM1734, the changes on the attendance law. I'm just going to very briefly, up here, just kind of go over where we are. Did you...do you want to close? You better close. [LB464]

SENATOR KRIST: Yes, I'd like to close and I'll be very brief. First of all, as a cochair of the JDAI statewide initiative, which has just started, I'll just take a sharp stick in the eye

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

Judiciary Committee  
February 05, 2014

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and say that we're making some progress there. This is part of the initiative. I think if we stop doing what we're doing, we're not going to make any progress. We just need to all work together and move forward. And I know those are only words but it's also my commitment and what I have done since I've been here in the Legislature that allows me to say that. As far as the discharge issue was brought up by the Department of Health and Human Services, darn right, they should go back to the judge. That's where it should start. It's a cornerstone of juvenile justice reform. So we're going to have to find a way to get there. Two ways to kill things in this body: call it unconstitutional or throw a fiscal note at it that's ridiculous. And those are my public comments about this fiscal note that came forward. I want to thank you, and you've got a tough day. [LB464]

SENATOR ASHFORD: Well, let me just...Bob, let me just say, I congratulate you on your efforts, an incredible amount of time and effort, really full time, that you've spent on the implementation of LB561. And working with Jenn, to my right, has just...it's an amazing team. You deserve a tremendous amount of credit, and I'm profoundly grateful for your efforts. So thank you. [LB464]

SENATOR KRIST: Thank you, Senator Ashford. [LB464]

SENATOR ASHFORD: Okay, go. (Laugh) See you, Greg. Okay, there was some--and I know that Oliver will make the record clear--there were some comments earlier on the attendance issues, and so we'll be able to capture those and relate them back to this amendment...the second amendment. But most of you are here. You're aware of the second amendment, LB1734 to LB464. Again, it's the result of the work of everyone in this room who have worked hard on this, Jenn, the entire committee. Obviously, from the very beginning of this effort what we were trying to do was to define those kids that really needed help and get them help. And if, for whatever...the implementation obviously left quite a bit to be desired, but over time we're trying to work through those issues. We believe with the language that we have here, we're going to focus the attendance issue where it needs to be focused, which is in the schools with the parents. That's the intent. That's the desire. I think that's always been our desire and intent. We...what...and I do compliment also, I know Don's left, but the county attorney's office, and all the county attorney's offices throughout the state that have been trying to work with schools to develop the right protocols and policies. I think now it's...and there's no question that too many cases got referred to the county attorney's office. I'm fully aware of that. I understand that. I get it. The language change we made two years ago did not do the trick. I get that too. I see Mary Ann is here, Mary Ann Borgeson. I worked with Mary Ann on this. She's made her...and Pam Tusa, as well, made those...her...their concerns known to me throughout the summer. So this is really an effort by everybody to try to resolve it. I am hopeful, by taking the word "documented" out of the requirement for excused...or for documented absences or doctors' excuses, that we will alleviate that problem. That can be worked out within the schools. The schools will have a policy that will be implemented in working with their parents, which is the way it should be. There

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

Judiciary Committee  
February 05, 2014

---

are kids that, no matter what we do, are going to need help. And I'm hopeful that the new parents and school committee...I'm not sure even what we call it anymore. My brain has turned into mush. But essentially the committee that we're forming to provide input into policies, state policies, regarding attendance is going to be very, very valuable. When I say \$2 million, I mean \$2 million. I'm not asking for \$2 million to get \$1 million; I'm asking for \$2 million to get \$2 million, because I think there are programs within the schools, working with parents that can be very, very successful. I'm just very appreciative for everybody that stuck with us on this. I'd ask Kevin to come up first, I think, because the example that Kevin is going to give, the GOALS program, is one example of a program that I think will...can be replicated throughout the state; in some cases it has been replicated. So, Kevin, shoot. Go ahead. Don't shoot. [LB464]

SENATOR COASH: Was that your opening? [LB464]

SENATOR ASHFORD: Yes. [LB464]

SENATOR COASH: Okay. [LB464]

KEVIN RILEY: (Exhibit 32) I'm Kevin Riley, R-i-i-e-y. [LB464]

SENATOR ASHFORD: Maybe it wasn't quite to the point, but...(laugh). [LB464]

KEVIN RILEY: I'm superintendent of the Gretna Public Schools, and I'm testifying on behalf of the superintendents of Douglas and Sarpy Counties in support of the amendment. I want to thank Senator Ashford and the committee for continuing to support children, parents, and schools in improving school attendance across the state. I appreciate the fact that this amendment calls for the appropriation of funding to support effective school attendance practices. With the approval of this amendment, our GOALS Center could apply for and receive funding. As you know, during the 2011 legislative session, the superintendents of Douglas and Sarpy County were statutorily directed to develop and participate in a plan by August 1, 2011, to reduce excessive absenteeism. Much work went into that plan. The mission of the superintendents' plan is to address absenteeism and at-risk behavior prior to any 20-day threshold without the creation of additional governmental bureaucracy. Our plan focuses on prevention, early intervention, and collaboration between schools, families, children, and child-serving agencies. We want to prevent children from ever being referred to the county attorney's office. The county attorney's office should be a last resort. There have been too many referrals made to them that really had no business being made to the county attorney. In our plan, schools, districts, and families work together to improve school attendance. If there is a problem, we exhaust all district processes and resources to resolve the issue. This is where most attendance issues need to be resolved--at the building and district level. However, if the problem continues, we can refer a child to our GOALS Center. Involvement in the GOALS Center is voluntary. The GOALS Center is a 501(c)



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Transcriber's Office

Judiciary Committee  
February 05, 2014

---

that began operations in October 2011. It is an organized, fully active partnership between schools and the community, promoting student attendance and learning. GOALS, through the partnership, maximizes assistance and services for youth and families in need. We just started our third year and our family advocates report that attendance for the children in the GOALS program continues to improve. A year and half ago, we hired an executive director, Treva Haugaard, who will follow my testimony. Treva has a staff of three family advocates and a quality assurance coordinator. The caseloads for the family advocates are getting too big. We need to add another. We are off to a good start. There have been a few problems and we still have a long way to go; but never before have we had this level of collaboration and cooperation between families, schools, and child-serving agencies as we do in the GOALS Center. [LB464]

SENATOR ASHFORD: Yes, Senator. [LB464]

SENATOR COASH: Thank you, Senator Ashford. Thank you, Mr. Riley, for coming. You're always very helpful. And I think this is probably the third hearing on this issue you've come and gave us our ear. I want to ask you about a portion in this amendment that removes the requirement that an illness be documented by a medical professional, because that's being removed in this amendment. [LB464]

KEVIN RILEY: Yes. [LB464]

SENATOR COASH: And in previous years when you've testified on these issues, you've talked about the school's perspective of dealing with families where parents struggle to get their kid to come to school and will use an illness as a way to call in to tell the school, you know, my kid's sick, when really that wasn't always the case. Sometimes it is, sometimes it's not, and that original provision was in there to hedge against that. How do you think...if this language moves forward, how will school districts or individual schools navigate the difference between those two parents: the one parent who truly has a sick child at home, and the parent who has a kid at home that they can't get out of bed, so instead the parent calls in and tells the school that my kid is sick. How will a school negotiate that if no longer we require...is required some documentation? [LB464]

KEVIN RILEY: School administrators have to follow school board policy and state law. And I think most every school board policy that I know of requires somewhere in it, some level of documentation regarding illnesses. I think that typically what schools do is if a child misses a few days because they have stomach flu, they're just going to take the parent's word for that as they do in so many cases. But if they're going to be gone three weeks because of it, there has to be some documentation. It has to start at that level. Whether the documentation piece stays in state law doesn't affect that part. I think documentation may help a county attorney on that rare occasion that they should be involved in it, from our school district's perspective. The bigger districts are going to

