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Judiciary Committee  
February 13, 2014

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[LB870 LB1021 LB1028 LB1063 LB1093]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 13, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB870, LB1063, LB1093, LB1021, and LB1028. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Mark Christensen; Colby Coash; Al Davis; Amanda McGill; and Les Seiler. Senators absent: None.

SENATOR ASHFORD: (Recorder malfunction)...with our agenda here in the Judiciary Committee, and today we have five bills, beginning with Senator Bolz's LB870. So, Kate, would you like to lead us off?

SENATOR BOLZ: (Exhibit 1) Good afternoon, colleagues. The city of Alliance, Nebraska, is owed \$66,920 in new... [LB870]

SENATOR COASH: Could you start with your name, Senator? [LB870]

SENATOR BOLZ: Oh, I'm sorry. Senator Kate Bolz, spelled B-o-l-z. The city of Alliance is owed over \$66,000 in nuisance abatement, utility fees, city property damage reimbursement, airport rental, and landfill fees. For a community the size of Alliance this is significant, and this scenario is repeated all across the state. My office has identified over \$8.7 million in debts owed to Nebraska municipalities through a survey of communities. Further, we have identified over \$3.2 million in debts owed to Nebraska's courts through a report using the JUSTICE program. Debts continue to mount each year, and each year public debts are simply left to accumulate or written off completely. This is significant not only because it results in higher taxpayer payments but also because this money should flow into funds that pay for public education, the courts, victims' fees, and other purposes. Some people have asked why I brought this bill, and what it comes down to is simple. I think it's only fair that people pay their debts and I think it's important that funds go to their intended purposes. So let me tell you a little bit about the details. LB870 would create a centralized public debt recovery program in Nebraska--it's a new approach--by first creating a centralized office and, second, giving that centralized office new tools such as the authority to intercept lottery winnings or unclaimed property to pay back the money owed. The bill is modeled after efforts that are successful all across the country, including a model initiative in Kansas that brought back in \$25 million just last year. The centralized office would be within the State Treasurer's Office, and the public debt recovery office would have access to tools, including income tax refunds, lottery winnings, state payroll but only up to 25 percent, vendor payments, and unclaimed properties. Cities, counties, and state agencies would be able to turn unpaid debts over to the public debt recovery program only after certain due process requirements are met. You'll notice that LB870 carefully considers the rights of the debtor while offering another option to those struggling to collect. While the

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Treasurer's Office will develop the majority of the administrative details, I wanted to ensure that the debtor receives proper notice of the potential offset and that there is a process in place for the debtor to contest a claim submitted to the program. The person owing the debt will also have an opportunity to avoid an offset altogether and set up periodic payments or simply pay the debt on-line. Let me also make mention of the fiscal note. Several state agencies assume that the public debt recovery program would supersede or otherwise interfere with existing debt recovery efforts. Department of Labor takes the position that LB870 would cause it to be out of compliance with its participation in the federal TOP program, which intercepts federal tax income returns among other things. Kansas and Iowa do successfully take part in the federal TOP program, while also successfully implementing a public debt recovery program. And the Department of Health and Human Services submitted a letter in opposition, citing conflicts with their own debt collection efforts, but these efforts are exempted on page 3, line 11 of the bill. The states with successful programs require participation on some level from the state agencies. It is simply more cost-effective than the more expensive services utilized by DHHS and high fees charged through the federal TOP program. To offer flexibility, however, the original language in the bill does offer options for the Treasurer to make departmental exemptions when appropriate. This would require collaboration between state agencies and the Treasurer's Office. If an agency in opposition is an indicator, however, then a new policy consideration is brought before the committee. I will offer you an amendment that clearly provides for optional agency participation in debt submission to the program. This allows for agencies to work freely with the State Treasurer to develop a system. There will, however, be start-up and technology costs. However, the intention, as is in place in other states, is that the program will become self-sustaining through the application of very modest fees for the recovery process. These fees are considerably less than those charged through commercial collection agencies. I appreciate your consideration of LB870. The core of this bill is to model a public debt recovery program after other very successful efforts in other states that have recovered millions of dollars owed for public purposes. I believe that it's only fair to use the tools available to the state to help collect dollars owed to Nebraska and its communities, communities that must cut budgets or raise taxes when their dollars are not sufficient. The program is not sympathetic to absentee landlords or folks who simply decide not to pay their bills, but it does recognize the importance of a debtor's rights when recovering monies on behalf of Nebraska. And I appreciate your consideration of this new initiative. Happy to take any questions. [LB870]

SENATOR ASHFORD: Yes, Senator Coash. [LB870]

SENATOR COASH: Thank you, Senator Ashford. Senator Bolz, so we are turning kind of the State Treasurer into a collection...giving our Treasurer some collection duties? [LB870]

SENATOR BOLZ: Uh-huh. [LB870]

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SENATOR COASH: In the private sector, when we turn over debt to a collection agency, they get to take a percentage... [LB870]

SENATOR BOLZ: Uh-huh. [LB870]

SENATOR COASH: ...of what they collect. Is that the case here? [LB870]

SENATOR BOLZ: That's an excellent question. You're right. In the private sector, when we turn a debt over to a collection agency, they can and will take an additional fee, an additional percentage. That can be 5, 10, 15, 20, 30 percent, and I think that's part of the problem in debt collection, particularly in debt collection of public dollars. So this initiative would take a much more modest percentage, between 3 and 5 percent, that would cover the costs of running the public debt recovery program but not make a profit. [LB870]

SENATOR COASH: Okay. So is it...what does it say in the bill? Is it 3 percent or is it...you said 3 to 5. What is the percentage? [LB870]

SENATOR BOLZ: Let me look for sure. I think we put some specific language in. [LB870]

SENATOR COASH: I can find it later, Senator. [LB870]

SENATOR BOLZ: Yeah. [LB870]

SENATOR COASH: That's just a question that I had was... [LB870]

SENATOR BOLZ: Forgive me. I think it depends on...it depends on some circumstances... [LB870]

SENATOR COASH: Okay. [LB870]

SENATOR BOLZ: ...but we'll make sure you get the answer. [LB870]

SENATOR COASH: All right. Thank you. [LB870]

SENATOR ASHFORD: Thanks, Kate. I don't see any other questions. Do we have any proponents for this bill? [LB870]

SENATOR SEILER: Mr. Chairman, let the record show that I have a conflict of interest in this that I own a collection...Central Nebraska Collections agency and collect money for public entities. [LB870]

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SENATOR ASHFORD: Okay. Thank you, Senator. All right. [LB870]

GARY KRUMLAND: Senator Ashford, members of the committee, my name is Gary Krumland, it's K-r-u-m-l-a-n-d, representing the League of Nebraska Municipalities appearing in support of LB870. Communities across the state have responded to this bill and said that they think it would be a very useful tool for them to help collect some of their past-due debts. And as Senator Bolz mentioned from the survey, there is a lot of money owed to cities and villages across the state, that probably the biggest area where there are past-due payments are utilities. Cities offer water, sewer, electric, some offer solid waste collection. And that's where probably the biggest problem is where you have past-due debts. Under the current law, for certain of those, like water and sewer, they can file a lien against the property. With electricity, there's no specific authority to do that. And even if you file a lien against the property, sometimes if you ever get money back it may be years and years later. It's not something that's a quick turnaround, because sometimes it doesn't happen until the property is sold. The other area that cities have debts that they don't collect is in nuisance enforcement, if they have to go in and clean up a property and also file a lien against the property. So this would be very helpful for cities to...and villages, especially some of the smaller communities who may not have the resources that some of the larger ones have. And so we do support the bill. With utilities, if somebody doesn't pay, then everybody else has to pay a little more. So we think having an extra tool to collect this money would be very helpful. And be happy to answer any questions. [LB870]

SENATOR ASHFORD: The Treasurer has to be holding the money. Is that...? [LB870]

GARY KRUMLAND: Yeah, it's... [LB870]

SENATOR ASHFORD: And if the Treasurer is not holding the money then... [LB870]

GARY KRUMLAND: The way I understand it, yeah, it would be funds that the state receives,... [LB870]

SENATOR ASHFORD: So the Treasurer would have... [LB870]

GARY KRUMLAND: ...income tax refunds, lottery proceeds, let's see... [LB870]

SENATOR ASHFORD: So the Treasurer would have to... [LB870]

GARY KRUMLAND: Yeah. [LB870]

SENATOR ASHFORD: ...query, no, would have to query these other agencies to determine whether there was money held? Is it held money that is owed? Is that what it

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is? [LB870]

GARY KRUMLAND: And I'm probably not the one to ask on the details of how that works, but it's my impression that it's money that the state would be collecting anyway. [LB870]

SENATOR ASHFORD: By various agencies. [LB870]

GARY KRUMLAND: Yeah. [LB870]

SENATOR ASHFORD: So, okay. Thanks, Gary. [LB870]

GARY KRUMLAND: Uh-huh. [LB870]

SENATOR ASHFORD: I don't see any other question. Any other proponents? Margaret. [LB870]

MARGARET BLATCHFORD: (Exhibit 2) Good afternoon, Senator Ashford, members of the Judiciary Committee, my name is Margaret Blatchford. I'm the assistant city attorney with the city of Lincoln, and we are testifying today in support of the bill. We do find situations, especially in the cases of property damage where we're trying to collect on a debt, and it's often difficult because those motorists are often uninsured and we can't collect on that. We see that...this bill as an additional tool that we can use that's probably more efficient, more cost-effective instead of using a collection agency or attorneys. This is a more viable, efficient method to use probably in those cases. That's it. [LB870]

SENATOR ASHFORD: As long as the state has to hold the money, right? [LB870]

MARGARET BLATCHFORD: I think your...I think the way the bill is written, your initial start-up funds are from State Settlement Cash Fund. [LB870]

SENATOR ASHFORD: Okay. [LB870]

MARGARET BLATCHFORD: And then they can...that kind of provides the money for your infrastructure. [LB870]

SENATOR ASHFORD: No, but I mean in order to pay back the... [LB870]

MARGARET BLATCHFORD: It comes from their state tax returns, their state payments, lottery proceeds, unclaimed property. [LB870]

SENATOR ASHFORD: Okay. Okay. Thanks, Margaret. [LB870]

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MARGARET BLATCHFORD: Yep. [LB870]

SENATOR ASHFORD: Next proponent. More? Opponents? Hi. [LB870]

KIM CONROY: (Exhibit 3) Chairman Ashford, members of the Judiciary Committee, my name is Kim Conroy, C-o-n-r-o-y, and I'm Tax Commissioner for the Nebraska Department of Revenue. I'm appearing here today in opposition to LB870. While the idea of an offset program is good, the Department of Revenue has a lot concerns with the way the bill is presently drafted. I can break this down into three main concerns for you. The first concern would be delaying individual income tax refunds. The second concern would be impeding our current tax collections that we're doing at the Nebraska Department of Revenue. The third concern would be with having debts that are final, due, and owing. On the first concern on individual income tax refunds, it's that time of the year. We had 82,000 refunds that went out on Tuesday. Under LB870 though, however, we would have to send those first to the Treasurer's Office to determine whether there should be an offset on those. While every refund will not be subject to offset, there will be numbers of them that are. This will significantly delay the refunds getting out to Nebraska taxpayers on a timely basis, so we have some rather large concerns with that. The second concern is the Department of Revenue's current tax collection processes. Under LB870, we would have to turn over delinquent tax accounts to the Treasurer's Office for collection. When that happens, we have to cease all of our collection activity at that time. Think of the confusion that would cause for taxpayers. They're working with the Department of Revenue to clear up a tax delinquency. After 90 days, now they're working with the State Treasurer's Office to do that. Questions on the fiscal note I'm sure you probably have: Why is there a reduction in revenue? The Department of Revenue knows that in any collection activity that time is of the essence. The sooner we have contact with delinquent taxpayers the better our recovery typically is. Under the bill as written, we would have to cease those collection activities. But probably a bigger concern even of that is the enforcement actions that the Department of Revenue does have right now. I think you know we can garnish wages. We can levy bank accounts. We can seize property and we can revoke sales tax permits. Those enforcement mechanisms the State Treasurer does not have. Our third concern is with final debts. Before we start collecting any accounts at the Nebraska Department of Revenue, they are final. They've gone through a due process hearing. LB870 adds another step to this. It gives the taxpayer another bite at the apple to do another appeal on what we consider to be a final tax debt. It just is not an effective way to do an offset program. The Nebraska Department of Revenue currently does offset programs. For instance, we will do a child support offset against an individual income tax refund, but before we do that, that child support payment is final, due, and owing. That's all we do is we look to see is there an individual income tax refund or a lottery payment. If there is, the money is sent to the appropriate parties. [LB870]

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SENATOR ASHFORD: Thanks, Kim. [LB870]

KIM CONROY: Uh-huh. Any questions? [LB870]

SENATOR ASHFORD: Don't see any. [LB870]

KIM CONROY: Just one thing, if I could add just real quickly, Senator Ashford, we applaud the concept of this but really think we would need to do a look at this in the interim because of the complicating factors surrounding it, Senator. [LB870]

SENATOR ASHFORD: Thanks, Kim. I don't see any questions. Very well. Don or...well, no. Janice. [LB870]

JANICE WALKER: Good afternoon, Senator Ashford and members of the committee. My name is Janice Walker, J-a-n-i-c-e W-a-l-k-e-r, and I'm the State Court Administrator for the Nebraska. I, too, applaud the idea of another tool to collect debt, and that includes fines and costs in the court system. My concern with LB870 is primarily the...on page 3, the requirement that the cost of the initial interface be paid through our JUSTICE Automation Fund, as well as the ongoing maintenance expense for the yearly upkeep of the interface. We have estimated that the initial interface will cost about \$185,000. That's in our fiscal note. But we do not know what the cost of the ongoing maintenance is going to be. We could not get a figure from the Office of the CIO, so that is my concern, the costs that would be taken out of the Automation Fund which we use to support our statewide court automation. [LB870]

SENATOR ASHFORD: Thank you, Janice. Thank you. [LB870]

JANICE WALKER: Uh-huh. [LB870]

SENATOR ASHFORD: Any questions? Don. [LB870]

DON STENBERG: (Exhibit 4) Mr. Chairman, members of the committee, for the record, my name is Don Stenberg, S-t-e-n-b-e-r-g, State Treasurer for the state of Nebraska. This is one of those bills where I had trouble deciding whether I should appear as a supporter, an opponent, or neutral, and I decided to appear as an opponent because of the way the bill is written and not the concept. I think conceptually the idea that people who owe the state of Nebraska money, that we should be able to offset that debt against an income tax refund or against lottery winnings or a state contract payment makes a lot of sense, so I want to commend Senator Bolz for bringing this issue forward for consideration. I think the bill needs some changes, number one, to make it much more cost-effective. Before I go into that, let me briefly review a little history, because the Legislature has acted on this issue several times in the past. One of those is found at Nebraska statutes 72-1601. It's in the letter to Senator Bolz that was my handout and

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it basically already provides for an offset process for any state agency. And without going into all the details of that statute, basically, if you're a department head, you contact the director of DAS, Mr. so-and-so, Mrs. so-and-so owes the state so much money; if there's an income tax refund or any other source of revenue, set it off against that amount. It's kind of a bare-bones statute. I don't know that it's utilized much, if at all, but it is on the books already and does, for the state agencies at least, the same thing that this bill is intended to accomplish. There is a provision of law, 45-623, that authorizes both state agencies and local governments to utilize a collection agency to collect their bills if they so choose. And there's another set of statutes, 77-27,161 and sequence, which our office is involved in, and those are offsets against lottery proceeds and income tax refunds for child support collection and for Medicaid recovery. That is a system that is in use. The Tax Commissioner mentioned it in passing. And in my letter I suggest to Senator Bolz that she use that set of statutes as kind of a model for the bigger picture here, because I think it's very well thought out. It has a good procedure set forth. And I see my time is already running out. If I could only make one point about this as far as the cost and efficiency, this bill contemplates the State Treasurer basically running a very large hearing agency. And my thought, and the way the current offset statute is put in place, is that all hearings and notices and due process is performed by the agency or by the local government that has the debt, and the Treasurer's role is limited to the mechanics of offsetting once the debt has been confirmed as valid. That would greatly reduce our fiscal note, because much of our fiscal note is hiring all the hearing officers and clerical staff to send out all these notices and have all these hearings that the statute requires. The local agency, the state agency to whom the debt is owed, is in a much better position to fully understand the facts, to have the facts and to put those forward. If we had hearings, the agencies would still have to do that. The municipality, to collect their electric bill, would have to get on the phone with the hearing officer anyway, so they're going to have to do this anyway. There's no use having the State Treasurer's Office duplicate that function. My other concern and suggestions are included in that letter. I see my time is up, but I'd be happy to answer questions. [LB870]

SENATOR ASHFORD: Okay. Any questions of Don? I don't see any. Thanks, Don. [LB870]

DON STENBERG: Okay. Thank you. [LB870]

SENATOR ASHFORD: Any other opponents? Any neutral testifiers on this bill? Senator Bolz. Whoops, we have a neutral. Neutral or...? [LB870]

JANET WIECHELMAN: Neutral. [LB870]

SENATOR ASHFORD: All right. [LB870]

