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Judiciary Committee
March 12, 2015

[LB281 LB437 LB497 LB625]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 12, 2015, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB625, LB281, LB497, and LB437. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: Ladies and gentlemen, welcome to the Judiciary Committee. The hour of...bewitching hour has arrived and we will get started. My name is Les Seiler. I'm from Hastings, Nebraska. I'm from District 33 and that's all of Adams and all of Hall except Grand Island. On my far right is Senator Matt Williams from Gothenburg. Next to him is Adam Morfeld from Lincoln. Next to him is Bob Krist who is at the table. Senator Ernie Chambers will be next. Legal counsel is Josh Henningsen. On the far left is Dr. Laura Ebke from Crete. Next is Senator Patty Pansing Brooks from Lincoln. Senator Colby Coash from Lincoln will be joining us. And the committee clerk is Oliver VanDervoort. Our pages are Jonathan and Stef. It's important that you get your testifying sheet, get it filled in. Especially, yesterday's people didn't put on their town, so they had the road right but they didn't...address, but they didn't put their community down. So make sure you put the community so we know where you're from. We will be discussing the bills in order that's been printed in the agenda: LB625, LB281, LB497, and LB437. When you come up to testify, slide up to the mike because--it's not for amplification--it's more important that there's transcribers on the other end and they need to be able to pick up your testimony. We don't want to miss it. You can submit your comments in writing to our pages. If you do not desire to testify but still wanted to submit something in writing, give it to the pages. They'll distribute it. If you don't have anything in writing but you want to count your presence here on one bill or another, there is a sheet out front that you can fill out. Sign it. It will be made part of the transcript and the record so it's just as if you testified. I will also join you in turning off my cell phone. You will be allotted three minutes. You'll have a green light, a yellow light, and a red light. When the red light comes on, stop. If the...if you don't, I will holler at you to stop. The reason is, is we want to keep going because, as I understand it, we're going to have a lot of witnesses today. And I don't care if we go to 11:30 at night. That's kind of normal for this group. But you may want to get home tonight. Kidding aside, it just makes this process go faster. If you are an important...on somebody, one of senators' minds thinks what...your testimony is very important, they'll ask you to continue for a few minutes. One of the things that we've been a little strict about is open display of support of one side or the other. This isn't a basketball game. That's down the road a ways. I hope you all are representing communities that are participating there today. So if you would, please, respect each other. And, oh, by the way, if one person...if a senator is talking, don't talk. They'll give you a chance to talk, we...because the mike will not pick up two conversations at the same time. Okay, with that, Senator Krist, your opening of LB625.

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SENATOR KRIST: Thank you, Senator Seiler. Good afternoon. And good afternoon, fellow members of the Judiciary Committee. For the record, my name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with north-central Douglas County and the city of Bennington. I appear before you today in introduction and support of LB625. As a former member of the Health and Human Services Committee, I am familiar with the issues surrounding our state's lack of behavioral health community support. I am supportive of policies that put the needs of many of our most vulnerable patients first and foremost in a better delivery system for critical mental health services. This committee has dealt with those lack of services across the state. You know how precious they are. We've dealt with them in Corrections. So it should be no stranger to you either. LB625 may seem like a complex issue but it's actually very simple. LB625 would allow the involuntary admitted patients to receive behavioral health treatment at a facility across a state line. This bill keeps patients much closer to home, as well as financial costs to the law enforcement agencies down. And those are the folks who are transporting back and forth. When a patient is placed in emergency protective custody, law enforcement agents with the behavioral health regions and hospitals must find a qualified facility and an open bed. In many cases, that open bed is across the state, far across the state. I'd like you to imagine, if you will, being in the Omaha area and being in this situation with one of your family members and the closest bed that they can find available is in Scottsbluff or Kearney, which means they're going to have to transport across the state, instead of Jennie Edmundson right across from Council Bluffs--big difference, closer to home, treatment can be effected just as easily. Colleagues, this is not a new idea. LB625 is adapted from current laws in the states of Minnesota, North Dakota, South Dakota, Illinois, and many others. An individual from a behavioral health center in South Dakota will be providing you testimony on the practical application of this bill, as well as a draft contract, for your review. Under LB625 Nebraska would not be able to send...sorry, would not only be able to send patients across state lines for more timely care but it would now allow it to receive patients from other states as well. I hope that you will listen to the supporters of LB625 and focus on the intent of the legislation. If there are issues in current law or statutes that need to be handled, I'm sure we can do that. This is a bill that I...there is no priority for. I would ask that we keep it, work on it, and get it out and maybe we can discuss it the first part of next year. But it's very, very important. Thank you for listening and I'll take any questions, but I'll be here for closing. [LB625]