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

Judiciary Committee  
February 05, 2014

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have more referrals. But for the most part, once we have turned over information to them which is required in law, and they already have all of that as to how many of these were documented by our policies and all those types of things, those people are pretty smart and they tend to make really good decisions on whether they could move forward with those or not. So I don't know if I answered that, but I think it's... [LB464]

SENATOR COASH: Well, so just, if I can repeat back, what I heard you say was that even if a documented illness is removed from statute, that it's your contention that that can still be a part of school's, individual school district's policy? [LB464]

KEVIN RILEY: Absolutely, absolutely. [LB464]

SENATOR COASH: Because I think that was one of the...I mean, that was one of the reasons we originally had this bill, was... [LB464]

SENATOR ASHFORD: Well, we put it in there because there was a concern that there were people that were absent for long periods of time without any verification. [LB464]

KEVIN RILEY: Correct. [LB464]

SENATOR ASHFORD: As long as the school districts are going to require it, I mean, you document an illness...whether you get it from a doctor or not, you have something that says this person, this young person is not in school because they're ill. And then I assume you check up on that to make sure, you know, if you say it goes for a longer period of time. What we're trying to say by taking the documented out is that in every case it's not required that you get documentation. That's what we're...by taking it out, that doesn't mean you still...you can require it as you see fit as a board policy, but that's worked out between you and the board and the parents. [LB464]

KEVIN RILEY: And the parents. I mean, you're checking on every absence. You're talking with parents on every absence because you have to make a decision as an administrator whether it's excused or unexcused by your policies as set by your board of education. [LB464]

SENATOR ASHFORD: Well, I always...I mean, the example...there's been a lot of examples, and trust me, I've heard a lot of examples. The one that really, you know, affected me the most was the autism example where I think maybe Mary Ann brought that to my attention, where how do you...I mean, you've got to be able to work with a family that has an autistic child, obviously. I mean, you're the contact point, and for us to put it in state law or not, you still have to work with that child and that family anyway, so. [LB464]

KEVIN RILEY: And typically they're on an IEP anyway, because if they're on the

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

Judiciary Committee  
February 05, 2014

---

spectrum they're usually on an IEP and you work those things out typically with the parents. Then I don't know that particular example, but. [LB464]

SENATOR ASHFORD: I'm sorry, Colby. I interrupted. [LB464]

SENATOR COASH: Thank you. [LB464]

SENATOR ASHFORD: Good. Now we're going to hear more about GOALS and...you have been very patient, Kevin, with us over the years. Thank you. That's because you're from south Omaha. [LB464]

TREVA HAUGAARD: (Exhibits 33 and 34) Good afternoon, Senators. My name is Treva Haugaard, H-a-u-g-a-a-r-d. I am testifying in support of AM1734. As Dr. Riley mentioned, I am the executive director of the Greater Omaha Attendance and Learning Services, or the GOALS Center. I have worked in the area of child welfare and juvenile justice for the past 17 years. My educational background includes a master's in social work and public administration. I am currently an adjunct professor at the UNO School of Social Work. In the interest of time, I will not repeat the key information provided by Dr. Riley. The following is an overview of some sample data collected since October 2011: a total of 432 students have been referred to the program; the average age of the students is 13 years old; referrals are almost equal between males and females; we also know that the number of students successfully completing the program have increased in the first two years. We continue to learn more about student and family barriers and unmet needs which at times contribute to inconsistent and irregular attendance. These areas include but are not limited to transportation, unaddressed or inadequately addressed mental health needs, school refusal, poor peer relationships, family economics, housing, employment, and school disengagement. While the GOALS Center has experienced success in a variety of areas, a few of the highlights include: the referrals have been received from all schools districts; referrals continue to increase from year to year; referrals have been received for students in all grades K-12; there is an active partnership with Nebraska Health and Human Services, Nebraska Office of Probation Administration, and all 11 public school districts; a multidisciplinary process is in place which includes all the above partners as well as community agencies, which allows GOALS to be uniquely equipped and to identify and creatively meet the unmet needs of students and children referred to the GOALS Center. The GOALS Center also has opportunities for growth. These include: the development of consistent procedures and referral process with schools districts; enhancing technology to share data and outcomes; creating a private-public funding stream where everyone is invested for the outcomes for students; increasing funding to hire an adequate number of family advocates; creating forums to educate students, parents, and key stakeholders about the diverse issues surrounding school attendance; increasing family engagement; enhancing the multidisciplinary process and creating a process to identify and provide intervention to students at an earlier time period. AM1734 outlines the proposal for

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

Judiciary Committee  
February 05, 2014

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additional funding to be directed to the Nebraska Department of Education for the purpose of funding grants to school districts to increase attendance. Through funding opportunities made available, the GOALS Center will address the above opportunities to enhance our program and provide more support for students and families. I want to thank you for your time today and your steady dedication to these important issues for Nebraska children and families. [LB464]

SENATOR ASHFORD: Yes, Senator Coash. [LB464]

SENATOR COASH: Thank you. Thank you, Treva. What's the structure of GOALS? Are you a nonprofit? [LB464]

TREVA HAUGAARD: Yes, sir. We are a nonprofit. As of November we received our nonprofit status. [LB464]

SENATOR COASH: Okay. So as a nonprofit, if there was a philanthropist that said, we really like what you're doing and we want you to do even more, here's a big check, you can take that money, right? [LB464]

TREVA HAUGAARD: Yes, as of November. [LB464]

SENATOR COASH: And you can go out there and get grants... [LB464]

TREVA HAUGAARD: Yes. [LB464]

SENATOR COASH: ...or apply for grants. [LB464]

TREVA HAUGAARD: Um-hum. We can. [LB464]

SENATOR COASH: So what Senator Ashford is trying to do through this amendment is looking at some state money, but you can do this...I mean, you can... [LB464]

TREVA HAUGAARD: We could increase the program to provide more support throughout the two-county area to the 11 public schools. And it's needed. There are other students. Right now, I have three family advocates; they each have 40 students, which is about 15-20 too many for the work that really needs to happen to help students and families reengage back into school and really identify those barriers that are preventing that regular and consistent attendance. [LB464]

SENATOR COASH: Are you out there soliciting donations, applying for grants, things like that? [LB464]

TREVA HAUGAARD: Yes. Yes. [LB464]

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

Judiciary Committee  
February 05, 2014

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SENATOR COASH: But you just...you said you just got your nonprofit in November, so you're... [LB464]

TREVA HAUGAARD: Right. And before that, the Omaha School Foundation was supporting us through that effort. [LB464]

SENATOR COASH: Okay. [LB464]

TREVA HAUGAARD: So, yes, we are able to and we have been working with funders in Omaha for funding support for the program. [LB464]

SENATOR COASH: Do you receive any kind of...do the schools that are members of your coalition, do they kick in any of their, of the individual school budgets? [LB464]

TREVA HAUGAARD: So the GOALS Center has received funding from the Learning Community, and then from the school districts we are receiving in-kind support. Omaha Public Schools has provided us the location; support with developing a database; our Web site, they're redoing that for us. So we're getting in-kind support from the school districts in that regard. We've had discussions about, in the future, what funding needs to look like. So does that answer you question? [LB464]

SENATOR COASH: Are the school districts prohibited from using any type of their budget to supplement GOALS? [LB464]

TREVA HAUGAARD: You know, because I'm not part of the school districts, I don't know if there's any specific barriers. I can tell you that through their foundations they have all gone back and inquired. When GOALS needed funding, they had gone back to their foundations and inquired about funding for GOALS, and that's how we were going to meet some of our budgetary needs. Dr. Riley might be better to know if there's barriers within school budgets. [LB464]