JANET WIECHELMAN: (Exhibit 5) Good afternoon, Senator Ashford and Judiciary



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Committee. My name is Janet Wiechelman, J-a-n-e-t W-i-e-c-h-e-l-m-a-n. I am the clerk of district court for Cedar County and the legislative liaison for the Clerks of District Court Association. We appreciate Senator Bolz in bringing this theory as another avenue to try to collect unpaid judgments in criminal cases. However, we do have concerns about the process and procedures that have been set out in the bill. We have given our comments to Senator Bolz and we're kind of hoping we can work with her on addressing those issues. My letter provides those specifics, too, but I want to look at it a different way. In the court system we already have a court order, and through the criminal process we have the availability of enforcing that in the forms of time pay, allowing the defendant to enter a time pay agreement. And at times with time pay agreements, we'll set up a hearing date, a show cause hearing. So if the defendant has failed to comply in that time payment agreement, the court has the authority to bring the person before him and find whether or not he should be held in contempt for his failure to pay the court costs, fines, restitution, and probation fees. In looking at that, we have to look at criminal cases. We talk about them starting with traffic infractions all the way to felonies, and felonies at times have a longer period of time. We believe we need to let the court have the authority first to try to enforce and collect on those court costs before it would ever be turned over to the Public Debt Recovery Act. Therefore, the programming of JUSTICE might be a little more complicated to address all those particular issues. We do allow payments by cash, by check, and we also have the on-line program on [Nebraska.gov](http://Nebraska.gov) which allows an individual to pay it by debit card or credit card. Some of the concerns we have again is the procedures and we're also concerned about the identifier. How are we to recognize that John Doe in the criminal case is the same John Doe who has a state revenue check? We do not have Social Security numbers in criminal cases; we only have date of births, and our concern is whether or not there would be a way to actually match correctly if this in fact was the individual or not. We are concerned about the cost, as Janice Walker had indicated. We are concerned if the automation fee is used it might delay other processes being implemented in the JUSTICE system. Due to the fact of that date of birth only, we have concern of the additional staffing time to go back to those old cases and try to collect a Social Security number if, in turn, that is going to be required. We appreciate Senator Bolz in doing this, but we'd like to sit down, do more discussion with it. That's all I have if anybody has any questions. [LB870]

SENATOR ASHFORD: I don't see any. Thank you, Janet. [LB870]

JANET WIECHELMAN: Thank you. [LB870]

SENATOR ASHFORD: Any other neutral testifiers? Senator Bolz? Kate? [LB870]

SENATOR BOLZ: Colleagues, when we talk about debt collection, lots of people have lots of things to say. What I have to say about it is that we can and should use the tools available to the state of Nebraska in a thoughtful and strategic way to collect the debts

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so that they are used for the purposes for which they are intended. This will only work if we work together. I think the crux of this bill and the crux of the testimony that you've heard today comes down to page 3, line 16, Section 5: The State Treasurer shall develop and implement a program, shall promulgate rules, and should work with public programs and public entities. If that's done successfully, I think a program modeled after other state programs could work and could be of great benefit to the state of Nebraska. I think the conversation comes down to whether or not we should legislate those details or whether we should regulate those details through the creation of this office in with the State Treasurer. So those are my thoughts and ideas about the bill and the testimony you've heard, and I'd be happy to answer any questions. [LB870]

SENATOR ASHFORD: I don't see any. Thanks. [LB870]

SENATOR BOLZ: Thank you. [LB870]

SENATOR ASHFORD: (See also Exhibits 6, 7, 8, 9, 10, 11, 12, 13, and 28.) We're going to conclude the hearing then and go on to Senator Lautenbaugh. But first, let me introduce my colleagues. To my...we're introducing my colleagues, but you can...you're a colleague so you...to my left is Senator Seiler from Hastings; Senator Mark Christensen from Imperial; Senator Colby Coash from Lincoln; Oliver VanDervoort is the committee clerk; Jenn Piatt is the...my counsel; to my far right, Steve Lathrop from Omaha; Amanda McGill from Lincoln; and the dean, Ernie Chambers, from Omaha...or I don't know if that's what the longest-serving person is. Those of you who haven't been here, and I see most of you have been here before, but we do have a light system. We'd ask you to confine your testimony to three minutes and the yellow light will go on when we ask you to sum up. So, Scott, good afternoon again. [LB870]

SENATOR LAUTENBAUGH: Good afternoon, Mr. Chairman and members of the committee. My name is Scott Lautenbaugh, L-a-u-t-e-n-b-a-u-g-h. I represent District 18. I am here to introduce LB1063. LB1063 would provide a uniform procedure for nonparties to gain access to transcripts from juvenile court proceedings. Juvenile court hearings often involve discussions of highly sensitive material, such as the results of sexual offender risk assessments of parents or juveniles, chemical dependency evaluation, facts relating to sexual abuse or domestic violence, mental health evaluations, etcetera. This bill would establish a method and require notice to be provided when nonparties request to acquire this information. This information is what some would argue should not be open for perusal of just anyone, given its sensitivity and potentially damaging nature well into the juvenile's adult life. The new requirements include the filing of a written motion with the juvenile court judge of the case requesting the transcript of a specific hearing, a copy of the request as well as notice of the hearing to be given to all the parties by the requester, and a hearing before the court on the propriety of the request, a showing of a valid purpose on the part of the requester for the request, and a decision within the discretion of the court after taking into account the

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reasons for the request and any objections to the request. By placing these limits on outside parties requesting records we can help improve the privacy of juveniles and their families. I'll be honest, this was...this has not long been a passion of mine. I, frankly, thought that these were closed. I honestly thought the proceedings were closed. Until recently, I didn't know we had access to juvenile court. And I know frequently juveniles' records are sealed or not available to protect them later in life. And the availability of these transcripts of these proceedings for whatever purpose, when this was brought to my attention I found it to be troubling and so I did agree to introduce this bill. There are attorneys who actually practice in the juvenile court, I believe, who are here to testify as to the potentiality of abuse and the need for this bill, but I think it's pretty straightforward what I'm trying to do here, what I'm trying to avoid. I'm in favor of transparency as much as the next person but...and this would not prevent people from attending juvenile court proceedings. But being able to acquire the written transcript, I just think there should be some sort of uniform procedure in place that at least requires some sort of a showing of a purpose for it, and that is the point of the bill. I'd be happy to answer any questions you might have. [LB1063]

SENATOR ASHFORD: Senator Chambers. [LB1063]

SENATOR CHAMBERS: Are juvenile court proceedings, that would be the subject of one of these requests for a transcript, open to the public? [LB1063]

SENATOR LAUTENBAUGH: I believe that to be the case. [LB1063]

SENATOR CHAMBERS: So then nothing would be in the transcript that wouldn't be available to anybody who chose to sit in on the proceeding. [LB1063]

SENATOR LAUTENBAUGH: I believe that's true. [LB1063]

SENATOR CHAMBERS: So then it's a public record. [LB1063]

SENATOR LAUTENBAUGH: Well, I'm sitting here, the wheels are turning in my head as I'm trying to think of a definition of... [LB1063]

SENATOR CHAMBERS: That's fine. I'm not rushing you. Just go ahead. [LB1063]

SENATOR LAUTENBAUGH: ...public record. But I mean what goes on in the courtroom is open to the public, yes. [LB1063]

SENATOR CHAMBERS: That's the way I should have phrased it. [LB1063]

SENATOR LAUTENBAUGH: Yeah. [LB1063]

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SENATOR CHAMBERS: Yeah, what goes on in the courtroom. Somebody requested this for a reason. But I would like you to look on page 5, and I think when you were speaking to the bill, this just relates to a word in line 10, "A valid purpose must be shown," that word should not be "by" but "on" in line 10 on page 3 (sic). [LB1063]

SENATOR LAUTENBAUGH: Yeah, it should be "on" instead of "by." [LB1063]

SENATOR CHAMBERS: Okay. Now what would a valid purpose be and who would determine it? [LB1063]

SENATOR LAUTENBAUGH: It would be the judge's discretion. We don't provide guidance for what a valid purpose would be or a, you know, sufficient purpose. At some point... [LB1063]

SENATOR CHAMBERS: And if I came, the judge might say the fact that I asked for it is valid, and if somebody else that they didn't like came, they may be found not to be having a valid purpose. [LB1063]

SENATOR LAUTENBAUGH: This would still allow discretion, yes. [LB1063]

SENATOR CHAMBERS: Now why should...when I'm asking these questions, they're not from the standpoint of an individual who might have an objection, but we're dealing with public records, court proceedings which are open to the public. When we get in line 12, "The court shall determine whether or not the requester may obtain the transcript after taking into account the reasons for the request," and there's no guideline as to what reasons would be considered valid,... [LB1063]

SENATOR LAUTENBAUGH: That's correct. [LB1063]

SENATOR CHAMBERS: ..."and any objections to the request." If I look at this, it looks like the courts don't want to be bothered with making information available to the public. But I'll listen to some of those who testify after you and I will question them and see if they can show me some valid reasons for a bill like this. I don't see where if the proceedings are open to the public, transcripts, if somebody is willing to pay the cost, naturally, would not be available and why they'd have to go to a court and a judge, who could just say, well, I'm too busy; no, I'm not going to let you have one; your reason is not valid. [LB1063]

SENATOR LAUTENBAUGH: Well, and to be clear, this was not brought to me by any court official or any judge, so I don't know...and I don't know that there are any here to testify. I don't know if that would be proper. But this was not a concern voiced by any public official or judge or court official. That... [LB1063]

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SENATOR CHAMBERS: Okay. Then I'll wait, as I said, to see who testifies and I'll question them. [LB1063]

SENATOR LAUTENBAUGH: And I usually would point out I will not be around to close, so with that said, I don't know if that brings any more questions now that you won't be able to ask later. I'll always talk about it off the mike, obviously, whenever you want, but I don't want you to think I'm... [LB1063]

SENATOR CHAMBERS: No. [LB1063]

SENATOR LAUTENBAUGH: No. [LB1063]

SENATOR ASHFORD: Senator Coash. [LB1063]

SENATOR COASH: Thank you, Senator Ashford. Senator Lautenbaugh, what's the procedure as the law sits today if somebody wants to get a copy of a transcript? What, you know, if I just see something in the paper about a juvenile has been convicted of a crime and I want to learn a little bit more about the court proceeding, what do I have to do under the law today? [LB1063]

SENATOR LAUTENBAUGH: Well, I don't know that there's any real uniformity to that as far as whether or not you can be...whether or not it can be denied, whether it is provided in all circumstances or what, which is kind of the point of this. I think there may be different approaches to that, depending on who the judge is. [LB1063]

SENATOR COASH: Would I just go to the clerk of the court where the case was and say, hey, I understand Joe Smith was convicted as a juvenile, I saw it in the paper and so I'd like to see the proceedings? I mean... [LB1063]

SENATOR LAUTENBAUGH: I don't know if you would make that request of the clerk of that particular court or the bailiff or the judge, if you knew who the judge was assigned. I'm not just sure... [LB1063]

SENATOR COASH: Okay. [LB1063]

SENATOR LAUTENBAUGH: ...how they would currently do it now. I don't know if there's uniformity, though. [LB1063]

SENATOR COASH: Well, that would be a question that I have, just so I can understand... [LB1063]

SENATOR LAUTENBAUGH: There...and again, I will lay my cards on the table. I think I had one juvenile case once and it drug on so long that the kid got too old and nothing

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happened. [LB1063]

SENATOR LATHROP: Hard to believe. (Laughter) [LB1063]

SENATOR LAUTENBAUGH: And that was...and it wasn't even my fault, to be honest, now the other side is the judge, so you know. In any event, that was my experience and that was a long time ago so I don't know the answer to how they work up there and... [LB1063]

SENATOR ASHFORD: (Laugh) (Inaudible). [LB1063]

SENATOR LAUTENBAUGH: ...can't...apparently I have a call too... [LB1063]

SENATOR ASHFORD: We don't even...never mind. It's just... [LB1063]

SENATOR LAUTENBAUGH: ...or I'm really excited about that question, one or the other, I don't know which but (laughter) either way. [LB1063]

SENATOR COASH: Well, I will leave that to maybe somebody behind you will help explain the current process, because I... [LB1063]

SENATOR LAUTENBAUGH: I can guarantee you, no matter who comes behind me, someone is going to know more about the current juvenile court procedure than I do. [LB1063]

SENATOR COASH: Okay. Thank you, Senator. [LB1063]

SENATOR ASHFORD: Thanks, Scott. Okay. Do we have some proponents, those for the bill? Chris. [LB1063]

CHRIS COSTANTAKOS: Good afternoon, Senator Ashford, members of the committee. My name is Chris Costantakos. I'm an attorney from Omaha, Nebraska. I'm also the author of Juvenile Court Law and Practice, published by Thomson Reuters, now in its eighth edition. I hope I can answer some of these questions. The first thing I'd ask the committee to keep in mind is that juvenile court proceedings, ideally, are to be rehabilitative in nature. People make mistakes. Parents make mistakes, kids make mistakes, and ideally juvenile court exists to help provide services so that those mistakes can be addressed honestly and with full participation. When a juvenile or a parent agrees to accept services in the context of a juvenile court proceeding, in my opinion, they're taking a chance. It may not work out, but it may work out. But the last thing that needs to happen to that parent or that child who has taken that risk to undergo evaluations, participate in a therapeutic process or rehabilitation, is for their most private and sensitive information, missteps and relapses to be made public. I'd like

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to just give you four quick examples why this bill is a good bill, although I would recommend that there be an amendment on the first line of paragraph (6) to limit this to a non...request by a nonparty. You can't have this apply to a request by a party because that imposes an additional burden on the appellate process. This should be simply limited to any nonparty who wishes to obtain a transcript of a juvenile court proceeding shall comply with the following procedure. That would be my suggestion for amendment. Here are the four quick examples. At a review hearing in juvenile court, there's discussion of a psychological evaluation of a 15-year-old boy which indicates he is struggling with gender identity issues. A nonparty requests and obtains the transcript of that hearing. The nonparty makes copies of the transcript, which find their way to the high school where the boy attends. His peers read the transcripts and begin bullying him. Worst case, he commits suicide because of the humiliation. Second example: A father who's a party to a child neglect proceeding has a cocaine problem. He participates in treatment. He has a relapse. That relapse is indicated and discussed at a review hearing. A nonparty again requests a transcript of that hearing where these matters are discussed. This is posted on the Internet. The father loses his job as a result of the newly discovered information, because we have a terminable at-will state. And even though the primary purpose of the juvenile court proceeding is rehabilitative in nature, the father loses his means of support. Third example: Juvenile is in foster care by reason of parental neglect. She doesn't like to be called a foster child. She doesn't want her peers to know she is a foster child. Again, the nonparty obtains a transcript and...of a hearing at which this foster care status is discussed and it's posted on Facebook. The girl's peers find out. Last case: Juvenile court proceeding for child abuse is initiated by the state based on statements of a teenager, a girl, that she has been subjected to excessive physical abuse by her parents. The court tells...the juvenile tells the court at the early hearings, I don't want to go home because of the abuse. At a later hearing, a year later, after therapy and supportive services, through her tears she tells the judge, I lied, this abuse never happened. The nonparty gets a copy of the transcript of the initial hearing but not the later hearing, and this is out for public dissemination. My time is up, but I am willing to answer any questions. [LB1063]

SENATOR ASHFORD: Senator Coash, then Senator Chambers. [LB1063]

SENATOR COASH: Thank you. These examples that you gave, are they real examples? [LB1063]

CHRIS COSTANTAKOS: The facts are real. The nonparty requests have not happened, at least in my cases. [LB1063]

SENATOR COASH: Okay. So those examples are things that...I mean those are real examples but... [LB1063]

CHRIS COSTANTAKOS: Yes, sir. [LB1063]

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SENATOR COASH: ...nobody actually went and requested those. [LB1063]

CHRIS COSTANTAKOS: Not so far. [LB1063]

SENATOR COASH: Because I'm still struggling, and maybe it will come, to understand...I mean I understand the concerns that you brought up but I'm still struggling to figure out what has happened. I mean if those things had happened, I would have questions as to who they were and why. But I'm... [LB1063]

CHRIS COSTANTAKOS: I think there are more requests being made by nonparties of transcripts in Douglas County, and what has happened is the Internet and... [LB1063]

SENATOR COASH: Who is making those requests? [LB1063]

CHRIS COSTANTAKOS: Well, I'm not aware of specific identities but I'm... [LB1063]

SENATOR COASH: I mean is it somebody who just starts a Web site to post transcripts? [LB1063]

CHRIS COSTANTAKOS: I'm not sure of the purposes. You had asked earlier, Senator, about the current procedure. There is a Supreme Court rule, it's 1203, and I think it's not a good rule but it says upon...it's a court reporter rule and it says: Upon request of any person not a party to the suit, if so approved by the trial judge, furnished to the person or have prepared for such person as expeditiously as possible a typewritten transcription of any trial or proceedings or any portion thereof. [LB1063]

SENATOR COASH: So it said if so ordered by the trial judge? [LB1063]

CHRIS COSTANTAKOS: That's correct. [LB1063]

SENATOR COASH: So per rule, there is a judge that looks at this before the trans... [LB1063]

CHRIS COSTANTAKOS: Well, there's no method, there's no procedure for how approval is given. It could be a court reporter. We don't know if the court reporter requests the approval or whether the nonparty who is requesting the transcript requests the approval. There's no notice to anybody else in the case. It could be a totally arbitrary thing where a judge simply says, no, I'm not going to do that. [LB1063]

SENATOR COASH: But... [LB1063]

CHRIS COSTANTAKOS: At least this proposed bill provides some kind of a uniform



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standard procedure where everybody knows there is an official request being made by a nonparty and there is notice to the parties who may be affected by the disclosure. There is a hearing and it requires the judge to make that finding and indicate the reasons therefor in a written order, so that everybody is clear and it's not just an arbitrarily...if so approved by the court. [LB1063]

SENATOR COASH: Okay. I'll ask you because maybe you know. In the proposed language it says you can obtain a transcript, and a transcript, as we understand it here, is just a written record of what was said. But as you mentioned, there were other things that are part of the court proceeding, mental health evaluations, you know, CPS evaluations. When...if I, under the current law, wanted to go and request...we've used the words "transcript," we use the word "proceedings," do I get a copy of those evaluations as well or am I just getting a copy of the written documentation of what was said in court? [LB1063]

CHRIS COSTANTAKOS: Well, you should, a transcript means a verbatim transcription of every word said in court. When a court reporter is requested to prepare a transcript, typically they understand that to be the transcript plus the exhibits. If you look at the statute to which this is posted, this new bill is proposed, it's 43-, I believe, 2,108. That particular statute defines what are confidential records and records not subject to public inspection in juvenile court context, things like evaluations, chemical dependency evaluations, probation reports. [LB1063]

SENATOR COASH: So under the current law, I can get a transcript but I cannot get the exhibits? [LB1063]