SENATOR SEILER: Senator Coash. [LB625]

SENATOR COASH: Thank you, Senator Seiler. Senator Krist, I'll ask you and if you know, that's great. If you want to defer to some folks following you, that's fine too. Would this be a situation where the cost of treatment that would happen out of state would be more expensive than the cost of treatment in state? I'm worried behavioral health providers, that it's kind of like out-of-state tuition, right, where they'll take people who need their services from anywhere but

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they have one rate for in-state residents and one rate for out-of-state residents. Do you know how that...if that would be a factor considered in this bill? [LB625]

SENATOR KRIST: Yeah. I...in the study that I've done, my assumption is that if you're Medicaid eligible here you're going to Medicaid eligible there and there's going to be caps that are going to apply, so I don't see that there's going to be a differential. But the compact that's been formed between other states...and the gentleman who will follow me can answer, I'm sure, what is their particular situation. I think one of the examples we have in another area of health is the school for the deaf. We don't have a school for the deaf in Nebraska and we contract for that service in Iowa for the most part. So I think it is up to us to watch the contracts. And that's one of the things the Department of Health and Human Services feels that we need to harmonize within the statutes. [LB625]

SENATOR COASH: Right. Okay. And did I understand correctly in your opening that the out-of-state provider would have to agree... [LB625]

SENATOR KRIST: A contract. [LB625]

SENATOR COASH: ...to do this and have a contract so... [LB625]

SENATOR KRIST: It's my understanding there is a contract that would have to be a provision, a memorandum of agreement, a contract with that other state. [LB625]

SENATOR COASH: Okay. So we're not going to pass this bill and then all of a sudden somebody needs the service, is transported over there, and they go, well, hang on a second... [LB625]

SENATOR KRIST: They're high and dry, yeah. [LB625]

SENATOR COASH: ...we're not...okay. All right. Thank you. [LB625]

SENATOR KRIST: No, I...that should not and would not happen in my estimation, but that's one of the reasons why I think there's a little more work that needs to be done on the detail. [LB625]

SENATOR COASH: Thank you, Senator Krist. [LB625]

SENATOR KRIST: Thanks for the question. [LB625]

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SENATOR SEILER: Senator Chambers. [LB625]

SENATOR CHAMBERS: And if you can't answer this, then I can check it out. If a person were involuntarily committed and transported to Iowa, that involuntary commitment would take away any right that person or his or her family would have to say as to whether that transporting out of the state should occur? [LB625]

SENATOR KRIST: I would...Senator Chambers, I don't know for a fact, so...but I will offer conjecture. I believe what we need to make sure of is that that is not forced upon a family or an individual within the contract confines. I only put myself in that situation that I...example that I gave in Omaha because, if I know it has to happen anyway, I'd rather have someone that I love at Jennie Edmundson in Council Bluffs, close to me, rather than being miles and miles away. But to your point, I don't know that detail. [LB625]

SENATOR CHAMBERS: And that person would be subject to the laws of Iowa once over there. [LB625]

SENATOR KRIST: And that... [LB625]

SENATOR CHAMBERS: So if there were some kind of action taken by that person against an employee or another person, the criminal laws of Iowa would obtain, rather than Nebraska's? [LB625]

SENATOR KRIST: And I don't know the answer to that. It's another... [LB625]

SENATOR CHAMBERS: Oh, okay. I can check that but I just wanted the record to at least know we touched on it. [LB625]

SENATOR KRIST: Yes, sir. [LB625]

SENATOR CHAMBERS: Okay. [LB625]

SENATOR SEILER: Any other questions? Thank you. First proponent. [LB625]

SHEREE KEELY: (Exhibits 1-3) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Sheree Keely, spelled S-h-e-r-e-e K-e-e-l-y. I am vice president of behavioral services at CHI Health, appearing this afternoon in support of LB625. I'm also