SENATOR COASH: Okay. Well, I'm sure he'll follow up. [LB464]

TREVA HAUGAARD: I just can't answer that specifically. [LB464]

SENATOR COASH: Okay. Thank you. [LB464]

SENATOR LATHROP: Can I just ask a basic question? How do you get engaged in this process? So does the school call you and say, we have a child that's not showing up? [LB464]

TREVA HAUGAARD: So referrals come from...primarily from the school districts. But I

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

Judiciary Committee  
February 05, 2014

---

will say we, as we're looking at our first two years of data, we received about 80 percent of our referrals from school districts, and approximately 20 percent came from the county attorney's office, because GOALS really is designed to prevent further involvement as well. And so when the county attorneys would review, they would say, we really think that with more prevention efforts we can keep this student out of the juvenile court system. [LB464]

SENATOR LATHROP: Okay. [LB464]

TREVA HAUGAARD: So to answer that, it is a voluntary program and anyone can make a referral. We've had a few parents make referrals as well. [LB464]

SENATOR LATHROP: So a school district makes the referral and they say, the little Lathrop kid isn't showing up; what do you do next? Do you call the family or...? [LB464]

TREVA HAUGAARD: So the school typically has already talked to the parent about the GOALS Center and the parent has said, yes, that they would like to have that. Once we receive the referral, we call the parents. We set up our initial meeting. We have a full service coordination process which includes an evidence-based assessment, setting up service plans, and then connecting them to resources within the community. Some... [LB464]

SENATOR LATHROP: Okay. And all of this is designed to be something that intercepts them before they get to the next step, which is the referral to the county attorney. [LB464]

TREVA HAUGAARD: Correct. The earlier we receive a referral, the more likely we're able to help prevent them from crossing that threshold of needing a referral. [LB464]

SENATOR LATHROP: I was looking at your pamphlet and I see...you say you're partners, and it looks like all of the school districts. So are you doing all of the...are you involved in all of these, or does the parent have to express an interest, or are you limited by capacity? [LB464]

TREVA HAUGAARD: Because it's a voluntary program, parents need to agree to participate. So usually the school districts are getting that agreement. If a parent says no, there are school districts that will not send the referral. There are parents that say yes, and then once we go out and we talk with them, they decline to further participate. The brochure identifies our partners, but we have made great connections with community agencies that provide additional in-kind support, because we really all have come together to say we want to help children and prevention efforts. [LB464]

SENATOR LATHROP: And in a typical week, how many kids are you seeing? [LB464]

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

Judiciary Committee  
February 05, 2014

---

TREVA HAUGAARD: It's slower at the beginning of school, obviously. In a typical week we see anywhere from five to ten referrals. That kind of ebbs and flows. The other thing about our referral... [LB464]

SENATOR LATHROP: So one a day from the 11 districts. [LB464]

TREVA HAUGAARD: Just about. [LB464]

SENATOR LATHROP: Okay. [LB464]

TREVA HAUGAARD: Obviously, the bigger districts we receive more referrals from than the small districts. [LB464]

SENATOR LATHROP: And what's your batting average? Do you help ten families? If ten families come to you, are you going to help all ten of them avoid the county attorney process? [LB464]

TREVA HAUGAARD: I wish I could say yes. We're working on that. Right now, we are somewhere about a 70 percent success rate. [LB464]

SENATOR LATHROP: Say that again? [LB464]

TREVA HAUGAARD: About 60-70 percent, I would say. [LB464]

SENATOR LATHROP: Okay. [LB464]

TREVA HAUGAARD: I'm pulling that out of thin air right now. [LB464]

SENATOR LATHROP: Okay. [LB464]

TREVA HAUGAARD: We did enter into a program evaluation with UNO, and they're really helping us scrub our data and look at our outcomes in a different way than what we had. [LB464]

SENATOR LATHROP: So if you had 30 percent that are not responsive to your intervention--okay, you go, you meet with them, you try to help them, you do whatever you're going to do for them, get them whatever resources that might be responsive to the problem--do you think they're the people that actually should be going to the county attorney? [LB464]

TREVA HAUGAARD: I'm sorry, can... [LB464]

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

Judiciary Committee  
February 05, 2014

---

SENATOR LATHROP: I mean, are you an effective screen? Like, if they can't get it done with you, they probably should be talking to the county attorney? [LB464]

TREVA HAUGAARD: Yes. I mean, the...but I would say is, is that sometimes we recognize that the family needs something else, and so we'll connect them to that resource. So it might be that there's a lot of behavioral health concerns, and we're going to connect them to Region 6, because Region 6 is the expert in our community. So just because they're not successful with the GOALS Center, it doesn't mean that they necessarily need a referral to the county attorney. We have had more students than we care to see not be successful and not engage with our services; and the school has then made a referral to the county attorney because that behavior has not changed. [LB464]

SENATOR LATHROP: Okay. Thank you. [LB464]

SENATOR ASHFORD: Great job starting something from absolute scratch, and you've achieved a great deal. So thank you very much. [LB464]

TREVA HAUGAARD: Thank you. [LB464]

SENATOR SEILER: I do have one question. Excuse me. [LB464]

SENATOR ASHFORD: Oh, sorry, Senator Seiler. [LB464]

SENATOR SEILER: Is there a program called STARS? [LB464]

TREVA HAUGAARD: I believe that there is but I think that's in... [LB464]

SENATOR ASHFORD: In Wahoo I think. [LB464]

TREVA HAUGAARD: Yeah. I was going to say it's not in Omaha that I'm familiar with. [LB464]

SENATOR ASHFORD: It's Wahoo, I think, Les. [LB464]

SENATOR SEILER: Okay. I've heard it out in the Hastings, Kearney, Grand Island area. [LB464]

SENATOR ASHFORD: Oh, do they have it too? Yeah. [LB464]

TREVA HAUGAARD: Yeah. [LB464]

SENATOR SEILER: And I didn't know if it was a similar type program or part of your



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

Judiciary Committee  
February 05, 2014

---

program or... [LB464]

TREVA HAUGAARD: It's not part of the GOALS program. There are other programs within other parts of the state that work with the school districts and the county attorneys. I would repeat what Senator Ashford said, and GOALS is a model that could be replicated throughout the state. We have amazing partnership with Health and Human Services, and Probation, and community agencies, and it would be easy to take this model and replicate that with the right funding and support statewide. [LB464]

SENATOR ASHFORD: And to Senator Coash's point, he's asking about the money, and he should. And the idea behind the funding really is to create that network, I think, a statewide network of the GOALS, or whatever we call it, GOALS programming, because now we have the Probation and HHS collaboration, everybody is talking to everybody anyway, so, you know, we could insert the absenteeism issue into that sort of thing. [LB464]

TREVA HAUGAARD: Um-hum, right. Yeah. And I would say for the rural areas, my plug is, is that the rural areas or the smaller school districts don't have necessarily the resources to hire school social workers that can really be intensive, and maybe they're covering a full district. And so GOALS is an extension and really helping out the school districts in areas that maybe they don't have the resources or the time to effectively do. So it is a good model to go statewide. [LB464]

SENATOR ASHFORD: Thanks, Treva. [LB464]

SENATOR SEILER: Thank you. [LB464]

SENATOR ASHFORD: Brenda. [LB464]

BRENDA VOSIK: (Exhibit 35) This is a lot of stuff. I'm going to tell you what it is. I don't expect you all to read everything in there, but I would ask that at the top of the stack in your folder you'll see there are several letters that are paper-clipped together, and those are letters from children across the state of Nebraska who have been affected by the way the current law is being used. And it's well worth your time to take a few minutes to read what those kids are having to say. [LB464]