CHRIS COSTANTAKOS: Well, that would be my hope, that under the current law you could get the transcript and not the exhibit, although when court reporters, and this is a court reporter rule to prepare this, they typically attach the exhibits as a part of the transcript. [LB1063]

SENATOR COASH: Okay, because Senator Lautenbaugh's proposed language only applies to transcript. I mean if this were to become law, I guess I could go in and say, I don't care what was said, I just want to see the evaluations. [LB1063]

CHRIS COSTANTAKOS: No, Senator, with all due respect, you couldn't see, if you were a nonparty, you could not see the documentation and the exhibits because of the prior portions of 43-2,108 to which this bill would be appended. Those are deemed as confidential records or records not subject to public inspection. Where I think the Legislature can act well in this regard is we do have statutory clarification that records, in terms of exhibits, are not public. They're not. They're confidential records. We don't have any statutory guidance as to what happens when a nonparty wishes to obtain a transcript of a juvenile court proceeding or a hearing. [LB1063]

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SENATOR COASH: Okay. I'll end my questions, but I would like to see a copy of that court rule... [LB1063]

CHRIS COSTANTAKOS: Oh. [LB1063]

SENATOR COASH: ...that you referenced. We can have the pages make a copy of that. Thank you. [LB1063]

SENATOR ASHFORD: Senator Chambers, do you have...? [LB1063]

CHRIS COSTANTAKOS: Senator Chambers, how are you? [LB1063]

SENATOR CHAMBERS: Hi. Are you the one who asked that this bill be introduced? [LB1063]

CHRIS COSTANTAKOS: I am. [LB1063]

SENATOR CHAMBERS: Did you draft it? [LB1063]

CHRIS COSTANTAKOS: Well, I put concepts across. [LB1063]

SENATOR CHAMBERS: Here's why I'm asking that. You're familiar with the language in the bill. [LB1063]

CHRIS COSTANTAKOS: Yes, sir. [LB1063]

SENATOR CHAMBERS: Okay. And I'll ask you a couple of lead-in questions or preliminary questions that I did Senator Lautenbaugh. The subject matter that we're dealing with would be words spoken in a court proceeding which is open to the public. [LB1063]

CHRIS COSTANTAKOS: Correct. [LB1063]

SENATOR CHAMBERS: Is that true? [LB1063]

CHRIS COSTANTAKOS: Yes, that's true. [LB1063]

SENATOR CHAMBERS: So anybody can be there and hear that. [LB1063]

CHRIS COSTANTAKOS: That's true. [LB1063]

SENATOR CHAMBERS: Does a person have to sign in before coming to one of these

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hearings? [LB1063]

CHRIS COSTANTAKOS: I don't believe so, no. I mean... [LB1063]

SENATOR CHAMBERS: Does a person have to tell a bailiff or somebody why he or she wants to come to the hearing? [LB1063]

CHRIS COSTANTAKOS: They do not. [LB1063]

SENATOR CHAMBERS: For it to be open to the public, as the constitution says it should be, once that proceeding starts, anybody should be able to just enter. We're not talking about to create a confusion or anything like that. [LB1063]

CHRIS COSTANTAKOS: Okay. [LB1063]

SENATOR CHAMBERS: Or if the court, like the Supreme Court here, says once the proceedings start then you have to wait until they're over, I'm not talking about that. Everything here is available to the public, so I will then take a stroll through the odyssey of this bill being led by you. If we start on page 3...oh, no, this is 5, the requester shall file a written motion with the judge, so that's the first step, correct? [LB1063]

CHRIS COSTANTAKOS: Correct. [LB1063]

SENATOR CHAMBERS: Next, and all this is on the one making the request, a member of the public, has to make a copy of the request as well as the notice of hearing to all the parties. That's what the one making the request has to do. [LB1063]

CHRIS COSTANTAKOS: Correct. [LB1063]

SENATOR CHAMBERS: How many parties may there be to a juvenile proceeding? [LB1063]

CHRIS COSTANTAKOS: Perhaps as few as three and as many as seven or eight possibly. [LB1063]

SENATOR CHAMBERS: So the requester would have to find the proper mailing address for each one of these parties and submit a copy of the request and the notice of a hearing. [LB1063]

CHRIS COSTANTAKOS: Well, or somehow find some method of transmitting that to them, yes. [LB1063]

SENATOR CHAMBERS: How would the requester know when the hearing is to be?

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[LB1063]

CHRIS COSTANTAKOS: The requester would receive...the notice could...let me back up. The motion could not be filed without a notice, and the bailiff would assign the a hearing date to the requester. They would know when the hearing is. [LB1063]

SENATOR CHAMBERS: I can't really hear you. Could you speak just a little louder? [LB1063]

CHRIS COSTANTAKOS: The requester would, when they file the motion, would be given a hearing date by the bailiff. [LB1063]

SENATOR CHAMBERS: So the bailiff determines the hearing date. [LB1063]

CHRIS COSTANTAKOS: That would be correct. [LB1063]

SENATOR CHAMBERS: So this information would then be sent by the requester to all of the parties. Suppose one party is left off. Then the motion would automatically be denied? [LB1063]

CHRIS COSTANTAKOS: Senator, I don't know or the judge may allow more time to make sure that some kind of service or notice is given to that party. [LB1063]

SENATOR CHAMBERS: And I'm a stickler for these things, so don't take it personally. [LB1063]

CHRIS COSTANTAKOS: I'm sorry? [LB1063]

SENATOR CHAMBERS: I'm a stickler for these types of things,... [LB1063]

CHRIS COSTANTAKOS: Well, I know you are. [LB1063]

SENATOR CHAMBERS: ...so don't take it personally. [LB1063]

CHRIS COSTANTAKOS: All right. [LB1063]

SENATOR CHAMBERS: We have a bill and we don't really know how it's going to be carried out. What we're putting into the statute, we don't know how it will be carried out and we don't know what the consequences would be of one of the parties not being served this notice. In other words, I don't see anything which says if a party is not served with the notice of the hearing, as well as a copy of the request, that would lead to a dismissal or denial of the motion. [LB1063]

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CHRIS COSTANTAKOS: No. [LB1063]

SENATOR CHAMBERS: Or that the judge is required to grant an opportunity to cure that problem. [LB1063]

CHRIS COSTANTAKOS: Correct. Correct. [LB1063]

SENATOR CHAMBERS: Okay. Then we go down to line 8, "The court shall conduct a hearing on the propriety of the request." There is no time frame given as to when the judge should conduct the hearing. [LB1063]

CHRIS COSTANTAKOS: Well, only as it's linked to the hearing date, but, yes, this statute doesn't specify within how many days the hearing must be held. [LB1063]

SENATOR CHAMBERS: That's what I mean. It... [LB1063]

CHRIS COSTANTAKOS: No, there is nothing that addresses that. [LB1063]

SENATOR CHAMBERS: ...rests purely and strictly and absolutely in the discretion of the judge as to when a hearing will be set, a date. [LB1063]

CHRIS COSTANTAKOS: That's correct. [LB1063]

SENATOR CHAMBERS: It could be a year later. [LB1063]

CHRIS COSTANTAKOS: Well,... [LB1063]

SENATOR CHAMBERS: It doesn't say within a reasonable time. So the judge can say, a year from now we'll have a hearing on this motion. And what in this statute would give a requester a basis for complaining anywhere that the hearing date has been set at an unreasonable time in the future? There's nothing in the statute that would allow that requester to seek an earlier date. [LB1063]

CHRIS COSTANTAKOS: No, but,... [LB1063]

SENATOR CHAMBERS: Okay. [LB1063]

CHRIS COSTANTAKOS: ...Senator, if you'd like to amend that, I think that would be a reasonable amendment. [LB1063]

SENATOR CHAMBERS: I just want to see what...the language as it is. [LB1063]

CHRIS COSTANTAKOS: All right. [LB1063]

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SENATOR CHAMBERS: Now what would constitute a valid purpose by the requester? [LB1063]

CHRIS COSTANTAKOS: Well, the media comes in, I think, at times and they do file motions, typically, and request disclosure of... [LB1063]

SENATOR CHAMBERS: Who? [LB1063]

CHRIS COSTANTAKOS: The media has done that in the past in terms of a case that has attracted some public notice. [LB1063]

SENATOR CHAMBERS: Who determines whether it's a valid purpose? The judge, strictly. [LB1063]

CHRIS COSTANTAKOS: The judge. And, Senator, if I may, the United States Supreme Court in Nixon v. Warner Communications, as well as our Supreme Court in a case I believe called State v. Cribbs, have both said, yes, these are public records but they're subject to the inherent authority of every court to control its own records and its own files to prevent the improper disclosure of sensitive material or material to persons who may seek it for reasons of spite or sensationalism. [LB1063]

SENATOR CHAMBERS: So what does that mean? [LB1063]

CHRIS COSTANTAKOS: What it means is that each court would decide this on a case-by-case basis and it would be a matter of judicial discretion. [LB1063]

SENATOR CHAMBERS: And it would mean that a judge could deny my motion and grant yours if we both are nonparties. [LB1063]

CHRIS COSTANTAKOS: That, Senator, that already is the case based on the Supreme Court rule. It's worse, it's a worst-case scenario because what it says is the request shall...or the court reporter shall prepare the transcript for the nonparty if so approved by the judge. There's no method of how that approval... [LB1063]

SENATOR CHAMBERS: That's a court rule. [LB1063]

CHRIS COSTANTAKOS: That's a court rule. [LB1063]

SENATOR CHAMBERS: Can a court rule be trumped by a legislative enactment? [LB1063]

CHRIS COSTANTAKOS: Senator Lathrop says yes. I think so. [LB1063]

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SENATOR CHAMBERS: I'm asking you. You're the author of this bill. [LB1063]

CHRIS COSTANTAKOS: Yeah. I... [LB1063]

SENATOR CHAMBERS: Can...if we pass a statute and we say that if a person requests this document it shall be provided, can a court rule say, we disregard what the Legislature said? [LB1063]

CHRIS COSTANTAKOS: I don't...and I may be wrong and I will stand corrected if I am, I don't...I believe you can. I believe that the legislative enactment would take precedence. [LB1063]

SENATOR CHAMBERS: So that's what we're dealing with here. [LB1063]

CHRIS COSTANTAKOS: That's what I think we're dealing with here. [LB1063]

SENATOR CHAMBERS: And if we feel that this language is too broad and grants the judge too much of an opportunity to be arbitrary, then we don't have to accept this. And if the judge could do it already and it's beyond the Legislature's power to do anything about it, then we don't need this statute. But I know that's not what you're saying. I'm trying to make a record. We don't know what a valid purpose would be as determined by any particular judge, do we? [LB1063]

CHRIS COSTANTAKOS: Well, and I think that may vary, Senator, from case to case. [LB1063]

SENATOR CHAMBERS: So it's not a standard. We're not giving a standard at all. [LB1063]

CHRIS COSTANTAKOS: Yeah. And I think that's what the United States Supreme Court and our Supreme Court said in both the Warner case and in the Cribbs case--don't do the standards because you can't conceivably address every possible situation that may or may not be a valid purpose. But to... [LB1063]

SENATOR CHAMBERS: So then the Legislature should not enact a statute that is based on total discretion, even whimsy, and there's no way to challenge it or question it. [LB1063]

CHRIS COSTANTAKOS: It's already a discretionary matter. [LB1063]

SENATOR CHAMBERS: Say it again. [LB1063]

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CHRIS COSTANTAKOS: It's already a matter of judicial discretion whether or not those types of transcripts are released or not released by the court. [LB1063]

SENATOR CHAMBERS: Well, if the judge has discretion as to whether or not to release the transcript, what is this statute for? [LB1063]

CHRIS COSTANTAKOS: I think what this statute is for is to provide a uniform type of procedure by which, if a nonparty wants to access or obtain a transcript of a juvenile court proceeding, this is a method by which they can do it. Anyone who potentially may be harmed, for example, in the examples that I read earlier, at least has the right to weigh in and be heard by the court on the propriety of that request. I mean I think it's entirely possible that some of the requests for transcripts may be sought to put them out on the Internet or for whatever reason, and there's too much of this kind of information that's discussed and has to be discussed in a full and fair hearing of juvenile issues, whether it's parents or kids, that shouldn't be out. [LB1063]

SENATOR CHAMBERS: Well, if it's that sensitive and the judges and the courts have all this authority, why don't they close the hearing when they have this kind of information presented and get everybody out other than the parties, and seal the records, and they're available only in the case of an appeal? [LB1063]

CHRIS COSTANTAKOS: Two reasons, Senator. Article I, Section 13 of the Nebraska State Constitution mandates that all courts are open, okay? The second reason is the Supreme Court rule which governs the closure of courts or court hearings. If you read that, the only standard there is whether or not the information that's likely to be elicited at the hearing has a substantial likelihood to result in harm or damage to the right of the defendant to a fair trial. [LB1063]

SENATOR CHAMBERS: So... [LB1063]

CHRIS COSTANTAKOS: We could be long past the fair trial and the harm or damage to the child or to the parent is... [LB1063]

SENATOR CHAMBERS: And none of those rules are interested or have as a primary goal withholding information from the public. That's not their purpose,... [LB1063]

CHRIS COSTANTAKOS: That is correct. [LB1063]

SENATOR CHAMBERS: ...it doesn't seem to me. Now I want to ask you this. Do you think the Legislature could enact a statute which states categorically that the transcript of any public court proceeding, any proceeding open to the public, that transcript shall be available to whomever requests it and pays the cost of the production? Could the Legislature enact a statute like that? [LB1063]



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CHRIS COSTANTAKOS: Without any intermediary judicial involvement? [LB1063]

SENATOR CHAMBERS: Right. We've...the Legislature hereby finds... [LB1063]

CHRIS COSTANTAKOS: Well,... [LB1063]

SENATOR CHAMBERS: ...that, pursuant to the Nebraska Constitution, the courts...all court proceedings are open to the public. Any public proceeding in a court where a transcript is available shall be available and provided to whomever requests it and pays the fee, something like that. [LB1063]

CHRIS COSTANTAKOS: You could... [LB1063]

SENATOR CHAMBERS: Then we wouldn't even be doing...going through all this, would we? [LB1063]

CHRIS COSTANTAKOS: Well, no. You can enact that statute, but again, even though it's a public record, I think the case law is very strong that the public record is still subject to the judicial discretion to exercise supervisory power over its own court files and its own records to prevent the improper disclosure of those things where damage, harm, sensationalism, or spite may occur. [LB1063]

SENATOR CHAMBERS: But we would have to see whether a court is going to say that its rules trump the statute, wouldn't we? [LB1063]

CHRIS COSTANTAKOS: Well, it's case law, Senator. [LB1063]

SENATOR CHAMBERS: Say it again. [LB1063]

CHRIS COSTANTAKOS: It's case law. [LB1063]

SENATOR CHAMBERS: I didn't understand you. [LB1063]

CHRIS COSTANTAKOS: I'm referring to the two cases. [LB1063]

SENATOR CHAMBERS: Well, case law can be changed by statute. [LB1063]

CHRIS COSTANTAKOS: True. [LB1063]

SENATOR CHAMBERS: Okay, I'll go down to line 12, because a judge, based on our discussion, could say your purpose is valid, mine is not, and it could be based on the fact that the judge trusts you and doesn't trust me or doesn't like me. Line 13...line 12,

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"The court shall determine whether or not the requester may obtain the transcript after taking into account the reasons for the request and any objections to the request."  
Who's in a position to object? [LB1063]

CHRIS COSTANTAKOS: Parties, I think, to the proceeding are in a clear position to object. [LB1063]

SENATOR CHAMBERS: Where does it say, because I may be missing something, where does it say the objection would be...could be made only by a party? [LB1063]

CHRIS COSTANTAKOS: Well, I guess in paragraph (6)(c)...I'm sorry, (b): A copy of the request as well as notice shall be given to all parties. [LB1063]

SENATOR CHAMBERS: Would this hearing be public that (b) is talking about? Would that be a public hearing? [LB1063]

CHRIS COSTANTAKOS: I don't know why it wouldn't be. [LB1063]

SENATOR CHAMBERS: So then it doesn't say that a party is the only one who can make an objection. And it doesn't say in what forum the objection would be raised. Somebody could write a letter. Some organization could contact the court and object. I could object. It says any objection, without limit. So everything is totally discretionary and left up in the air, and this does not really set a standard except to tell you that there is no standard; whatever the judge wants to do can be done. [LB1063]

CHRIS COSTANTAKOS: Correct. [LB1063]

SENATOR CHAMBERS: And the judge doesn't have to give any...it doesn't say the judge has to give a basis for any decision. It can be completely arbitrary. And there is nothing that this would prohibit. Would you agree? [LB1063]

CHRIS COSTANTAKOS: No, I agree, but I... [LB1063]

SENATOR CHAMBERS: Okay. [LB1063]

CHRIS COSTANTAKOS: ...think it's also the same standard in the court rule. And again, I guess that could be amended, Senator, to require that the basis for the granting or the denial of the request be placed in the order. [LB1063]

SENATOR CHAMBERS: But that's all that I would ask you. I just wanted to get from the one... [LB1063]

CHRIS COSTANTAKOS: Yeah. [LB1063]

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SENATOR CHAMBERS: ...who offered the bill... [LB1063]

CHRIS COSTANTAKOS: Right. [LB1063]

SENATOR CHAMBERS: ...what that, you know, rationale was. Thank you. [LB1063]

CHRIS COSTANTAKOS: You're welcome. [LB1063]

SENATOR ASHFORD: Thank you, Chris. [LB1063]

CHRIS COSTANTAKOS: Thank you. [LB1063]

SENATOR ASHFORD: The next supporter. [LB1063]