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handing in letters of support from the Nebraska Hospital Association and NABHO. Before I begin, I'd like to thank Senator Krist for introducing this important legislation and for your continued support of behavioral health. Behavioral health care in Nebraska has experienced a significant shift over the years from institutionalization to community-based treatment and services. I've worked in behavioral health in the industry for close to 30 years and have seen firsthand that despite the heavy lifting that has taken place by legislators, philanthropists, and providers, there are still gaps that must be addressed for the betterment of the patients that we're serving. Due to limited inpatient bed availability in Nebraska, involuntarily committed patients are transferred to the first bed that comes available. Oftentimes, this results in patients being treated far from home and requiring lengthy transport. This places stress on local hospitals which expend countless hours procuring an inpatient bed, as well as local law enforcement and ambulance services which are required to transport the patient to the next available facility. If...LB625 would allow interstate placement for involuntarily committed patients within Nebraska and bordering states. If...the sending agency--the county or the region--contracts with the receiving agency--the hospital, the substance abuse center--to provide services with the intention of delivering care close to the patient's home, decreasing transport cost and helping to reduce the current bottleneck in hospital inpatient units. Attached in your packet is a map of the states that currently utilize an impact (sic--compact), including Iowa--and Iowa just passed their law last week--Minnesota, South Dakota, and Wisconsin. The law is voluntary, meaning no hospital will be required to accept or transfer patients. Instead, they are given the option to enter into these contractual relationships at their discretion. Last year there were 33 involuntarily committed patients who were treated in hospitals outside of Omaha due to lack of bed availability. The travel expense ranged from \$300-3,000 per patient per incident. The average length of stay in a hospital is five to seven days, so the majority of the care occurs outside of the hospital walls, therefore, the support of the community continuum is key for the patient and family. Being able to seek treatment close to home is important in providing continuity. Interstate placement would alleviate both tension and inefficiencies in the current system by allowing this emergent care to occur close to the patient's home and shorten transport. On behalf of CHI and the patients that we serve, I thank you all for your service to the state. I would be happy to try to answer any of your questions. [LB625]

SENATOR SEILER: Senator Williams. [LB625]

SENATOR WILLIAMS: Thank you, Senator Seiler. I just want to be sure of a couple of things. The cost factor that was the question to Senator Krist for Medicaid in this situation, it wouldn't matter whether it's across the state line? [LB625]

SHEREE KEELY: Not as far as I know, it wouldn't. [LB625]

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SENATOR WILLIAMS: Okay. Is there anything in LB625 that...you mentioned Iowa has recently passed a law and other...some other bordering states. [LB625]

SHEREE KEELY: Right. [LB625]

SENATOR WILLIAMS: So does this become somewhat reciprocal that those... [LB625]

SHEREE KEELY: Yes. The state... [LB625]

SENATOR WILLIAMS: Iowa could use beds in Nebraska also? [LB625]

SHEREE KEELY: Correct, yes. [LB625]

SENATOR WILLIAMS: Okay. [LB625]

SHEREE KEELY: You have...the other state has to have the interstate compact as well. [LB625]

SENATOR WILLIAMS: But if they have that... [LB625]

SHEREE KEELY: Yes. [LB625]

SENATOR WILLIAMS: Okay. Thank you. [LB625]

SENATOR SEILER: Senator Pansing Brooks. [LB625]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Okay, Ms. Keely. I was just wondering, again speaking about costs, I'm looking at the fiscal note. Did you by chance see the fiscal note? [LB625]

SHEREE KEELY: I heard about it this morning, yes. [LB625]

SENATOR PANSING BROOKS: Okay. Do you have any thoughts about the fact that they're saying that this will cost more money when in actuality it seems like...that we are making it so that it will be in closer proximity and so it seems like the costs should be cut rather than...do you have any idea why the costs increase? [LB625]

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SHEREE KEELY: I don't understand the basis of the fiscal note. I'm not sure what their assumptions were. To your point, from how I'm looking at it, it appears we would save money because we wouldn't be transporting. I don't anticipate we would have more patients that would be committed so, I mean, we're either sending a patient to Kearney and they're being treated there and we're paying for it there, or we're sending them to Council Bluffs. Well, we're not paying in Kearney. We're paying in Council Bluffs. So I...I don't understand... [LB625]

