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Judiciary Committee  
September 19, 2014

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[LR542]

The Committee on Health and Human Services and the Committee on Judiciary met at 1:30 p.m. on Friday, September 19, 2014, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR542. Health Committee senators present: Kathy Campbell, Chairperson; Bob Krist, Vice Chairperson; Sue Crawford; and Sara Howard. Senators absent: Tanya Cook; Mike Gloor; and Dan Watermeier. Judiciary Committee senators present: Brad Ashford, Chairperson; Ernie Chambers; Mark Christensen; Amanda McGill; and Les Seiler. Senators absent: Steve Lathrop, Vice Chairperson; Colby Coash; and Al Davis.

SENATOR ASHFORD: Okay, it is 1:30, so welcome, everyone. This is a joint committee hearing of the Judiciary Committee and Health and Human Services. Health and Human Services is to my right and Judiciary to my left. So you take that for whatever it's worth. (Laughter) Senator Campbell, this is her resolution and she's going to give a brief introductory. And Senator Chambers is here sitting with the HHS Committee. But I have a list of testifiers and some time. And before each person gets up...and then of course we have time for public testimony. And I'll go over sort of the time constraints on each testifier though. I would ask everybody to keep it pretty tight because we probably will have questions. So with that, Senator Campbell.

SENATOR CAMPBELL: (Exhibit 1) Thank you, Senator Ashford, and I appreciate the opportunity to make a few comments. I first of all would like to say that the Health and Human Services Committee would gladly welcome Senator Chambers to our side of the table. (Laughter) LR542 was introduced by me in the last session of the Legislature and for several reasons. One is at the request of the Nebraska Association of County Officials who have been taking a look at this issue and I think are establishing their own committee to deal with their perspectives on this. Secondly, the issue of guardians ad litem arose over the study of LR37, the child welfare privatization issue. And a number of comments were made at that time and continued to be made to members of the

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Health and Human Services Committee. And since the session's end, I determined a couple of things. One is that I wanted to have a public hearing in which we could establish a record of some factual information. An interim study is different than a hearing on a particular bill. We are here today to gather some facts and how the system is set up and how it works. And I felt that that was important. Secondly, I've spent time having individual interviews with people who work front line so to say in the system. And I've gathered information about that. And thirdly, I've spent some time taking a look at the former reports. And, colleagues, if you want to know, there's a shelf of former reports having to deal with guardians ad litem. And people keep bringing saying, did you know about this report? Did you know about 2011? Did you know about...? So we are gathering all of those. It isn't as if this subject has never been researched. It has been researched and reports have been given. But the question we have before us is really: What action do we need to take based on that, and how have we progressed since we've had those reports? For the members of the Judiciary Committee and the members of the Health and Human Services Committee, before you you have the executive summary of the report that was done in 2009. There was a bill in the Legislature I presume in 2008 and it asked for this study to be done and it was published as you can see in December of 2009. It is from the National Association of Counsel for Children. And it is the most quoted to me of the studies of people who talk. And I felt that you needed to have the executive summary. Also, you will be given a copy if you have not, a letter that has come from Kelli Hauptman. I want to make sure Kelli was the person. This is an important letter for your review of this issue in the sense that Kelli gives you pretty factual information about what is in the statutes, what are the duties of a GAL, and of particular note I would like you to look at the second to the last paragraph on page 2. There are currently 309 attorneys eligible for GAL appointments in Nebraska. According to JUSTICE, the court data system, there were approximately 1,800 family cases filed in the past year that had a GAL appointment, mostly for the child but this also includes for parents. Of those, about 43 lawyers handled a little over 1,000 of those 1,800 cases. And I found that fact to be very interesting--or that means 57 percent. Twenty-five percent of GAL attorneys had one or fewer GAL appointments

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over the past year. Today, we are intending to give you as much factual information and what is happening in this area. Before you on your agenda you have a list of people that I contacted to try to provide for us a record so that when we go forward to do additional work on this issue, we will have a view of the system from a number of people who want to provide background information. So with that, Mr. Chairman, thank you very much. [LR542]

SENATOR ASHFORD: Thank you, Senator Campbell. And your committee has done significant work in this area and parallels at least I think to a significant degree what we've done in juvenile justice on our side of the Capitol. So with that, let's go to the testifiers. We have...and I'm going to...hopefully, Nina, your name is...tell us your last name. [LR542]

NINA WILLIAMS-MBENGUE: Williams-Mbengue. [LR542]

SENATOR ASHFORD: Okay. It's a very pretty name. I just know I would have screwed it up. But why don't you come up and give us your testimony if you would and if you'd sit here in this chair. And go ahead. And I don't know, do you have handouts? Or maybe you do and there they go. [LR542]

NINA WILLIAMS-MBENGUE: Yes, we do. We do have handouts, yes. And I do...I'm sorry. If it's okay, Mr. Chair, my colleague we were (inaudible) on the presentation. [LR542]

SENATOR ASHFORD: Sure. [LR542]

NINA WILLIAMS-MBENGUE: And we'll introduce ourselves. [LR542]

SENATOR ASHFORD: Sure. Do you have two chairs there? Do you have another? [LR542]

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NINA WILLIAMS-MBENGUE: We'll pull one up. [LR542]

SENATOR ASHFORD: Okay. Yeah, we are using the sheets. Anyway, we've allocated 20 minutes for your comments. If you would, let's try to certainly keep it within the 20 minutes because I'm sure there will be some questions. And the more time we leave for questions the better usually. So with that, why don't we proceed. [LR542]

NINA WILLIAMS-MBENGUE: Thank you very much and good afternoon. Senator Ashford and members of the committee, and on behalf of the National Conference of State Legislatures, I thank you for the opportunity to present information that I hope will be helpful. My name is Nina Williams-Mbengue, Williams, dash, M-b-e-n-g-u-e, and I work for the National Conference of State Legislatures in the Children and Families Program. And my colleague that is here with me here with me today is... [LR542]

MEGHAN McCANN: My name is Meghan McCann, M-c-C-a-n-n, and I am a policy associate with the National Conference of State Legislatures Child Welfare Project. [LR542]

NINA WILLIAMS-MBENGUE: (Exhibits 2 and 3) Yes, and we both work in the Children and Families Program at NCSL on the Child Welfare Project tracking child welfare legislation and program activity across the states and providing research and information to legislators and legislative staff in all 50 states who are all members of NCSL. As you know, NCSL is a bipartisan organization. We do not lobby on particular pieces of state legislation or promote specific agendas in any way. But we are here to present objective information on state legislation and practice trends. We were asked to provide a national overview of guardian ad litem programs in practice for guardians ad litem and child abuse and neglect cases including information on appointment, compensation, training and qualifications, funding, and operation. We will also very briefly look at guardian ad litem standards of practice that jurisdictions around the

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nations look to for guidance in improving the performance of guardians ad litem. And we will provide several state and local examples of programs and practice, as well as discuss considerations for state lawmakers. We do have a handout that we will walk through. It is a copy of a PowerPoint presentation. [LR542]

MEGHAN McCANN: My name is Meghan McCann again. Good afternoon. I'll start out with a brief overview, kind of a 50 state rundown of a number of issues including appointment of guardians ad litem, the role of a guardian ad litem, qualifications and training, compensation and funding, court-appointed special advocates, and caseloads. And this information comes from the Child Information Gateway, which is a service of the U.S. Department of Health and Human Services. And they do a 50 state statutory survey of state laws related to representation of children in abuse and neglect proceedings. As kind of a context, you have all this in the slides. The Child Abuse Prevention and Treatment Act requires states to appoint a guardian ad litem to represent a child's best interests in all abuse and neglect proceedings that result in a judicial proceeding. That may be an attorney. It may be a court-appointed special advocate. It may be a layperson. And they are required to obtain an understanding of the situation, the needs of the child, and then to make recommendations to the court on a child's best interests. GAL appointment, attorneys are generally appointed to do two different things: either investigate and represent the child's best interests or represent the child's expressed wishes before the court. And that is more of a traditional attorney-client relationship. A CASA, like I mentioned before, may serve as the guardian ad litem. And all 50 states and the District of Columbia and all territories provide for the appointment of a child representation in state statute. And 41 of those states use the best interest representation model. So they require the attorneys to represent the child's best interest. Fifteen of those states require the guardian ad litem to be an attorney. And then a few states use kind of a different model which is a...only five states do that. It's a two distinct attorneys approach where there's one attorney appointed to represent the best interests and one attorney appointed to represent the expressed wishes. But in all cases across the country, the court will make that appointment. One of the larger

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debates happening is the debate of best interest versus expressed wishes. And that is because sometimes what an attorney would feel the best interests for the child are may conflict with what the child feels is right and their expressed wishes. So laws in 25 states require the guardian ad litem to communicate to the court what the child's best wishes are prior to making the guardian ad litem best interest recommendation. And laws in 14 states allow for separate counsel. And Wyoming is one example of a hybrid model where the guardian ad litem in the guidelines is required to consider the child's best wishes in their best interest determination, but those wishes are not binding as they would be in a traditional attorney-client relationship. I won't kind of run down these, the qualification and training; but 45 states do have qualification and training standards in statute, court rules, or guidelines. And there are some specific requirements in 17 states including Nebraska. So the duties of the guardian ad litem, I believe you have that letter that sort of lays out Nebraska's duties for the guardian ad litem and what they're expected to do. But 40 states do list specific duties in statute. So compensation and funding, this is one of the larger components of this, of guardian ad litem laws. So statutes in most states, including Nebraska, provide that reasonable compensation must be paid to attorneys that serve as guardians ad litem. And that comes in usually a flat rate, so they get a certain amount per case. Or it comes as an hourly rate. And that varies by state and even among counties within states. And then various ways of funding these programs whether the attorneys contract through a state agency; whether the state sets up a special fund within a state agency as in Colorado, Kentucky, and Oregon. Thirty-three states, including Nebraska, are paid by the court and those...funding to the court...to the court for those costs vary as well. Court-appointed special advocates are generally volunteers and will not be paid. However, in Maine and Missouri, they may be compensated for travel expenses. States also address court-appointed special advocate and their role. Thirty-three states allow for appointment of a court-appointed special advocate in statute. In 17 states, the court-appointed special advocate may serve as the guardian ad litem. On caseloads, states generally set caseload guidelines, recommendations, or requirements in court rule. Where they are mentioned in statute it's generally to delineate who should

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determine caseload standards and guidelines. According to the 50-state survey from the National Quality Improvement Center on the Representation of Children in the Child Welfare System, state recommendation guidelines vary from anywhere...25 cases per attorney to 100, sometimes 150. And with that kind of general overview, I'll hand it over to Nina to discuss guardian ad litem standards and practice. [LR542]

NINA WILLIAMS-MBENGUE: Yes. Again my name is Nina Williams-Mbengue with the National Conference of State Legislatures. We were asked to provide an overview of state standards of practice for guardians ad litem. And we identified several standards of practice that states and localities look to for guidance in this area, although there are a few others. And I've put lists of them here. I will not go into a lot of detail with them. The American Bar Association has standards for child representation. Also the National Association of Counsel for Children who describe their standards as guidelines that are built upon the ABA standards. And probably most recently, this is a federal entity, the National Quality Improvement Center on the Representation of Children in the Child Welfare System, they've come up with a best practice model that they're actually testing in two states over the last few years. That is a combination of the ABA standards as well as the National Association of Counsel for Children. Many of the...and I'll talk briefly about what the standards are. There are...no state or locality has adopted all of the standards recommended by these entities, but they have adopted portions or provisions in different areas around their states to meet some of the need in their state for improving representation. And generally the standards center around improving attorney performance and look at things like managing caseloads, centralizing agency administration, addressing compensation issues, balancing child's best interests and child's expressed wishes, making recommendations about contact and interaction with their children and youth clients, improving training for agencies, and looking at improving outcomes for children. Another area that we identified, the National Association of Counsel for Children offers a child welfare law certification process where they actually certify attorneys currently in about 13 states and the District of Columbia to ensure that the attorneys that go through these process are knowledgeable in child

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welfare, spend 30 percent of their time on child welfare law. The attorneys have to pass a written competency exam and with their application they're required to submit references. And on slide number 16, the National Quality Improvement Center best practice model of child representation again looked at the standards that the American Bar Association and the NACC have put together to come up with a series describing the general duties and activities of the children's legal representative to include things like timely appointment of the guardian ad litem, working to represent the child's interests, and addressing special needs and disabilities. Their best practice model includes guidance on meeting with the child, how to do the investigations, providing counseling, addressing special needs, appearing in court, and their organizational administrative supports that are part of this best practice model with the National Quality Improvement Center stating first of all that the administrative structure is clearly stated about that appointment and supporting an accountability of the child's representative and that the child's representative is independent from the court. The best practice also includes information on adequate and timely compensation of the guardian ad litem as well as about reimbursement. And they do focus on lawyer training for the child representative, ongoing training and training requirements to become a guardian ad litem. And one of the main pieces is about caseloads, that caseloads should be of a manageable size. As I mentioned earlier, the National Quality Improvement Center is an entity, a federal entity that is looking at identifying sort of best practice standards. And initially, they identified five offices around the country which I've listed here that have components really that seem to combine some of the American Bar Association standards. And these are the entity in Connecticut with a statewide contractual. The others are localities or districts and I've listed them here. And some of the components have to do again with timely appointment, meeting the child regularly, the knowledge base of the attorney, how astute the attorney is in child welfare issues, compensation, staffing, and training. The two states, Georgia and Washington, where the National Quality Improvement Center is running two demonstration projects with Chapin Hall, which is a research entity out of the University of Illinois (sic--Chicago), I think will be really interesting because they're actually...took the main components of what they



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consider best practice and they're applying it in these two states. And I listed here a series of questions that they're trying to answer. But I think the projects are running and they should finish between 2014 and 2015. And I believe there will be some interesting lessons learned for states. And now I will turn the presentation back over to Meghan McCann to give a few examples from states. [LR542]

MEGHAN McCANN: So states generally organize their guardian ad litem programs in two, sometimes three ways. It can be a child welfare law office model where there are offices in either counties or regions or a few offices throughout the state. And those are generally staffed full time guardians ad litem. They are full time...minimum three full-time salaried positions. They contract...the office itself contracts with the court. So the court would appoint the office and then they would have an attorney. And often that turns into sort of a multidisciplinary office where social workers or education specialists might be in the office and can assist the guardian ad litem with some of the more complicated child welfare issues. There's also a panel system. It's a statewide independent contractor system typically where either a state system...there would be a statewide list of attorneys, a county list of attorneys that the court can appoint that are certified guardians ad litem and have been trained according to the requirements. And then Massachusetts is an interesting model. They're a hybrid of the two in that they have seven...and I'll kind of talk about it a little bit more. But they have both child welfare law offices and a panel system. And two examples of the child welfare law office model are in counties actually in New York City and Los Angeles. And the attorneys receive salaries and other benefits. They participate in regular training. With that, the office is able to provide...and then the judges actually, in sort of an evaluation process, the judges are able to provide feedback on those attorneys to those offices. And both of those are an example of a multidisciplinary model in that they have social workers and education specialists on hand. The Colorado Office of the Child's Representative is on the other side. They're a panel program. It was enacted by the Colorado General Assembly in 2000, that there would a separate Office of the Child's Representative. And they manage all of the cases. They do respond...do oversight. They do payment for the