ANNE TROIA: Good afternoon, Chairman Ashford, Senators. My name is Anne Troia, A-n-n-e T-r-o-i-a. I'm an attorney in Omaha, Douglas County, and I have been practicing in juvenile court for 14 years, although I've been a lawyer since 1987. I am here to tell you, from the perspective of an attorney that practices in juvenile court, whether you're representing a juvenile in a delinquency proceeding or you're representing parents in a neglect case, what I tell each and every one of my clients is juvenile court is a court of rehabilitation. I want honesty. I want you to trust. I want you to...this is the place where you can receive the therapy you need, receive the...obtain a chemical dependency evaluation, whatever you need to make you and your family whole again. I really want all of you to place yourselves in the shoes of the juvenile or the parents who are charged with neglect. When you're in court proceedings, which usually happen every six months for neglect, it's a review and permanency planning hearing. At that time, exhibits are marked, entered into evidence: chemical dependency evaluation, psychiatric evaluation, psychological evaluations, psychosexual risk assessments, a number of things. And those documents, even though they're entered into evidence, are also talked about in the proceedings. We can pick out a variety, paragraphs in the document I will pick out and say, Judge, I want you to pay attention, to pay particular attention to this area, or, I want you to know how well my client, the juvenile, is doing because, based upon his or her psychological evaluation, they are making great strides. If that information was disseminated amongst people who were not part of the proceedings, who don't show an interest in that particular proceeding, I wouldn't be able to say, trust the system, be honest with your therapists, be honest with the evaluators because we're here to help you, we're here to make your family whole. And if this gets...if this is allowed to get out into the public without the proper procedures, then I'm afraid my job is going to become a lot more difficult and we're not going to be able to serve the many individuals, parents, and children that we need to serve and make whole. And that is what I would like to...that's all I have to say today. Thank you, Yes, sir. [LB1063]

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SENATOR ASHFORD: Senator Chambers. [LB1063]

SENATOR CHAMBERS: Have you talked to any judges about what's being proposed here? [LB1063]

ANNE TROIA: Sir, I have not. [LB1063]

SENATOR CHAMBERS: Now you are aware that these hearings are open to the public at the time they're conducted. [LB1063]

ANNE TROIA: Yes, sir. [LB1063]

SENATOR CHAMBERS: And if you think that something your client would say is hurtful, isn't it up to you to protect your client, knowing that this is a public proceeding and not telling who might be in the courtroom, even a predator? [LB1063]

ANNE TROIA: You are correct. However, if my client wants to say something, I always ask he or she what she would like to say before she addresses...he or she addresses the court. If it's a document that's entered into evidence and I pick pieces out that I want the judge to pay particular attention to, it's those areas where my clients are doing really, really well. [LB1063]

SENATOR CHAMBERS: If it can be heard by whoever is sitting in a courtroom, why should not a person be able to get a transcript of what was stated in the courtroom? [LB1063]

ANNE TROIA: Again, I would respectfully request that all of you put yourselves in these clients' shoes. [LB1063]

SENATOR CHAMBERS: But that's not what my role is. I'm a policymaker and I'm being asked to provide a rule that withholds from the public information that the public should be allowed to have. Would you recommend that this same rule be applied in the case of a criminal court where somebody is charged with murder? [LB1063]

ANNE TROIA: You know, I have practiced in criminal law too. That's a criminal case, sir, and I may not be answering your question properly, but the whole concept of juvenile court is a court of rehabilitation. [LB1063]

SENATOR CHAMBERS: No, I'm asking you this question because I have a reason. [LB1063]

ANNE TROIA: Oh, I'm sorry. Okay. [LB1063]

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SENATOR CHAMBERS: Suppose a person, it turns out, had all this evidence presented against him or her,... [LB1063]

ANNE TROIA: Uh-huh. [LB1063]

SENATOR CHAMBERS: ...and it turns out that this person was absolutely innocent. Everything in that transcript would be available, though, to the public, wouldn't it? [LB1063]

ANNE TROIA: That's correct. [LB1063]

SENATOR CHAMBERS: And there's nobody asking for a rule that says what we're asking for here, that the requester has to submit the motion, then send a copy of that, plus a hearing date,... [LB1063]

ANNE TROIA: Uh-huh. [LB1063]

SENATOR CHAMBERS: ...to everybody who is a party. And then the judge can decide yea or nay. [LB1063]

ANNE TROIA: Uh-huh. [LB1063]

SENATOR CHAMBERS: We don't do that. [LB1063]

ANNE TROIA: No, not in criminal court, we do not. [LB1063]

SENATOR CHAMBERS: And somebody could be innocent. [LB1063]

ANNE TROIA: That's true. [LB1063]

SENATOR CHAMBERS: And somebody else, who did not go to the case where the innocence was established and pronounced by a court, could take everything that was used to convict that person that was in the courtroom and put it on the Internet. [LB1063]

ANNE TROIA: Yes, I'm sure they could. [LB1063]

SENATOR CHAMBERS: Okay. Now if we have a situation where everything is left to the whim of a judge, you have more confidence in these judges than I do, first of all. Secondly, when we are putting in statute, and this goes beyond a court rule, impediments to the public obtaining information, I think we are working against the idea that's contained in the constitution about the doors of the courthouse being open. That's all I'll ask right now. Somebody else may have a question. [LB1063]

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SENATOR ASHFORD: Senator Coash. [LB1063]

SENATOR COASH: Thank you, Senator Ashford. Ms. Troia, you said a few times that if these were open to the public you wouldn't be able to advise your clients to be open and honest, right? But they are open. So you have to advise your clients now, look, somebody could come and ask for these but I still want you to be honest, right? [LB1063]

ANNE TROIA: Uh-huh. And I'll be honest with you, Senator. I just practice the law. I don't interpret. I mean I do interpret, but I mean I don't as Ms. Costantakos does. She knows the law pretty darn well. I practice more from the heart. And when I talk to my clients and say be honest with these people, I had no idea a nonparty could get...I'm being completely honest with you,... [LB1063]

SENATOR COASH: Okay. [LB1063]

ANNE TROIA: ...as naive as that may sound, I had no clue that a nonparty could get a transcript of a proceeding. [LB1063]

SENATOR COASH: Well, and I'm still waiting to hear the answer. [LB1063]

ANNE TROIA: Okay. [LB1063]

SENATOR COASH: In your experience working in the juvenile court, have you had nonparties coming and asking for transcripts in a hearing that you participated in and that... [LB1063]

ANNE TROIA: No. I'm sorry, I didn't mean to interrupt. [LB1063]

SENATOR COASH: So you have not had that. [LB1063]

ANNE TROIA: I have not had that personally. [LB1063]

SENATOR COASH: Are you aware of any...I mean Ms. Costantakos gave us some examples of things that could be requested but said that they weren't. Are you aware of any nonparty requests that have come to the court, they've gotten, they've done something with it and... [LB1063]

ANNE TROIA: Personally, no, sir. [LB1063]

SENATOR COASH: Okay, because I'm sure maybe somebody will come up here and testify, but I'm still struggling to figure out what we're trying...I mean I understand the

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desire... [LB1063]

ANNE TROIA: Uh-huh. [LB1063]

SENATOR COASH: ...to protect sensitive information, but I haven't been presented with any examples where the unprotection of them has resulted in something that's resulted in a bad outcome for a juvenile. So I'll continue to wait to hear that. [LB1063]

ANNE TROIA: May...excuse me. May I ask you a question though? Is that possible? I've never done this before. [LB1063]

SENATOR ASHFORD: You can do...no, ask Senator Coash a question. He's very good at answering questions. [LB1063]

ANNE TROIA: Thank you. My question is, do we have to have somebody...does something bad have to happen before a law is put into place? I guess that's my question. As a citizen, that's my question. [LB1063]

SENATOR COASH: The answer is, no, but I have to be convinced that there's a public purpose... [LB1063]

ANNE TROIA: Okay. [LB1063]

SENATOR COASH: ...to seal these, under these circumstances. And I'm...I haven't given...I'm not looking for something bad to happen. [LB1063]

ANNE TROIA: Okay. Right. [LB1063]

SENATOR COASH: I'm looking for evidence that something did... [LB1063]

ANNE TROIA: Uh-huh. [LB1063]

SENATOR COASH: ...so that I can have a reason to make a decision on this proposal. [LB1063]

ANNE TROIA: Okay. Thank you. [LB1063]

SENATOR ASHFORD: Thanks, Anne. I don't see any other questions. Thank you. [LB1063]

ANNE TROIA: Thank you very much. I appreciate your time. [LB1063]

SENATOR ASHFORD: Well, appreciate your time. The next supporter of the bill.

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Opponents, those against the bill, those who would be opposed? I see the press is here. [LB1063]

SHAWN RENNER: We've already been mentioned once. I thought I (inaudible). [LB1063]

SENATOR ASHFORD: Okay, go ahead. And then the young lady in the front row. [LB1063]

SHAWN RENNER: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Shawn, S-h-a-w-n, Renner, R-e-n-n-e-r. I'm a lawyer and lobbyist here in Lincoln. I represent Media of Nebraska, Inc., a coalition of the print and broadcast news media in the state. I appear to oppose LB1063. As Senator Chambers has pointed out a couple of times, these hearings that are being talked about are public hearings. Anyone can walk in. You don't have to show a purpose in order to attend, and that's part of the constitution and statutes of the state of Nebraska. As a general proposition, my clients, the news media, oppose efforts generally to require purposes for access to public records. The nature of public records is they are public and that includes the news media. It includes members of the public generally. And as a general rule, the news media doesn't try to distinguish itself from the public. If the public has access, we have access, and vice versa. I am concerned about what a valid purpose may be under the statute. The person that drafted the bill seemed to suggest that a news media report might be a valid purpose. I don't know if judges would agree with that or not. There's no definition in the bill, and that causes my clients concern. Two thoughts: I do not practice in juvenile court, and so take this with a grain of salt. It's a complicated area. I have tried to read the statutes recently, though, and I have some passing knowledge of the law. Many of the documents that were discussed in previous testimony are already subject either to direct sealing per the statute, psychological reports, those sorts of things. We also have permissive sealing of juvenile court records under a bill that passed four years ago in 2010, and those documents would not be available if a judge had entered an order sealing the records. Senator Seiler has a bill later in the day that would change that mix somewhat, but would broaden the sealing provisions, I guess is how I would characterize it, or make them mandatory as opposed to permissive. Crimes that would be felonies if prosecuted in adult court can be prosecuted in juvenile court. There is concurrent jurisdiction between juvenile court and district court. And so you could have a felony case... [LB1063]

SENATOR ASHFORD: And then there's a bill to even expand...there's a bill on the floor to even expand that. [LB1063]

SHAWN RENNER: Pardon? [LB1063]

SENATOR ASHFORD: No, to your point, there's actually a bill on the floor now, LB464,



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which expands...I mean makes it mandatory to file the case of (4)s and (3)(a)s. So it's out there now, is all I'm saying. Yeah. [LB1063]

SHAWN RENNER: Yeah. It is a rare thing for the Nebraska news media to report on judicial proceedings, juvenile court proceedings. It doesn't happen very often. It does happen on rare occasion though. And the best evidence of what was said and took place at a judicial proceeding that's open to the public is the transcript of that proceeding. For that reason, the news media requests that you not advance LB1063 to the floor. I'd be happy to try to answer any questions. [LB1063]

SENATOR ASHFORD: Senator Chambers, then... [LB1063]

SENATOR CHAMBERS: Sometimes when I ask pointed questions, people who have not been before this committee could feel like I'm picking on them. So there are questions I wanted to ask but I didn't want to ask the last witness. She was very cooperative, but I didn't want to seem like I was attacking or putting her in a position to answer a question that might...well, anyway. I've made it clear in committee hearings and on the floor of the Legislature that I have no respect for juvenile Judge Crnkovich in terms of being a judge. I have had reports of her abusiveness, her attempt to intimidate, her disrespectfulness. If this bill were in place and I had been told that she had done something particularly egregious and I'd say, well, was it in open court, and the person would say yes, then I would go through these steps. And since I'm not a liar, and I don't believe that anybody is so important that I have to lie to that person as though it's my parent and I'll be made to eat my broccoli or go to bed without breakfast or...I meant dinner, I'd have to submit this to Judge Crnkovich and she would say, what is your purpose? I'd say, I want to find out what you stated from the bench during a particular hearing. She'd say, well, I want to know your reason for it; your purpose is to get what I said but what is the reason that you want to get what I said? I'd say, well, I got a report that you made certain statements which are inappropriate and because I want to get the information from the source. And if I was talking to her, I'd say, I want to get the whinny directly from the horse's mouth, so I want this transcript. And she says, no. Under this, where could I go to challenge her refusal to allow me to have the transcript? [LB1063]

SHAWN RENNER: I don't know, is the direct answer. My guess is that you could attempt to appeal her ruling to the district court or to a Court of Appeals. I'm not sure which way the appeal would go. The problem you would have is, as I read the statute, once that judge decides it's not a valid purpose, I don't know how an appellate judge says you're wrong about that. It does... [LB1063]

SENATOR CHAMBERS: Right, I can't get it. [LB1063]

SHAWN RENNER: The valid purpose is not defined anywhere. To my knowledge, there's no statute or case law in Nebraska that discusses what a valid purpose might

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be. And I don't know what standard review an appellate court would apply to Judge Crnkovich to determine whether or not she appropriately decided that your purpose was not valid. I don't know, is the answer. [LB1063]

SENATOR CHAMBERS: And it could be determined that this is just not the kind of subject that is amenable to an appeal based on the structure of the statute itself. [LB1063]

SHAWN RENNER: You know, appellate courts don't like to give up their jurisdiction and the ability to reverse lower courts, so my guess is they wouldn't say they didn't have the ability to. But they may well defer on the theory that they don't have a better idea of what a valid purpose might be and it's not defined anywhere. [LB1063]

SENATOR CHAMBERS: Now let's say that an appeal were filed from the ruling in a juvenile court and I would request what they call a bill of exceptions in the appeal, which would be what we're calling a transcript here, and the transcript would be all the other filings and documents. But, in other words, when I made that request for all the documents I need in order to file them with the appellate court, the transcript, as we're discussing it, the verbatim transcription of what was said in court would be included in my request and made available to me. Isn't that true? [LB1063]

SHAWN RENNER: I believe that is correct. [LB1063]

SENATOR CHAMBERS: And when I file those papers, they are even available to the public, aren't they, in the appeal? [LB1063]

SHAWN RENNER: I believe they are. And I believe there is a provision in the Rules of the Nebraska Supreme Court and Court of Appeals that advise parties not to put nonpublic matter in their briefs, because the briefs are public as well. Our courts are generally open to the public and, with a few exceptions in the juvenile area, that includes the evidence that is involved in cases too. [LB1063]

SENATOR CHAMBERS: So even with this in place, if it were to be enacted into law, it does not prevent the actual verbatim transcription of what occurred in the juvenile proceeding from becoming a part of a public record that is not going to be censured by anybody. [LB1063]

SHAWN RENNER: With qualification, I believe that's true. This applies to requests by nonparties only, and the appeal would have to be done by a party to the proceeding. So someone involved in the proceeding would have to initiate the appeal. But then with that qualification, what you said is accurate, I believe. [LB1063]

SENATOR CHAMBERS: Now if I'm prosecuting an appeal and I'm a party and I did not

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include this transcript, then is my filing complete? [LB1063]

SHAWN RENNER: I don't think you'd win your appeal. You could...it's not jurisdictional if the preparation of the bill of exceptions under Nebraska law doesn't...if one is not prepared or not properly prepared, it doesn't deprive the appellate court of jurisdiction to decide the case. But it limits the issues the appellate court can consider. And I can't imagine an appeal not succeeding if you didn't have a proper record before the court. [LB1063]

SENATOR CHAMBERS: And if I'm on the other side, I could request then... [LB1063]

SHAWN RENNER: You could. [LB1063]

SENATOR CHAMBERS: ...that this document be prepared and that it be correctly prepared. What I'm getting at, there's no way to absolutely keep that information from being withheld from the public, even if a lower court judge, acting pursuant to this, said, no, you're not going to get it. There are other proceedings where it would be made available to the public. [LB1063]

SHAWN RENNER: I would say "might" rather than "would," because it depends on an appeal by a party. But, yes, I believe that is accurate. And that's... [LB1063]

SENATOR CHAMBERS: And this... [LB1063]

SHAWN RENNER: ...a function of having open public courts in the state of Nebraska. [LB1063]

SENATOR CHAMBERS: And this is just for the record that I carried you through this. Thank you. [LB1063]

SENATOR ASHFORD: Thank you, Shawn. [LB1063]

SHAWN RENNER: Thank you. [LB1063]

SENATOR ASHFORD: The next opponent. [LB1063]

EVANCE PHILLIPS-SOASH: Hello, committee. My name is Evance Phillips-Soash and I'm here... [LB1063]

SENATOR ASHFORD: Could you spell your name for us? I'm sorry. And... [LB1063]

EVANCE PHILLIPS-SOASH: First? Last or...? [LB1063]

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SENATOR ASHFORD: Both of them. [LB1063]

EVANCE PHILLIPS-SOASH: E-v-a-n-c-e P-h-i-l-l-i-p-s... [LB1063]

SENATOR ASHFORD: Oh, great. [LB1063]

EVANCE PHILLIPS-SOASH: ...hyphenated S-o-a-s-h. [LB1063]

SENATOR ASHFORD: Thank you. [LB1063]

EVANCE PHILLIPS-SOASH: Okay. I would like to start with my most recent situation. I went to court today with my 11-year-old grandson, who's been at the Douglas County Youth Center since January, I think it was about the 20th, supposedly for some type of abuse. He's been in like over 100 placements as of April, it was Thursday, April 8, 2014 (sic). His name is Giovanni (phonetic) Phillips. He's 11 years old, and I wish I could just show you a picture of what I saw today, my 11-year-old grandson in shackles, in shackles around his feet. This was an innocent child that left my home that Thursday to go to school and now he's got shackles on his feet. They're saying that he's a criminal. They painted him to be some type of criminal. They've put him on all types of drugs, psychotropic drugs, dangerous psychotropic drugs, the drugs my grandson said that he thinks that they were trying to make him forget something, make him forget that he was molested and that he was genitally mutilated. This bill, LB1063, is an attempt...not an attempt to protect juveniles or children. It's an attempt to cover up gross misconduct and due process and the destruction of my grandchildren and probably of others. My grandchildren, my grandson is not exclusive. I've lost five grandchildren in the system, and I've asked for my transcripts, most recently I was told I couldn't get them. And there's a reason that crystal-clear transparency I think is good when it comes to juveniles. Omaha has a pretty bad history. I mean I would think ever since the Franklin Credit Union that I'd want to be transparent, I'd want people to know what was going on as far as children are concerned. I don't know why there's so much of a cover-up here in Omaha, Nebraska. The thing is, is...and the thing is, is that this happens a lot to Caucasian children but there seems to be a disparity among black and children of color. It's like they're kidnapped from the cradle to the prison or possibly the grave. And something needs to be done, because there's something very wrong here. These people never let go. They have you jump through hoops. I had to stay away from my daughter. My daughter couldn't be around her children, the family wasn't allowed, stay away from your husband, you need to take domestic violence classes, you need to take anger management classes. I think the state of Nebraska needs an overhaul. I think the state of Nebraska working with children are the ones who are negligent. Thank you. [LB1063]