SENATOR PANSING BROOKS: Yeah, and we're not paying the cost of the movement of the patient. [LB625]

SHEREE KEELY: Right. Right. [LB625]

SENATOR PANSING BROOKS: Is there somebody else behind you that might speak to that, do you know? [LB625]

SHEREE KEELY: I would talk to Patti Jurjevich. [LB625]

SENATOR PANSING BROOKS: Okay. Thank you very much. I'll try that. [LB625]

SENATOR SEILER: Any further questions? I have just a procedure one. Person is picked up on an EPC and is brought for the EPC, the hearing. The hearing takes place in Nebraska, right, before they're transferred to another facility? [LB625]

SHEREE KEELY: We did have some discussion about that. Yes, I believe that would occur. Correct. [LB625]

SENATOR SEILER: Otherwise, we'd have a problem with law. The EPC laws in Iowa may not be the same as Nebraska. [LB625]

SHEREE KEELY: Right. [LB625]

SENATOR SEILER: Okay. And one of your parts of this bill says a person basically can't be...have been convicted of a crime. And so if you find that the person in your EPC hearing is a convict, at that point you've limited yourself back to Nebraska. Is that correct? [LB625]

SHEREE KEELY: Correct. [LB625]

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SENATOR SEILER: Okay. Thank you. Any further questions? Thank you. Next proponent.
[LB625]

STEVE LINDQUIST: (Exhibit 4) My name is Steve Lindquist, S-t-e-v-e, Lindquist is L-i-n-d-q-u-i-s-t. I am the assistant vice president for behavioral health services with Avera McKennan Hospital in Sioux Falls, South Dakota, so I'm one of those out-of-state facilities that you've been referencing here. We're the one that has a contract with 17 counties in the state of Minnesota for this out-of-state service. About ten years ago I was approached by a county in southwestern Minnesota to see if we could provide assistance for them for individuals who were on mental health holds. Counties had to drive a long distance to access psychiatric beds, and literally we're 20 minutes from the Minnesota border. And so they approached us. I didn't think we could do that because of state law issues but found out that Minnesota and Wisconsin had arranged something through their statutes that allowed for this kind of an arrangement. South Dakota passed complementary legislation to what existed in North Dakota and Minnesota and then, at that point in time, we talked with Minnesota counties about using us for these holds. It worked very well. It has expanded so we serve 17 counties, as I said. Some of the key things that we've found is that the sending state's mental health laws continue to cover the person. The person is assured the same legal rights and protections related to mental health treatment as they would in their home state. The sending governmental entity retains authority over the person and their legal status of the mental illness hold or commitment. The sending entity remains responsible for legal aspects of the mental illness hold or commitment. And lastly, interstate placement of individuals cannot take place until and unless there is a formal contract between the sending governmental entity and the bordering state treatment facility. This eliminates confusion in the process and defines the roles and responsibilities of the various entities. This is a very important step. Here are some of the positive benefits that we've found. Individuals are able to be served closer to home. Family members are able to maintain contact and visit with their loved one much more readily than if the person has been transported many miles away. Law enforcement or ambulance services providing transport do not need to be out of their home community for long periods of time and transport costs are reduced. And finally, the other thing is that it does address the financial issues. A contract has to be put in place which does define the cost of care. Medicare, Medicaid, private insurance are primary, and then a governmental entity is the payer of last resort, and that is defined in our contracts. Thank you. I'm available for questions.
[LB625]

SENATOR SEILER: Senator Pansing Brooks. [LB625]

SENATOR PANSING BROOKS: Thank you, Chairman Seiler. Mr. Lindquist...or is it Dr. Lindquist? I don't know but... [LB625]

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STEVE LINDQUIST: Steve. [LB625]

SENATOR PANSING BROOKS: Anyway, so what have the cost differentials been for you in South Dakota? Have you seen some cost differentials? [LB625]

STEVE LINDQUIST: No. We accept Minnesota Medicaid. They pay us their state rate. We do have to negotiate a rate with Minnesota Medicaid, so we get what is a negotiated rate with Minnesota Medicaid. For private insurance, it's whatever the rate is if we're a network or it's a single case negotiated rate. And lastly, if there is no payer, the person is not covered by some type of insurance, then it defaults to a governmental entity in that sending state. And that is defined in the contract so there's no surprises as far as what the cost would be. [LB625]