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attorneys. They set the minimum training and practice standards. And they're funded through legislative appropriation each year. And then they're also required to provide a yearly report back to the general assembly about appropriations, how the things were funded, sometimes outcomes, and other aspects of the program. In addition to the panel program, it's not necessarily a hybrid that they work together but there are also three pilot child welfare law offices in Colorado in three different counties. And they are operating a multidisciplinary staff model. So they have social workers and other child welfare related professions in the office that can help the attorneys manage each case. And I was actually able to work for one of those offices in the pilot program in the Rocky Mountain Children's Law Center. About a year ago I was working as a guardian ad litem. And Colorado has a fairly rigorous evaluation process within its contract renewal. It's not actually in the slides, but I'd be happy to talk with anybody and provide anybody information on that. But in order to...the contracts last for three years. When the contract renewal comes, they talk to other attorneys, court staff, judges, foster children, child clients, parents, all stakeholders in the cases that that attorney handled get vetted so that they can determine if that was an effective guardian ad litem and whether they should renew the contract. As part of that process is they use a compensation system called the Colorado Attorney Reimbursement Electronic System; it's CARES. And that requires the attorneys to track all of their time. And then they are able to take out some of the confidential information that the attorney can't share. But then they can see how the attorney is spending all of their time on that case--if they're spending time with the child or in court and where those things are happening to further evaluate the attorney in the contract renewal process. Massachusetts, as I mentioned, is a hybrid child welfare office and panel system. And it's administered by the Child and Family Law Division. And that works where there's seven small child welfare law offices across the state with no more than ten attorneys in each office, and the courts appoint those law offices first. When their determined caseload is full, then they will move and pull from the panel attorneys. There are 900 panel attorneys and it works out that, I want to say 80 percent...but the majority of cases get handled by the 900 panel attorneys. And then they have a caseload of 75 open cases at any time. And then finally California has a

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very county-based child welfare system. So they're running a county-based guardian ad litem system. And in 2004, they started a pilot project called Dependency Representation, Administration, Funding and Training or DRAFT. And that's where the county courts agreed to do a competitive bidding for attorney contracts. And they set certain performance and training standards including caseload and compensation standards. And so they started out in 10 counties and the program proved pretty successful and so it's now expanded to 20 of California's 58 counties. And as part of that process and the reason that they knew it was a successful pilot program and actually made it permanent is they track child welfare outcomes including reunification, reentry, guardianships, placements, attorney preparedness. And they do evaluation of the outcomes of that guardian ad litem and decided that it was working and they made it a permanent program. So I'll turn it over to Nina. I'd be happy to talk about any of those other programs in further detail. [LR542]

SENATOR ASHFORD: I think we're going to move to the questions here... [LR542]

MEGHAN McCANN: Okay. [LR542]

SENATOR ASHFORD: ...because I know that your last slide deals with considerations. So maybe we can have questions and then bring out those. Senator McGill is here. Yes, Senator Christensen. [LR542]

SENATOR CHRISTENSEN: Thank you, Chairman. I appreciate the information on how to set up things right. But I guess I also want to know how do you eliminate the bad ones? There's got to be a process for removal. All I can do is give you personal stories and I can get to personal, it happened to our family, to where the guardian ad litem never seen the kids until the court morning. And pulled the kids out of the family. There's five kids. They could have been adopted. Two of them have been; three are still unadopted five years later all because of a guardian ad litem that was racist. That's just bluntly where it was at. And how do you eliminate them? If you're going to have a good

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system, you got to be able to eliminate them too. [LR542]

NINA WILLIAMS-MBENGUE: Senator Ashford, I'll take a shot at this. [LR542]

SENATOR ASHFORD: No, go ahead. [LR542]

NINA WILLIAMS-MBENGUE: This is Nina Williams-Mbengue. [LR542]

SENATOR ASHFORD: And you don't need to... [LR542]

NINA WILLIAMS-MBENGUE: Okay. We did notice in our research certainly localities try to respond to that. And there are some that did seem to have procedures in place both for regular review requiring surveys and reviews and commentary both from the judges, foster youth, and other stakeholders. And that was put into consideration of whether or not the contracts would be renewed with the guardians ad litem. That seemed to be one way as part of the process. Now on the ground how that worked, you know, I don't know whether or not that worked to make sure that the guardian ad litem...it seems as though the child welfare law office in which the guardians ad litem are very specified, they're highly trained, you know, they're part of that office and others are working with them at least you know who they are and what the training are. And I don't know if, you know, there's a further problem with contracting large numbers of attorneys. But it does seem that states certainly in all the literature and things we hear, this is a huge problem, especially with guardians ad litem not visiting those children. And we've heard it often and over and over again from foster youth that we've had on our programs that they perhaps never saw their guardian ad litem until the day they arrived in the court. And that's a huge issue that states are really trying to get at that to do something about that. And it could be the Colorado system might offer some interesting examples. [LR542]

MEGHAN McCANN: So Colorado does the rigorous applications. So you...the application process is one evaluation. And then after three years, contract process, they

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do an even more rigorous evaluation of that. And so they would talk to a parent, the family members of the child, the child themselves, the siblings, and other support staff who would know that and then also their compensation system where the attorney is required in order to get paid to track where they're spending their time would be a way of finding out when they saw the child, how often they saw the child, how long they saw the child. And so evaluation systems like that are what we've been able to find are in sort of a contract renewal evaluation system like that. And California is doing an outcomes. So if we're talking permanency, it's taking a long time to permanency. Their evaluation process--I'm not certain exactly how that works; I'd be happy to follow up--would evaluate that guardian ad litem and what the outcomes were for that child. [LR542]

SENATOR CHRISTENSEN: Because I guess after spending eight years in the Legislature and being the number one issue I hear about... [LR542]

MEGHAN McCANN: Oh, absolutely. It's the number one issue we hear about as well. [LR542]

SENATOR CHRISTENSEN: ...in foster care. And a lot of the complaints comes in on guardians ad litem does not even care what the kid says or where...never see him. I've tried some legislation. I give up. I don't have a good thing to say. I'll just quit before I say too much. [LR542]

NINA WILLIAMS-MBENGUE: It was interesting as we did this study to see sort of how few states had sort of rigorous evaluations or programs built in or even tracking, you know, the guardians ad litem and their training and what they were doing and the fact that they were...the rules were all over the place. [LR542]

SENATOR ASHFORD: Senator Howard. [LR542]

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SENATOR HOWARD: Thank you, Senator Ashford. Can you outline a little bit more about how attorney-client privilege functions for guardians ad litem and then also how to measure performance within privilege outside of the contracts? What sort of...were performance measures integrated into the Colorado plan through legislation or were they integrated in through the contract negotiation process? [LR542]

MEGHAN McCANN: The last one. They were integrated through the contract renewal process. They were not part of the...the Office of the Child's Representative in Colorado was more of an enabling statute where it enabled them to...and then they work with the Supreme Court and other groups to make specific rules about evaluation and contract renewal. As far as privilege information, that is definitely an issue. And it kind of comes down to whether you're going to represent the child's best interests or the best wishes of the child. If it's a best wishes model...expressed wishes, privilege is a big issue there and it functions more like a traditional attorney-client relationship where the information is privileged. So there are questions on whether that's effective for the child in these situations or whether the best interests...and so it is a question I didn't...I don't have a lot of information off the bat, but I'd be happy to follow up with you about that. [LR542]

SENATOR HOWARD: That would be great. Thank you. [LR542]

SENATOR ASHFORD: Thank you, ladies. Thank you very much. Thanks for your comments. [LR542]

NINA WILLIAMS-MBENGUE: Thank you. [LR542]

SENATOR ASHFORD: Chris. [LR542]

CHRIS COSTANTAKOS: (Exhibit 4) Good afternoon. My name is Chris Costantakos, C-o-s-t-a-n-t-a-k-o-s. My address is 6910 Pacific Street, Suite 300, Omaha, Nebraska. But first, I'd like to thank Senator Campbell, Senator Ashford for inviting me to speak as

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the new chair of the guardian ad litem subcommittee of the Nebraska Supreme Court Commission on Children in the Courts. By way of background information, I practiced in juvenile court for over 30 years. Although my practice is based primarily in Douglas County, I have practiced in several other counties throughout the eastern portion of the state. I'm the author of Juvenile Court Law and Practice, which is a practice manual dedicated exclusively to Nebraska juvenile court issues published by Thomson Reuters now in its ninth edition. The Nebraska Supreme Court Commission was formed in 2005. In November of that same year, the guardian ad litem subcommittee was created to examine guardian ad litem representation of juveniles in juvenile court proceedings and make recommendations where needed to improve the practice. The subcommittee consists of volunteers from the commission who wish to serve on the subcommittee. Primarily these are attorneys who are guardians ad litem, judges, and some child welfare advocates. I've been asked today to give you a brief outline of summary, I guess, of the work of the guardian ad litem subcommittee to date. First, how does the subcommittee work? We meet more often than the entire commission, usually via telephone conference. We focused on specific issues or problems that have been raised relating to the quality of guardian ad litem representation. We make certain recommendations that go to the entire commission; and if the commission approves of our recommendations, then they're forwarded on to the Nebraska Supreme Court for consideration. There have been two distinct assemblies of the guardian ad litem subcommittee. The first was active from late 2005 through approximately 2009, and the second, about 2010 and continues into the present. Before I get into the actual work of the guardian ad litem subcommittee, I would like to explain two principles that have characterized the work of the subcommittee. First, we regard the guardian ad litem as an important person in juvenile court proceedings. This is the attorney who is responsible for making an independent investigation of the child's situation and circumstances and making independent recommendations to the court designed to protect the juvenile's social best interests as well the juvenile's legal and constitutional rights. The guardian ad litem is not there to function as an echo chamber for the prosecutor nor is the guardian ad litem to rubber-stamp the recommendations of HHS.

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Independent means that the guardian ad litem is charged with the duty to advocate for the juvenile's best interest even if that means opposing what others want or recommend. Because the guardian ad litem by statute is an attorney, the guardian ad litem sits in a unique position to protect the rights of children. The guardian ad litem can conduct discovery, subpoena medical and other records, can subpoena and call and cross-examine witnesses. The guardian ad litem can file motions affecting the juvenile's placement, visitation, motions regarding professional evaluations or necessary services for the child or the family. The guardian ad litem can initiate appeals and the guardian ad litem can participate in an appeal when the best interests of the child are at issue. And finally, by statute the guardian ad litem does have the legal authority to file a motion to terminate parental rights in an appropriate case. The second principle is while we regard the guardian ad litem as an important person in juvenile court proceedings, we also recognize that the guardian ad litem is not solely responsible for permanency for the child or for the outcome of a given case. A juvenile court proceeding is a lawsuit and a typical case involving allegations of child neglect or abuse can involve many participants in addition to the child's guardian ad litem. For example, the mother and her attorney are there to advance her interests, the father and his attorney, the deputy county attorney, and the judge. There can also be additional parties when a concerned grandparent or other relative seeks to intervene or in cases involving the Indian Child Welfare Act where the child's tribe intervenes. Add to that the possibility that the Foster Care Review Office may take legal standing in a given case to express the agency's position and a CASA volunteer might be appointed to assist with the case. So you can have many persons involved in one case as the case works its way through the multiple phases of a juvenile court proceeding. You can have an excellent guardian ad litem, but if the other participants in the case are not effectively fulfilling their duties, permanency can be delayed. You can have an excellent guardian ad litem, but if Health and Human Services is not providing necessary services in a timely fashion, that can contribute to delay. You can have an excellent guardian ad litem; and even if the other players are doing their jobs, permanency can be delayed in situations where the child has such special needs that he or she is simply unable to return to the parental home. With that, I



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would like to give you an overview then of what the guardian ad litem subcommittee has done, where we are at today, and after that I would be happy to answer questions. The subcommittee examined how guardian ad litem representation is undertaken in numerous other states and we studied the models of guardian ad litem representation used in several other states. For example, we examined systems where a lay volunteer is used instead of an attorney or we looked at systems where a lay volunteer is used in some kind of combination with an attorney. We did not recommend that Nebraska adopt those models because of multiple problems with confidentiality surrounding the child's communications and lack of legal representation in those models where no attorney is involved or an attorney doesn't get involved until later--for example, where the CASA decides to bring an attorney on board or where the judge decides. And where the attorney was involved in some of those models, there seemed to be a great deal of confusion and ambiguity about whether the attorney represents the child, the guardian ad litem, or whether the attorney represents a concept called best interest of the child. We concluded that Nebraska's current statutory structure of having the guardian ad litem serve a dual role as advocate for best interest and as legal counsel for the juvenile's legal and constitutional rights is a good one because it is flexible enough to meet the needs of the child and it ensures and prevents the child from being the only party in the room who does not have an attorney. The subcommittee recognizes that the juvenile code does not address what a guardian ad litem should do in all circumstances and in all situations. We drafted proposed court rules to provide some specific guidance to help fill in those blanks. They were approved by a majority of the members of our subcommittee. They were presented to the commission which approved them with the directive that they be sent to the Nebraska Supreme Court for further consideration. In July of 2007, the Nebraska Supreme Court adopted them, not as court rules which we would have wanted, but as guidelines that represent what the Supreme Court considers to be best practices to supplement the statutes. And I think you should have those in your handouts. They're called guidelines for guardians ad litem for juveniles in juvenile court proceedings. These guidelines speak to many issues to clarify duties that, for example, under our current statutes the guardian ad litem is to meet with the child only

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once every six months. Under the guidelines, there are additional interviews, for example, when the juvenile is in a new placement, when the juvenile asks to see the guardian ad litem prior to any issue at which...or hearing at which an issue will be decided that will substantively affect the juvenile. Under the guidelines, it is crystal clear that the court can remove a guardian ad litem for substandard performance and that any party in the case can file a motion seeking that relief. These guidelines also address matters such as communication with the child, compensation, and caseloads. Within months after the guidelines were adopted, then in 2008 the Nebraska Legislature requested the National Association of Counsel for Children--which I'm going to call the NACC--a Colorado-based advocacy organization that works to improve legal representation for children, to conduct a formal study to evaluate Nebraska's guardian ad litem system. The NACC released its report in December of 2009. In early 2010, the guardian ad litem subcommittee was reconstituted under the able leadership of a new chair, Judge Anne Paine to undertake the task of reviewing the 243-page report from the NACC and making any recommendations to the commission. We reviewed the entire report paying specific attention to the recommendations suggested by the NACC. I'm not going to go through every recommendation but the ones that we responded to of significance. The NACC recommended that the powers and duties of the guardian ad litem in abuse and neglect cases be clearly enumerated through statute or mandatory enforceable practice standards promulgated by the Nebraska Supreme Court. The subcommittee believed that the guardian ad litem guidelines adopted by the Nebraska Supreme Court do clearly enumerate the powers and the duties of the guardian ad litem. However, because they are only guidelines, they are not legally enforceable. And as we speak, the subcommittee is currently working on the issue of trying to present these to the Supreme Court once again with a request, or at least in the hope that they would consider reissuing them as enforceable court rules. The NACC recommended that training for guardians ad litem be increased. The guardian ad litem subcommittee developed an overview of subject matter that should be included in basic training curriculum for attorneys who want to be appointed as a guardian ad litem. These training areas included things such as an overview of the juvenile system, becoming

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familiar with issues that impact families whether they're child abuse, neglect, substance abuse, etcetera. The subcommittee recommended the adoption of a court rule requiring attorneys who desire to be appointed as guardians ad litem to undergo six hours of initial basic training and three hours of additional training each year thereafter. We presented these training recommendations to the commission which approved them to be forwarded on to the Supreme Court for approval. These recommendations requiring mandatory guardian ad litem training were adopted as an enforceable court rule by the Nebraska Supreme Court and appear today as Article 4-401 of the Rules of the Supreme Court. And again, I believe you have a copy of the training rule in your materials. And that will show you the areas of the curriculum. In the beginning, the initial six-hour training for guardians ad litem were live presentations put on by the Center for Children, Families, and the Law. It is currently provided by the judicial branch education office of the Supreme Court. During the last year, members of the guardian ad litem subcommittee worked to develop content for an on-line interactive guardian ad litem curriculum produced by the judicial branch education office of the Supreme Court under the direction of Carole McMahon-Boies using contractors and subject matter experts. This basic on-line interactive guardian ad litem training is available now, and to date, 75 attorneys from approximately 23 communities around the state have signed up to complete their initial guardian ad litem training using this resource. The guardian ad litem committee as we speak is currently working on curriculum topics to be developed into on-line interactive training modules to meet the three-hour annual training requirement. The NACC also recommended that Nebraska should establish mandatory caseload standards for guardians ad litem in abuse and neglect cases. Both the NACC and the American Bar Association endorse a caseload limit that an attorney representing children in juvenile court proceedings should have a caseload that does not exceed 100 children at any one time. In 2011, the guardian ad litem subcommittee developed a proposed court rule recommending a caseload limit such that a guardian ad litem should not represent more than 60 children at any one time. And you have a copy in your materials of the proposed court rule. The subcommittee felt that in light of the multiple duties and authorities of the guardian ad litem, in order to remain effective,