SENATOR LATHROP: Can we have you start with your name, please? [LB464]

BRENDA VOSIK: I will. Again, I'm Brenda Vosik, B-r-e-n-d-a V-o-s-i-k, director of the Nebraska Family Forum, and I am here representing the more than 700 members of the NFF. And I want to state for the record that we support AM1735 to LB464 in its entirety. This amendment provides additional... [LB464]

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

Judiciary Committee  
February 05, 2014

---

SENATOR COASH: Did you mean AM1734? [LB464]

BRENDA VOSIK: I'm sorry, what? [LB464]

SENATOR COASH: Did you mean AM1734? [LB464]

BRENDA VOSIK: AM1734. Yes, to LB464 is what I said. It's a... [LB464]

SENATOR COASH: Okay. [LB464]

SENATOR ASHFORD: That's what you (inaudible), and you're right. [LB464]

BRENDA VOSIK: Okay. Thank you for saying that. This amendment provides additional safeguards against nontruant children being referred to the county attorney. Removing the word "documented" from in front of the word "illness" returns discretion to parents. And I'd like to speak off the cuff to your concern. In Millard Public Schools, they have I think a really reasonable policy when it comes to that. We can call our own children in sick, which actually a lot of school districts across the state now, parents can't even call their own children in sick. In Millard you can, but after four days you have to provide some documentation. I think that's very reasonable. If you have a kid who is bedridden for four days, then it's time to go to the doctor. And so that might be something that if this Council on Student Attendance is created, that it could be utilized to suggest that to school boards and school administrators that that would be a reasonable policy. And speaking of the Council on Student Attendance, we support that. Across the state schools have adopted attendance policies that do not account for legitimate absences, and oversight and correction is needed. Children who are attending a family funeral or making a college visit, leaving a day early to visit Grandma at Thanksgiving, or spending time with a parent on military leave, are not truant children. They are not children at risk. There is no reason they should ever have an encounter with the juvenile justice system because of those absences; yet all across the state, from Lincoln to Butte, from Fremont to Sidney, these absences are considered unexcused and the schools are all too readily turning these kids into the county attorney; and this council could be a good way to solve that problem. We also support the appropriation if that money is going to be used to really help the schools, help struggling families, and not be given to county attorneys to prosecute these kids. I'm asking you to hear us today, to hear these parents that have been crying out for your attention for the last three to four years. There are a lot of experts who are in favor of the way this law is working, and I'm here to say that for us, for the families, it's not working, it's not helping us; it's harming us, it's harming our kids. And if you would talk to those families, if you would look in the eyes of those kids, read their letters and hear what I've heard over the past few years, you would understand that we need to have this law changed for their sake. We can do better. Let's get this right, and we are ready and willing to work with you collaboratively to get this right once and for all. Does anybody have any questions? [LB464]

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

Judiciary Committee  
February 05, 2014

---

SENATOR ASHFORD: Senator Christensen. [LB464]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Brenda. If I'm understanding you correctly, in this amendment where we strike "documented" illness and go to just an illness, you wouldn't have a problem with that being...I believe you said four; I was using five undocumented illnesses... [LB464]

BRENDA VOSIK: Um-hum. [LB464]

SENATOR CHRISTENSEN ...because I see the problem of...that we wanted to deal with, with people that will just call their kids in sick. [LB464]

BRENDA VOSIK: Right. [LB464]

SENATOR CHRISTENSEN: And that would give some leeway in here. But that's kind of what the original language done. So I don't know if you asked for this or how this all... [LB464]

SENATOR ASHFORD: Well, I think what we were trying to get to is a situation where the school policy...the school has to have a policy on this issue, and that policy should be the guiding document. And if the parent or the child, if they don't comply with that policy, then it's up to the school to decide what to do with that, I mean. But what we don't want...the mistake in the language that I readily understand is the idea that, especially not only but with low-income families where it was just very, very difficult, if not impossible, to get documentation for an illness, that they were just in noncompliance right away. And we don't want people to be in...we want them to be...and the whole thing was to help them, not to put them in noncompliance. But I don't know if I answered your point. I mean, there are going to be cases where four days in a row somebody has got to do something I would suspect. And that's the school's job, I mean, to do that, so. [LB464]

BRENDA VOSIK: Right. Sure. [LB464]

SENATOR CHRISTENSEN: And that was kind of the point I was making, Senator, was the fact that if we change this to get rid of documentation, when it already says "have been absent from school for more than five days per quarter or the hourly equivalent"... [LB464]

SENATOR ASHFORD: Okay, I see your point. I think what we're saying though...I get your point. The school can do that. The school can have a policy that...you know, the law says they're supposed to check, you know, five days, five days, five days, five days. What we're getting away from is the requirement that they document...that each illness

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

Judiciary Committee  
February 05, 2014

---

has to be documented, because it's impracticable. It doesn't work. It's going to...it disadvantages families. That doesn't mean the school should not have a policy dealing with five days of absences. I think that's what...in fact, what the law says is that you should have that; that schools should have that policy: five days in every quarter. [LB464]

BRENDA VOSIK: Can I speak to that? [LB464]

SENATOR ASHFORD: Yeah. [LB464]

BRENDA VOSIK: I think where things have gone awry here is that we're mixing up school policy with law enforcement. It's not the county attorney's job to enforce school policy. If the school has a policy, five days they need to deal with this family; if they have a policy that unexcused absence, you can't take your child on vacation, that's school policy. But should that be against the law? Should that be a reason for child protective services to come in for a child to be adjudicated truant? [LB464]

SENATOR ASHFORD: And I think the answer to that is, no; you're right, it should not be. And what...that should not be...that's not a violation of the law. It shouldn't be a violation of the law. I think we're correcting it so there should be no misunderstanding that it is not a violation of the law. The school can still do whatever...I mean, the school can work with the child...if a child is absent one day and it's unexcused, they get no contact with the parent at all and the child just doesn't show up, it's the school's job...I would think, the school's job to contact the parent or the guardian and say, where is the child? Because then it's a safety issue. We don't know where the child is. [LB464]

BRENDA VOSIK: Right. [LB464]

SENATOR ASHFORD: So we don't want to stop the school from doing that, and if they can't find the child for three or four days, maybe the...then at some point you have to call somebody to say we've got to find this child. That's just common sense. [LB464]

BRENDA VOSIK: Sure. Oh, I agree with that. I agree with that 100 percent. [LB464]

SENATOR ASHFORD: Am I missing your...? [LB464]

SENATOR CHRISTENSEN: I just was concerned that maybe we were almost going too far right here, like Senator Coash was getting at. If you strike "documented"...the way I'm reading it, you get five days' worth of sick days before it has to be documented. [LB464]

SENATOR ASHFORD: Absences. [LB464]

SENATOR CHRISTENSEN: How far do you want to go? Am I misreading it, Senator Coash? [LB464]

SENATOR COASH: I think the amendment is addressing two different sections. [LB464]

SENATOR ASHFORD: Two different sections. [LB464]

SENATOR CHRISTENSEN: Okay. [LB464]

SENATOR COASH: But let me ask you, Brenda, do you agree that a policy on documented illnesses should be at the school level, that every school should say to their families, here's our policy on illness and here's how we're going to deal with families when a child is called in sick? You're testifying that that...that the school is the appropriate place for that policy. [LB464]

BRENDA VOSIK: Yes. In fact, I think the school is the appropriate place for almost everything we're talking about here. [LB464]