SENATOR PANSING BROOKS: And I presume that you're...you talk about boarding psychiatric patients in your last bullet point and how sometimes the patients have to stay in the hospital longer under sort of an emergency room care until they can find placement. So this probably helps that, as well, to... [LB625]

STEVE LINDQUIST: It significantly reduces the amount of time that these individuals have to spend in a hospital emergency department while the staff find a bed. It's not good for someone to spend hours and hours or days in an emergency department just waiting for a psychiatric bed. Nationally, that's become a major problem. [LB625]

SENATOR PANSING BROOKS: Well, that would help reduce cost as well then. [LB625]

STEVE LINDQUIST: Yes. [LB625]

SENATOR PANSING BROOKS: Thank you. [LB625]

SENATOR SEILER: Senator Morfeld. [LB625]

SENATOR MORFELD: Well, first, thank you for coming. You said Avera McKennan in Sioux Falls, South Dakota? [LB625]

STEVE LINDQUIST: Yes. [LB625]

SENATOR MORFELD: Okay. I grew up, from your hospital, about five blocks away for about six or seven years. [LB625]

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STEVE LINDQUIST: Oh, is that right? [LB625]

SENATOR MORFELD: So, welcome. Welcome to Nebraska. [LB625]

STEVE LINDQUIST: Thank you. I'm a native Nebraskan, actually. [LB625]

SENATOR MORFELD: Oh, are you? Oh, okay. Well, we can talk about later, doesn't need to be on the record. But in any case, one of the questions that I had was some of the legal issues because these people are committed. Has there been any...and I'm assuming you're pulling a lot of patients from southwest Minnesota because those are more rural counties and you're the central hub or the regional hub for health care. Have you had any...has there been any legal issues with, you know, Minnesota law? I guess I don't know how to describe that very well, but it's a question that comes to mind. [LB625]

STEVE LINDQUIST: Sure, yeah, an excellent question. Initially, we had to learn Minnesota mental health law as far as the time frames, the criteria, and so our physicians and staff, we follow the bordering state's mental health code and for rights and responsibilities hearing and so on. The sending the state retains responsibility over that person while they're with us. If there is a situation, say the person assaults someone, then South Dakota law would kick in related to criminal charges. But in relationship to mental health code rights, responsibilities, it remains with the sending state. So we follow the sending state's code. [LB625]

SENATOR MORFELD: Excellent. Thank you, sir. [LB625]

SENATOR SEILER: Any further questions? Seeing none, thank you very much... [LB625]

STEVE LINDQUIST: Thank you. [LB625]

SENATOR SEILER: ...for your trip down and your testimony. [LB625]

STEVE LINDQUIST: Thank you. [LB625]

PATTI JURJEVICH: (Exhibit 5) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Patti Jurjevich, P-a-t-t-i J-u-r-j-e-v-i-c-h. I am the regional administrator for Region 6 Behavioral Health Care, one of the six regional behavioral health authorities in Nebraska. I am testifying today on behalf of the Nebraska Association of Regional Administrators in support of LB625. As you may be aware, concern exists about the availability