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60 children represented pretty much the outer limit of what an attorney could take on without compromising his or her effectiveness. The Supreme Court Commission on Children in the Courts unanimously approved the recommended court rule and forwarded it to the Nebraska Supreme Court. However, to date it has not been adopted. The NACC recommended that guardians ad litem be reimbursed on an hourly basis. All counties that still use the law firm or flat fee contract system should phase this system out given the evidence that attorneys working on an hourly basis have more reasonable caseloads and adequate compensation. With respect to this particular recommendation, the guardian ad litem subcommittee could not agree more. Paying the guardian ad litem on the basis of a flat fee per case or a flat fee per pay period tends to invite substandard advocacy because it all pays the same regardless of whether that guardian ad litem does excellent work or neglects his or her duties. In 2011, the subcommittee presented to the commission a proposed court rule that guardians ad litem be compensated on an hourly basis and that all flat fee arrangements for guardian ad litem representation be eliminated. You have again a copy of that proposed court rule in your materials. We also recommended that all services rendered by an attorney serving as a guardian ad litem be presented to the court in the form of a written itemization by the hour. The subcommittee believed that was one way to ensure accountability or at least enhance accountability that the guardian ad litem is actually performing the services for which he or she is being paid. The commission approved this proposed court rule unanimously and it was forwarded to the Nebraska Supreme Court. However, to date it has not been adopted. NACC recommended that youth participate in (3)(a) proceedings; that's abuse/neglect proceedings. We agreed with this principle...with this recommendation in principle because children who are old enough to understand the proceeding can and should be brought to the court hearing. The subcommittee, however, does not agree that all children should be brought to every single juvenile court hearing because of the risk for further harm. For example, children should not be brought into the courtroom where they are likely to come into contact with an individual who has abused them or where they're likely to hear testimony relating to sexual abuse of them or of a sibling by a parent or significant other or where a parent is making declarations about an intent to

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relinquish parental rights or where the child will miss school to attend a hearing that really does not involve any substantive issue at that particular hearing affecting the child. One proposal made by the NACC which the guardian ad litem subcommittee did not recommend was the creation of a centralized system to be operated by the state of Nebraska to administer and fund legal services for children. The NACC study itself disclosed that the concept was not supported by a majority of those surveyed in the study. The subcommittee felt that there's no basis to believe that adding another layer of bureaucracy would solve the concerns regarding a guardian ad litem who is ineffective or nonperforming. If anything, the subcommittee was concerned that state bureaucracies do not tend to really make things more efficient. The problem of an underperforming guardian ad litem is a personnel problem. The establishment of a new bureaucracy was questioned in terms of its efficiency to address that problem. The guardian ad litem subcommittee felt that oversight of guardian ad litem performance can be exercised by the court and by other lawyers. Effective lawyering can come into play. Any lawyer in the case including the parent's attorney, the deputy county attorney can raise the issue of the guardian ad litem's performance; and the judge has inherent authority to remove a guardian ad litem where the circumstances warrant. And finally, Nebraska law requires a guardian ad litem to submit to the court at regular intervals a written report containing recommendations regarding the juvenile's placement and other issues affecting the juvenile's best interest. The subcommittee wanted to find a way to help newer attorneys or attorneys who were new to guardian ad litem practice to prepare a good GAL report. Subcommittee developed a standardized format for a guardian ad litem report. And I believe you have that within your materials. But to be clear, this was not intended to be a substitute for a narrative report by the guardian ad litem in a complex case. Its purpose was merely to provide a guide for the guardian ad litem to make sure they're covering all the pertinent areas relating to the child's best interest. This particular standardized report form is posted today on the Nebraska Supreme Court Web site and can be downloaded by any attorney to be used. So that pretty much summarizes our efforts to date here by the guardian ad litem subcommittee of the Nebraska Supreme Court Commission on Children in the Courts to improve

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guardian ad litem practice. [LR542]

SENATOR ASHFORD: Any questions? Yes, Mark, Senator Christensen. [LR542]

SENATOR CHRISTENSEN: Thank you, Chairman. You don't have to respond to this. This is more of a comment to the senators sitting here. But if a guardian ad litem doesn't have to see the child more than once every six months, how can they have the best interests of the child at hand? How can they really know what's going on? I just drop that out to think about. They have the power to remove them from the home. They have the power to strip the parents of rights. They have the power...you listed a number of them. And they only have to see them once every six months. I call that abuse of power which is the senators' fault. Thank you. [LR542]

SENATOR ASHFORD: Yes, Senator Chambers. [LR542]

SENATOR CHAMBERS: I agree with, to a great extent, what Senator Christensen said because all rivers and most people are crooked because they follow the path of least resistance. And when money becomes the motivating factor and children are handled not only as though they're goods but fungible goods, then you're going to find incompetent lawyers, those who have no care. They'll cut corners on contracts, politics will get involved, and the child is not the one who is the focal point. But here is what I want to ask you: How is a court rule enforced? [LR542]

CHRIS COSTANTAKOS: Well, I would prefer a statute. But a court rule would simply be something I think that an attorney or a party in the case could appeal to the presiding judge and say this person is not following the court rule, perhaps it could give rise to the filing of an ethical complaint, perhaps it makes a difference on appeal. But I think it's not as effective as a statute. [LR542]

SENATOR CHAMBERS: What is the value of a nonenforceable guideline? I don't mean

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that as an argumentative question. It's to elicit information for the record. [LR542]

CHRIS COSTANTAKOS: My understanding regarding the guidelines and why they became guidelines rather than court rules because we don't have legislative authority was that they represented a best...they're aspirational. They represented a best practice ideal but they have no teeth. [LR542]

SENATOR CHAMBERS: And they can be totally ignored and there is no consequence. [LR542]

CHRIS COSTANTAKOS: That is correct. [LR542]

SENATOR CHAMBERS: They're not even aspirational. They're just words on paper. [LR542]

CHRIS COSTANTAKOS: That's correct. [LR542]

SENATOR CHAMBERS: Is this lawyer-client privilege constitutional or statutory? [LR542]

CHRIS COSTANTAKOS: Senator, I'm not following you. [LR542]

SENATOR CHAMBERS: The lawyer-client privilege that everybody speaks of, is it created by statute or by the constitution or is it something that the courts formulated? [LR542]

CHRIS COSTANTAKOS: I think it's common law. [LR542]

SENATOR CHAMBERS: There's nothing in the statute that would establish this privilege or give the boundaries of it as far as you know. [LR542]

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CHRIS COSTANTAKOS: I'm not aware offhand. And that's not to say that it isn't there in the statutes. I'm aware that it's in the Code of Professional Responsibility, but I believed it was coming from a common law basis. [LR542]

SENATOR CHAMBERS: Are privileges matters which the Legislature can legislate on, either create them or abolish them? [LR542]

CHRIS COSTANTAKOS: I believe so. Yes, Senator. [LR542]

SENATOR CHAMBERS: Okay. And like I said, that's for information in the record, not to be argumentative. [LR542]

CHRIS COSTANTAKOS: Yes, yes. [LR542]

SENATOR ASHFORD: Senator McGill, then Senator Howard. [LR542]

SENATOR MCGILL: Thank you. Thank you for being here. Seeing as many of these proposed guidelines weren't even adopted and they were just guidelines, have you during your time since the commission has been formed seen any practical changes in what's going on in the front lines of the guardian ad litem system? [LR542]

CHRIS COSTANTAKOS: Since the enactment of the guidelines? [LR542]

SENATOR MCGILL: Since 2005, when all of this started, have any changes really happened seeing as there isn't teeth in much of this work? [LR542]

CHRIS COSTANTAKOS: You're going to hate my answer. I have seen that improve for the good guardians ad litem. [LR542]



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SENATOR MCGILL: Have you? [LR542]

CHRIS COSTANTAKOS: Yes. [LR542]

SENATOR MCGILL: For the good... [LR542]

CHRIS COSTANTAKOS: For the good...the guardians ad litem who were already fairly well performing. [LR542]

SENATOR MCGILL: And the ones who were not well performing? [LR542]

CHRIS COSTANTAKOS: Well, I don't have a...I mean, I have not...what I'm trying to say is the guardians ad litem who care enough about the children to do all of duties also care enough to take a look at these and say... [LR542]

SENATOR MCGILL: That they went ahead and adopted the... [LR542]

CHRIS COSTANTAKOS: ...this is a recommended best practice. Yes, I will do that. And many of them do go to see children who are in an emergency situation or where there's a change of placement. But not all of them do. [LR542]

SENATOR MCGILL: Forgive me for not knowing more about this, but our friends from NCSL told us that in some models there are benchmarks or specific data coming out showing the lengths of time or the effectiveness, reunification, that each guardian ad litem may have. Do we track anything like that, outcomes for guardians ad litem? [LR542]

CHRIS COSTANTAKOS: For guardians ad litem, I do not believe we do. [LR542]

SENATOR MCGILL: Okay, thank you. [LR542]

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SENATOR ASHFORD: Senator Howard. [LR542]

SENATOR HOWARD: Thank you, Senator Ashford. Thank you for your testimony, Chris. It's nice to see you. [LR542]

CHRIS COSTANTAKOS: Hi, Senator. [LR542]

SENATOR HOWARD: I wanted to ask a little bit about the oversight for each contract. Within each contract, are they including these guidelines as requirements? What are the requirements within each guardian ad litem contract? Are they different from county to county? And who is enforcing them? [LR542]

CHRIS COSTANTAKOS: Which contracts are you speaking of? [LR542]

SENATOR HOWARD: So if a guardian ad litem has a contract with a court system to perform that function, is it just a contract where they'll serve as a guardian ad litem and then get paid? Are there any requirements within the contracts? [LR542]

CHRIS COSTANTAKOS: The only contracts with which I'm somewhat familiar are the Douglas County guardian ad litem contracts. [LR542]

SENATOR HOWARD: Okay. [LR542]

CHRIS COSTANTAKOS: And as far as I know, those contracts make no reference or don't incorporate this, don't incorporate the guidelines. And the origination of those contracts preceded the enactment or the adoption of these as guidelines by about four years. But to date, I don't think that they do and... [LR542]

SENATOR HOWARD: How often are those contracts renewed? [LR542]

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CHRIS COSTANTAKOS: We have a Douglas County Commissioner here today. And I think she can probably better answer that question. My sense was every maybe three to five years or something like that. But I think they have been renewed prior to their expiration date. [LR542]

SENATOR HOWARD: Okay, great. Thank you. [LR542]

CHRIS COSTANTAKOS: Okay. [LR542]

SENATOR ASHFORD: Thank you, Chris. I don't see any other questions. Thank you. [LR542]

CHRIS COSTANTAKOS: Thank you. Sorry I took so long. [LR542]

SENATOR ASHFORD: Thanks for your efforts. Cindy. [LR542]

CINDY JANSSEN: (Exhibit 5) Good afternoon. My name is Cindy Janssen, C-i-n-d-y J-a-n-s-s-e-n. I'm an audit manager with the Auditor of Public Accounts. And in July we issued an attestation report of the juvenile court guardian ad litem and attorney fees paid by the Douglas County Board of Commissioners and the Douglas County Juvenile Court. So I was requested to be here to provide you with a brief summary of the executive summary in that report which I believe you have a copy of. The audit covered a two-year period, fiscal years '12 and '13. We reviewed two parts of...two different areas of the guardians ad litem. The first area was the two contracts that the board entered into with contractors to provide guardian ad litem services. Those contracts are with Thomas Incontro PC and Monahan and Monahan. And they have been under contract with the board since 2003. Total of over \$1.7 million was paid to those two contractors in the two-year fiscal period that we reviewed. The Incontro contract called for a per case fee per year of \$1,050 per case per year. And the Monahan contract

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called for a \$25,000 approximately per month fee for up to 315 cases. We also looked at noncontract attorneys who are appointed by the court. Those noncontract attorneys are paid \$60 per hour. The guardian ad litem appointments, Douglas County paid those guardian ad litem appointments just over \$1.5 million in the two-year period we reviewed. I'm going to go into our findings in the report a little bit. We had five findings. The first two findings are related to the contract attorneys: Monahan and Incontro. The first finding is inadequate controls over contracted guardians ad litem, and there's several issues in this finding. The first one is a lack of documentation, review, and reconciliation. Those two contracts provide the Douglas County Board with a monthly listing of all open cases for which guardian ad litem services have been provided. That is essentially the only information the Douglas County Board receives from those contractors under the contract. The board did not verify the accuracy of the monthly case listings to ensure the propriety of the amounts paid to the contractors. The contractors also were required to produce annual or quarterly reports that provided specific details of the guardian ad litem services for which they are paid. However, those reports that were submitted were not reviewed or reconciled for accuracy. In the case of the Monahan contract, we found errors in the submission of her quarterly reports. The next issue we have is the failure to monitor the statutory compliance requirements. We noted the board failed to ensure that any of the services provided under the two contracts were carried out in compliance with state law requiring the guardian ad litem to consult with the juvenile within two weeks after appointment and once every six months thereafter. We attempted to review the compliance with statute in those contracts, and we were not able to review the records of Maureen Monahan. So we performed no testing. We were provided limited access to the Incontro contracts and we tested five cases of his. In none of the five cases could we find documentation to support compliance with the six-month requirement. Additionally, in one of the five cases tested we did not find documentation to support that the initial consultation occurred within two weeks. Another issue we have is a little bit of contractual ambiguity related to the Thomas Incontro contract. As I mentioned, his contract requires him to receive \$1,050 for each open case per year. That language fails to account for cases

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that are only open part of the year. The final issue I have under our comment number one is questionable authority of the board to contract with guardians ad litem. State statute empowers the court with the discretion to both appoint guardian ad litem and to determine their fees. So we kind of question the authority of the Douglas County Board to set a contract with the guardians ad litem. The next issue is some more detailed findings related to some of the testing we did with the two contractors. The contracts are set up so that they provide guardian ad litem services for children who come under the jurisdiction of the court in child abuse, neglect, and dependency cases only. During the period tested, however, Mr. Incontro billed for work on 135 cases and Ms. Monahan billed for work on 42 cases that were different case types under the contracts such as misdemeanor cases, status offender cases, and felony charges. And those all fell outside the parameters of the contract. Also, we tested the case listings provided to the board on a monthly basis, and we had several issues with that. Some of the listings were for cases that had not yet been appointed to those contractors by the court. There were cases on there that previously had been terminated. There were cases that they never had been appointed to serve as the guardian ad litem. And the Monahan listing had instances of duplicate case listings. The last issue under this comment is related to the Monahan contract. We noted that at least, in no fewer than 315 of her guardian ad litem cases she utilized the services of six different attorneys who were neither employees nor contractors of her firm. So the next two comments I'm going to go over are related to the noncontract attorneys that were appointed by the Douglas County Juvenile Court. We only tested 5 of 183 of those noncontract attorneys. These noncontract attorneys, unlike the contractors, are required to submit detailed invoices documenting the time spent on each case which is obviously more than what the contract attorneys provided to the board with simply a list of their open cases. So the detailed invoices sometimes go down to the tenth of an hour providing information on what services they were providing. One issue we had with these noncontracted attorneys was hearing attendance documentation. When, for whatever reason, attorneys in the Douglas County Juvenile Court failed to notify the receptionist, sometimes their presence is not recorded in the court order and as a result may not be