SENATOR ASHFORD: Thank you. I don't... [LB1063]

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SENATOR COASH: Wait, Senator. [LB1063]

SENATOR ASHFORD: Senator Coash. Ms. Phillips-Soash, could you sit back again because we have some questions? [LB1063]

SENATOR COASH: I just have a question for you. I wanted to clarify something. Thank you for your testimony. Did you testify you've requested transcripts before? [LB1063]

EVANCE PHILLIPS-SOASH: Yes, I... [LB1063]

SENATOR COASH: And... [LB1063]

EVANCE PHILLIPS-SOASH: ...no, I'm just...I'm saying this. I was in court and I asked Judge Kelly for my transcripts. [LB1063]

SENATOR COASH: And so...and there's been instances where you have received the transcripts? [LB1063]

EVANCE PHILLIPS-SOASH: Beg your pardon? [LB1063]

SENATOR COASH: There have been instances where your request has been honored and you've been given transcripts? [LB1063]

EVANCE PHILLIPS-SOASH: Yes. I had an attorney. I don't have an attorney. I haven't had an attorney for well over a year because he wasn't representing me and he was making racial statements to me. And he removed himself and ever since he removed himself, I have been asking for an attorney and I've been denied that. But... [LB1063]

SENATOR COASH: My question is just...I just want to make sure the record is clear because you have requested and you have received transcripts on some occasions. [LB1063]

EVANCE PHILLIPS-SOASH: Early on,... [LB1063]

SENATOR COASH: Okay, and then... [LB1063]

EVANCE PHILLIPS-SOASH: ...four years ago, when I had an attorney, about four years ago. [LB1063]

SENATOR COASH: Okay, and then subsequent to that, you've asked for transcripts and been denied... [LB1063]

EVANCE PHILLIPS-SOASH: Denied. [LB1063]

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SENATOR COASH: ...transcripts. [LB1063]

EVANCE PHILLIPS-SOASH: And I believe I'm a party to the case, although I don't have an attorney and I don't have anyone...I don't get served notice of hearings. I don't know what's going on. [LB1063]

SENATOR COASH: Were you... [LB1063]

EVANCE PHILLIPS-SOASH: These are...this is a child that I had from birth. I cut his umbilical cord. I named him. I raised him until they kidnapped him from the school across the street where I live. [LB1063]

SENATOR COASH: When you were denied the transcript, were you given anything in writing to say we have received your request and the court finds your... [LB1063]

EVANCE PHILLIPS-SOASH: I did get something later in the mail, yes. [LB1063]

SENATOR COASH: That said that you have been denied. [LB1063]

EVANCE PHILLIPS-SOASH: Right. [LB1063]

SENATOR COASH: Okay. Thank you. [LB1063]

SENATOR ASHFORD: Thank you, Ms. Phillips-Soash. [LB1063]

EVANCE PHILLIPS-SOASH: Thank you. [LB1063]

SENATOR ASHFORD: The next opponent. [LB1063]

STACY RYAN: Okay, I'm set. Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Stacy Ryan, R-y-a-n. I'm here to speak in opposition to LB1063. Right off, I'm going to just clear up a couple things. In Douglas County, when you go to juvenile court, they don't ask you to sign in; they ask you your name, and they have several yellow sheets. They want to know your name, who you're there with, why you are there, if you are related, and they want to know the case. And you don't sign in, but a woman signs your name in. When I've asked for the rule why they do this, they've never produced it for me. So you do have to sign in, of sorts. Since 2011, I like to observe court. All courts in Douglas County--county, district, and juvenile--have been using this language to deny a transcript to nonparties. This language is presented as a court rule. I have checked with the Supreme Court officials and no one is able to provide this court rule to me, and all court rules are supposed to be published so that the citizens, the public know what the rules are; this one isn't. I observe court proceedings

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and I've noted the following things in juvenile court specifically: People are threatened with arrest should they appear they are recording, should they appear that they are recording in proceedings; extra security guards, when certain court observers are present, show up; speeches by the judges threatening arrest for recording a proceeding; notice is put on the back of the benches that you will be arrested if you appear to...if you have your cell phone out or you appear to be recording; physically accosting court observers in the hall; intimidating and detaining observers. I don't think this is preventing a harm. It's preventing a harm that doesn't exist and the people that speak for it, I think, are assuming an evil that doesn't exist. My purpose in watching court proceedings is a case like Evance's. I will say I can tell you how this rule is...works when it's used. I was in a proceeding just a couple weeks ago and I had asked for a transcript a couple weeks before and was denied and was told to file a motion, etcetera. When I was in a hearing with someone else who had asked for a transcript, I sat in the back, and at the beginning of the proceeding my name was called out and I was told Stacy Ryan will make her argument and present evidence on why she wants a transcript. This...I do have a law degree but I don't practice law. I think that's insane, to be calling out members of the public. This judge called on me, forced me to stand up, told me to make my argument, told me to bring evidence, and I, in amazement, just said I wasn't prepared for this, I wasn't noticed. He then gave me the option to...he suggested, would you like to file a continuance? And I said, I guess so, sure. He then gave me his instructions, what I had to do: file a motion, schedule hearing, notice the parties, etcetera. And he's making me a party of a case that I'm not a party to. I just asked for a transcript. [LB1063]

SENATOR CHAMBERS: Could I ask a question or two? The red light... [LB1063]

SENATOR ASHFORD: I'm sorry. I just was distracted for a moment. Go ahead. Your red light is on. [LB1063]

SENATOR CHAMBERS: Oh, that's why I was going to ask a question, because you have to stop. [LB1063]

STACY RYAN: Yeah. [LB1063]

SENATOR CHAMBERS: In order that I can get this clear, you were in the courtroom with somebody else? [LB1063]

STACY RYAN: Yeah, right. [LB1063]

SENATOR CHAMBERS: Was that person a party? [LB1063]

STACY RYAN: I was in to observe a hearing wherein someone else requested a transcript and the judge, on his own, scheduled a hearing, and one of the parties was

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going to object to it, to someone getting a transcript. So they called out this other person, but when we were in the hearing he also then named me and announced that I would be made to make my argument and present my evidence. [LB1063]

SENATOR CHAMBERS: And what argument was he saying you should make and evidence of what, since you were not a party? [LB1063]

STACY RYAN: Why I wanted a transcript. [LB1063]

SENATOR CHAMBERS: But this particular hearing was not about you or a request... [LB1063]

STACY RYAN: No. [LB1063]

SENATOR CHAMBERS: ...that you had made. [LB1063]

STACY RYAN: No. [LB1063]

SENATOR CHAMBERS: The judge must have known who you were, called you by name. [LB1063]

STACY RYAN: Those sheets that you sign in with. [LB1063]

SENATOR CHAMBERS: Say it again? [LB1063]

STACY RYAN: I believe the sheets that they make you...when you sign in... [LB1063]

SENATOR CHAMBERS: Oh. [LB1063]

STACY RYAN: ...or they take your name, I think they're given to the judges so they know who's in their courtroom. [LB1063]

SENATOR CHAMBERS: But in any case... [LB1063]

STACY RYAN: So then he knew that Stacy Ryan was in the courtroom. [LB1063]

SENATOR CHAMBERS: And the judge, did the judge just say, is Stacy Ryan here, or did he look at you? [LB1063]

STACY RYAN: No, he said that two people have requested transcripts, named the other person and then named me, and told us that we would make argument and present...we were to be...to make argument and present our evidence. [LB1063]



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SENATOR CHAMBERS: But when you went there, you were not going there for a hearing on... [LB1063]

STACY RYAN: No. [LB1063]

SENATOR CHAMBERS: ...your request to get a transcript. [LB1063]

STACY RYAN: No. [LB1063]

SENATOR CHAMBERS: And that's why you told... [LB1063]

STACY RYAN: I was just there to observe. [LB1063]

SENATOR CHAMBERS: And if I understood you, because sometimes it's kind of hard for us to hear what the witness said, if I understood you, you indicated that you were not there to be...to present anything because you had not been given notice that a hearing... [LB1063]

STACY RYAN: Exactly. [LB1063]

SENATOR CHAMBERS: ...was going forth that involved you. [LB1063]

STACY RYAN: Yes. [LB1063]

SENATOR CHAMBERS: And then did you proceed to give evidence or did you say you would like that postponed to a later date? [LB1063]

STACY RYAN: Well, I was in shock and...because I couldn't believe he did this and he...I said, I'm not a party and I'm not prepared to give evidence, and he kind of interrupted me and said, would you like a continuance? And I just said, sure. So he granted me a continuance and I am to file a motion and he will bring back five lawyers, two DHH workers, a court reporter, and himself and have a hearing on whether I can get a transcript or not. [LB1063]

SENATOR CHAMBERS: But he granted you a continuance... [LB1063]

STACY RYAN: Yes. [LB1063]

SENATOR CHAMBERS: ...in a proceeding that you are not even a party to. [LB1063]

STACY RYAN: Yes. [LB1063]

SENATOR CHAMBERS: So there was no reason to grant you a continuance because

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you were not even involved. [LB1063]

STACY RYAN: Yes. [LB1063]

SENATOR CHAMBERS: Who was the judge? [LB1063]

STACY RYAN: Judge Vernon Daniels. [LB1063]

SENATOR CHAMBERS: And is he a juvenile court judge? [LB1063]

STACY RYAN: He's a juvenile court judge. [LB1063]

SENATOR CHAMBERS: Okay. I just wanted the record to be clear, because I got bits and pieces,... [LB1063]

STACY RYAN: Okay. [LB1063]

SENATOR CHAMBERS: ...but I didn't want to say this is what was said at the hearing if I didn't get it correct. [LB1063]

STACY RYAN: Okay. Can I just finish with paragraph... [LB1063]

SENATOR CHAMBERS: You have to... [LB1063]

SENATOR LATHROP: I think when you get the...now I got Senator Ashford is gone so I got to run the show. [LB1063]

STACY RYAN: Oh, okay. [LB1063]

SENATOR LATHROP: Once we get to a red light, because we have several more bills to hear,... [LB1063]

STACY RYAN: Okay. [LB1063]

SENATOR LATHROP: ...if there aren't questions, that's going to be it for your testimony today, I'm afraid, Ms. Ryan. [LB1063]

STACY RYAN: One really important thing: Nebraska case law says you don't have to ask permission for a transcript. [LB1063]

SENATOR LATHROP: Okay. Thank you. [LB1063]

STACY RYAN: Thank you. [LB1063]

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SENATOR LATHROP: Next opponent to LB1063. Thanks. [LB1063]

LAURA McCORMICK: (Exhibit 16) Hi. My name is Laura McCormick, M-c-C-o-r-m-i-c-k. Sir, I may have left it on...here we go. I'm testifying next because I am the other person, so I have a few comments to make. And if you'd like to ask me questions about what happened and the transcript and why I'd want it, I don't think I should have to tell anybody why I want it, but I'm happy to. It has to do with the millions that we pay all the attorneys in juvenile court. You know, my interest in transcripts starts with my own case. I never in my life thought I would have anything in common with a convicted pedophile, but, see, I do. The gentleman's case, Charles Kay, this is an article that was published in the World-Herald. In fact, Judge John Irwin is weighing in on all of the improprieties, some of which occurred in my own case: shredded transcripts, backdated court orders, missing and altered transcripts. Yes, I have it, too, and so does Mr. Kay. And I realize that isn't necessarily salient to the commentary about juvenile courts. Now I do have interest. Before I drove the van and I stayed at home with my kids, I actually was an accountant, an auditor, and so I like numbers. I have interests in the money that they spent in the juvenile courts. Some interesting facts: payments to individual appointment attorneys, such as Ms. Troia, in the juvenile court have increased 180 percent in 10 years; expenditures over a 20-year period in the juvenile courts, this is Douglas County, 569 percent increase. In 2010, Judge Crnkovich appeared before the Douglas County Board asking for a \$1 million supplemental budget increase. The board gave her an additional \$750,000. An interesting aside, this bill which I sure do wish that I had...I'm going to have to talk to Ms. Costantakos--I got her book at the guardian ad litem seminar that I paid \$200 to go to--how I get a direct line to get a bill introduced. But the fiscal note prepared by the Supreme Court says that this bill is going to cost us nothing. And as I sit here and listen to Senator Chambers ask many questions about how this would work, it sure seems to me like it's not going to cost nothing. I highly recommend this, Kids for Cash. The comment that I want to make just from this, which I brought your very own copy, but I only have one, because I do this on my own dime. Indeed, the Luzerne County scandal comes on the heels--and that's what this book is about--of recognition of Pennsylvania as a national leader in the way it treats its young people accused of crime. In 2004, a year after cash began changing hands in Luzerne County, the John D. and Catherine T. MacArthur Foundation selected Pennsylvania to be the first state in which it would invest millions of dollars as part of its Models for Change in juvenile justice reform initiative. Now I did bring two additional stacks of material which cost the taxpayers... [LB1063]

SENATOR LATHROP: This is not being recorded when you get that far away from the mike, Laura. [LB1063]

LAURA McCORMICK: ...that's okay...\$250,000 and we have done absolutely nothing to modify any of the problems that are mentioned in the scathing indictment on guardian

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ad litem or juvenile legal defense, which I'm assuming you all have copies of this, a report on access to counsel--very troubling. There are some very serious problems in Douglas County,... [LB1063]

SENATOR LATHROP: Laura,... [LB1063]

LAURA McCORMICK: ...very serious. That concludes my comments. [LB1063]

SENATOR LATHROP: ...we went through this just a couple days ago. [LB1063]

LAURA McCORMICK: Sure. [LB1063]

SENATOR LATHROP: You got the red light. Let's see if there are any questions. [LB1063]

LAURA McCORMICK: Yeah, do you want to know about how it works, the motion and...because it's happened to me? [LB1063]

SENATOR LATHROP: We'll see if anybody has a question for you. [LB1063]

LAURA McCORMICK: Sure. [LB1063]

SENATOR LATHROP: Okay? Any questions for this witness? I see none. [LB1063]

LAURA McCORMICK: Thanks. [LB1063]

SENATOR LATHROP: Thank you for your testimony, your patience,... [LB1063]

LAURA McCORMICK: Thank you very much. [LB1063]

SENATOR LATHROP: ...and taking the time to come down to visit with us. [LB1063]

LAURA McCORMICK: You're welcome. [LB1063]

SENATOR LATHROP: Anyone else here as an opponent to LB1063? Good afternoon. [LB1063]

MELANIE WILLIAMS-SMOTHERMAN: Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Melanie Williams-Smotherman. It's Williams hyphen S-m-o-t-h-e-r-m-a-n. I founded the Family Advocacy Movement in 2009 in response to firsthand experiences with DHHS systems and court processes that denied due process and caused great harm to our family in the name of protecting children. As a community activist for the last five years, focusing on these issues, I worked pretty

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hard. And without any financial compensation whatsoever to the taxpayers of Nebraska, I spent a lot of my time researching system processes while responding to families and their children who reach out to me requesting support, information, and independent oversight of situations that cause them harm and instability within the juvenile court processes. I attend so-called team meetings, I attend mediated family conferences, many juvenile court hearings. I am a member of the NFC advisory board, community advisory board. I participate in creating research reports on child welfare and juvenile court, and I'm also with families at the hospital when their nursing newborns are pulled from their weeping mothers' arms. I see this issue at the ground level, not at the 30,000-foot level. And this is very personal to me. Because when there are attempts being made by senators who haven't necessarily set foot in the juvenile court proceedings where these things are happening, I am very personally affected by that, because we struggle on our own dime, as Laura mentioned. We struggle to travel between Omaha and Lincoln and all kinds of courts throughout Nebraska advocating for families who ask for that help because they are not feeling as though those people who are getting paid by taxpayer dollars are doing what they should be doing. As a member of the public but also as an advocate for families, I think that it is very troubling that there are members of...well, lawyers, members of legal teams who are attempting to thwart our opportunity to hold accountable, by verbatim record, what is said when we observe misconduct, when we observe concerns about potential due process violations and even youth being denied proper representation. And I have personally witnessed these things. And if I have to, I've gotten...I've requested transcripts. Some judges give them without any problems; other judges always give a problem. And I think that it is too much of a burden to ask the public to file a motion. I'm not a lawyer. I don't think I should have to hire a lawyer to file a motion and then go before a judge that I believe has maybe violated that due process and tell that judge that that is why I want the transcript, only to be denied in the end. [LB1063]

SENATOR LATHROP: Got it. Senator Coash has a question for you. [LB1063]

MELANIE WILLIAMS-SMOTHERMAN: Yes. [LB1063]

SENATOR COASH: Thank you, Senator Lathrop. Thank you for your testimony. Have you requested transcripts in juvenile court before? [LB1063]

MELANIE WILLIAMS-SMOTHERMAN: I have. [LB1063]

SENATOR COASH: Have you received them? [LB1063]

MELANIE WILLIAMS-SMOTHERMAN: I have from one judge. [LB1063]

SENATOR COASH: Have you ever requested transcripts that you have not... [LB1063]

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MELANIE WILLIAMS-SMOTHERMAN: Yes. [LB1063]

SENATOR COASH: ...been able to receive? [LB1063]

MELANIE WILLIAMS-SMOTHERMAN: Yes. [LB1063]