SENATOR COASH: Okay. So with this, you could have a school right here in Lincoln that says, our policy is we're not going to worry about it until four days. You can go out to Senator Christensen's part of the state, you know, eastern Wyoming, (laughter),... [LB464]

SENATOR SEILER: Kansas. [LB464]

SENATOR COASH: ...and the school district in his part of the state could say, you know what, one...at one day of absence and I want to see a doctor's note. Right? [LB464]

BRENDA VOSIK: Well, that's what this law is trying to fix. [LB464]

SENATOR COASH: Well, what I'm saying is we wanted some consistency. By removing this and putting it at the local level, which I agree is appropriate, you'll have...you will not have...and we've got 200 and some school districts; you will have 200 and some policies on documented illness. [LB464]

BRENDA VOSIK: Sure. But if you remove law enforcement from that equation...and that's what I was getting at before. So one day they need to have a doctor's note. If we're removing law enforcement from that equation, then that's between the school and the parent. And what's happening now because of the way these schools have their policies that you can't even call your own child in sick, you can't go to Grandma's funeral, that's a matter that's being thrown into law enforcement; and that's not the right way to approach this. [LB464]

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

Judiciary Committee  
February 05, 2014

---

SENATOR COASH: One thing that won't change, though, is that within the confines of whatever the school district does here with regard to bereavement leave, with regard to illness, at some point the school district--and it won't go past 20--is going to say, and now we will get law enforcement involved, based on their own policy. This does not remove law enforcement. [LB464]

BRENDA VOSIK: No, it changes it to 20 days unexcused. [LB464]

SENATOR COASH: And it's always been 20 days. But they can still get in there. [LB464]

SENATOR ASHFORD: No, but they could still...but let's get this clear though. But, I mean, if a school on day two or day three they perceive there's a problem, the child is not there and they don't have a...pursuant to their policy, whatever that policy is, they do have the, in fact, probably the obligation at some point to contact not law enforcement necessarily, but it could be law enforcement, it could be the county attorney's office, it could be HHS, it could be whomever the school deals with; or if the child is on probation, the probation officer. I mean, that could happen under...what we're saying here is we're not triggering...requiring the county attorney to be involved if there are 20 days of absences that are excused under school policy. That's what we're saying. It doesn't mean that at five days the school couldn't do something if it perceives there's danger or a problem, and that's their obligation. [LB464]

BRENDA VOSIK: Right. If that child is missing, is that...are we saying the same thing... [LB464]

SENATOR ASHFORD: Or can't be accounted for. [LB464]

BRENDA VOSIK: Or can't be accounted for, not if the parents are accounting for the child and the school just doesn't like their reason. Then do they...? You know, that's I think maybe where... [LB464]

SENATOR COASH: Brenda, I think under this amendment... [LB464]

SENATOR ASHFORD: Well, if they don't like the reason, I mean, that's between...I mean, it has to be consistent with the policy. If the child is missing or not in school or whatever, and if that...if the school determines that to be a violation of a school policy, they could--and they could before this law was passed--they could contact law enforcement or a county attorney or HHS or whomever, and say we've got a problem, we can't deal with this child for whatever the...I mean, there could be a myriad of different reasons. But with the change, what isn't going to happen anymore is if you have somebody with 10 days of unexcused absence, for example, and 10 days of excused absence, it equals 20, and all of a sudden a letter goes to the county attorney

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

Judiciary Committee  
February 05, 2014

---

and the county attorney has to react. That won't happen anymore under this change. It doesn't stop the school from...but then it's between the school and the parent to make sure that that policy is consistently understood. [LB464]

BRENDA VOSIK: And that's where it should be from our perspective. [LB464]

SENATOR COASH: You could get...and I just want to make sure this is clear, because I've heard from lots of parents who are trying to navigate this. You could get a wily school board out there who could say, you know what, we're going to have a policy for our school district that says, day one, if I don't have a documented illness, I'm going to report that; and day two I'm going to report it again. There is nothing in this amendment that is going to prohibit a school district from having a policy that they think will meet their needs. And... [LB464]

BRENDA VOSIK: I think there is. If you look at the...where they've crossed out the word a school district "may," and change it to "shall not." [LB464]

SENATOR COASH: But they will have a policy, and that is up to that school board. [LB464]

SENATOR ASHFORD: Right. [LB464]

BRENDA VOSIK: Okay. [LB464]

SENATOR COASH: And that school board is going to determine what's best for their school. [LB464]

SENATOR ASHFORD: And that's the way it was, Brenda, before LB800 passed. I mean, the law...it was loose. I mean, it was just...it was somewhat arbitrary. They could...the school could report or not report based on what was happening or what they perceived to be happening. [LB464]

SENATOR COASH: My final comment is it's just one of those things where be careful what you wish for; you may get it. You may wish for a lot of local control and then you'll find a school board who decides to take matters in their own hands and then we'll be hearing from families from that school. [LB464]

BRENDA VOSIK: Well, and I think that's the purpose of the Council on Student Attendance. [LB464]

SENATOR ASHFORD: Right. [LB464]

BRENDA VOSIK: There's some oversight there, and hopefully the Association of School

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

Judiciary Committee  
February 05, 2014

---

Boards... [LB464]

SENATOR ASHFORD: Right. [LB464]

BRENDA VOSIK: ...will be involved in this, and say, look, this isn't reasonable that you're calling the county attorney because this child went to his grandmother's funeral. You know, we're going to have some oversight here, and that's why we're really in favor of this council. [LB464]

SENATOR ASHFORD: And the Legislature is going to know because there are going to be parents on this group and they can call their state senator. I mean, there's going to be much more collaboration built into this council. I just don't see this getting out of hand...it could. There could be examples of if it goes awry, but not in this 700 family type situation where there's 700 families adversely impacted. It shouldn't happen under this...with this oversight. [LB464]

BRENDA VOSIK: No, it shouldn't. And I think that families... [LB464]

SENATOR ASHFORD: I mean, with this change it shouldn't. [LB464]

BRENDA VOSIK: Right. And families now, I think across Nebraska, are becoming aware that they're...how to navigate this and who to call. And this group has grown so much, we're not going anywhere. And if there continues to be problems from individual school boards, like you were saying, Senator Coash, then, you know, hopefully we'll be able to assist parents to direct them how to approach their school boards, how to get ahold of their senator, and the steps that they need to take. [LB464]

SENATOR COASH: I don't want that anymore though. [LB464]

SENATOR ASHFORD: This is pretty positive though. I mean... [LB464]

BRENDA VOSIK: Well, then let's... [LB464]

SENATOR ASHFORD: Well, Brenda, I mean, this to me this is a...and then I'll shut up. But this is pretty positive stuff because... [LB464]

BRENDA VOSIK: Yeah. [LB464]

SENATOR ASHFORD: ...when we saw the problem of so many people, 20,000 or whatever it was, I mean, you look at numbers, and you go, holy mackerel, 20,000 kids are, you know, are not in school. And that...all the alarm bells go. Well, if we had this sort of oversight group then, I think they would have said, hey, let's look into this; why is it 20,000; why are there 20,000...and what do the numbers really mean? So I think this



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

Judiciary Committee  
February 05, 2014

---

oversight committee will insist on knowing what this data is and what it means and is it excused or unexcused or what is it, so that we can make policy based on what's real instead of just guessing that there's this huge problem out there. [LB464]

BRENDA VOSIK: Right. And, Senator Coash, are you suggesting that excused and unexcused absence policy should be set at the state level? Is that what you're suggesting? [LB464]

SENATOR COASH: I'm not saying that. [LB464]

BRENDA VOSIK: Okay. [LB464]