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reflected on the orders that appear in JUSTICE. Obviously this could cause a lack of readily available support for the attorney attendance at hearings. When we looked at the noncontract attorney invoices, we found certain errors in invoices submitted for payment by the noncontract attorneys. There were more than 130 instances of the hearing dates on the invoices differing from those found on the actual court orders as well as another 44 cases in which the court orders or records were insufficient to support attorney attendance. There was also a lack of documentation to verify the attorney attendance at hearings. Again, the juvenile court's use of informal notification sheets sometimes results in a lack of readily available support for such attendance. We noted that instances of noncontract attorneys having submitted bills for attending hearings, however the court orders obtained from JUSTICE provided no indication of their attendance. Similar to the contract attorneys, we looked at the statutory compliance with the five noncontract attorneys that we tested. And we only looked at the invoices that were provided to the court for these five attorneys. Some of the invoices provided by three of the five attorneys offered no indication of client consultations having occurred within two weeks after appointment. Rather, available records indicated that the earliest consultations took place between 18 and 184 days after appointment. We also identified two cases in which the guardian ad litem did not consult with their client within the six months of the previous visit. One final issue in this comment is related to court-appointed attorneys. Though routinely appointing free legal counsel in juvenile court cases on the grounds of indigence, the court does not typically seek or document proof of eligibility to receive such taxpayer-funded legal representation. [LR542]

SENATOR ASHFORD: Cindy, I'm going to stop you here for a moment because we've gone through quite a bit. So maybe we'll have some questions that you can... [LR542]

CINDY JANSSEN: Okay. [LR542]

SENATOR ASHFORD: We have your information on the other point, last point. So, Senator Krist. [LR542]

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SENATOR KRIST: Thank you, Senator Ashford. Cindy, thank you for your report. It was very fine. Who requested the audit? [LR542]

CINDY JANSSEN: The Douglas County Board. [LR542]

SENATOR KRIST: Okay. Did you have any indication that they knew what they were about to hear? [LR542]

CINDY JANSSEN: I think they did and that's why they requested the audit is my understanding. [LR542]

SENATOR KRIST: Was there any indication that any of these practices have been corrected? Do you have any knowledge that either Monahan or Incontro has corrected the data? [LR542]

CINDY JANSSEN: No. Typically when we do an audit and release our findings, we don't. Unless requested again, we don't do any follow-up procedures after the fact. So I would have no knowledge of that. [LR542]

SENATOR KRIST: Did they have an opportunity to respond to you during this process? [LR542]

CINDY JANSSEN: Yes, they did. [LR542]

SENATOR KRIST: Did they take that opportunity and give you...? [LR542]

CINDY JANSSEN: They did respond. We met with both contractors and all five of the noncontract attorneys tested. And they did provide responses to the report. [LR542]

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SENATOR KRIST: At any time... [LR542]

CINDY JANSSEN: I think in most cases they were somewhat in a disagreement with what we said. [LR542]

SENATOR KRIST: I bet they were. At any time did the subject of the Ethics Opinion 00-1 on third-party provider contracts ever come up in the discussions? [LR542]

CINDY JANSSEN: Yes. [LR542]

SENATOR KRIST: And what was their response? [LR542]

CINDY JANSSEN: I believe that came up with one of the noncontract attorneys, and I can't recall what their response was off the top of my head. [LR542]

SENATOR KRIST: Okay. And just to establish the record, that would have said while it is true that contractors cannot supply extensive detail regarding work performed in these cases, noting action is taken, dates, amounts, and requested is standard and does not violate professional rules. And that was brought to their attention and they disagreed with that as well. [LR542]

CINDY JANSSEN: Um-hum. [LR542]

SENATOR KRIST: Any source or... [LR542]

CINDY JANSSEN: No, both contractors clearly invoked the attorney-client privilege. [LR542]

SENATOR KRIST: Really? Thank you so much for your work. [LR542]



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SENATOR ASHFORD: I just have...I mean the one, and there are many points here, but the one bothersome thing for me has always been this issue of not seeing the children prior to the hearing. And I'm sure that's here somewhere. Can you summarize that for me as it relates to those contracts? [LR542]

CINDY JANSSEN: Basically, for the contract attorneys, that was part of the information that they deemed privileged. We were not able to look at the records of Maureen Monahan. Thomas Incontro allowed limited access, that access being he would look through his records and tell us when they met with them as opposed to us looking at the records and seeing when they met with the clients. And so based on that review, we did get limited information from him and from his cases that indicate...we only looked at five because it was rather time consuming of his cases. And none of the five cases that we looked at met the requirements. And then on the noncontract attorney side, we used the invoices that they submitted that detailed what they were doing. And we also have similar issues on that side when several of the attorneys were not meeting the requirements. [LR542]

SENATOR ASHFORD: Okay. Was there...Senator Chambers asked the question about attorney-client privilege. And I think it's kind of...that's my confusion here. And I guess I just pose the question. You may not have an answer. The enumeration or the information regarding the number of cases where a child was not seen until the day of the court proceeding, I guess I don't understand the attorney-client privilege issue there. [LR542]

CINDY JANSSEN: Well, for the contract attorneys, because they provide very limited information to the Douglas County Board, basically these are the cases we have open right now. [LR542]

SENATOR ASHFORD: Is that attorney-client privilege between the...that's being alleged, is the privilege of the child and the attorney? Is that what's being suggested

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here? [LR542]

CINDY JANSSEN: Yes. [LR542]

SENATOR ASHFORD: And it's the...okay. Yes, Senator Krist. [LR542]

SENATOR KRIST: Just to follow up, I wanted to be clear for the record, we're talking about a Supreme Court ruling, an Opinion, 00-1. It was released in 2000, that was very clear on those kind of issues where you can release certain information which does not fall into attorney-client privilege. And that was brought to their attention and they still refused to answer? [LR542]

CINDY JANSSEN: I'm not sure that we...our office specifically raised that Supreme Court Opinion. What we requested was documentation specifically from the contractors that would allow us to test whether or not they were meeting the compliance of statutory standards. And specifically the Monahan contract would not allow us any information to test compliance with that provision. [LR542]

SENATOR KRIST: But there was no disagreement that these were third-party contracts and that the taxpayers were paying and public information would have been required or available by contract? [LR542]

CINDY JANSSEN: We had that opinion. And I believe the contracts also have an audit requirement in both contracts that would seem to allow the board to request that information. [LR542]

SENATOR KRIST: Thank you, Cindy. [LR542]

SENATOR ASHFORD: And I'll get to Senator Seiler. Let me just follow up for a second. So it is this contract that the...between the attorney and the county board that is invoked

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as the reason for not providing the information. [LR542]

CINDY JANSSEN: I'm not sure off the top of my head the reason why they invoked that. [LR542]

SENATOR ASHFORD: Okay, fair enough. Okay. And to Chris's point about we don't need more bureaucracy in government, though that may be so, but it seems to me that, and Senator Chambers is alluding to it in his questions that obviously the guidelines aren't being adhered to, or at least we don't know because we don't have the information. At some point without a law, without a legal, you know, a law that says you have to do X, Y, and Z, you're going to continue to face what you're facing if you were to do another audit. [LR542]

CINDY JANSSEN: Right, right. [LR542]

SENATOR ASHFORD: There's nothing to change the situation. [LR542]

CINDY JANSSEN: No, and I would point out I think all of the attorneys would argue and did argue that...what our point was, was we weren't saying they weren't meeting with these people. We were saying the documentation, that wasn't made available to us. [LR542]

SENATOR ASHFORD: Right, and there's no way... [LR542]

CINDY JANSSEN: We could not determine that. [LR542]

SENATOR ASHFORD: And similar to some of the other experiences we've had in the last eight years, is that if we don't have adequate information as to what's happening then, number one, it's difficult to make policy; number two, it's difficult to correct the problem. And if something does go wrong with the child and it's alleged by somebody

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that the guardian ad litem did not see the child or make an adequate inspection of the home or follow up on an old court order or whatever it is, you know, it's the state ultimately that's going to be blamed for failure of somebody to do something. That's a fairly common experience we have. So there's just a lot of...to me, it seems to me there's just a lot of unanswered questions. But I understand and respect the fact that you were unable to get the information. Senator Seiler. [LR542]

SENATOR SEILER: I'd like to bring a little reality to those, when you don't see your client until an hour or so before a hearing. Take Hastings for example, there's no place to house juveniles. And if you're appointed, the sheriff may have to transport that child for 100 miles or so. They get there right before the hearing starts. That's your first opportunity to see that child unless you want to go the day before, a 200-mile trip. And then you come to the county board and say, I took a 200-mile trip because I wanted to see my client before the hearing. And they're going to say, wait a minute. You could have got a few minutes right before the trial. [LR542]

SENATOR ASHFORD: Well, I think that's a great point, Senator Seiler. I think though my concern, a lot of these hearings occur quite quickly after there's an intercept of the child or the child is within the jurisdiction of the court. So there's not a lot of time to...there's not weeks that go by prior to the first hearing. But at the same time, I think Senator Seiler makes a great point about the cost and the transportation issues. But then it's our job I think at the legislative level to try to address that, whether it's through some sort of teleconferencing or some other mechanism that we do have available for other kinds of...on other kinds of issues that could be used here as well. I get Senator Seiler's point. It's well taken. But if we don't know it's happening, it's hard to make policy, anyway. Yes, Senator Christensen. [LR542]

SENATOR CHRISTENSEN: I appreciate Senator Seiler's comment and yours too. But my point, I think, still that I made earlier stands. We give them a lot of power. And if we're going to give them that power, we've got to make sure they see them or they

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shouldn't have that kind of power. Thank you. [LR542]

SENATOR ASHFORD: Thank you. Yes, Senator Chambers. [LR542]

SENATOR CHAMBERS: When family issues are being discussed in court, there's always emphasis placed on what's in the best interest of the child. But when it comes to these hired guns called guardians ad litem, the interest of the child is not considered. The interest that people have in the child is as money producers for lawyers. I think the judges in Douglas County should have taken some responsibility. I think the Chief Justice, who under the constitution is the administrator of all the courts, should take responsibility. They have all been derelict. These lawyers know that nobody is regulating them. When they're called to account they can say, lawyer-client privilege and that's not true. And nobody does anything about it. A political body such as the Douglas County Board cannot be trusted to do the right thing partly because they may not have the time to do the things that constitute accountability. They may not have the knowledge or they may just not have the interest. So I'm listening and I'm going to continue listening. But I have arrived at the conclusion that the Legislature is going to have to step in. And whereas there may be other senators who can be manipulated by the courts, the judges, or the Chief Justice, I'm not one of those persons. And for me, the children are everything. I'm not religious but I call on that Bible for these people who pretend to be religious. And in court they have people swear on the Bible. And some courts talk about in God we trust so I'm going to invoke their Bible and their god. To them, Jesus is somebody they worship. And he said, he that offends against one of these my little ones, it were better for him that a millstone be hanged around his neck and he be drowned in the depth of the sea. What they should have said it were better for him to have that happen than to have to run against me when it comes to the welfare of these children. I just have something I'm going to read into the record because I don't see the names of any of these people who are contract lawyers or otherwise. But I want to ask: Do you know whether any of these people have been in bankruptcy at the time they had one of these contracts? Are you aware of whether any of them have? [LR542]

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CINDY JANSSEN: I am not aware of any bankruptcy. [LR542]

SENATOR CHAMBERS: And I think when whoever is speaking for the county board comes can tell me that. But I'm going to read this letter. And the date is October 18, 2002. This looks like...now I...there are people who are high tech, some low tech. I'm no tech. But it looks like it might be what they call an e-mail. But it was sent October 18, 2002, and it's from Maureen Monahan to Janine, I guess, Uccino, U-c-c-h-i-n-o, Janine, J-a-n-i-n-e. If I'm pronouncing it correctly or incorrectly, I've spelled it. There's a rumor around the office that you, Kim, and some other Legal Aid alums are contemplating a bid for the juvenile guardian ad litem contract. Kathy Kelley, the executive director for the county, asked my dad if he was going to put together a bid. My dad has been an attorney for 10 years, championed children's rights for 12 years on the State Board of Education, and is a former city councilman. He has a very good personal relationship with four county board members. My dad also went to Notre Dame for a year if that helps. He initially said no to Kathy; but after I spoke with him, he had a suggestion. My dad suggested fronting a bid out of his already established office. It is my understanding that you and any other attorneys would be working out of your homes. That might be a detriment to your bid. My dad has a law office. It's in the same building that the county juvenile attorneys work in right now. He has a brand new phone system that can be expanded to up to 15 voice mail/phone sets. He would be in on the bid in name only. Right now, it is just him in a small suite of three offices, but the suite next door is empty and there are additional offices if needed down the hall. The real idea is to have a central place for all phone calls, faxes, administration...for attorneys who want to work from home and provide office space for attorneys who want to work full time. Current NLS--I don't know who NLS is--employees have discussed trying to make a bid. Jonathan Cohn, C-o-h-n, has suggested including in any bid the GAL cases NLS attorneys currently have. It would be of benefit to the county to have attorneys from NLS join into the bid and take their cases with them at some type of flat fee. Jonathan and I would both be interested in discussing a possible bid. There may be others who

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are interested. I did juvenile work for a year before I came to NLS. I also worked extensively on the ASFA laws when I worked for a state senator in Lincoln. Of course, there is absolutely no pressure. We simply see an opportunity. Plus, I didn't have much of an opportunity to work with you. This may be a blessing considering how well Notre Dame's football season is going. I am out of town for the weekend, but I check this e-mail. Maureen K. Monahan, Esquire. Now Douglas County is considered, in some regards, to be something like a little Chicago. There are deals made between county board members and various people, lobbyists. There are criticisms of it but there is nobody to turn to to enforce accountability. I say again, the judges don't do anything. The juvenile court judges don't do anything. The Chief Justice does nothing. And when it takes a newspaper to make disclosures about matters that are of great public concern, they ought to be of concern to the Legislature and the judicial branch, but nobody in those branches take notice. I was requested by many people to just be here today and I agreed, but I was going to come anyway. At first, I wasn't sure whether my presence might inhibit some people. Then I decided I should come here and listen to what people say and put a few things on the record myself. As for a lawyer-client privilege, the Legislature can trump by legislation anything in the common law. Under the Nebraska Constitution, the Legislature has plenary power to legislate on every subject. And the only limitation would be found in the Nebraska Constitution, the constitution and laws of the federal government. The state constitution is not a grant of legislative authority, it is a limitation. And whatever the constitution does not limit, prohibit, or restrict the Legislature from doing, the Legislature can do. And these so-called privileges are not going to be allowed to be used as hiding places for lawyers, who I think have no great interest in the welfare of these children. When you create a bounty system and say you're going to get \$1,500 or \$1,050, whatever it is, for every case, that becomes the standard, and the welfare of the child means nothing. So when you work on a basis of so much money based on certain other numbers, you're going to raise that number as high as you can. And when this Maureen and this Incontro can thumb their nose at the agency, the entity that is spending taxpayers' money, that entity is wrong; these lawyers are arrogant; and I think there may be some ethical violations

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by them. And I intend, despite all of the issues that I'm obligated...obliged to address because I'm a member of the Legislature on certain committees, this is another one of those that I'm going to give time on. And when I sink my claws into something, I used to would say "my fingers," but since I've developed a great affinity for and with mountain lions, I will use those kinds of allusions now; instead of tooth and nail--fang and claw. And they need to know that somebody is on their trail now who will not be bought off, who will not be frightened off, who will not be deterred, who will be implacable, who will be relentless. And if there are heads that must roll, get a basket big enough to hold them all. And I'm glad that the audits were done and it helps to be able to see what kind of information these spongers at the public trough are trying to hide. When we find the numbers of errors that have been unearthed and the judges are not outraged, the Chief Justice is not outraged, their titles mean nothing to me. And I think the Chief Justice, because he has that exalted position, has an extraordinary responsibility pursuant to the constitution to do a better job than he's doing. Now he can frighten lawyers. He can intimidate some legislators, but to me a man ain't nothing but a man. And that's all Chief Justice Heavican is, as far as I'm concerned. The judges on the juvenile court are derelict in their duty. And as long as they don't come clean, as long as they don't straighten up and fly right--and I've told the Chief Justice this, they'll not get another juvenile court judge in Douglas County as long as I'm in the Legislature. And if they want to play hardball, then that is what they're going to get. And they're not going to gang up on little children. They're not going to intimidate and take advantage of parents who don't know the law, who cannot get adequate legal representation, and those children who are just cast aside are going to have somebody who will look after their interest now. And by saying these things, I'm not suggesting that I can be everywhere at the same time, that I can know everything that's going on. But where I am and what I do find out, I'm going to act on. And I want that on this record. And I don't know how much else I'll say during this hearing, but I didn't want people to think that because I'm quieter than ordinarily I would be at a hearing that I'm not paying attention or that I'm asleep. Because when you get old, you can close your eyes, but wise people know that not every closed eye is sleep. And for those who don't understand, I don't listen through my