SENATOR COASH: When you were denied your request, were you given something that was...indicated the reason for the denial? [LB1063]

MELANIE WILLIAMS-SMOTHERMAN: No, I asked specifically for that, by statute, according to public records laws, and was not given the reason or pointed to any particular law or statute that would explain why I was denied. [LB1063]

SENATOR COASH: Well, I think there's a--and it was presented by the proponents--there was a court rule that says it is at the judge's discretion. I bring it up because the proponents want these sealed or wants, excuse me, wants judicial discretion, but it seems like we already have that if you've had some judges who have given you and some judges who have not given you transcripts. [LB1063]

MELANIE WILLIAMS-SMOTHERMAN: And that's correct, although I find that problematic even though judges are denying, because they aren't providing proper reason. I think that there's, you know, we have in Nebraska the fortune to have open juvenile court hearings, which is something that's lauded throughout the country. And those states that don't have that are being criticized for actually being more harmful to juveniles because public oversight helps to prevent the judicial branch from maybe overstepping or doing things that they shouldn't be doing. [LB1063]

SENATOR COASH: Okay. Thank you. [LB1063]

MELANIE WILLIAMS-SMOTHERMAN: And without those verbatim transcripts, we have no way of proving what happens. [LB1063]

SENATOR COASH: I understand. Thank you. [LB1063]

SENATOR LATHROP: Okay. I see no other questions. [LB1063]

MELANIE WILLIAMS-SMOTHERMAN: Thank you. [LB1063]

SENATOR LATHROP: Anyone else here to testify in opposition? [LB1063]

SUZANNE O'DONNELL: My name is Suzanne Nelson O'Donnell, N-e-l-s-o-n O-'-D-o-n-n-e-l-l, and I would like to express concern over limiting access to transcripts in any courtroom. From my own experience as a business person in the financial

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industry, auditors and checks and balances are what keep people honest and transparent. My 4th grader is being taught that branches of government allow for a check-and-balance system. He is taught that people are innocent until proven guilty. From my own long, unexpected, falsely accused experience, I have found another reality. Pleadings and motions that are skillfully crafted can paint a picture of someone that may or may not be reality. The public hearing and transcript should reflect the truth of a situation. If people I don't know can sit and listen to hearings about my children, then why can't they read and order a transcript? If anything is too private, can't an attorney or a GAL ask that part of the conversation be protected from a transcript? In my own eight-month and over \$30,000 juvenile court experience, I was told by a court reporter I had to go through my attorney to get my own transcripts and it would take weeks and cost hundreds of dollars. Now I have been told that with cash I can order them myself and that the typing, at \$3.25 a page, will only take about three weeks or so. Transcripts are the journal of events that tell the story. Without open and honest access to them for everyone, the story can be twisted or manipulated against those less fortunate, whether they be nonwhite, non-English speaking, unemployed, unable to afford private legal counsel, or simply unaware of their right to their own transcript. In my own experience, I also saw closed chamber meetings and attorneys called into chambers during my hearings to discuss things. I have no idea if there are even transcripts of those meetings. This is a great concern to me because my children were being discussed at that time. I was lucky to have professional, private, legal representation. My case was completely dismissed and my boys were returned home. Not everyone in Nebraska is so fortunate. I am okay with others' ability to read my transcript to expose the atrocities that have been done to my children and so that it is not done to others. [LB1063]

SENATOR LATHROP: I see no questions. [LB1063]

SUZANNE O'DONNELL: And for the record, this is \$450 and four hearings. The next five months of my transcripts will be another \$850. [LB1063]

SENATOR LATHROP: I have written those checks. They are very expensive. They're very expensive, no question about it. Thank you, though, for your insight and your thoughts. We appreciate your testimony today. Anyone else here to testify as an opponent to this particular bill? [LB1063]

WILLIAM SOLE: I just want to say that I'm a plain-spoken guy and... [LB1063]

SENATOR LATHROP: All right. Well, we're going to have you begin by giving us your name and spell... [LB1063]

WILLIAM SOLE: I will. [LB1063]

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SENATOR LATHROP: ...your last name for us, if you wouldn't mind. [LB1063]

WILLIAM SOLE: My name is William, Bill Sole, S-o-l-e. I'm glad to be here, so thank you for listening to me. I was brought into this because I ran into one of the people that have spoken here at a Learning Community meeting because I was concerned about the education system, and then I was actually exposed to what this bill is doing. Well, anyway, I had a friend in Lexington and she has this very problem where her grandson in Omaha, she can't get access to information about her own grandson. And so he's involved in the legal system. And so what I found out about is this advocacy community that is really very good-natured, only trying to help out, help kids that are trapped in the system. And frankly, the parents of these children can't afford...they don't understand, myself included, do not understand the system. And so you can't afford a lawyer and so you're really trapped in a system that you don't know exactly how to deal with. But then when somebody comes to try to help, I know that this idea is thrown up, it just seems to be consistent, that we have to be fearful of the bad actors that are out there, and I think that is, of course, of concern. But there are so many good people that are really spending their kids' futures, they're spending their families' resources to try to help other people. And this bill will prevent that from happening. So my friend in Lexington drove to Omaha and some of these ladies sat down with them and explained what she was really up against, and it's not good. It was horrible for her and she still hasn't resolved the problems. So her grandson, a good kid, is still stuck in the system and it's just, you know, since I know the people that are involved, it's just a tragic thing. So allowing people to have access to these that, you know, there is the exception of people that are either operating with bad intent or evil actually happening, but would you prevent all of the good activity from taking place just because of one bad actor? I believe that's the exception to the rule. So anyway, that's about all I have to say, so. [LB1063]

SENATOR LATHROP: Well, Bill, we're glad you came here to say it. [LB1063]

WILLIAM SOLE: You bet. [LB1063]

SENATOR LATHROP: I see no questions. [LB1063]

WILLIAM SOLE: Thank you. [LB1063]

SENATOR LATHROP: So thanks for coming down. [LB1063]

WILLIAM SOLE: You bet. [LB1063]

SENATOR LATHROP: Any other opponents? Is there anyone here to testify on LB1063 in a neutral capacity? If not, Senator Lautenbaugh has waived his close, so that will close the hearing on LB1063 and bring us to Senator Brasch and LB1093. Senator Brasch. Especially if it's a public document, Amanda. Good afternoon and welcome



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once again to the Judiciary Committee. [LB1063]

SENATOR BRASCH: (Exhibits 14 and 15) Thank you, Senator Lathrop, and thank you, members of the Judiciary Committee. I am Lydia Brasch, L-y-d-i-a B-r-a-s-c-h, and I represent the 16th District in the Nebraska Legislature. The intent of LB1093 is to simplify the ability of Nebraska's juvenile court system to use court-connected juvenile conferencing services, with the ultimate goal of aiding families in the child welfare system to better achieve positive outcomes. The simplification will come in the form of transferring funding directly from the Department of Health and Human Services' budget to the Nebraska Supreme Court budget, replacing the current process of grants and contracts. At present, these funds are transferred through a grant process between Department of Health and Human Services and the administrative office of the courts, and through contracting from the Department of Health and Human Services to individual juvenile facility conferencing programs. This issue came to my office after representatives of both the Department of Health and Human Services and the Supreme Court had met last December. And in the discussion they agreed a simplification in funding was an ideal solution for these important conferencing services to continue and provide timely services. Since that time I have met with Chief Justice Mike Heavican and Department of Health and Human Services Director Kerry Winterer and discussed with them the option of transferring the funding legislatively. Both had agreed at that time that working together will help achieve harmony to make sure that this bill represents a simple transfer of funds that remains neutral in revenue, revenue neutral. Currently, you will notice that the fiscal note does not reflect revenue neutrality. However, after a series of ongoing meetings and discussions and collaboration that we have continued right up until this morning, where both Director Winterer and the Supreme Court have agreed to two minor changes that will result in a truly revenue-neutral fiscal note that will be given to the Fiscal Office and drafted and given to you. I gave you some e-mail drafts of where we're at. Though we've not fully completed the amendment process, it will be completed very shortly. Representatives from both Department of Health and Human Services and the Supreme Court, who have been working through all the details, are confident that this bill and its underlying intentions will serve the state and its juvenile conferencing services effectively and without need for appropriation. In fact, you will hear from many proponents today and representatives and neutral from the administrative office of the Supreme Court and Health and Human Services who worked diligently on all the details, and they will provide more details during their testimony. I'd like to provide you with a basic overview of the types of conferences being addressed by this bill. There is the prehearing court conference, often referred to as the PHCs, and family group conferences, or the FGCs. A prehearing court conference began as a pilot project in 2003 and resulted from the first statewide children's summit. A prehearing conference is an informal session to work on critical child and family issues, such as identification of biological parents, health and education needs of the child, and identification of relatives who may be able to help care for the child. Nebraska adopted a prehearing conference model based upon the

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National Council of Juvenile and Family Court Judges best practices, which were to front-load child welfare cases. The ultimate goal of this front-loading is to reduce a child's time in the system and achieve permanency. Through time and various initiatives, prehearing conferences became a part of the judicial system. Conferences are ordered by judges and oversight is provided by the office...administrative office of the courts and the Office of Dispute Resolution. Judges and legal professionals agree that facilitated conferencing is cost-effective and it improves timeliness in the court process and permanency for children. Over 766 child welfare cases were facilitated across the state last year and various studies showed that the process is effective and efficient. Again, experts today will testify after me to be able to speak on the successfulness of the conferencing process. Family group conferences began as a pilot project in 1997 as part of the Nebraska Court Improvement Initiative, a joint project between the Nebraska Supreme Court and the Department of Health and Human Services. The FGCs address child abuse, neglect, and vulnerable teen cases in which family connections and decision making are essential elements. The ultimate goal is to create a plan for permanency and address critical safety issues for children who have been abused or neglected through a comprehensive, family-centered, decision-making process. Nationally, FGC outcomes have been very positive because an increased number of children are placed with extended family members and, therefore, the placements are more permanent than with foster care. This provides a cost savings for two reasons. First, the increased number of children being placed with extended family reduces the number being placed in foster care. Second, because this process is front-loaded, it reduces the amount of time these children live in foster care. Nearly 3,000 family group conferences have been provided and benefited families and children in Nebraska over the past 15 years. I could read you more about the results, but because I have people here who actually work with these families and in this area, I will leave that for you to discuss with them if you have questions. Members of the Judiciary Committee, these programs have been proven to be effective and efficient. Through surveys and data, they show that they result in decreased costs, increased permanency, and provide universally accepted solutions for families. I would like to encourage you to look at LB1093, that is revenue neutral, as a successful and efficient way to simply transfer funding from Department of Health and Human Services into the juvenile Supreme Court that continue to work together to make this bill revenue neutral. And I have both parties behind me. I'd encourage you to pass LB1093 out of committee. Thank you for your time and consideration. [LB1093]

SENATOR LATHROP: Thanks, Senator Brasch. Are you going to stay to close?  
[LB1093]

SENATOR BRASCH: I will stay. [LB1093]

SENATOR LATHROP: Okay. Very good. [LB1093]

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SENATOR BRASCH: Thank you. [LB1093]

SENATOR LATHROP: Let's begin with proponents of LB1093, those who care to testify in support. [LB1093]

SENATOR BRASCH: I may not need to close, but I'll stay if there's questions. [LB1093]

SENATOR LATHROP: Okay, that's fine. Sure. [LB1093]

DEBORA BROWNYARD: Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Debora Brownyard, D-e-b-o-r-a B-r-o-w-n-y-a-r-d. I'm here on behalf of the administrative office of the courts. I am the director of the Office of Dispute Resolution and I'm here to ask for your endorsement. We're here to support LB1093. My office oversees the providers of juvenile conferencing. Juvenile court judges are utilizing these services across the state. We're really pleased with the Through the Eyes of the Child meetings and the leadership that the Chief Justice has given for prehearing conferences and family group conferences. Part of my role is to do administrative work and so I'm involved in contracting, in granting. And part of the main reason for the request for this bill that Senator Brasch has brought forward for the Supreme Court and HHS is to just basically reduce the need for a cumbersome business practice of annual going through grants, going through contracts. And so it's basically a shift, as Senator Brasch has said, of funding that's currently in HHS, \$450,000. And instead of doling out that \$450,000 per year through grants and contracts, asking the Legislature to pass LB1093 in order to have those funds shifted and coming into the Supreme Court budget every year. And that way the Supreme Court would administrate these prehearing conferences funds, which are basically court-ordered family meetings by individual judges, and then my office would oversee the funding. And the other thing that my office does is we oversee the reporting, so I get quarterly reports from these providers, which will also include data on outcomes for these child welfare cases. And I think you'll hear testimony from the Children's Commission about wanting all kinds of children's services evaluated, and so the mediation centers who are doing these services are currently keeping data. And if this bill passes then we will add data points. Then that we can have the collection of information so that we can do our own internal evaluation and perhaps at some time in the future an external evaluation on how well these court-connected, facilitated conferences are providing better opportunity for families to have a chance to have a voice, talk about how they can plan for their children, and truly be a part of that rehabilitative process if the families are engaged as part of the solution. I'm happy to answer any questions, take comments. [LB1093]

SENATOR ASHFORD: I don't see any. Thanks,... [LB1093]

DEBORA BROWNYARD: Thank you, Senator. [LB1093]

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SENATOR ASHFORD: ...Deb. Okay, any... [LB1093]

SENATOR LATHROP: We're on proponents, Mr. Chair. [LB1093]

SENATOR ASHFORD: Thank you, Mr. Vice Chair. Other proponents? [LB1093]

ROGER HEIDEMAN: Chairman Ashford, Senators, my name is Roger Heideman, R-o-g-e-r, Heideman is H-e-i-d-e-m-a-n. I'm a juvenile court judge in the Separate Juvenile Court in Lancaster County. I'm also a member of the Nebraska Supreme Court's alternative dispute advisory council. I'm here today to offer my support for this bill. I think Senator Brasch did an excellent job of kind of giving an overview of what I would classify as kind of the beginning of these mediation services in the juvenile court. When we left that summit almost eight years ago, our local mediation center became a member of our local collaborative team, an indispensable member, and we began utilizing those prehearing conferences in all of our protective custody hearing cases on a trial basis. I'd be remiss to say we didn't do it with some skepticism, but that skepticism has turned to complete support of that system now that it's being utilized in every one of our prehearing or protective custody hearings on a weekly basis; that we have a trained facilitator and mediator there for each one of those families to help identify services and families and those sorts of things that Senator Brasch identified that are important to identify early on in the case to get better outcomes in the long-run. That's evolved into other areas as well. We now also utilize the mediation services for permanency planning hearing conferences as well as termination of parental rights conferences where those families that are at that point in time where reunification is no longer a viable option, they still have the ability to sit down with a trained mediator and facilitator and discuss what was the next best step for their children going forward. Personally, I've utilized that in a number of cases. Every one of them has reached, I think, a favorable outcome that the parents believe they had input that was vital to their decision going forward. We're kind of on the fringes of some new utilization of services as well with restorative justice type mediation with LB561 last year and juvenile justice reform in LB464. [LB1093]

SENATOR ASHFORD: How's that going? [LB1093]

ROGER HEIDEMAN: It's going well, not without some hiccups, but we're working our way through it, so. [LB1093]

SENATOR ASHFORD: Well, thanks for all the work you're doing. [LB1093]

ROGER HEIDEMAN: But in the way of victim-offender mediation, it's been rarely used, at least in Lancaster County, and that's something I think we wanted to expand upon that to get community involvement with those processes. So I said it's kind of an

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evolving role in our juvenile court proceedings to utilize the mediation centers, so. Any questions? [LB1093]

SENATOR ASHFORD: And, okay, and I missed the...I missed Deb's introduction, but these facilitations are in the context of all potential cases or is it just...is it child welfare only? [LB1093]

ROGER HEIDEMAN: Potentially in all cases, and what we're utilizing them primarily for at this time is in all of our protective custody cases, kids that have... [LB1093]

SENATOR ASHFORD: Okay. [LB1093]

ROGER HEIDEMAN: ...children who have been removed from their parents by court order that... [LB1093]

SENATOR ASHFORD: Okay. Do you see a role for this in LB561, in these kinds of cases? [LB1093]

ROGER HEIDEMAN: There is. I know, and Kelli Hauptman may... [LB1093]

SENATOR ASHFORD: I see that...I don't want to put it on the record, but I do see the Chief nodding his head. I... [LB1093]

ROGER HEIDEMAN: No. Yeah, Kelli... [LB1093]

SENATOR ASHFORD: Just so you don't say something that (laugh)... [LB1093]

ROGER HEIDEMAN: Okay. And Kelli Hauptman is here as well. One of the new areas also is a youth circle, those kids that may be out of home and are moving towards leaving the system, that there's some mediation services available to bring them through this youth circle to make sure their voice is being heard as they transition out. [LB1093]

SENATOR ASHFORD: And that's important work. That's important work. And even in the transitional facilities or in the youth centers, and as those evolve into regional centers, that youth center sort of process could be very valuable. I'm sure that's going to be part of it anyway, but... [LB1093]

ROGER HEIDEMAN: Sure. [LB1093]

SENATOR ASHFORD: Right? [LB1093]

ROGER HEIDEMAN: Right. [LB1093]

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SENATOR ASHFORD: Well, thanks for all you're doing, Judge. Any questions? I don't see any. Thank you very much. [LB1093]

ROGER HEIDEMAN: Thank you. [LB1093]

SENATOR ASHFORD: Next proponent. [LB1093]