SENATOR COASH: I'm saying that if you put it at the school district level, you may not like what you get there either. [LB464]

BRENDA VOSIK: Sure. [LB464]

SENATOR LATHROP: Yeah. It could be way less than 20. [LB464]

SENATOR SEILER: Yep. [LB464]

SENATOR COASH: You could get a school district who doesn't like...I mean, we've...I've heard from school districts who think we were too lax on this, so they're probably chomping at the bit to get it in their hands so they... [LB464]

SENATOR ASHFORD: I got one today. I got an e-mail today: What are you doing? I don't know. I don't know. (Laugh) [LB464]

SENATOR COASH: They want to tighten it down. So, you know,... [LB464]

SENATOR LATHROP: The difficulty is if you look at it from your perspective as a mother of someone at Millard and say, I can do better with the Millard School District, and the next guy out in Imperial may end up doing worse than what this bill requires, and I think that's Senator Coash's point. [LB464]

BRENDA VOSIK: Okay. [LB464]

SENATOR LATHROP: We turn it over to local control, I suppose you can vote your school board out. But in the end it's going to be their decision and we're not going to set the number. [LB464]

BRENDA VOSIK: Well, hopefully, we can hash this out over the next couple of weeks and come to a good conclusion so you guys can stop getting all these calls and e-mails.

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

Judiciary Committee  
February 05, 2014

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[LB464]

SENATOR ASHFORD: The calls are fine. I mean that's what a democracy is all about. And, sure, we got calls, and people were mad and they're mad at me. I know that. I've been mad at...people are mad at me for a lot of things. So this was not something I was...I had experienced before. But, I mean, it...but I think this committee has been great, that we said, Brad, we've got to get into this and make it work. Kevin has been great. We can make this work. And you've been great. So everybody in this room has been great, so let's figure out a way to make this work and move forward. [LB464]

BRENDA VOSIK: Okay. And I want to thank you again for presenting this, and you again, also, Senator Christensen, for going to bat for the families. We really appreciate that. [LB464]

SENATOR ASHFORD: Okay. Thanks, Brenda. [LB464]

BRENDA VOSIK: Thank you. [LB464]

SENATOR ASHFORD: Anybody else want to talk about this? [LB464]

CARL MESECHER: My name is Carl Mesecher, C-a-r-l M-e-s-e-c-h-e-r, and I come to you as a parent in Lincoln. I have two children. I just want to share with you what...the experience we have gone through. I have a fifth-grader, was in fourth grade, went on some business trips, and they were preapproved prior to the school year. My fifth-grader does have Asperger's syndrome which is on the autism spectrum. Got into the school year, got past the 20 days or near the 20 days and did go over, got sent to court. Not only got sent to court but had child protective services at our door. And in the end, everything got dismissed. I guess it was a big deal, then it wasn't a big deal. Child protective services was...said we were...they were looking at us for physical neglect, which is just appalling to me as a parent. I'm embarrassed for our state, too, for this. You can't predict neurological disorders or chronic illness. When I plan for something accordingly, or parents plan for something accordingly, you can't predict the health and what that's going to be like later. My fifth-grader now, we were at ten days at the break. We had a decision to make because we can't predict the second semester. We either need to move or homeschool. We're now homeschooling, which is not our preference either, but I feel we had no decision to make. My other child, who did go on the trips, too, didn't go over; doesn't have these conditions. And it's not missing two or three weeks at a time; it's missing a couple hours here, a couple hours there, for therapy, for doctors' appointments, for...recovery time is longer for these children. We're not...you know, they are not robots and they don't fit in a box. And I am here in favor of this. I do think it's a step forward of where we've been. [LB464]

SENATOR ASHFORD: Thank you. [LB464]

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Transcriber's Office

Judiciary Committee  
February 05, 2014

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SENATOR COASH: Thanks, Carl. [LB464]

CARL MESECHER: Thank you. [LB464]

SENATOR ASHFORD: Well, sorry, that happened, obviously. Okay. Yes, Mary Ann. It's longer than county board meetings, isn't it? [LB464]

MARY ANN BORGESON: Well, we're stretching there. Good evening yet? Mary Ann Borgeson, M-a-r-y A-n-n, Borgeson, B-o-r-g-e-s-o-n. I'm the chair of the Douglas County Board speaking to all of you today in support of the changes to this law. You may be asking, what's a county board have to do with this? For the last three years, it just so happened that I received personally many calls from families--and they weren't just in Douglas County; they were from other areas of the state--asking for assistance. And so that's how we got involved. But the counties are involved because there's expense related to it in terms of what the county attorney expends on it. But when you put the cost aside, really what it comes down to is, is this really how we want to treat our Nebraska families? Do we want to criminalize or begin to start criminalizing absences from school? And, Senator, I couldn't agree...kids need to be in school, but there are circumstances beyond even the parent's control as to why that child isn't in school. And so these changes that we're making I think will help keep some of the kids out of the system in which...it's ironic this is attached to a bill that we are trying to keep our children out of our judicial system, keep families out of judicial system, keep them out of our youth centers, keep them out of that whole realm, and yet, on the other hand, we pass a law that is thrusting, throwing our kids and families into that black hole. And so I think with these changes I think we are able to get back to really common sense; get back to where the schools and the parents, the families, are able to work together and pull law enforcement and...well, actually the political system, out of trying to legislate the common sense. [LB464]

SENATOR ASHFORD: Mary Ann, thank you for your persistence and your willingness to...(laugh). [LB464]

MARY ANN BORGESON: Well, I appreciate Senator... [LB464]

SENATOR ASHFORD: I'll tell you, I always tell this Mary Ann Borgeson story because when we worked together on Katrina when I ran the Housing Authority and Mary Ann was on the county board...but I also was working with Region 6 and with others. And when, all of sudden, the Katrina victims showed up at the Civic Auditorium from out of the sky, there was Mary Ann working I think...I don't know if you ever slept for a week. [LB464]

MARY ANN BORGESON: Round the clock. [LB464]

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

Judiciary Committee  
February 05, 2014

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SENATOR ASHFORD: I don't think you did. With cots all over the...the whole auditorium was full of cots and people, and trying to locate, you know, places for these people, was...I mean, it's one of those things that's happened in our history. She never gets credit for it but she did...and so anyway. [LB464]

MARY ANN BORGESON: You know, and I know you guys don't expect credit either, but I really do appreciate Senator Christensen stepping up, listening. Senator Ashford, I know we went round and round and, you know, we got where we need to be, and I really appreciate it. I appreciate all the senators reading the e-mails I've sent, meetings that I've had with you all. It's...you know, it's a very emotional issue too. And so to be able to come full circle to where we are today, I really do appreciate it, and you guys deserve a pat on the back for listening to the Nebraska families. Thank you. [LB464]

SENATOR ASHFORD: Thank you. And thank Pam Tusa as well for meeting with us and...okay, any other proponents? Any opponents? Oh, one. Okay. Do we have any neutral? Is the department going to talk? Okay. And you're... [LB464]

SENATOR SEILER: Wind them up. [LB464]