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eyes. I listen through my ears. And what I'm hearing is very, very distressing to me. And in order that those who did these audits will know that their work was not done in vain, I'm going to have some additional conversations, but I don't want to take up all the time on this hearing with you as a witness. But I want you to know that that work will not have been done in vain. And Maureen and Incontro can tell the auditor no. They can tell the judges no. They can even tell me no. But I'm able to invoke some consequences. And if I have to badger my colleagues; if I have to persuade my colleagues, I am pretty sure that this Legislature is going to take an intensified interest in this boondoggle known as the guardian ad litem operation. One of my colleagues named Pete Pirsch was a guardian ad litem and he was spared my wrath because of the family he was harassing. He was going to this family's house on Sunday without notice because he and they think they own these people and these people are frightened. Because as Senator Christensen pointed out, their parental rights can be terminated. And I'm sitting here thinking, this guardian ad litem on the one hand is supposed to be representing the child and the best interest of the child, but the guardian ad litem can file a motion to terminate parental rights. That is tremendous leverage that these individuals with no particular qualification and certainly no compassion or ethical standards, and I'm not saying that applies to every one, should not be put in that position because it could be an inherent conflict when you have somebody supposedly working on behalf of the child's best interest and the best interest of the child may be to remain with his parent, but the parent can have those rights terminated by this so-called lawyer. Something is very wrong with this system. I think not is it only broken, I think it is corrupted and something has got to be done. It can't all be done by me. But there is such a thing as a catalyst which doesn't do all the work, but it's a driving force to see that the work is done. And I may retire into my shell of silence and maybe I won't. But that's all I have to say at this point. Thank you, Mr. Chairman. [LR542]

SENATOR ASHFORD: Senator Seiler. [LR542]

SENATOR SEILER: I have one last question. When I was in the practice involving

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guardians ad litem, they had to submit a written request for fees and costs to the judge. [LR542]

CINDY JANSSEN: Um-hum. [LR542]

SENATOR SEILER: The judge had to review it and then approve it. Did you find that in your audit? [LR542]

CINDY JANSSEN: The noncontract attorneys that we looked at, that's how they function. It's not the same for the contract attorneys. [LR542]

SENATOR SEILER: I don't remember that statute saying--if you're contracted with the county, you're exempt from submitting your bill to the judge. As I remember one case, the county board chairman was in court saying--we're not going to pay this, and the judge said--wrong, I set the fee, your job is to pay it. [LR542]

CINDY JANSSEN: And that's one of the findings in our report that we question the authority of the board... [LR542]

SENATOR SEILER: Okay. [LR542]

CINDY JANSSEN: ...to enter into the contracts and to set the fee as opposed to the court doing that. [LR542]

SENATOR SEILER: Thank you. [LR542]

CINDY JANSSEN: Um-hum. [LR542]

SENATOR ASHFORD: Thank you, Cindy. Elaine Menzel. Hello, Elaine. [LR542]

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ELAINE MENZEL: (Exhibit 6) Good afternoon, Senator...Chairman Campbell and other members of the Health and Human Services Committee and Judiciary Committee. First, would like to appreciate...express appreciation to Senator Campbell for introducing this interim study so that the issues associated with guardians ad litem can be discussed further. My testimony is going to strictly be focused on the chart that is being handed out to you. And what it shows is survey results of 34 counties and for the respective costs associated with guardians ad litem. And I believe I go back 2011-2012 fiscal year and then up to 2013-2014 and the various cases that were heard in those counties. Following my testimony, county commissioner from Douglas County and a county supervisor from Buffalo County will be testifying about the specific dynamics of guardian ad litem systems within their counties. The survey results are based on responses from requests made to the county clerks in the respective counties. And then in some situations they talked to the clerk magistrate or the clerk of the district court or county attorney and that's how the information was compiled. The number of guardians ad litem in the reporting counties for 2013-2014 ranges from zero to 371, and then in Douglas County with 2 contracted firms and 832 court-appointed attorneys. And then costs for the reporting counties for guardians ad litem for juveniles during that same time period ranges from unknown and zero dollars to nearly \$1.6 million in Douglas County. A number of respondents indicate the information is unknown or not readily available. And the basis for this in some situations is that those counties do not separate out the court-appointed attorneys from the guardian ad litem attorneys, so it's a collective amount. For example, Phelps County notes that on their information as to why their dollar amount is relatively high for what would be termed a smaller populated county. I hope this information is beneficial to you as you sort through the issues associated with guardians ad litem. And I would be glad to attempt to answer any questions you have. [LR542]

SENATOR ASHFORD: I don't see any, Elaine. Thank you. [LR542]

ELAINE MENZEL: Thank you. [LR542]

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SENATOR ASHFORD: Commissioner Borgeson is next. [LR542]

MARY ANN BORGESON: Good afternoon, Senators. Mary Ann Borgeson, M-a-r-y A-n-n B-o-r-g-e-s-o-n. Thank you, Senator Campbell, for allowing this forum to occur to talk about the guardian ad litem issues. I am the Chair of the Douglas County Board of Commissioners. I am here today to talk to you about the guardian ad litem services and the issues that counties are facing. In the past, Douglas County had contracted with Legal Aid of Nebraska for GAL services. We felt it was getting too expensive, so we went to an all-appointed system, which is where the judges just appointed the GALs. The fee is set by the Supreme Court or by each individual court. The juvenile court sends us a letter at the beginning of the fiscal year and said this is the fee for court-appointed attorneys. It was not too long that we figured strictly using court appointed wasn't working either and actually ended up costing us more per fiscal year. So we then decided to go back to contracting for the services. And today we have two contractual arrangements for the GAL services. We have struggled with the current system for a number of years, but the last three years things really began to bubble to the top. And this past year we started to hear from the public, the advocates, and users of the system. We had a citizen, who you will actually hear from later today, I believe, that was asking many questions, not only of myself, but of our board about our contractual arrangements of...and some of those questions could not and cannot to this day be answered. We found that there was no way for us to really monitor performance of our contractors or audit our contractors which were two actual provisions within the contracts themselves. We are basically spending over a million dollars on a system that lacks accountability and transparency. We started to discuss the issues openly at our board meeting. I brought the issue to our Nebraska Association of County Officials where we had Kim Hawekotte and Julie Rogers come out to one of our county board workshops and present exactly what GALs were, what the system was, and we started to talk about how we were being accountable as county board members in expending county tax dollars on this issue. When we found that there were too many issues for us

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to be able to address, I spoke with our newly-appointed chief administrative officer and said that we needed to have a conversation with someone to come in and do an independent audit of our contracts. And thus we were...had a conversation with the state auditors. We invited them in to perform the audit on our current system. The report was not pretty, as you had already heard the results of it. But for me and other board members, it did validate for us the need to put out a call for action to make changes to our current system. We had discussed as a board a couple of different ways to change the way that we provide services that may be able to provide better accountabilities and transparencies. But the auditor did bring up the issue, which was talked about earlier, as to whether or not we even had the authority to contract for these services. We since have asked for an Attorney General's Opinion on that issue. The Attorney General's Office stated that they would not render an Opinion on that. But we then went back and said, will you render an Opinion on the current contracts that we have? And we're waiting for the analysis of their work on those two contracts. So for counties...and I can speak specifically again for Douglas County, the bottom line is this for us is that we're mandated to pay for these services and we have no real way of accounting for or monitoring the services provided. We are here today to offer any assistance we may give to try to change the system because we do believe, after all, it is for the families and the kids. It's not about keeping jobs for lawyers. It's about making our system good for our families. And so we're here to help. I'll take any questions if you have any.

[LR542]

SENATOR ASHFORD: Thank you, Mary Ann. Yes, Senator Krist. [LR542]

SENATOR KRIST: Before I start, I'm following in the line of one of my colleagues who starts almost everything he does by saying that I'm establishing a record. That's what these kind of events are about. So this is not personal, Commissioner. [LR542]

MARY ANN BORGESON: Oh, absolutely. Yep. Yep. Yep. [LR542]

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SENATOR KRIST: This is simply establishing a record of things that we need to know. Because as we move forward and change, Douglas County Commissioners have had a play in this. [LR542]

MARY ANN BORGESON: Yep. Yes. [LR542]

SENATOR KRIST: So let's go back...the National Association of Counsel for Children, NACC, evaluated the GAL system in Nebraska in 2009, you're familiar with that report. [LR542]

MARY ANN BORGESON: Yes, yes. [LR542]

SENATOR KRIST: And who paid for that report? Do you know? [LR542]

MARY ANN BORGESON: No. [LR542]

SENATOR KRIST: Okay, the Legislature. [LR542]

SENATOR ASHFORD: We did. [LR542]

SENATOR CAMPBELL: The Legislature did. [LR542]

MARY ANN BORGESON: Oh, okay. [LR542]

SENATOR KRIST: And to the point, those were taxpayer dollars that came forward. Do you agree that that organization is pretty well established and credible with the GAL? [LR542]

MARY ANN BORGESON: Yes. [LR542]

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SENATOR KRIST: Okay. So you also agree that NACC report has credibility and specifically to Nebraska. [LR542]

MARY ANN BORGESON: Yes. [LR542]

SENATOR KRIST: So since 2009, that report has been public knowledge. You're familiar with the recommendation, I think it's number 5 on page 194, and I don't expect you to read it, but I'm going to put it in the record: All counties that still use a law firm/flat fee system should phase out this system given the evidence that attorneys work on an hourly basis, have more reasonable caseloads, and adequate compensation. So since 2009, we have known that. Would you agree? [LR542]

MARY ANN BORGESON: Yes. [LR542]

SENATOR KRIST: And you're familiar with...let's switch to the Auditor's report for just a minute. You guys requested the Auditor's report. [LR542]

MARY ANN BORGESON: Yes. [LR542]

SENATOR KRIST: Was that...because you wanted somebody to come in, and I think that's admirable. You read that report, obviously; we were briefed on the report. Did you expect the findings when you made the request? [LR542]

MARY ANN BORGESON: Yes, we expected some of the findings. And especially again because when the citizen was coming forward asking some of the same questions, we couldn't answer them. So, I was expecting...the board was expecting that we would probably see some of the same findings. [LR542]

SENATOR KRIST: As a commissioner, are you influenced at all by the fact that your contractors wouldn't answer questions that they should have been able to answer?

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[LR542]

MARY ANN BORGESON: Um-hum. It was very frustrating. [LR542]

SENATOR KRIST: I am too. So who paid for that evaluation? [LR542]

MARY ANN BORGESON: We did. [LR542]

SENATOR KRIST: So once again, taxpayers' dollars. [LR542]

MARY ANN BORGESON: Taxpayers. [LR542]

SENATOR KRIST: A few other questions for the record. Let's discuss the 2011 report, assessment and recommendations. You're familiar with that report as well? Are you familiar with, again, it's recommendation number 6. For the record it says: For any future contracts, the Douglas County Board of Commissioners should establish a detailed RFP to solicit bids from potential contractors. It goes on in some detail. And I have to tell you from my experience on the federal government side, without a good RFP, without a good understanding between the contractor and the government agency, you don't have a good contract. And in this particular case, I think it is very clear that they were asking you to change that. You're familiar with the characteristics of a normal contract system. The report notes that good contracts include minimum attorney qualifications, provisions for support costs, workload caps, and it went through it. So since 2011, we've had another good recommendation on how we should do things. And then finally to the contracts--and thank you, I'm, again, addressing these comments not to you personally, but to the board and those that have been familiar with the contract--we've established that there's been at least three different reports specific to the state of Nebraska since 2009 all discussing the GAL system. Do you agree with that? [LR542]

MARY ANN BORGESON: Yes. [LR542]



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SENATOR KRIST: There's been little or no action... [LR542]

MARY ANN BORGESON: Yes. [LR542]

SENATOR KRIST: ...to make that right. Maybe the children in the system was not served well by the contracts--I think that we've established that. Can you tell me in...when was the last time the board reauthorized one of these contracts? [LR542]

MARY ANN BORGESON: One of them was just reauthorized right before...or at the beginning of our fiscal year...the Monahan contract. [LR542]

SENATOR KRIST: Before or after you saw the reports for the audit? [LR542]

MARY ANN BORGESON: After. [LR542]

SENATOR KRIST: Really? [LR542]

MARY ANN BORGESON: Yes. [LR542]

SENATOR KRIST: And that was the Monahan contract you said? [LR542]

MARY ANN BORGESON: Yes. [LR542]

SENATOR KRIST: When is the Incontro contract coming up for (inaudible). [LR542]

MARY ANN BORGESON: Both of them now are up in...I think it's June or July of 2015. They're both now up at the same time. [LR542]

SENATOR KRIST: Does your board intend to take any action for...? [LR542]

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MARY ANN BORGESON: Yes. What we tried to do this year was two things. We tried to not renew that contract and just go with the court appointed for some of the cases. That did not pass. Tried to get an amendment into that contract to supply a detailed billing using the example of one of the court-appointed attorney billings that I had found out about and that failed. And so the contract went forward as it was. [LR542]

SENATOR KRIST: So you're telling me that even after... [LR542]

MARY ANN BORGESON: Yes. [LR542]

SENATOR KRIST: ...the three individual Nebraska specific... [LR542]

MARY ANN BORGESON: Yes. [LR542]

SENATOR KRIST: ...you made no changes to those contracts. [LR542]

MARY ANN BORGESON: Yes. [LR542]

SENATOR KRIST: I'm just going to close my comments and say this: I've been involved all interim period with some pretty heavy stuff. And building a record on...building a record for legislative purposes is so important to future legislation. But I'm also affected by the fact that I've been told by people in Douglas County and Omaha that my job was in...was in the Nebraska Legislature, to stay out of their business. So I'm affected a little bit by the fact that even though you're coming to us and saying you want to help, it seems like you've had three different opportunities with three different sets of data to look at what we were doing and you've made no...can you tell me how you voted on that proposal? [LR542]

MARY ANN BORGESON: I voted "no." But I can address...the report, right or wrong, I

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can tell you were really never brought or talked about at the board level until...I'm just going to say her name, Laura McCormick, brought them to our attention and we started talking about them. And that wasn't until about three years ago where it was not as direct as it has been in the last year, but we never...we never even really looked at those reports until then. That's just being honest. [LR542]

SENATOR KRIST: Well, I think she's a good citizen. She's come to talk to me a few times too. And I think she has a lot to add to the conversation. But I have to say this--the buck stops at a certain point. [LR542]

MARY ANN BORGESON: Um-hum, yep, I agree. I agree. [LR542]

SENATOR KRIST: And I've heard all I want to hear from Corrections about--I didn't read the Supreme Court ruling. [LR542]

MARY ANN BORGESON: I agree. [LR542]

SENATOR KRIST: I didn't do this, I didn't do...it's...okay? [LR542]

MARY ANN BORGESON: I agree. Um-hum, yep. [LR542]

SENATOR KRIST: It's time that we start making some changes for kids. [LR542]

MARY ANN BORGESON: Yep. [LR542]

SENATOR KRIST: And the time is now that we start working together. [LR542]

MARY ANN BORGESON: Yep, I agree. [LR542]

SENATOR KRIST: But I think the commissioners need to really look at those contracts.