KAREN AUTHIER: (Exhibit 17) Good afternoon. Thank you, Senator Ashford, Judiciary Committee. My name is Karen Authier, K-a-r-e-n, Authier, A-u-t-h-i-e-r, and I serve as the chair of the Nebraska Children's Commission. The Children's Commission recognizes the importance of facilitated conferencing as a resource that can improve outcomes for children involved in both the child welfare and the juvenile service systems by reducing barriers to permanency and improving timeliness of permanency decisions. The commission supports allocation of resources to make facilitated conferencing available on a statewide basis to families who would benefit from this service. Facilitated conferencing, as you've heard, is provided under the auspices of the administrative office of the courts and Office of Dispute Resolution through the mediation centers that are located in communities across the state. The language of LB821, which created the Children's Commission in 2012, placed expectations on the commission to review and address the role of facilitated conferencing in the child welfare system. The commission has devoted meeting time to assessing the role of facilitated conferencing and assigned the community ownership of child well-being work group responsibility to further review the need for and capacity of facilitated conferencing and develop recommendations for the commission. The work group determined that the mediation centers are a key component of community-based prevention services for children and families, that the need for prehearing conferences and family group conferences exceeds current funding allocations and that there is a need for a dedicated, sustainable source of funding for both types of services, both for child welfare and juvenile justice cases. The commission approved the work group report and I want to read the actual recommendation: The community ownership of child well-being work group recommends that funding for prehearing conferences, court-ordered family group conferences, and other relevant facilitated conferences for both child welfare and juvenile service cases be funded by the Legislature as part of the Supreme Court's budget, not to exclude sliding fee scales and court fees and other potential sources of funding. Funding for tribal courts should be included in the budget as well as funding for a statewide independent evaluation. Family group conferences for noncourt-involved child welfare cases should continue to be funded through contracts between the Department of Health and Human Services and the Office of Dispute Resolution approved mediation centers. While LB1093 does not address all of the commission's recommendations, passage would be an important step in providing clarity regarding allocation of resources for facilitated conferencing and medication for families served by child welfare and juvenile services. The commission will continue to

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monitor and review access and effectiveness of those services. [LB1093]

SENATOR ASHFORD: Thank you, Karen. I don't see any questions, but we have your comments. Very good. Next proponent. Casey. [LB1093]

CASEY KARGES: (Exhibit 18) Senator Ashford, members of the committee, I'm Casey Karges, C-a-s-e-y, last name Karges, K-a-r-g-e-s. I'm the executive director of the mediation center here in Lincoln, one of six Supreme Court approved through the Office of Dispute Resolution. I have colleagues that are here with me. I lost the flip of the coin and I'm the one that's representing our centers here today. We are in favor of LB1093. We believe family input and buy-in in decision making in the midst of conflict can product long-term agreements. There's two kind of facilitations we're talking about today--prehearing conference, FGCs. Currently, with the mediation center, I'll just talk about my particular center, we contract some with the Department of Health and Human Services; some we contract with funds that go from the Department of Health and Human Services to the Supreme Court and then we contract with the Office of Dispute Resolution; some of that we're just trying to pull together into a pot that I think would be available for these kind of services that we would then probably contract with the Office of Dispute Resolution just for all of these so we wouldn't have to go through all these different ways of getting the funds for these services. What they've been talking about is a lot of family input. The mediation centers, as been lifted up, have been doing these family group conferences for over ten years. A key component is getting people around the table, family members, support people to get their input. Sometimes within a family group conference, a key component is that we prepare, we look at the concerns, the strengths of the family, and everybody leaves, including the mediators, and then they're supposed to come up with a plan to meet the needs as a family unit, so it becomes the family plan. And then they come back in as the facilitators and work with everyone to make sure that they address all of the particular needs. And so it's the family plan that moves forward. Prehearing conference is right before you go into court, the day of court, is specific needs. An example would be if a child has been taken out of a home, have they seen their family in the past two, three days? Can we set up more parenting time for the trauma of the child? Do they go to Scouts or do they have activities that then we need to make sure in the next few days those kids go to? Are there medical needs that everybody in the room can hear at the same time? And so it's getting that family input, trying to vet for quicker results. We know if the family has buy-in, it will be a better long-term plan. There has been some discussion about evaluation. We keep statistics. Everything that we do in some way goes to report to the Office of Dispute Resolution. We're always open for a continued evaluation of our services, and so the mediation centers, if we would get some more funds, probably through grants at the present time, would be open to any evaluation of our services. So we are in support of LB1093 and be open to any questions. [LB1093]

SENATOR ASHFORD: I don't see any, Casey. Thanks. [LB1093]

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CASEY KARGES: Thank you. [LB1093]

SENATOR ASHFORD: Thanks for your work. [LB1093]

KELLI HAUPTMAN: (Exhibit 19) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Kelli Hauptman, K-e-l-l-i H-a-u-p-t-m-a-n. I'm the staff attorney of the Through the Eyes of the Child Initiative, which is a Supreme Court initiative under the Nebraska Court Improvement Project, and I'm here to testify in support of LB1093. Just as an overview, the Through the Eyes of the Child Initiative was created in 2006 by outgoing Chief Justice John Hendry, and has continued under the strong leadership of Chief Justice Heavican. Its main purpose is to improve court processing in juvenile cases across Nebraska. We have 25 judge-led multidisciplinary teams who have been the soul of the initiative and have spent the last several years working on a variety of projects that aim to improve how we respond to abused and neglected children. And now with additional funding we've recently received, we've expanded that into the juvenile justice side and are focusing on that issue as well. One of the major focuses many of our teams have had has been to increase the use of mediation facilitation in juvenile cases, and we've been working with them to try to assist them in that. So I want to focus on how the teams have been using these, their increase, and why LB1093 is needed to achieve stability and to scale up the practices. So you've already heard a little bit about the types of conferences. The initiative teams really began using them in 2006 on a consistent basis. There were 142 prehearing conferences that year. By 2009 that number had increased to 433. Part of the increase was due to our expansion of the use of prehearing conferences. The initial prehearing conferences that happened right after the kids have been removed were such a success that we began working with teams on rolling out with what are called permanency prehearing conferences and TPR prehearing conferences. Those happen in the later stages of the case and address some of those permanency issues. So last year we...the number of prehearing conferences had risen to 665 and we had such success that we had a problem of running out of funding and we weren't able to secure additional funding. So the reality was that some of them had to be temporarily suspended until the new fiscal year started. So any project that is trying to scale up, the temporary suspension of funding is problematic. It makes it difficult for teams to infuse these practices into what they're doing into general practice, and that's the ultimate goal of what we're trying to do. We're trying to infuse mediation facilitation into the life of a juvenile case, so not only in abuse/neglect but now we're looking at all the possibilities that there can be in juvenile justice cases as well. And to do so, we need stable and adequate funding to pay for this service. And LB1093 would accomplish that by moving it over to the AOC. We do recognize that in increasing the use of the services that we're going to have to find some way to get additional funding, but we are committed to working on that. And I did distribute a letter from Judge Gendler of the Sarpy County Separate Juvenile Court also supporting LB1093. Thanks. [LB1093]



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SENATOR ASHFORD: I don't see any questions. Thank you. Next proponent. Any opponents? [LB1093]

SENATOR LATHROP: Did you start...did you jump up slowly on the supporter... [LB1093]

SENATOR ASHFORD: Are you an opponent? [LB1093]

SENATOR LATHROP: ...or were you a quick opponent? [LB1093]

CHIEF JUSTICE MIKE HEAVICAN: (Laugh) I'm a proponent. [LB1093]

SENATOR ASHFORD: You're an...you're for the bill. [LB1093]

CHIEF JUSTICE MIKE HEAVICAN: You're moving...I am for the bill. [LB1093]

SENATOR LATHROP: Got it. [LB1093]

CHIEF JUSTICE MIKE HEAVICAN: You're moving this along too quickly. [LB1093]

SENATOR ASHFORD: I was trying to figure out in my mind how that was going to play out in the office in as much as...(laughter) [LB1093]

SENATOR LATHROP: He didn't get out of his chair fast enough. [LB1093]

CHIEF JUSTICE MIKE HEAVICAN: I intended to clarify that. [LB1093]

SENATOR ASHFORD: Very well. (Laugh) [LB1093]

CHIEF JUSTICE MIKE HEAVICAN: Good. My name is Mike Heavican and that is spelled H-e-a-v-i-c-a-n, and I'm the Chief Justice of the Nebraska Supreme Court. And I'm just here very simply to say that I support this and want to thank Senator Brasch for sponsoring it. It is hopefully a process to simplify how this is paid for. And I should note, as Kelli just did, that it is probably inadequate funding but it is neutral monetarily at the moment and we will have to look for more funds for these very useful mediation processes in the system. And they no doubt would be very useful in the juvenile justice side of things also, but that's not in this bill. [LB1093]

SENATOR ASHFORD: Senator Brasch has been and my conversations with her have been great. She has a great focus on outcomes and I know that's your focus as well. [LB1093]

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CHIEF JUSTICE MIKE HEAVICAN: Uh-huh. [LB1093]

SENATOR ASHFORD: Yeah, the more we can move this over to LB561 and where appropriate. Thanks for all your work. [LB1093]

CHIEF JUSTICE MIKE HEAVICAN: Uh-huh. Thank you. [LB1093]

SENATOR ASHFORD: All right. I don't see any questions. We're a congenial committee at times. Okay. Any other proponents? Opponents? Neutral? Kerry. [LB1093]

KERRY WINTERER: (Exhibit 20) Afternoon, Senator Ashford and members of the Judiciary Committee. My name is Kerry Winterer, that's spelled K-e-r-r-y, last name Winterer, W-i-n-t-e-r-e-r. I have the privilege of being the CEO of the Department of Health and Human Services. There is some written testimony being distributed. I don't intend to read that testimony. Testimony kind of talks about a few issues that we have with this bill. I'm here to actually testify in a neutral capacity but at the same time say that we are supportive of what Senator Brasch is doing here. We've had several conversations with the Office of Dispute Resolution representing the Supreme Court, at Senator Brasch's instance, and I think we have come to agreement, if you will, on the fiscal implications of this. So I think there will be a fiscal note, a new fiscal note that we agree on, as well there are some more technical issues in the bill that we have some concerns with. There is an amendment that we've been working on with the senator and the Supreme Court to work on some...on an amendment to deal with those issues as well. So that's really all I need to say about it. It think this has worked out very well and we seem now to be on the same page relative to moving these funds over to the Supreme Court so that they can continue to provide these services. We will continue to provide services for not...noncourt-involved youth. The dollars that are being transferred are those that are court-involved, just for your information. [LB1093]

SENATOR ASHFORD: And that will fund the... [LB1093]

KERRY WINTERER: So happy to respond to questions. [LB1093]

SENATOR ASHFORD: ...that funds the initiative. [LB1093]

KERRY WINTERER: Yes. [LB1093]

SENATOR ASHFORD: Correct. [LB1093]

KERRY WINTERER: Questions? Thank you. [LB1093]

SENATOR ASHFORD: Pretty clear. Thanks, Kerry. [LB1093]

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KERRY WINTERER: Thank you. [LB1093]

SENATOR ASHFORD: Other neutral testifiers? [LB1093]

MELANIE WILLIAMS-SMOTHERMAN: Hello again. My name is Melanie Williams-Smotherman, M-e-l-a-n-i-e, Williams-hyphen-S-m-o-t-h-e-r-m-a-n. I have very brief comment. One of the things that I have noticed throughout the last five years of advocating for families and children is the remarkable ability of everyone who partakes in being a part, I guess, of making a living on the child welfare and juvenile court industry to have amazing mission statements and amazing reports about how well their programs are doing. I don't know not only who would expect anything less but also, you know, when we're talking about children, there are a lot of wonderful words in the lexicon that touch all of our hearts. The unfortunate reality for me of being the person who is kind of an independent overseer and not making any money on the system in the child welfare, juvenile court systems is that I get to observe how these functions actually work for families and I get to talk to the families afterwards and ask them how they feel it worked. And unfortunately, they would write a different mission statement and a different report than those that you hear from the people who are actually here today and often attend these hearings. I would just ask the committee to think of two things with regard to family team meetings or the mediated family group conferences. One is who pays them is who they have an allegiance to. The families recognize that. They feel that from the moment they walk in. They don't want to go back afterwards. I'm not going to say that it's across the board because maybe they have reports of some people who like it, but I can tell you that many families for whom I advocate have extreme concerns about the process of the mediated family group conferences and they feel that there is a conflict of interest between the organizations that pay them and the way they conduct these mediations. Then the second thing is, if I remember, it was off the top of my head when I was listening, but I really do believe that the committee should do its due diligence in talking to actual members of the community who engage in these things, not making money off of these things. And I guess that's why I'm here and why I'm always the fly in the ear. But it's important that you realize that families have a different perspective and the children have a different perspective. Thank you. [LB1093]

SENATOR ASHFORD: Thanks, Melanie. Any other neutral? Senator Brasch. Thank you for bringing this, Senator Brasch. [LB1093]

SENATOR BRASCH: Well, I wanted to thank everyone here, the committee and those that came forward today. [LB1093]

SENATOR ASHFORD: You have to keep working on this the next... [LB1093]

SENATOR BRASCH: I have. You truly have opened my mind, ears, my heart in all the dialogues we've had about youth at risk, families at risk, not building prisons but building

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good character, recidivism. It's an area that I am interested in. And because of your bill, probation officers contacted my office saying, I'm from your district, do you have questions? And I said, I have a lot of questions. And they all came to my office, not just from Burt and Washington County but then Cuming County and we had a really good heart to heart on...heart talk on so what are the gaps? What do you need? And just hands down, this mediation center, you know,... [LB1093]

SENATOR ASHFORD: Yeah. [LB1093]

SENATOR BRASCH: ...this program here was very moving. And I felt this bill was very important. We worked so hard. And I want to thank Director Winterer also for his efforts. He has come to my office numerous times with a five-minute window and been very cooperative. And the results are good so I hope that we can move this without any problems, because it is just transferring funds and... [LB1093]

SENATOR ASHFORD: Right. We're transferring funds in order to... [LB1093]

SENATOR BRASCH: Exactly. [LB1093]

SENATOR ASHFORD: ...maintain the program. [LB1093]

SENATOR BRASCH: There's no fiscal note. There is no dispute between Health and Human Services or the Department of Justice. And I believe it's a good, sound place to start. [LB1093]

SENATOR ASHFORD: Well, I always...and we don't have to go into deep history, Senator McGill, but I do remember, I'm sorry, but I do remember when Senator Landis and to some extent I, with him, worked on this. He was really the catalyst, Dave was, in getting the sixth center started and Lancaster County mediation or the mediation center here is exceedingly good. And so... [LB1093]

SENATOR BRASCH: I know they all have such heavy lifting to do... [LB1093]

SENATOR ASHFORD: Right. [LB1093]

SENATOR BRASCH: ...with their mission and what they do, so thank you for considering this. [LB1093]

SENATOR ASHFORD: (See also Exhibit 27) Thank you, Lydia. All right. Now we go to Senator Seiler, LB1021. [LB1093]

SENATOR SEILER: Thank you, Mr. Chairman. Members of the committee, my name is Les Seiler, L-e-s S-e-i-l-e-r. I'm the senator from the 33rd District. There is justice in

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practicing law for a long period of time. This bill that I have the pleasure of introducing is a very narrow bill. But I will tell you, in the practice of law, shortly after the Vietnam War, this bill would have been a great piece of literature because it says that it "shall" be sealed, and it was in the old days "may" be sealed. And it depended on the judge that you got whether you got the record sealed. Why was that important? People could not go into the military after Vietnam if they had even a juvenile record. And so if it was sealed then they could. And I had counseled many, many parents on that their son or daughter wanted to go in the military, serve our country, question is, could they get it sealed? And the question I always said to them was, depends on the judge. And... [LB1021]

SENATOR ASHFORD: Right. And the presumption was that if it's sealed that the kid is okay and... [LB1021]

SENATOR SEILER: That's right. And this doesn't...this initiate...changes it to the court initiates the proceedings after the juvenile has satisfactorily served his probation, supervision, treatment, rehabilitation, or successfully completed diversion. The court initiates the proceedings and sends out the notices. And if there's no objection filed, it's automatically required to be sealed. In... [LB1021]

SENATOR ASHFORD: Does it have to be done at a certain age? I got to read through... [LB1021]

SENATOR SEILER: No. [LB1021]

SENATOR ASHFORD: Okay. [LB1021]

SENATOR SEILER: He has to have completed all of those requirements that the judge set at the time he was placed under court supervision. The other thing is, is that if the court screws up, which is possible, and doesn't file the order sealing the records, then the juvenile, the juvenile's parents, or the juvenile's guardian can file the request and, again, the court...it shifts back to the court. The court then notifies the parties that...and if no one, again, objects, then it's automatically sealed. It's important. Now there's always going to be exceptions and this doesn't have anything to do with who can get transcripts or whether it's an open hearing or not. This is a procedure which we have in adult court. It's called an expungement. But in the juvenile system, take away that question of the court making, I don't like the little blonde-headed guy today so he doesn't get it, but the little black-haired guy, he gets it, and they've committed the same offense. This takes away from that. This just puts it in there that it will be expunged if they've done their job and complied with all of the court rules. I think it's an excellent change and something I would have advocated 40 years ago. Thank you. I'll take questions now. [LB1021]

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SENATOR ASHFORD: I don't see any questions, Les. Thanks. Thank you. [LB1021]

SENATOR SEILER: Thank you. [LB1021]

SENATOR ASHFORD: Okay. Those supporting the bill. [LB1021]