MARY BAHNEY: (Exhibit 36) Senator Ashford and members of the Judiciary Committee, I'm Mary Bahney, M-a-r-y B-a-h-n-e-y. I'm here today representing the School Social Work Association of Nebraska, SSWAN. The members of SSWAN have concerns about the changes in the school attendance laws that are being proposed in both of these amendments. School social workers in our association are employed by school districts across the state. School social workers support learning and know that a student's attendance can have a significant impact on one's success in school. While the duties of school social workers vary with the districts they work for, most of the members of SSWAN are involved in implementing their district's school attendance policy. Since the passage of LB800 in 2010, school social workers who work closely with students and their families have seen decreases in the numbers of students who have had chronic school attendance problems. School social workers in Nebraska have had the advantage of working with a number of intervention and prevention programs that have been developed in several communities across the state in response to the increased focus on school attendance. School social workers are trained to assess the reasons students are absent from school. Oftentimes, school social workers have an understanding of the reasons for a student's attendance issues long before the significant number of 20 absences is reached. During that time frame, the school social worker is able to initiate interventions that will decrease the number of absences in the future. There are cases where some students are enabled by their parents who contact the school to report that a child will be absent when there is not a valid reason for the child to be absent from school. Schools most often are willing to excuse a child's absence when the request is made by the parents. Under these changes in the law, the

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

Judiciary Committee  
February 05, 2014

---

excused absences will accumulate and could delay opportunities for interventions that could be implemented. Schools are often reluctant to count a student as unexcused. Often what might be excused in one district or school building is unexcused in another district or building. Carrying out a consistent excused/unexcused policy across a school district is difficult, much less across the state. SSWAN supports the measures outlined in AM1734 that would review school attendance policies in all of our school districts. SSWAN also supports the efforts to reduce the number of families referred to the court system because students have been habitually truant. While a referral to the court system should be the last resort to resolve these issues, we know that oftentimes school attendance issues are a sign of other difficulties the family is experiencing. The members of SSWAN are concerned that setting an extremely high bar of 20 unexcused absences as the only way that court involvement will come into play would have the unintended consequence of allowing far more than 20 absences to accumulate. It could also prevent earlier intervention from happening so that there could be ways to prevent that from increasing. And just in summary, we would like to see some sort of a policy that where, like has been said, families can work together with their school personnel, because each situation is truly individual. [LB464]

SENATOR ASHFORD: Yeah, Mary, we're not preventing the social workers working with the schools. And if there's a need for some intervention on day two, then there is. But it's got to be...the schools have to bear some responsibility... [LB464]

MARY BAHNEY: Sure. [LB464]

SENATOR ASHFORD: ...and have a policy that's understandable to the public and to the parents. [LB464]

MARY BAHNEY: Sure. [LB464]

SENATOR ASHFORD: But anyway, Senator Christensen. [LB464]

MARY BAHNEY: Sure, sure. [LB464]

SENATOR CHRISTENSEN: Thank you, Chairman. Thank you, Mary. Just one comment, you know, same as Senator Ashford. You can still go visit with them before the 20 days. It's just where we're intervening. And the other part is, I've said this to a lot of people: bad policy development on a school's part leads to bad laws on my part. [LB464]

MARY BAHNEY: Sure. [LB464]

SENATOR CHRISTENSEN: And that's part of the problem here. You know, we've got to figure out how to get a commonsense balance and we don't have this problem.

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

Judiciary Committee  
February 05, 2014

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[LB464]

MARY BAHNEY: Sure. [LB464]

SENATOR CHRISTENSEN: But I think we can see that we didn't get common sense all the way across the board in all cases, and we might be overreacting here. [LB464]

MARY BAHNEY: It's a pendulum, isn't it? [LB464]

SENATOR CHRISTENSEN: It is. And that's why I say, we've got to get everybody to work together and sit down and have some common sense, because I'm serious, bad policy on their part can lead to a bad law on my part; and neither one is good. So thank you. [LB464]

MARY BAHNEY: Sure. We just wanted to be sure that we were represented. [LB464]

SENATOR ASHFORD: You're very important in this process, Mary. There is no question about that. [LB464]

MARY BAHNEY: So thank you. And we just wish more school districts would hire school social workers. [LB464]

SENATOR ASHFORD: They should do that. Maybe they will now. [LB464]

MARY BAHNEY: I've mentioned it. [LB464]

SENATOR ASHFORD: Okay. Any other...okay, neutral? Oh-oh. How many neutral testifiers are there? John? And we're going to be really short...short neutral. [LB464]

SENATOR CHRISTENSEN: I thought we eliminated neutral. [LB464]

SENATOR ASHFORD: If Senator Coash had his way, we sure would be. [LB464]

BRIAN HALSTEAD: (Exhibit 37) Good afternoon. Senator Ashford, for the record my name is Brian Halstead, B-r-i-a-n H-a-l-s-t-e-a-d. I'm with the Nebraska Department of Education. I'm here in a neutral capacity because the state board determines all positions of the department and they didn't take a position on LB464, so I have to appear in a neutral capacity. A couple comments. Number one, do not use the word "truant" or "truancy" in Chapter 79. Senator Ashford, stop putting that word in there. If you've realized, the department, we've been focusing on attendance and absences, and that's what any school district policy should focus on. The only time anyone is truant is after the juvenile court has had a hearing and determined sufficient facts have been proven to show that the child is within the provisions of 43-247(3)(b). The word "truant"

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

Judiciary Committee  
February 05, 2014

---

doesn't help anybody's cause. So in your amendment, absences and attendance are appropriate; leave "truancy" out of this. Number two, the task force should really be composed of school board members, should have parents, should have administrators. However, under the constitution of the state of Nebraska, the people have said the state board and the department should have the general supervision; so we think the state board should do that appointment, not the Governor. It's not because we don't have a great working relationship... [LB464]

SENATOR ASHFORD: I'm fine with that. [LB464]

BRIAN HALSTEAD: I understand that. [LB464]

SENATOR ASHFORD: But someone has got to appoint them. [LB464]

BRIAN HALSTEAD: Absolutely. So the state board, because of the constitution, the people have put that there. [LB464]

SENATOR ASHFORD: Okay. [LB464]

BRIAN HALSTEAD: And finally, number three, and the point, there is no magic number. It isn't 5; it isn't 20, it isn't anything else. And I think what we need to realize, there's no single magic number, no magic number of days or whatever. 79-209 is the statute about a school district's policy and what school officials should do. The compulsory attendance law is found in 79-201(2), which says a child shall be in school every day school is open and in session unless excused by school officials or illness or severe weather makes attendance impossible or impracticable. With that, we would be willing to work with anybody to clarify the board policy statute and make it clear what's expected and what should be done. And I'll answer any questions. [LB464]

SENATOR ASHFORD: Yes, Senator Coash. [LB464]

SENATOR COASH: Thank you, Senator Ashford. Brian, do you think the Department of Education could do the same things that Senator Ashford is proposing that this Council on Student Attendance does? [LB464]

BRIAN HALSTEAD: Well, first of all, the statute he's amending already has the Commissioner of Education, the chief executive officer of the Department of Health... [LB464]

SENATOR ASHFORD: We're just expanding it. [LB464]

BRIAN HALSTEAD: Just expanding it. The work is already being done by the department, Senator Coash. Now if you're going to add other people and reimburse

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

Judiciary Committee  
February 05, 2014

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them for their expenses and travel, there's going to be a cost to the department. You're going to find a fiscal note from us to do that. So in that regard there's no staff at the department doing that. You're looking at the only staff member, and Commissioner Blomstedt just got on board. The other staff member who is doing it is former Commissioner Roger Breed. So if you want us to collect school district policies, have a... [LB464]

SENATOR ASHFORD: It's cheap at half the cost. It's cheap at half the cost. [LB464]

BRIAN HALSTEAD: Well, now that he's retired, he's even cheaper in that regard. So in that, I know he disagrees with that, but... [LB464]

SENATOR COASH: But the Department of Education could do... [LB464]

BRIAN HALSTEAD: All of the numbers you've got...we are the ones who have produced all of the numbers, the data on all of this. We're already doing some of this, so it isn't like it's a separate commission. So if you're going to expand what unfortunately is called the... [LB464]

SENATOR ASHFORD: We want to look at policies, though, Brian. [LB464]