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[LR542]

MARY ANN BORGESON: I agree, Senator. [LR542]

SENATOR KRIST: The only other thing I would say for the record is, I'm wondering why the Attorney General does not want to opine on this issue. And I think it's worth following up on. [LR542]

MARY ANN BORGESON: I don't know. [LR542]

SENATOR KRIST: That's not your concern. [LR542]

SENATOR \_\_\_\_\_: It's ours. [LR542]

SENATOR KRIST: That's ours. [LR542]

SENATOR ASHFORD: Well, it can be my concern. [LR542]

SENATOR KRIST: It can? Thank you, Commissioner. [LR542]

SENATOR ASHFORD: Senator Campbell. [LR542]

SENATOR CAMPBELL: Commissioner, and obviously the system is...what we're finding in our individual interviews is that the system operates differently...Lancaster, Sarpy, other counties. So I want my colleagues to understand that almost every county may have a little different way and that's why we've asked both a urban and rural commissioner to address. But in Douglas County, you have a court administrator, I believe, for the juvenile court. [LR542]

MARY ANN BORGESON: Um-hum. [LR542]

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SENATOR CAMPBELL: Did they review the billings? [lr542]

MARY ANN BORGESON: There were no billings for the contracted GALs. What we did do, after the audit and after the failed attempt to get the detailed billing amendment in the new contract, went to the judges and asked, okay, to take...rid of this client-attorney privilege confidentiality thing, would you be agreeable for them to submit the bill...a detailed bill to the courts? Because then it takes us out of the picture, but yet we would be able to have access from somebody, being the court administrator, to review these bills. And the judges said--no, they didn't want to partake in the contracted attorneys' work. [LR542]

SENATOR CAMPBELL: I do want my colleagues to know that in some of the counties that we've talked to, they are required to show billable minutes at, you know, one-tenth of an hour or whatever. I'm sure the attorneys here could talk about the different divisions and that they are reviewed by a court administrator and by the judge. [LR542]

MARY ANN BORGESON: That's probably true for the appointed. And I don't know if it's all of them, but I do know that some appointed attorneys have submitted detailed billing that were reviewed by the court administrator. [LR542]

SENATOR CAMPBELL: Good. Thank you. [LR542]

SENATOR ASHFORD: Senator Chambers. Yes, sir. [LR542]

SENATOR CHAMBERS: Madam Commissioner, I appreciate your being here and your expression of a willingness to--and I may be paraphrasing--have transparency, accountability, and so forth. And I want to say for the record once again because people may not understand the power of the Legislature. The Supreme Court has ruled specifically on any number of occasions that the Legislature, through the enactment of

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statutes, is empowered to declare what the law is and public policy. And the Legislature is empowered to determine when a public tax-supported body--elected body--enters contracts, there are certain provisions that must be there in order to protect the public interests, see that the goals articulated by the contract are met, and so forth. So if anybody on that county board wants to say the Legislature can't do it, well, it shows how lacking in knowledge they are. But some of them are so accustomed to ignoring the law that is already there, nobody calls them to account, so we do have a job to do. It's one that I'd rather not get involved in, not that I think it's unimportant. But it's difficult. It's going to be time consuming and I shouldn't have to. But I have a couple of things I'd like to ask you. Have any of these contracts been renewed or extended while still enforce as far as you know? For example... [LR542]

MARY ANN BORGESON: Like early renewals? [LR542]

SENATOR CHAMBERS: Yes. [LR542]

MARY ANN BORGESON: Early as in...probably right before the renewal date was up, not necessarily like years in advance. [LR542]

SENATOR CHAMBERS: But some have been before the renewal date arrives. [LR542]

MARY ANN BORGESON: Before the renewal date expired. [LR542]

SENATOR CHAMBERS: Okay. [LR542]

MARY ANN BORGESON: There's a current...currently there's a one hundred...either by March 1, we have to notify the contractors that we are no longer going to renew their contracts or there's a 120-day out clause that we can exercise. Which again, was what was going to happen with one of the contracts after the Auditor's report. [LR542]

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SENATOR CHAMBERS: Are these contracts available to the public? [LR542]

MARY ANN BORGESON: Yes, sir. [LR542]

SENATOR CHAMBERS: Has the legal community at-large been notified in any manner of the pending opportunity to bid on one of these contracts? [LR542]

MARY ANN BORGESON: At the...back in 2003 when we did the RFP, yes. But since then, there hasn't been an RFP. [LR542]

SENATOR CHAMBERS: And that's something the Legislature can require if the county board won't do it. But I don't understand why the board wouldn't want to do that because everybody says that through bidding, and my colleague has pointed out, you have a better opportunity to get a better deal. [LR542]

MARY ANN BORGESON: I agree. [LR542]

SENATOR CHAMBERS: Now, are these...if I understood correctly what Ms. Costantakos said, the noncontract attorneys are required to provide more detailed information than the contract attorneys, is that correct or did I mishear...did I misunderstand? Then I'll ask you... [LR542]

MARY ANN BORGESON: I don't know if they're required. I do know that they submit, whether it be voluntarily or if it's required by the court, to submit...they do submit...I've seen some...a detailed billing. [LR542]

SENATOR CHAMBERS: And is some of the information that these noncontract lawyers submit, is some of that information of the type that the contract attorneys say they are not going to make available? [LR542]

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MARY ANN BORGESON: Well, that's where we're a little bit confused, because that was our question, is how can...even one of the contractors said, when she's not a contracted attorney... [LR542]

SENATOR CHAMBERS: Um-hum. [LR542]

MARY ANN BORGESON: ...she submits detailed billings. [LR542]

SENATOR CHAMBERS: Um-hum. [LR542]

MARY ANN BORGESON: So if she's...and that's where then we decided, well, let's go to the court and have them submit it to the court if the issue is they can't give us the information. [LR542]

SENATOR CHAMBERS: Has the board ever told one of these contract attorneys--if you don't give us the information, we're going to terminate the contract? [LR542]

MARY ANN BORGESON: That's what we've tried to do this time around, Senator. [LR542]

SENATOR CHAMBERS: When you said "tried," you mean the board members wouldn't vote for it? [LR542]

MARY ANN BORGESON: Right. [LR542]

SENATOR CHAMBERS: And that's some of what I call the corruption, the cronyism, and politics at work. The public interest is not being served. And I think the public needs to know this so that pressure can be brought on these county board members. But I think an expose by the World-Herald does a lot more good than all of these other things because exposure is what these politicians fear. But to try to get to a question or two



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without making you repeat what you've already gone over...is there a high turnover...I shouldn't use the word "high," but is there a regular turnover of lawyers in these firms or organizations that the contract lawyers operate? [LR542]

MARY ANN BORGESON: In the Incontro contract I would say no; that's a pretty...it's actually a firm...it's a business. That was one of the questions that Ms. McCormick asked the board is in our own contract we say that you cannot subcontract this work. And so the question was--if you're not a firm and yet you're paying other attorneys, how is the board allowing that? How does that fit within the contractual arrangement? And so on that contract I can't answer. I don't know. [LR542]

SENATOR CHAMBERS: Okay. And not to prolong it, because you've said you're willing to be cooperative. If I have questions, then I will get in touch with you and we can talk. [LR542]

MARY ANN BORGESON: Absolutely, any time. [LR542]

SENATOR CHAMBERS: Thank you. [LR542]

MARY ANN BORGESON: Yep. [LR542]

SENATOR CHAMBERS: That's all that I have. [LR542]

SENATOR ASHFORD: And also for the record, my...thank you, Mary Ann, for, first of all, for initiating this effort and bringing this matter to a vote. I was aware of that vote. And you voted the right way, clearly. And my experience, when you grab ahold of an issue is that you get it resolved. And I agree with Senator Chambers that we need you to help us get through this because it makes no sense. It makes no sense at all to have one set of rules for somebody that's on a contract and one set of rules for somebody that's billing on an hourly basis, which is probably the norm throughout the state. And

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you, as a county commissioner, I understand how you can be confused by this. And you're not a lawyer and what...the other point that I would make and to the court is...and Senator Chambers has brought this up, as has Senator Krist, what I...what is somehow...and it certainly has come up in the Department of Corrections, is...over and over again...and that is, you know, it's not really our concern, it's the county's concern. And then...so the court system is sort of saying, well,...or the judges in Douglas County or the Supreme Court generally is...it's...this is being administered on the county level. We don't want to interfere with the county. But then we have citizens that have...that cannot understand what's going on. And there is this constant passing of the buck. You have yourself, as a member of the county board, you have, in my mind, you have put a hold on this now. You've said, wait, I...this was going on for a period of years, I've had it. We're going to fix this thing. And you're not getting any help from the judiciary in this matter. And I think that that is a big issue. There clearly is a legislative fix to this, in my mind, and without creating a bureaucracy. But, you know, I know when we got this report in 2009, it was absolutely crystal clear that the message was--no more contracts, it should be a case-by-case basis and that the matter is not really a matter of just money, it's a matter of care for the child which is the overriding concern. I know that's your concern. So now here we are a few years later and it's time to act. So I applaud your leadership in this matter. And getting this thing resolved, you're going to have to play a major role in getting that done. [LR542]

MARY ANN BORGESON: But besides the fiscal issue and the taxpayer dollar issue and sometimes that becomes a little bit more the talking point then there's still a huge issue in even...even the provision within our contract where we say we monitor and audit, we can or shall or may or whatever the exact word is, I don't have it right now, but even those then we can't do it. And so I even had asked the board if we can't do it, then why do we have it in the contract? If we can't monitor the performance of the work being done, then why do we have the contract? But... [LR542]

SENATOR ASHFORD: Well, and I think what you're saying...what I hear you saying is

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that you did read the report and you...you...it triggered in your mind and you talked to members of the public and this triggered in your mind to say--we're not...why is this happening? [LR542]

MARY ANN BORGESON: Right. [LR542]

SENATOR ASHFORD: Why do we not have the ability to find out what's going on? And somehow, somehow these contracting parties have been...have taken some sort of position, legal or otherwise; made it impossible...you know, ostensibly legal or otherwise, make it impossible for you to make a judgment. And so this accumulative knowledge that you've now received has brought you to this conclusion. I honestly...you know, to me I can see, unless someone can explain it to me, no reason...no reason, zip reason, nothing, zero, why the court simply says to each one of...if the attorney is in front of them, and they say--what did you do for this case? I don't care what contract you have, what did you do and how much time did you spend and how many times did you see the child? And to try to mesh that with, you know, what the outcomes are. But we can't even begin to do that, right? [LR542]

MARY ANN BORGESON: Right. Right. [LR542]

SENATOR ASHFORD: Okay. [LR542]

MARY ANN BORGESON: And I can tell you that the...I think when the light bulb, if you will, went on for me was sitting with families that were users of the system, that were giving me the play-by-play of what had occurred within their families and you can read whatever reports you want to read... [LR542]

SENATOR ASHFORD: Right. [LR542]

MARY ANN BORGESON: ...but it's not until you have someone sitting in front of

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you...and there were many of them, that told me their horror stories of what they'd been through. [LR542]

SENATOR ASHFORD: And these lawyers get \$1,050 no matter what the outcome is, no matter how many times they see the child, there's no way of knowing how many times they've seen the child or children. [LR542]

MARY ANN BORGESON: Um-hum. [LR542]

SENATOR ASHFORD: So, anyway, I guess it's all...we've...we're being somewhat...I'm being somewhat redundant. But thank you. [LR542]

MARY ANN BORGESON: No, I think it's just important that when, you know, when you start to look at issues, the bottom line for me, and I've said this at our board many times, is that if we're making a system and doing a contract or resolution, an issue, whatever it is, if it's good enough for my family, okay; if it's not, then why is it good enough for everybody else's out there? And this issue hits home right there about that. I wouldn't want my family going through it right now. [LR542]

SENATOR CHAMBERS: Just one other thing. Madam Commissioner, I'm not going to require you to do everything on this by the way. I have a representative on that county board with whom I intend to have some serious discussions also. [LR542]

MARY ANN BORGESON: Yep. And he's with me on this by the way. [LR542]

SENATOR ASHFORD: Thanks, Mary Ann, very much. [LR542]

MARY ANN BORGESON: Thank you. [LR542]

SENATOR KRIST: He's lucky. [LR542]

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SENATOR ASHFORD: Okay, Buffalo County. [LR542]

BILL McMULLEN: Senators Ashford, Campbell, thank you for allowing me some time to speak today. My name is Bill McMullen, M-c-M-u-l-l-e-n. I'm the Chairman of the Buffalo County Board of Supervisors. I'm in here filling for our budget committee chair, Sherry Marrow. She had to go to Washington, D.C., with a bunch of Korean veterans this last week. Basically, I guess my position here is to explain what we do in Buffalo County with guardian ad litem. And it's all individually-appointed attorneys by the judges. My understanding is they have a list of attorneys and they look at that list and appoint them randomly. After the attorney has done his work, he turns in a bill to the judge. The judge reviews it and then it's sent to the county board. The county board approves it and pays the bills. I'm happy to be here today because we're looking at our budget and in the last three years it has doubled from \$325,000 in 2011-12; it's up to \$600,000 this year and that's only a thousand dollars higher than we spent last year. We didn't allow enough last year; we had to amend our budget... [LR542]

SENATOR ASHFORD: Is that just guardians or is that also defense? [LR542]

BILL McMULLEN: Excuse me. [LR542]

SENATOR ASHFORD: Is that juvenile defense and guardians or is that...? [LR542]

BILL McMULLEN: That is juvenile defense and guardians, I believe, court-appointed counsel and guardian ad litem on that part of it. We've...are being proactive. We've contracted with University of Nebraska at Kearney to do a study. We've collected data for the last three or four years trying to give them something to start with and come back to us with some kind of a plan of action that we can take to keep from seeing a tripling of our budget every three years on this particular issue. We're also working with CASA, which is...although it is volunteers, it is not free. We have pledged \$30,000 to support

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CASA. And now as we review our bills that are approved by the judges, we now see where the court-appointed counsel...or GALs are now charging us for talking to the CASA volunteers. So it's a...I'm almost wondering, you know, as I sit back there and listen, is if...we ask them to go audit it if all of a sudden they're going to reach up and run the ticker tape back down there to see if we're going to get charged for the audit by them for their time. So, anyway, I don't have very much else to say on the subject other than we need some kind of plan of action on this. And if you don't give it to us, we're probably going to have to figure it out ourselves. So if there are any questions, I'd be happy to answer them. [LR542]

SENATOR ASHFORD: I won't be doing it, but I can almost guarantee you that the Legislature will be. [LR542]

BILL McMULLEN: I hope so. [LR542]

SENATOR ASHFORD: And I do think CASA is a big deal and I know the state has invested I think five hundred thousand... [LR542]

BILL McMULLEN: And we're starting...our eyes are starting to open up on it more and more. We like it. [LR542]

SENATOR ASHFORD: Yeah. Yeah. And with all the changes in the juvenile system, that may have impacted some of these... [LR542]

BILL McMULLEN: It's nice to have another set of eyes in there that...that maybe even though they're nonprofessional, they're observant and they'll report to us. [LR542]

SENATOR ASHFORD: Right. Right. Thank you. Senator Seiler then Senator Campbell. [LR542]

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SENATOR SEILER: Yes, Mr. Chairman. Have you talked to the other county commissioner chairmen in your area, like at Adams and Kearney and that? [LR542]

BILL McMULLEN: No, I haven't. [LR542]

SENATOR SEILER: Okay. I wondered if you knew...I believe that everybody in our area in the Hall, Adams, Clay, that whole area does it just the way you're doing it. [LR542]

BILL McMULLEN: Yeah, just exactly, yeah. From talking to our county attorney, I've asked for, you know, any kind of remedy he can think of, any path we can follow that would save us some money or would do a better job and are we getting the bang for our buck that we think we're getting? It's hard to audit it. [LR542]

SENATOR SEILER: Okay, thank you. [LR542]

SENATOR ASHFORD: One of the things that would be interesting to look at is how much of that is abuse and neglect, and how much of that is juvenile prosecution just...I mean for us to know, honestly, I mean for us to... [LR542]

BILL McMULLEN: I would say...you know, I'd go 75/25. We don't really have that... [LR542]

SENATOR ASHFORD: Abuse and neglect? [LR542]

BILL McMULLEN: ...abuse and neglect. [LR542]

SENATOR ASHFORD: Yeah. [LR542]

BILL McMULLEN: I mean, it's not that high crime of an area. [LR542]

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SENATOR ASHFORD: Senator Campbell then Senator Chambers. [LR542]