SHAKIL MALIK: (Exhibits 21 and 22) Good afternoon, Senators. I'm Shakil Malik, S-h-a-k-i-l, last name Malik, M-a-l-i-k. I'm a deputy county attorney with the Douglas County Attorney's Office. I'm here testifying on behalf of Douglas County and the Douglas County Attorney's Office in support of this bill. I've outlined in my written testimony and also provided some proposed technical revisions. Some of you may be aware I'm very fond of those revisions. Currently, as...and I was asked actually to come here through the senator's staff, kind of outlining how things are currently functioning after LB800, now that we've had about three and a half years to see how it's actually going in practice and what, if any, effect that this legislation would have on that. As the senator correctly outlined, under the current law if a...well, let me step back. There's two types of sealing. There's the sealing that's done administratively and then there's a sealing that's done judicially. In my county, a significant portion of juvenile offenses are sealed administratively. This is something where we instituted a few years ago where we don't generally file on cases before we send them to diversion. We'll divert first. And if diversion fails, then we'll go to court. We don't go to court, continue, and then send them to diversion. When that happens, if a prosecutor either declines to file a charge or chooses to send the case to diversion and the child successfully completes diversion, then my office and other offices would then notify the arresting agency and any other involved agencies that they should seal the records and answer then affirmatively that, you know, they have no record of that offense to any public inquiry. This bill primarily addresses then the second part, the judicial sealing. If a case is filed in the court, the first place it could be sealed is if the prosecutor dismisses the case prior to trial or if the charges are found not true and it's dismissed by a judge. At that point, the court or the prosecutor then notifies the arresting agency and the court clerk to seal the records, and from there on that's where it's answered that it is sealed or doesn't exist. The issue that this bill really gets at is what happens when juvenile is found true, that the charges are true, they're placed on probation or similar order, and the court completes their jurisdiction, they complete their order successfully, how to get the records sealed. Now by law, the court may either initiate the proceedings on its own or once the juvenile hits 17 the court is required to initiate it with some exceptions. In my county, in practice, like many things, some judges do it some ways, some do it other ways. Generally, there's been a push by our court administrator and by most of the judges to, at the time that jurisdiction terminates, that they relieve the juvenile off probation, that they seal the records right then. Some judges don't and then our court admin. tries to get them triggered for hearings anyway. Then it's up to the judge to determine whether the record should be sealed. Generally speaking, if no...and I see I'm out of time. [LB1021]

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SENATOR ASHFORD: Go ahead. Go ahead and finish. [LB1021]

SHAKIL MALIK: Generally speaking, if there's no objection filed by the state, in some cases OJS but mainly the county attorney, the record is automatically sealed. If there's an objection filed, that's where we have a hearing and the judge has to determine if the juvenile has been rehabilitated to a degree. [LB1021]

SENATOR ASHFORD: Let me ask you this. What percentage of the, generally, of the cases that require a hearing? The vast majority are sealed, aren't they, without a hearing? [LB1021]

SHAKIL MALIK: Yes, I would say my own experience, I have the highest caseload probably in the state, I've had it for two years, and I'd say 1 out of 10 if not 1 out of 20 times do I object to the record being sealed. Vast majority of time either my office, me, or the judge on their own at the time that jurisdiction is terminated, it's sealed right then. So a lot of times it doesn't even come up to a hearing or there's no notice given down the road anyway. The concerns I think, and the Douglas County Board voted to strengthen the law, I think the concerns come from that, you know, there is the ability for a judge, and we do have this with some of the judges, where they say a juvenile has completed probation and terminated jurisdiction, but they don't seal the record. And you know, from a practical standpoint, doesn't make a lot of sense. Why wouldn't you just seal it then? Most the judges do. But then these kind of hang out there, and fortunately our court administrator usually triggers the sealed records hearing and comes back in. But it's just more added paperwork and effort. And I think this bill would go towards requiring the court to trigger that sealing. As currently drafted, there are a couple... [LB1021]

SENATOR ASHFORD: Let's do this. Let's see if there are any questions. But I am glad to know that you're sealing LB800, that was the idea, that it would be eventually get to the point where most of the records were sealed. And if they're not sealed, rarity. And so I don't know, does anyone else have any questions on this? I don't see any. But good. Good work. Thanks. [LB1021]

SHAKIL MALIK: Thank you. [LB1021]

SENATOR ASHFORD: Okay. Any other proponents? [LB1021]

SARAH FORREST: (Exhibit 23) 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 am the policy coordinator for child welfare and juvenile justice at Voices for Children in Nebraska. We're in support of strengthening and streamlining record sealing for youth in juvenile and in some instances adult criminal court and LB1021. Basically, this bill is consistent with our knowledge of adolescent development. Mistakes that kids make

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when they're kids don't necessarily have anything to do with the kind of person they'll become and it's not reflective of any sort of pattern of behavior. So we're glad to see that the changes from LB800 are being strengthened here. And it reduces barriers to opportunity and success for youth who have had court involvement. As you know, there are educational employment barriers that come with carrying a criminal record. I think the one extra point that I would throw out there is that there are still youth who face criminal records for low-level felony offenses, second-offense graffiti, which are not included in our current record sealing statute. So one thing that we would be interested in or would encourage you to look at is what are those other types of offenses where youth have been processed through adult criminal court and will carry those permanent records that we might be able to allow them to seal so that that mistake that they made when they were 15, 16 doesn't continue to hold them back from employment and educational opportunities. So we appreciate all of your work on juvenile and criminal justice issues, and would be happy to answer any questions. [LB1021]

SENATOR ASHFORD: Yes. [LB1021]

SENATOR MCGILL: I don't have a question but I want to throw this out there, especially for the committee members that will still be here next year. Senator Crawford, it came to her attention that some military recruiting locations were asking people to unseal their juvenile records and trying to coax them along that process. We've contacted the DOD and they're going to look into it, because they shouldn't be doing that. But I want the committee to be aware that that's something that I've heard of happening. And since we're talking about this issue, I thought I'd just mention it real quick. [LB1021]

SENATOR ASHFORD: Senator Coash. [LB1021]

SENATOR COASH: No. [LB1021]

SENATOR ASHFORD: Oh. Thanks, Sarah. [LB1021]

SARAH FORREST: Thank you. [LB1021]

SENATOR ASHFORD: Anyone else wish to testify for the bill? How about against the bill? Shawn. [LB1021]

SHAWN RENNER: Hello again, members of the committee. Shawn Renner, R-e-n-n-e-r, appearing on behalf of Media of Nebraska. The news media thinks that the Legislature struck the right balance when it enacted LB800 a few years ago and opposes making mandatory sealing for these classes of records for a couple reasons. Under current law, as I think was already explained, the records are automatically sealed if there's an arrest but no actual prosecution, no charges are filed, dismissed by the prosecutor, etcetera. The cases we're talking about here are where there's been an



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actual adjudication, the juvenile has been found...guilty is not the right word but has been found...has been adjudicated to have done what was alleged to have been...happened, and the juvenile has then completed whatever the sentence or probation might be. We think that in that instance it makes sense to leave discretion to the juvenile court judge to determine whether or not it's appropriate to seal those records. Those could be, you know, range from very minor offenses to something that society might think is a pretty significant offense. And it makes some sense to my clients that a judge be allowed to look at it and decide whether or not there are reasons not to seal those particular records. And for that reason, would ask the committee not to advance LB1021. [LB1021]

SENATOR ASHFORD: Of course if the judge...and I understand your point, but the judge would, prior to making a disposition of a case if this changed to Senator Seiler's idea, that they would, in making that final disposition, they would know that those records are going to be sealed. So that might enter into some of the process that they go through in making that final. [LB1021]

SHAWN RENNER: I don't dispute that. [LB1021]

SENATOR ASHFORD: Yeah. [LB1021]

SHAWN RENNER: What I heard is the primary reason for this change from at least the folks that work in the juvenile justice system is, well, some of the judges don't do it like we think they ought to or are sloppy from a procedural standpoint or forget or those sorts of things. I'm not sure that making automatic sealing is the answer to that problem to the extent it is a problem. [LB1021]

SENATOR ASHFORD: Okay. [LB1021]

SHAWN RENNER: It's the lack of discretion or the discretion being removed that bothers my clients. [LB1021]

SENATOR ASHFORD: Okay, get your point. I got it. Thanks. [LB1021]

SHAWN RENNER: Thank you. [LB1021]

SENATOR ASHFORD: Okay. And any other neutral testifiers? All right. Senator Seiler, do you...waives. And now Senator Coash, LB1028. Is that right? LB1028. [LB1021]

SENATOR COASH: (Exhibits 24 and 25) Thank you, Senator Ashford. Good afternoon, colleagues. I am Colby Coash, C-o-a-s-h. I represent the 27th District right here in Lincoln, here to introduce LB1028. This is a very simple bill. It changes the number of judges in Douglas County, juvenile judges I should...from five to six. And this would

have a direct impact, obviously, on Douglas County and the metro area. I had an interim study this last interim on barriers to permanency. That was a pretty broad study. It was a joint study between this committee and the HHS Committee, and it was designed to try to fish out what is going on with children who are not at home who could be, and what are the barriers to getting that taken care of in a timely fashion. One of the things that came up was timely access to the court proceedings. And in Omaha, as you will know, Senator Ashford, there are a lot of children in the system, and getting in front of a judge in a timely fashion is a challenge because they have a pretty big caseload. So I offered this legislation at the recommendation of...well, my recommendation but from a perspective of I believe that an additional judicial resource in that area will get more kids to the permanency that they deserve and in a more timely fashion. But it's not just me that thought this was a good idea. As you know that there is a Judicial Resources Commission and they recommended this change back in 2008, and again just this past November the commission voted to carry a motion to recommend that an additional judgeship in Douglas County be added. When the Judicial Resources Commission met in its public forum and there wasn't any opposition to that, and so it is pretty straightforward. I've given you copies of the Judicial Resources Commission's meetings where they recommended that. And I would...I think this could be part of a bigger package to address some of the juvenile justice needs that our children are facing, so I'll leave it at that. [LB1028]

SENATOR ASHFORD: Yeah, and you've been supporting this before, Colby, so thank you for looking after our kids and... [LB1028]

SENATOR COASH: Well, you know, I've carried a couple of bills moving judgeships and adding judgeships, and the first couple years they impacted my community. But they certainly made me realize that we have a big need in the Omaha community. And I wanted to bring this. [LB1028]

SENATOR ASHFORD: Did we add...when did we add a juvenile judge then, Senator Seiler, I forget, in Lancaster? Did...was that... [LB1028]

SENATOR COASH: My bill, I added a district court judge. [LB1028]

SENATOR ASHFORD: You added district. [LB1028]

SENATOR COASH: Yeah. [LB1028]

SENATOR ASHFORD: Did we add a...did we add... [LB1028]

SENATOR COASH: So it's been over six years since... [LB1028]

SENATOR ASHFORD: We added a juvenile judge before that I guess then. [LB1028]

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SENATOR COASH: That was prior to my time, but we haven't had any... [LB1028]

SENATOR ASHFORD: It might be my first two years or something we did it. I do remember we dealt with that. Senator Seiler. [LB1028]

SENATOR SEILER: Mr. Chairman, I'd like to inform the Chairman and members that I have a conflict of interest with the addition of this commission report. My partner is a voting member of the commission. [LB1028]

SENATOR ASHFORD: Oh. [LB1028]

SENATOR COASH: Well, you're a voting member of this Legislature. (Laughter) [LB1028]

SENATOR SEILER: That's the conflict. [LB1028]

SENATOR ASHFORD: We're not going to let you off that easily, Senator Seiler. No, Senator,... [LB1028]

SENATOR SEILER: Bob Parker. [LB1028]

SENATOR ASHFORD: No, fine. Senator Davis. [LB1028]

SENATOR DAVIS: Senator Coash, I'm just looking at this fiscal note and wondering if you have any comments on it. [LB1028]

SENATOR COASH: Well, we set judges' salary so that's...it is what it is. The salary is in statute. If you have a judge, you've got to have a court reporter. We've talked about court reports. Those are important. That's an important part of the puzzle. I can't dispute the fiscal note. If you want to have another judge, you have to pay that judge to sit on the bench. [LB1028]

SENATOR DAVIS: Right. I recognize that. Essentially, I'm kind of looking at all the other things that go along with that and wondering why there seems to be so much more need for other staff. [LB1028]

SENATOR COASH: So much need for other staff? [LB1028]

SENATOR DAVIS: Well, deputies, entrance screening officer, part-time screening officer. I just didn't know if you'd looked it over and if you thought it was legitimate or not. [LB1028]

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SENATOR COASH: The... [LB1028]

SENATOR ASHFORD: It is labor intensive because of the nature of the cases, but I...maybe someone coming behind... [LB1028]

SENATOR COASH: The impact to the state budget is two positions. It's a judge and a court reporter. [LB1028]

SENATOR ASHFORD: Right. [LB1028]

SENATOR COASH: Certainly Douglas County has to provide space and infrastructure to house an additional... [LB1028]

SENATOR ASHFORD: Right. [LB1028]

SENATOR COASH: ...courtroom and additional chambers for the judge. [LB1028]

SENATOR ASHFORD: So there would be a cost to the county but... [LB1028]

SENATOR COASH: There is a cost to the county. [LB1028]

SENATOR DAVIS: That's it. Thank you. [LB1028]

SENATOR ASHFORD: Thanks, Colby. Okay, any other...any proponents? [LB1028]

ELIZABETH NEELEY: Okay. Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Elizabeth Neeley, E-l-i-z-a-b-e-t-h N-e-e-l-e-y. I'm the executive director of the Nebraska State Bar Association and I'm here today to testify in support of LB1028. I'm here today in place of our president, Mike Fenner, for a few reasons. One is that I staffed a study by the Judicial Resources Commission and State Bar Association in 2008 regarding judicial resources and I've published in the area of workload assessments. And so I wanted to make myself available if you have questions about those issues. Providing adequate level of judicial resources is essential to effectively administering justice and providing meaningful access to citizens of Nebraska. As Senator Coash indicated, for the past eight years it has been the finding and recommendation of both the State Bar Association's judicial resources committee and the Judicial Resources Commission that the Douglas County Juvenile Court needs another judge. The annual caseload reports produced by the administrative office in the courts show that in 2013 the Sarpy County Juvenile Court judges had around 294 new filings per judge; in Lancaster, 349 new filings per judge; in Douglas County each judge had 497 new filings. These statistics don't represent the total caseload or workload of a judge, just the new filings for the year. Many of these new cases will take 18 months to 2 years to resolve, compounding the workload of the Douglas County Juvenile Court.

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Simply put, lack of judicial resources means that it takes longer for children and families to get in front of a judge. According to the juvenile court administrator for Douglas County, a request for a two-hour block of time is currently scheduled one and a half to two months out; a half-day block of time is scheduled three months out; and a full day is scheduled out five months or longer. Children and families wait longer to obtain services and resolution of their case. Children removed from the home spend more time in out-of-home care, which is a great cost to the state of Nebraska. In a recent report by the Foster Care Review Office, data indicated that there were 409 children statewide that had been continuously in out-of-home care for three years or longer. Seventy-three percent or 300 of those youth came from Douglas County, the Eastern Service Area. One of the primary barriers, as Senator Coash indicated, that's been identified is court delays, continuances, and actions by legal parties. Anytime a case is continued in Douglas County on one of these cases, it's an extra two to five months that those youth are in out-of-home care. That unnecessary delay is costly to Nebraska taxpayers. It has negative impacts on youth who are in out-of-home placements. And while adequate judicial resources is not the only factor, it's certainly part of the solution. [LB1028]

SENATOR ASHFORD: Liz, good. Any questions? Can you tell me what the impact of LB561 has had on just the capacity issues? [LB1028]

ELIZABETH NEELEY: I think the... [LB1028]

SENATOR ASHFORD: Or do you have any data? It's pretty quick. [LB1028]

ELIZABETH NEELEY: I do not have any data. I think that the impact of LB561 and the fact that you're considering LB464 and other reforms makes judicial resources even more critical. And I agree with Senator Coash that this is part of a larger reform in juvenile justice and it's an important piece. [LB1028]

SENATOR ASHFORD: Yeah. I mean we're going to be moving more cases in or...and they can be difficult cases. [LB1028]

ELIZABETH NEELEY: Correct. [LB1028]

SENATOR ASHFORD: So okay. Thank you. [LB1028]

ELIZABETH NEELEY: Thank you. [LB1028]

SENATOR ASHFORD: Thanks, Liz. Next proponent. Any opponents? [LB1028]

LAURA McCORMICK: Thank you very much. I'm sorry, I don't have a form but I'll fill it out after. My name is Laura McCormick, Douglas County. I'm making off-the-cuff comments. I'm opposed to the additional juvenile court judge. I'm sitting here looking at

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the 2013 base salary for juvenile court employees. These are secretaries, bailiffs. Of course, they don't include the court reporters because their salaries are paid by the state. Salaries only, \$906,000. The sixth floor of the courthouse is completely inadequate. We have a very antiquated courthouse in Douglas County. In order to add a judge, I have no idea how much it's going to cost but I would guess \$500,000, \$1 million. I don't know. There's no space on the sixth floor. I regularly attend the JDAI collaborative meetings and during those meetings you can hear about the judiciary's aversion to any sort of meaningful, evidence-based data collection about judicial workload. With all due respect to Ms. Neeley, she is an employee of the state bar. I would really appreciate it if we could get some independent statistics in the state of Nebraska. I am not convinced at all--I'm sorry, Senator Coash--that we need another judge. I think what we need to do is stop overriding the risk assessment tools. I think we need to stop detaining, in the DCYC, children for status offenses. And if you'd like, I can provide you court orders and documents to back up what I'm saying. Those are the things that I think we need to be doing. I don't think we should be having more cases in the juvenile courts. I don't think we need another salary for a judge, which it isn't just the salary. The pension and benefit costs to county citizens such as myself are enormous, as are the pension obligations for judges. So I would say when we have actual data that's independent, real data, then I think we should make that assessment. Thank you. [LB1028]

SENATOR ASHFORD: Thank you. I don't see any questions. Thanks. Any other opponents? Any neutral testifiers? Senator Coash. [LB1028]

SENATOR COASH: Thank you, Senator Ashford. Just to respond, Judicial Resources Commission is independent and they look at caseloads independently. I agree there shouldn't be that many filings, but there are. And if you're a child who's stuck in the system, whether you agree with being in the system or not, you want to get in front of the judge as soon as you can so you can get out of the system. That's all I got for you. [LB1028]

SENATOR ASHFORD: Thanks, Colby. Senator Seiler. [LB1028]

SENATOR SEILER: Mr. Chairman, I didn't hear you add the Appleseed as the letter. [LB1028]

SENATOR ASHFORD: (Exhibit 26) I didn't say it, but we are...we do add it, but Appleseed has submitted a letter in support, which we acknowledge. Thank you, Senator Seiler. I don't see any...thanks, Colby. [LB1028]

SENATOR COASH: Thank you. [LB1028]

SENATOR ASHFORD: Thanks. That concludes the hearing and all the hearings for

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today. Thank you. [LB1028]