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of inpatient acute care beds in Nebraska for persons in psychiatric crisis. In Region 6, covering Cass, Dodge, Douglas, and Sarpy and Washington Counties in eastern Nebraska, timely access to acute care beds for individuals in an involuntary status is a problem. Last fiscal year, 33 individuals had to access needed care in a facility outside of Region 6. This situation requires travel to Lincoln or Kearney. Since FY '09, Region 6 has averaged 22 persons per year that needed an out-of-region placement. A recent review of activity in emergency departments in Region 6 indicates an average wait time for an inpatient bed ranging from 7 hours to 14.5 hours. In 2014, there were two instances when there were no psychiatric inpatient beds available in Region 6, Lincoln, or Kearney. In these cases, one individual waited in an emergency department for seven days and another individual waited five days to access the needed acute care services. This is not necessary and not acceptable when there are beds available in Council Bluffs, a short distance away. In Region 4, covering 22 counties in northeast and north-central Nebraska, if the acute care program at Faith Regional in Norfolk is full, the alternative is Kearney or Omaha. In FY '14, 30 individuals accessed inpatient care outside of Region 4. And a quick qualifier on that, not all of those left the region because the Norfolk program was full. Because of the expanse of the Region 4 area, in some cases it makes much more sense for those individuals to go to North Platte or to Kearney because it's much closer to home, which is the concept that we're advocating for today. The ability to access a bed in a closer facility in Sioux City or in Sioux Falls is a better option for that area as well. Traveling long distances for treatment is not good for consumer care, creates a difficulty for family members to participate in the treatment process, stretches law enforcement resources, and is costly. If passed, regions will have an opportunity to contract with hospitals in bordering states to allow the transfer, admission, and treatment for individuals in an involuntary status. The same quality standards of care required by regions of inpatient programs in Nebraska will apply to programs in these neighboring communities. Behavioral health regions have a long history of working with consumers, family members, advocates, and other system stakeholders to identify and address mental health and substance abuse issues and barriers to treatment and rehabilitation that impacts our communities. Advocating for reasonable solutions to improve care is what this bill is about. LB625 provides us with a reasonable solution. And I will stop there. You have the rest. Thank you. [LB625]

SENATOR SEILER: It's your request. [LB625]

SENATOR PANSING BROOKS: Ma'am, would you please go ahead and finish whatever you... [LB625]

PATTI JURJEVICH: Okay. [LB625]

SENATOR PANSING BROOKS: ...if you have one more statement or something. [LB625]

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PATTI JURJEVICH: Certainly. Advocating for reasonable solutions to improve care is what this bill is about. LB625 provides us with a reasonable solution to address the inpatient access issue for persons in involuntary care. I urge your support for LB625 and look forward to the opportunity to expand our inpatient resources so that individuals in need of care may access that care closer to home, family, and supports in a reasonable and timely manner. Thank you for your leadership and support on this bill and I will try to answer any questions you may have. [LB625]

SENATOR SEILER: Do you have questions? [LB625]

SENATOR PANSING BROOKS: Thank you. Thank you, Ms. Jurjevich. I think Ms. Keely said that you have...you might be able...you did speak a little bit about the savings and cost. But speaking specifically to the fiscal note, could you speak to your understand...have you seen the fiscal note? [LB625]

PATTI JURJEVICH: I have looked at it, yes. [LB625]

SENATOR PANSING BROOKS: And do you have any comments with regard to the fiscal note versus what you've just talked about, cost savings with law enforcement and all sorts of... [LB625]

PATTI JURJEVICH: And when I talk about cost savings, it's primarily in those transportation costs that folks are incurring for those longer distances. The fiscal note, as I understand it, provides an accounting in the FY '14 total column where it lists services down the left, that is on the division of behavioral health side and the regions side of behavioral health funding is what the allocations are across all six regions in the state for those acute care services. I cannot...I don't know that I understand the 5 percent. My assumption is that perhaps they are forecasting an increase in demand for services. [LB625]

SENATOR PANSING BROOKS: Okay, I'm trying to find the 5 percent now. Okay. And could you just discuss a little bit of the cost of the transportation. Are there law enforcement officer...what...who is helping transport? [LB625]

PATTI JURJEVICH: I can speak to how it occurs in Region 6. [LB625]

SENATOR PANSING BROOKS: Okay. [LB625]

PATTI JURJEVICH: And when an individual presents themselves... [LB625]

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SENATOR SEILER: Okay, yes. Waive closing? Waive closing? [LB625]

PATTI JURJEVICH: ...at Lasting Hope Recovery Center, one of the local emergency departments under an emergency protective custody, and the evaluation takes place and the determination is made that inpatient care is needed. And if a bed is not available in our community and transportation is necessary to Kearney, for example, that sending facility is going to pay for the transportation cost for that individual to go from one place to the next, and generally that is going to be by ambulance or something like that, that is expensive. [LB625]

SENATOR PANSING BROOKS: And are there... [LB625]

PATTI JURJEVICH: Then, when they come back to the...I'm sorry. [LB625]

SENATOR PANSING BROOKS: No, go ahead. [LB625]

PATTI JURJEVICH: When they come back to the our community from that other facility, Region 6 pays the cost of that transportation for them to return home. [LB625]

SENATOR PANSING BROOKS: And are there law enforcement officers that go with that person or they just...is it one person just driving that person or how does it usually work? [LB625]