SENATOR CAMPBELL: And that really falls in the trap, because the report that we have from NACO indicates that Buffalo County couldn't divide those out. So it would be helpful if we could, you know, have that as clear as you could. But one of the questions, as we've begun to study this issue and really look at it, west of Lincoln, in talking to people, some of the counties and the people who are in those counties, not necessarily county officials, but attorneys or judges have said, you know, I have a difficult enough time finding attorneys to serve as GALs. Have you heard that comment? [LR542]

BILL McMULLEN: Not at all. If anything...the only thing I have heard from the attorneys I run into in the courthouse is we don't pay enough. We're at \$65 an hour and I've...scuttlebutt is a hundred by court order. I've talked to judges about it. They say, we don't seem to have anybody running away from it. [LR542]

SENATOR CAMPBELL: We do have one person that I talked to indicated that they were paying \$100 an hour because they just... [LR542]

BILL McMULLEN: See now, I've heard... [LR542]

SENATOR CAMPBELL: ...had difficulty finding people who are willing to do it. [LR542]

BILL McMULLEN: I've heard that in Hall County, but I haven't seen that in Buffalo County yet. I've approached them on it. You know, basically...the judges say, well, nobody is turning it down. [LR542]

SENATOR CAMPBELL: Okay. Thank you, Commissioner, for coming down. [LR542]

SENATOR ASHFORD: Senator Chambers. [LR542]



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SENATOR CHAMBERS: Thank you. Mr. McMullen, I didn't hear your testimony, but when you mentioned that the judges appoint all of the attorneys who represent the juveniles, something occurred to me, and you can't answer it so I'm not asking it. But maybe somebody who would testify after you from Douglas County would know the answer. When you have these contract attorneys then judges are going to have the opportunity to determine to some degree whether or not these lawyers are doing the job they should. And what occurred to me is whether judges in Douglas County will ever say--I'm not going to go with these contracted hired guns. I'm going to appoint an attorney who I think would be suitable. But here's the question I would ask because you probably explained how the selections are made. Is there any consideration given to whether the lawyer has experience in handling this kind of work, or is it like just drawing lots and whichever name comes up, that's the lawyer? [LR542]

BILL McMULLEN: Basically, my understanding of it is there's a list of attorneys that the judges keep that are...have put in to do GAL representation. And they just randomly go through there and pick them out. I don't know how they determine it. [LR542]

SENATOR CHAMBERS: But in this pool there are lawyers who are experienced in this kind of work. [LR542]

BILL McMULLEN: It would seem so, because we see their names quite a bit. [LR542]

SENATOR CHAMBERS: Okay, that's all I had. Thank you. [LR542]

SENATOR ASHFORD: Yes, Senator Campbell. [LR542]

SENATOR CAMPBELL: Just a quick response to Senator Chambers. In discussion with Douglas County, and the commissioner can nod here, but I think in 80 percent of the cases the contract is utilized by the judges. So, in Douglas County... [LR542]

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SENATOR CHAMBERS: Um-hum. [LR542]

SENATOR CAMPBELL: Okay, to answer your question. So there are private attorneys that are used by some of the judges in Douglas County. It's not all contract. [LR542]

SENATOR CHAMBERS: But the way I would ask the question, and we're not ignoring you, Mr. McMullen. [LR542]

BILL McMULLEN: That's all right. I enjoy listening to you. [LR542]

SENATOR CHAMBERS: See, if you say 80 percent, that could mean that all of those contract lawyers are working, so none are available, so the judge goes out. But I mean even with some of those hired guns available, the judge...because to me the judge can ignore all of that... [LR542]

SENATOR CAMPBELL: That is correct. [LR542]

SENATOR CHAMBERS: ...and do it on his or her own. But I'd wondered because of the way these contract lawyers have got the county board buffaloed, whether it's through political clout or whatever, I'm wondering if they try to exert that kind of power and pressure on judges who would choose not to use one who is available and instead appoint one. So that's the direction I was going. But thanks for the effort, because it sharpened the question that I would... [LR542]

SENATOR CAMPBELL: Exactly, and we have more work to do there. [LR542]

SENATOR CHAMBERS: ...like an answer to. Thank you. [LR542]

SENATOR ASHFORD: Yeah, and there's nothing to prevent five lawyers to get together in a law firm and say we want to do guardian ad litem work. But that doesn't mean that

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the judge should not require that each one of those lawyers who performs that work provides a detailed analysis of what was done and what they were charged for...

[LR542]

BILL McMULLEN: Yeah. And we have had some distinguished attorneys come in...

[LR542]

SENATOR ASHFORD: ...which you do. I mean, you already do that, yeah, so. [LR542]

BILL McMULLEN: Yeah, yeah. But we've had some distinguished attorneys come in and address the board and say we'd like to set up that sort of a system. And we say, that's great, go...you know... [LR542]

SENATOR ASHFORD: Right. You can share expenses... [LR542]

BILL McMULLEN: ...go write your own RFP or whatever you want and, you know...

[LR542]

SENATOR ASHFORD: Right. Sharing expenses doesn't mean you have...you can't...you're not accountable to... [LR542]

BILL McMULLEN: Right. And they usually disappear and we never see them again.

[LR542]

SENATOR ASHFORD: Right. Oh, okay. There they go. Okay, thanks... [LR542]

BILL McMULLEN: Can't always be lucky. [LR542]

SENATOR ASHFORD: ...thanks for coming all the way down. [LR542]

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BILL McMULLEN: Thank you very much. I appreciate your time. Any more questions?  
[LR542]

SENATOR ASHFORD: I don't see any. [LR542]

BILL McMULLEN: Thank you. [LR542]

SENATOR ASHFORD: Kim. And then Kate and then we'll have public comments after that. [LR542]

KIM HAWEKOTTE: (Exhibit 7) Good afternoon, Senator Campbell and Senator Ashford and members of the Health and Human Services Committee and also the Judiciary Committee. I'm Kim Hawekotte, it's K-i-m H-a-w-e-k-o-t-t-e, and I'm the executive director at the Foster Care Review Office. I know you've heard a lot of testimony today and I do have written testimony that I've given to you as to the Foster Care Review Office and our background, that we're an oversight agency. So I want to get to the meat of what I have in our testimony and that's the efforts that our office goes to in an attempt to figure out if a guardian ad litem has done his or her job. As each of you know, under the Nebraska statutes, the Foster Care Review Office does individual case file reviews on children in out-of-home care. Part of that case file review is to look at whether or not a guardian ad litem is doing their job. What we do and what staff have been trained to do in the past year and a half is to look on documentation on the HHS system, on N-FOCUS. Does it show that they've appeared, that they've done anything? We look on the JUSTICE system; does it show if they've done anything? We send questionnaires to every guardian ad litem before our local board hearing saying--get us information, answer these questions, are you doing it. We request copies of their GAL reports. We personally invite them to each one of our local board meetings saying--come, give us information; you can hear more information. In my opinion, we make every effort possible to give them an avenue by which to say, yes, they are doing their statutory responsibility or not. So what we did is we pulled the data for our case file reviews that

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were done from January 1, 2014, through June 30, 2014. We did 2,091 case...individual child case file reviews during that time period by our staff. And then we looked at the data with regards to the guardian ad litem and what we could see and not see. And for me it was very eye opening. With regards to the guardian ad litem contact with children within six months of the file review when we did it, 44 percent of them had had some type of contact with the child before. But I think what was more concerning to us is that 45 percent we were unable to determine after we went through everything that I just explained. We couldn't find documentation. We had no idea what they were doing. [LR542]

SENATOR ASHFORD: And 56 percent hadn't had. [LR542]

KIM HAWEKOTTE: Right. Right. And 6 percent had no contact and we could find documentation showing that they had not visited their children. So then we thought, okay, let's look for whether or not the guardians ad litem had submitted a report to the court as required under the statute. Well, as you can tell, 34 percent we could find that there was a report submitted; 62 percent we were unable to determine. Part of that reason is this...and I think this is an important thing we need to look at as a system, is that all guardian ad litem reports to the court are, and they should be, deemed confidential. In other words, they go under statute into the social file, not onto a computerized system that anybody and all the public can look at. Well, because it goes onto...into that social file, it goes into a private part of the whole JUSTICE computer system which means my staff do not have access to it. We cannot look at it. Also there is a statute that...I just found as I was working on this after 30 years as an attorney, 43-1307 that specifically states that the courts are to send to the Foster Care Review Office all guardian ad litem reports. I'm not sure we've ever gotten those...that I will now be working in...I'm sure the Chief Justice will gladly work on us...or maybe try to get us access on the JUSTICE system so that we can start reporting some of this data out. Because, in my opinion, if I was each of you, I would be looking at how do I set up an accountability system? I have an oversight agency, which is the Foster Care Review

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Office, I need them to provide oversight and let me know... [LR542]

SENATOR ASHFORD: This is the same thing we deal with in juvenile court. [LR542]

KIM HAWEKOTTE: Yes. [LR542]

SENATOR ASHFORD: I mean, it's the lack of data sharing. I mean, how can Mary Ann know what to do if you can't get the information? I mean, I... [LR542]

KIM HAWEKOTTE: Right. [LR542]

SENATOR CAMPBELL: That's amazing. [LR542]

KIM HAWEKOTTE: Right. [LR542]

SENATOR ASHFORD: ...that's amazing. Maybe I shouldn't be amazed, Senator Chambers, but that seems amazing to me. [LR542]

KIM HAWEKOTTE: I think the other frustrating thing...or maybe one of the possible solutions...when you look at the guardian ad litem statute, there's no requirement under the guardian ad litem statute that the guardian ad litem must respond to the Foster Care Review Office. If we are going to provide oversight over that system and ensure that they are meeting with their children and doing what they need to do, it would be our position that they should be required then to have to respond to the Foster Care Review Office when we ask for information or complete our questionnaires or at least send us your reports. If you're filing reports to the court, at least send us your reports. So that might be one possible solution. The other thing, Senator Chambers, you had talked about with regards to the judicial system, one thing that the Foster Care Review Office does is we complete our recommendations and finding report; it is sent to the court after we finish each and every case file review. And in that, our staff have been told, and they

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do a wonderful job of saying in big bold letters--the guardian ad litem has not seen their child that we can find, or, no, the guardian ad litem has done a wonderful job in representing their child's interest. Our problem becomes is not every court will accept our reports and findings into evidence even though there is a statute that says that the Foster Care Review Office reports shall be made a part of the record in juvenile court. So we need to ensure that that is being done so we can get the good information to the court so the court...the judges can make a good decision and then ask, as Senator Ashford said of those attorneys, have you visited your child? And if you haven't visit, why have you not visited, because according to the Foster Care Review Office you have not? So maybe...we can lack information. I'm not saying my staff might miss something, but by setting up that type of process we might provide more oversight. So that's the end of my testimony and I will gladly answer any questions. [LR542]

SENATOR ASHFORD: Yeah, it just seems to me that...how many more new people do you need then in order to fix this one? [LR542]

KIM HAWEKOTTE: I don't really...I don't need any more people to fix this one. I need a statutory responsibility that they have to respond to us which isn't more people. [LR542]

SENATOR ASHFORD: Right. Senator Campbell. Senator Campbell. [LR542]

SENATOR CAMPBELL: And I made a note of that. We can quickly get on that. But you know what, what is astounding to me, as we started work in on this, is that we've had report after report, gathering dust, or whatever it is, and waited for people who within systems could have and probably should have made the changes suggested, particularly in the 209 Report. You all have the nine recommendations on the back page of the executive summary. And yet that action hasn't been taken. And now we are to the Legislature, who most likely is going to have to step in and make that. I mean, that's my commitment. We've waited and waited, change hasn't come. We have to step in and make that change. Because at this point, we talk all the time in our office between

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Michelle Chaffee, who is the legal counsel, and I, you know, these are the most vulnerable people, children and youth, can't complain, don't have a way...I mean, they don't know. And they should have the best representation and not just what's left over...or not accounted for. And there are many good GALs, I'm not saying that there aren't. But to some extent, we really do have to step in. [LR542]

SENATOR ASHFORD: Senator Seiler. [LR542]

SENATOR SEILER: One thing I'd like to clarify, a child action where there's a GAL involved or a lawyer appointed to represent them, it's not a kumbaya, we all get in a circle and hold hands and it goes, these are vicious trials. You've got the parents represented...usually husband's got an attorney; the wife's got an attorney. You've got the child's attorney. And it is a vicious trial. These are not... [LR542]

SENATOR ASHFORD: Routine. [LR542]

SENATOR SEILER: ...pleasant situations. So keep that in mind when you're talking about what's going on in there. [LR542]

SENATOR CAMPBELL: Exactly. [LR542]

SENATOR ASHFORD: Thanks, Kim. [LR542]

KIM HAWEKOTTE: Thank you. [LR542]

SENATOR ASHFORD: And, of course, as Senator Chambers mentioned, Senator Christensen has been talking about this for some while. So...anyway...okay, Kate, I'm sorry. Hi, Kate. And after Kate, how many are...do we have that would like to testify that are members of the public? Okay. Good. Kate, you have...would 10 minutes, and then public testimony is 10 minutes. [LR542]



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KATE GAUL: I think I can be much briefer than that, Senator. [LR542]

SENATOR ASHFORD: Okay, okay. [LR542]

KATE GAUL: (Exhibits 8 and 9) Good afternoon, Senators. I'm Kate Gaul with your Legislative Research Office. And I've just been asked to present information that I gathered per your request for this study. We did a 50-state survey. And we were asked to ask five basic questions of the other states and their practices for guardians ad litem. And those questions were: Whether they were required to be attorneys; where the source of those attorneys came from, if they were a contract, a fee for service; if not attorneys, what the requirements were; and then the dual representation if the GALs represented just the best interests of the child or if there was separate representation. And then finally how the GALs were compensated. And I just want to quickly say a little about the survey mechanism, because it was a little different for us. My colleague, Logan Seacrest, put the survey together and we sent it out...oh, a thank you to the State Court Administrator, Mr. Corey Steel, because he facilitated our distribution of the survey. It was an e-mail survey and it was sent out through the LISTSERV of the National Center for State Courts. So we were able to...they were able to get the e-mail and it is quick on that and get the survey and then it came back to us. And what was a benefit to me was when the survey results came back to us, they put in...they were into a...the handout that I've given you on the spreadsheet. So what we have there are their verbatim responses to our questions. And there was no operator error or anything lost in translation, hopefully. You might see there's...we didn't get 50 state responses back. There were 29 responses, 28 states and the District of Columbia and there...since they weren't yes or no responses, they're a little bit difficult to summarize, but I attempted to do a little bit of that. And I would note that that 14 of the respondents...they require their GALs to be attorneys. But six of the ones who said they're not required to be attorneys, they can be attorneys and they often usually are and another six of those. And then I've also handed out another survey that was presented to me after we did this survey, and

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that was done by the National Center for State Courts. And I include that simply because it also adds another dimension. It was a survey they did on the legal representation of children in the child welfare system and that was another 50-state survey. And a benefit there is that they allowed some commentary from their systems on whether...the advantages and the disadvantages were. And I would say, too, back to our survey, we did ask for them to get responses back by today, so there's a chance a few other states could come in. They hadn't as of this morning, but just one last thing. I guess I'd draw your attention to a couple of the responses, they were a little bit different. In Arkansas, for example, their Legislature created an office of dependency and neglect representation. So there are a few like Arkansas that have a public system set up and others that do not that are more like you've heard here in testimony so. [LR542]

SENATOR ASHFORD: It's a lot of work. Thank you for doing all that work. [LR542]

SENATOR CAMPBELL: I agree. Thank you so much, Kate. [LR542]

KATE GAUL: You're welcome, you're welcome. [LR542]

SENATOR CAMPBELL: This is really much more than we anticipated, because I know you didn't have a long time to do it. [LR542]

KATE GAUL: No, it was just...it was a couple weeks the survey went out... [LR542]

SENATOR ASHFORD: This morning is when you started. (Laughter) [LR542]

SENATOR CAMPBELL: I called her at 8:00. [LR542]

KATE GAUL: It wasn't quite that fly-by-night, but... [LR542]

SENATOR ASHFORD: Can you put something together for us by noon? [LR542]