BRIAN HALSTEAD: Absolutely. We can do that at the department. That's why it's the state board... [LB464]

SENATOR COASH: Could you do it for less than \$2 million? [LB464]

BRIAN HALSTEAD: Well, the \$2 million is we're seeing in the fiscal note is funding two school districts to set up programs. Because Senator Christensen is probably going to tell you, in Chase County, in Red Willow County, some of his counties, they don't have all the foundations, they don't have all the services that Douglas and Sarpy have been able to bring people together and do that. So if you're expecting all of the school districts, all 249, or in this case since 11 of them have already done it, you're down to 238, and it's going to be 230...we're losing one school district, or the two school districts are already merging, so next year it will be less than 249. There aren't resources. And there isn't the capacity in the greater part of Nebraska where Senator Christensen is from, where I've been in Keith County, it's not there like it is in Douglas and Sarpy County, and that's one of the issues. And the services aren't there. [LB464]

SENATOR COASH: But everybody in Senator Christensen's district goes to school every day, all day. Right? [LB464]

BRIAN HALSTEAD: Unfortunately, Senator Coash, I can get you the numbers that shows that's not true either. [LB464]



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

Judiciary Committee  
February 05, 2014

---

SENATOR CHRISTENSEN: That's not true. [LB464]

SENATOR COASH: Okay. [LB464]

BRIAN HALSTEAD: And that's the unfortunate part. And the reality is there are reasons why kids aren't in school. Some of them are beyond the control of the family and the kids, and they shouldn't be in the juvenile justice system... [LB464]

SENATOR ASHFORD: Right. Right. We all agree with you, Brian. [LB464]

BRIAN HALSTEAD: Absolutely. [LB464]

SENATOR ASHFORD: Okay. Thank you. [LB464]

BRIAN HALSTEAD: Sure. [LB464]

SENATOR ASHFORD: John, for a very short... [LB464]

JOHN BONAIUTO: Be really quick. The hour is late and... [LB464]

SENATOR ASHFORD: Well, these folks have been sitting here all day and they've done a great job, and I want to get them going home. [LB464]

JOHN BONAIUTO: John Bonaiuto, J-o-h-n B-o-n-a-i-u-t-o, representing the Nebraska Council of School Administrators and the Nebraska Association of School Boards. The Nebraska Council of School Administrators just had a webinar on absences and attendance, and we'd be happy to provide you a link to show you the work that they do. And to help administrators do a better job in administering this type of policy, the council will continue their education work. The Nebraska Association of School Boards has a policy service. They will develop model policies for what you create and pass, with the input that you're getting, and also will do education. I talked to Dr. Riley, and he is going to, I believe, recommend that GOALS be a program at the state conference, which has board members and administrators from across this state, so they can see that program and how it works. We surely agree with balance, and you need to have boards and administrators working with their parents. And if the parents find that there are boards that are not willing to work with them, then some of those parents need to run for the school board and help them out. That's what it's all about. We will work with the department on the oversight and appreciate the opportunity to get grants to do better. [LB464]

SENATOR ASHFORD: I think the grants are critical... [LB464]

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

Judiciary Committee  
February 05, 2014

---

JOHN BONAIUTO: Yes. [LB464]

SENATOR ASHFORD: ...because every...all 90...all 200 districts, 249 districts need the ability to have the same stuff. I mean, it can't just be...okay, thanks, John. [LB464]

JOHN BONAIUTO: Thank you. [LB464]

SENATOR COASH: Wait, hold on. I do have a question. On the issue of removing... [LB464]

JOHN BONAIUTO: Documented. [LB464]

SENATOR COASH: ...documented... [LB464]

JOHN BONAIUTO: I knew where you were going. (Laugh) [LB464]

SENATOR COASH: It was...well, I just wanted to clarify, because I didn't...because I asked after Dr. Riley got down. Would you agree with the statement that even if it was removed from state law, that that could still be put in a school board's policy? [LB464]

JOHN BONAIUTO: Yes, I would. [LB464]

SENATOR COASH: It could be. [LB464]

JOHN BONAIUTO: And listening to the discussion was very helpful because that should be done at the local... [LB464]

SENATOR COASH: So even if it says no documented... [LB464]

JOHN BONAIUTO: The law... [LB464]

SENATOR COASH: ...illness as required by law, it could still be required by the school board. [LB464]

JOHN BONAIUTO: That's the way I would read it, Senator, and... [LB464]

SENATOR ASHFORD: Well, the way... [LB464]

SENATOR COASH: Okay. I just wanted to get that... [LB464]

SENATOR ASHFORD: Yeah, just so we understand it. I mean, what we were requiring is documented evidence of illness for every case. [LB464]

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

Judiciary Committee  
February 05, 2014

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JOHN BONAIUTO: Yes. [LB464]

SENATOR ASHFORD: And that's too burdensome. [LB464]

JOHN BONAIUTO: Yes. [LB464]

SENATOR ASHFORD: Okay. [LB464]

JOHN BONAIUTO: And so... [LB464]

SENATOR ASHFORD: Okay. Okay, that's what I get out of it. So okay. [LB464]

JOHN BONAIUTO: Okay. And I got the same thing, that you don't want it to be that burdensome, but... [LB464]

SENATOR ASHFORD: Well, they're not going to get it. They're not going to get the documentation. It's impossible,... [LB464]

JOHN BONAIUTO: Yes. [LB464]

SENATOR ASHFORD: ...so we can't require it anymore. [LB464]

JOHN BONAIUTO: There needs to be something that makes sense, common sense and workable, and the board will have to work that out. [LB464]

SENATOR ASHFORD: But to Senator Coash's point, we were asked to put that language in there. [LB464]

JOHN BONAIUTO: You know,... [LB464]

SENATOR ASHFORD: That's fine though. Enough of this. We've got to go. It's ten after 6:00. [LB464]

JOHN BONAIUTO: You have to start somewhere. [LB464]

SENATOR ASHFORD: I know. [LB464]

JOHN BONAIUTO: And I think the message was there. Thank you. [LB464]

SENATOR ASHFORD: Okay. Well, we've just got to be a little better at it. So okay. Not you, John. Us; me. Sarah. [LB464]

SARAH FORREST: (Exhibits 38 and 39) Hi, everyone. Sarah Forrest, Voices for

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

Judiciary Committee  
February 05, 2014

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Children in Nebraska, S-a-r-a-h F-o-r-r-e-s-t. And I just really would like to thank the committee. Coming around to you is a fact sheet that we recently put together looking at data on both absenteeism and then processing of truancy in our juvenile court system. We're extremely supportive of the portions of this bill which are going to give school districts, some of whom are still really struggling with chronic absenteeism, the resources to tackle this issue. But I would also say that we'd like to look at maybe making some modifications to the juvenile code to look at when it is appropriate for prosecutors to file against young people for the purposes of truancy. We have a small but increasing number of young children who are coming into our juvenile justice system for their absences from school, and so we have a couple of recommendations in that regard. But in general, just are very thankful that you all are looking at this important issue both from the perspective of keeping kids in school but also making sure that they aren't unnecessarily involved in the juvenile justice system. And I would be happy to take any questions. [LB464]

SENATOR ASHFORD: Any questions of Sarah? I don't see any. [LB464]

SARAH FORREST: Okay. Thank you. [LB464]

SENATOR ASHFORD: Thank you, Sarah. Thanks for all your work. [LB464]

SARAH FORREST: Thank you. [LB464]

SENATOR ASHFORD: (See also Exhibits 24 and 40) Anybody else? That concludes the hearing. I don't have any final comments other than again to thank you all again for everything you're doing. [LB464]