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KATE GAUL: We try to do our best. And I would just say that if you had other specific questions or requests, I would be happy to get information for you. [LR542]

SENATOR ASHFORD: Good job. [LR542]

SENATOR CAMPBELL: Thank you very much. [LR542]

KATE GAUL: Okay, thank you. [LR542]

SENATOR ASHFORD: Ms. McCormick. [LR542]

SENATOR CHAMBERS: While the next witness is coming up, I didn't want to give Kate a chance to respond, but I almost live in their office. (Laughter) [LR542]

SENATOR ASHFORD: They're the best. In the 16 years that I've been here, I've...it's truly unbelievable, now that I get an opportunity to say it, probably the last time, what an incredible work you do do on the fly, oftentimes, and that's one of the reasons we have an effective Legislature is because of our research department. [LR542]

LAURA McCORMICK: (Exhibits 10-14) My name is Laura McCormick; it's L-a-u-r-a M-c-C-o-r-m-i-c-k. While you're waiting, I guess, to get your papers, I did take notes and I have, I guess, a couple of comments about some things that have been discussed. The early renewal of the contracts--there was an early renewal in 2005. Judge Crnkovich came to the child and youth services meeting in 2005 and offered her opinions and observations about what was going on with abuse and neglect cases in Douglas County. There was a decision and there were discussions around lifting the ceilings that were in place with Incontro's contract. And I think there is no ceiling. It's an infinite number of cases that can be awarded him. There were also changes made to the Monahan contract. I am a big believer in all that Commissioner Borgeson has done

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to champion this issue. I can't say enough about all that she has done in listening to families. I think that not enough attention is being given to the role that the judiciary plays in this. If one peruses this document, which is the State Auditor report, certainly there are many exceptions that relate to the contracts. And I think...it is my belief that there is fraud and corruption at the heart of some of the people who provide these services. And I think it is outrageous that there has not been a call for a very thorough investigation. But the second half of this report deals exclusively with invoice processing and payments that are under the purview of the courts. When I met with Senator Campbell, I explained to her that some of the most uncooperative people in the courthouse are those that work for state employees and are compensated with county dollars. Some of the documents that were used in this audit report, I had to take public records requests all the way up to Dale Comer to get some of these documents which is outrageous. They are simply explanations of how bills should be paid and processed. The individual, the court administrator, who is responsible for this payment processing system, has a payment system in place that allows duplicate payments. He and his employees alter vendor invoices. These are major systemic internal control deficiencies and they need to be addressed. So I think that there needs to be some examination of the role of the judiciary in this. In terms of meeting with kids, I think you were talking about in the rural areas and the issues with distance, I can definitely see that that would be a problem. I'm an Omaha person, lifelong, I don't know that that's such a serious problem in my county. I can tell you that in the Douglas/Sarpy County area, it is not uncommon for these people to arrive and simply wave at their child. The child does not know the attorney's name. The child cannot reach the attorney. I know children. How do I know that guardians ad litem don't meet with their kids? I know because I ask the children. And they say--I don't know who this person is; I don't know what is happening in my case. I never saw this person in two weeks. I never saw them in six months. I know, I'm certain. In terms of Ms. Costantakos, she made a comment about the need for a guardian ad litem to be an attorney and that the child would be the only person in the room that has an attorney. I would offer it to you, with all due respect, the child has an attorney in name only, an attorney that never met with them; that doesn't prepare

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any reports and that may not even come to court. And they get a blank check. And if you're the benefit of one of these contracts, the name of the game is body count. It's that simple. In terms of...so let me back up because we have a variety of documents and I honestly don't think we'll get through them all. In terms of me, I was a stay-at-home parent for 20 years. I have eight years' experience working in internal audit and I managed an accounts payable department. I have a bachelor's degree in accounting. I'm currently studying to take the CPA, because I was at home for 20 years and not doing accounting. During my work as an auditor in Fortune 500 companies in Omaha, I did work on audits where fraud was identified. I sincerely believe that there are very serious problems in Douglas County with some of the attorneys who do this work. Okay, so...let's start maybe just with my general comments. I would assert that the problems with the GAL system in Nebraska are very similar to the systemic issues recently publicized regarding the correctional system. Anyone daring to ask serious questions is told by system stakeholders that they have no control over other portions of the system or that they...this is their job, I have...my retirement is at stake. I have three kids to put through college. I know it's wrong, but I can't tell anyone. They fear retaliation if they speak openly about the fact that guardian ad litem do not work...they don't do the work that is mandated by statute. They violate the law. They break the law. They don't comply with the code of professional responsibilities. No one cares. The broad system issues, in my opinion, and we'll talk about that when we go through the outline that I gave Senator Campbell when we met, include a lack of independent oversight, inconsistent billing practices across counties, lack of uniform billing practices, no connection between billing and verification that the work has been performed, the use of attorney-client privilege by guardian ad litem to hide billing irregularities, the inability of the parents or the public to view attorney invoices even when they are asserting that the attorney never met with the child, inconsistent practices regarding malpractice insurance requirements and no monitoring as to whether or not the attorneys carry the insurance. The activities required of guardian ad litem are not compulsory and even those that are don't...they don't happen and no one cares. And there's an inadequate complaint mechanism. It should be noted that the guardian ad litem problem has been

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written about for more than a decade in Foster Care Review Office reports. I took the time to go back all the way to 2004. It amazes me that much of the language when the reports are written it's almost...it's the same. Fifty percent of these people, there's no documentation that they're doing the work. And I'm telling you, children will report if you ask them. They do not meet with them, they are not. The Foster Care Review Office can do little more than refer concerns to judges. The judges really though have no way to ascertain if the work has been done because the billing documents, if they're compiled, are frequently compiled long after the case has been closed. I personally am a big believer in systemic change to this system. I'm skeptical that guardian ad litem needs to be attorneys. I would like to see serious consideration given to approaches in which there is some type of a blended system--the use of people who may be more affordable, more interested and trained in child welfare development. They're the ones on the ground having contact with the kids, making contact with schools. But then if there is a problem in a case, they can reach out to a licensed attorney. That to me would make more sense. I would like to see efforts to build in systems of accountability. And those systems, I believe, need to be independent of the judiciary. The fact of the matter is, that an attorney, any attorney in the state could file a complaint, could raise issues, and they don't. And I've asked attorneys why they don't. And sometimes they tell me--oh, it's a big hassle; I've got skeletons in my own closet; we just look the other way, I guess. I believe the deficits in the attorney billing practices currently are unacceptable. And I adamantly believe...adamantly, that lawyers who have accepted tax dollars and not done the work mandated by statute need to be held accountable. In this report...and I forwarded not only to Auditor Foley, but some of the other people involved in this commission, an audit report that was prepared in the state of Iowa. The Iowa State Auditor found their public defense and their contract systems are somewhat different because it's Iowa versus Nebraska. But they found an attorney had billed in excess of 24 hours a day for work of 20 hours a day and in this audit report there was a person...there is an attorney's invoices that were selected where this individual was billing for more than 15 hours in a workday with no breaks to go to the bathroom, eat breakfast, lunch or dinner. And when I compare that fact with the Foster Care Review

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Report that shows that 50 percent of these people, we can't even find any documentation; they won't respond to inquiries. That, I think, is deeply troubling; and I think there needs to be additional attention and work done on that issue. So that's really my comments. Again, in terms of what I've given you, there is a broad outline that goes through...it begins--no uniformity of practices across counties. I've tried to categorize some of the broad systemic issues that I've seen. We did spend, Senator Campbell and her aide and I, some time discussing bills. One of the reasons...Sarpy County does have contracts in place for some of the people that do this work. Their contracts are a little different than Douglas County's. But there is an invoice; the attorney's name is Colleen D. Bergren. At the top of the invoice it says August 12 to June 13. This...I don't even know what you say about this invoice. It basically says, you know, the dog ate my computer, to paraphrase. And this person just gave broad numbers of hours in which they alleged that they met with a child. She has another subsequent invoice that is a different format, a little bit different way of reporting hours; doesn't report hours down to the small increment that can be required in Douglas County. Then I also have an invoice by...that was prepared by an attorney named Jeff Wagner. The thing that's interesting about this invoice, in Douglas County it is not possible for people to sit down in JUSTICE and look at attorney invoices in the juvenile courts. That differs from district court. I personally think all invoices should be scanned in. And when I say there should be uniform billing practices, if we don't want certain information on an invoice, then we should stipulate what that is and make it so that these invoices can be viewed by the public; and if there is a problem, the issue can be raised to the relevant authorities. For some reason Mr. Wagner...this is a case that I have observed. And my name actually is one of the names I redacted on the statement. But for some reason this invoice was scanned into JUSTICE. Auditor Foley spent some time in his report talking about all the deficits in JUSTICE. I can't speak to outstate where you're from. I really don't know if it's a problem statewide. I can tell you, in Douglas County there are very serious problems with how things are scanned, what is scanned, consistency across even court orders. Those kinds of problems are very serious problems in Douglas County. I'd be happy to talk to, really, any of you if you would like about what I know about some of the billings,

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the documents that I've had to request via public records. I believe there needs to be serious inquiry though into some of the vendors that were profiled in the audit report. [LR542]

SENATOR ASHFORD: Thank you, Laura, good. [LR542]

LAURA McCORMICK: Oh, and the last thing I guess I would say is this is a copy of the recommended report that I think Ms. Hawekotte...I was kind of conferring with her before she spoke, I believe this is the document that she tries to get her hands on. But, again, I wrote my comments at the very bottom. This is from last year's Foster Care Review Office report and maybe...I think she was citing these same statistics, which I can tell you, they've remained the same for a decade; they never change, they don't improve. Thank you for your time. [LR542]

SENATOR ASHFORD: Yes, Senator Campbell. [LR542]

SENATOR CAMPBELL: Laura, just explain for everyone here, because you've given...it's this document in which there's like "JV, JV" what...just explain to the people. And briefly explain what does that mean. [LR542]

LAURA McCORMICK: Okay. Here's what happened, let me explain. Right now I'm advocating for a family; I'm going to court for a family where Bergren is the guardian ad litem. The child is telling me, and this is a child that will graduate from high school next year, the same story that lots of these kids say. The other interesting thing about Ms. Bergren is she was the guardian ad litem for Robert Hawkins. And when Ms. Costantakos did the analysis of the court records associated with his case, she noted that there was not one single document that stated that she met with the child, there were no reports, there was nothing. So the reason I'm interested in this attorney, that's why...I'm currently seeing a child. The period of time I happen to request this invoice because the child had a court date, this is the one with no information during that time



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frame. So then I requested a subsequent invoice and there's...this is the issue here--when the attorney prepared this bill, she's listing out dates of service. The first one says 08-01-13, a child's name and then four hours. Someone took the time to write down the docket and page numbers associated with every case. The attorney didn't do that. It was the clerk of the court in Sarpy County who did that. And the reason they're doing this is because of the statute that mandates that when a record is sealed it...let's say in a delinquency matter, then the county attorney is stating that even the child's name there, that would need to be redacted and I couldn't see it. So if you flipped to page 2 on 08-16-13, there's a child's name, and then underneath there is another name that evidently is a case in which it has been sealed. Now I had lengthy conversations with some of the folks in Sarpy County about the appropriateness of this. I'm just a citizen. I'm not a lawyer. I don't...I understand the purpose and the intent of sealing records. But when it comes to this, if you eliminate the name, there's really no way to determine whether or not the person did the work. And what I attempted to show the county attorney is, even if...let's say that I knew the child's name, their full name, I would have no way of discerning who that person was in JUSTICE because the case was sealed. And I don't know how familiar you all are with JUSTICE, but if you type in a case number where the case is sealed, you see nothing. There's nothing to see. And so I allege that it is not necessary to do this. Now when the county does this, when they've spent all this time, this takes lots of time--hours to do this, it makes it cost prohibitive for me or anyone else to get a copy of this document. And I know that the Auditor also ran into some difficulties because statute is somewhat nebulous. When the Auditor requests documents, there is no time frame in place. And that was certainly a problem that I ran into because I was asking lots of questions that some people would rather I didn't. And one of the techniques that's used to make it so that people go away is the use of the public records law to either make it cost prohibitive or to not respond within any sort of a time frame where you could get the information. So it's unclear to me if this is necessary, this redacting. And I think that's an example of why...I've given you three very different statements. This is why there needs to be some level of uniformity. I think that the interest of juveniles who have sealed court records need to be weighed against

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the interest of the public. A guardian ad litem, they function as a parent, as a parent. You have people in court who have never met the kid. They don't know what the kid looks like. They don't make phone calls. They're functioning as a parent. There has to be some level of accountability in terms of the dollars. And while you may have heard from others in outstate Nebraska who don't have this problem, look, Douglas County is where it's at--50 percent of the case filings, millions of dollars. And if we're not spending that money on this, we could spend it on something that might actually help children.

[LR542]

SENATOR ASHFORD: Laura, thank you. I think this is very good comments. I do...could I...go ahead, Senator. I wanted to ask Kim a question. Again, what does not to be determined mean or not determinable? Is that because you can't find the file in JUSTICE? Or when you say--unable to determine...so 44 percent there was some kind of contact, but unable to determine 45 percent. Is that because it...what does that mean exactly? [LR542]

KIM HAWEKOTTE: Either because we don't have access to the document within JUSTICE or that guardian ad litem has not responded to our repeated request to try to get information from them. It could be either/or. [LR542]

SENATOR ASHFORD: Because even if we had the information...even if we were to know that there was just information of the...contextual information around when it was the...when the child was seen, when the report was generated, just have a context, even if you don't see the report is more than having "not to be determined." [LR542]

KIM HAWEKOTTE: And that would be our position, Senator. That at least if we had access to that or there...and/or there was a requirement that the guardians ad litem have to respond to the Foster Care Review Office, I then could at least sit here and give you data such as X number saw their children within the six months according to the documents that they filed, and they filed reports with the courts in X percent of cases. I

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could give you some of that, but right now I can't give you any of that, Senator. [LR542]

SENATOR ASHFORD: And I wonder...okay. Of all the abuse and neglect cases, what percentage of the children are in foster care? I know that's a hard one, but what's the population of abuse and neglect children generally? [LR542]

KIM HAWEKOTTE: Out-of-home children currently right now are about 3,000 statewide. [LR542]

SENATOR ASHBORD: Okay, so the foster care is a pretty good chunk of it, probably almost all in foster care. So you see most... [LR542]

KIM HAWEKOTTE: Yeah. [LR542]

SENATOR ASHFORD: ...and they're the most serious cases. They're the ones that the state needs to be most concerned about, most probably. Not in all cases, but...they're out of home so there's got to be something going on. [LR542]

KIM HAWEKOTTE: They're out of home, so there has to be at least some accountability as to whether or not we as the state as the parent are meeting their needs. [LR542]

SENATOR ASHFORD: Okay, thank you. I don't have any...yes, Senator Campbell. [LR542]

SENATOR CAMPBELL: No, I don't have a question. I just had...I want my colleagues to know and I failed to mention in the opening, the Nebraska Children and Families Foundation is working with us to talk to and do a survey of youth who have been in the foster care system, who would have had a GAL, or are currently, because we felt it was very important to get the voice of youth and talk to us. [LR542]

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SENATOR ASHFORD: Yeah, and my only last and probably my very last comment I'll make in my life here... [LR542]

SENATOR CAMPBELL: Last one. [LR542]

SENATOR ASHFORD: ...is that, you know, we spent four or five years, at least, in this committee on delinquency and we talked about crossover kids who are in both systems. And talked about data (inaudible) for seven years, at least, since we've started. And this testimony today has really brought home to me the other side of the coin, the abuse and neglect side. We were dealing with, oh my goodness, we get to a point where they've really done something bad and they're in juvenile justice system for an act and these people are the ones who can really make a difference and help. This is tragic. So you guys are going to fix it. [LR542]

SENATOR CAMPBELL: We'll work at it. [LR542]

SENATOR ASHFORD: And, Chris, I'm not sure we don't need a little more bureaucracy on this one maybe, I don't know. Thank you very much. [LR542]

SENATOR CAMPBELL: Thank you, everyone. [LR542]