PATTI JURJEVICH: And I think that's...there is probably going to be some follow-up testimony... [LB625]

SENATOR PANSING BROOKS: Okay. [LB625]

PATTI JURJEVICH: ...that can speak better to that. But in Region 6 it's handled a little differently than in other areas of the state. [LB625]

SENATOR PANSING BROOKS: Okay, thank you. [LB625]

SENATOR SEILER: Any further? Senator Williams. [LB625]

SENATOR WILLIAMS: Thank you, Senator Seiler. Ms. Jurjevich, I wanted to ask again, this only, again, works with another state that is part of the compact or has adopted that? Are you aware of whether Wyoming, Colorado, and Kansas are looking at this at this point? [LB625]

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PATTI JURJEVICH: Oh, I'm afraid I cannot speak to that. I don't know the answer. [LB625]

SENATOR WILLIAMS: Okay. Hopefully, you know, if we do this, it would really be nice, especially for those that are in western Nebraska, to connect with Denver and Laramie and the places out there. [LB625]

PATTI JURJEVICH: Agreed. The concept is a good one. [LB625]

SENATOR WILLIAMS: Thank you. [LB625]

SENATOR SEILER: Any further questions? I have one. [LB625]

PATTI JURJEVICH: Okay. [LB625]

SENATOR SEILER: Your facility in Kearney, what is the name of the facility? [LB625]

PATTI JURJEVICH: Richard Young. [LB625]

SENATOR SEILER: Okay. Anybody else have any questions? Thank you. [LB625]

PATTI JURJEVICH: Thank you. [LB625]

SENATOR SEILER: Next proponent. [LB625]

CHRIS KLEINBERG: (Exhibit 6) Good afternoon, Chairman Seiler and members of the Judiciary Committee. I want to thank Senator Krist especially for this particular bill in my stead. My name is Chris Kleinberg, C-h-r-i-s K-l-e-i-n-b-e-r-g. I am a sheriff of Dakota County, Nebraska. Dakota County is in Region 4 mental health district and we are right across the river from Sioux City, Iowa, if you're familiar with that metropolitan area. I'm here to support LB625. This bill has unanimous support from the Dakota County Commissioner, South Sioux City Chamber, as well as their legislative committee and citizens I've spoke with in my area. We're on the border of Iowa and South Dakota. Although Dakota County's population is roughly right around 25,000 people, we're a few city blocks--city blocks--from Sioux City, Iowa, which is, if you've ever been to that area, that's where the hospitals are, that's where we deal with most of...I was born, actually, in Sioux City, Iowa, native Nebraskan though--just wanted to clarify that. (Laughter) Approximately 170...however, when it comes to law enforcement, it gets difficult, especially in this particular area, because my deputies and myself, if anybody has been there for

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any length of time, we average probably anywhere from 7-12 emergency protective custodies a year. Not even mentioning the cost of having a deputy or two, it's an average of eight, nine hours for one EPC. That's at the hospital; that's the whole bed. I am not comfortable with one deputy going, which is usually me or whatever guy, and it does happen. An hour and a half drive to Norfolk, that's our nearest hospital in the state of Nebraska. An hour and a half, especially for someone with mental problems, is a long drive. And I can tell you many stories, if you've got time, of these drives throughout the night. Now we're dealing with vets. We have a lot of vets in our communities now. I cannot look at the family of a veteran or...and say, yes, I understand it's a couple blocks north, we can get him medical help, but, no, we've got to drive, you know, an hour and a half one way. This bill, it just, in my opinion, as it sits right now, the only other change to this that I would like to see is the actual evaluation, the 37 hours or 38 hours it takes to evaluate this person. That is the crucial time. The way it sits right now, it's my understanding that this covers treatment. We use medical services in Sioux City as law enforcement in my area for Child Protective Services. The interviewers are over there. We use them for...we use the same radio system as Sioux City and Woodbury County, Dakota County, South Dakota. We're all on the same radio system. We use the same healthcare facilities as far as helicopter rescue and things like that. This is just...just makes it much, much easier for us and the patient. Thank you.

[LB625]

SENATOR SEILER: Any questions? Senator Chambers. [LB625]

SENATOR CHAMBERS: Have you had any instances of situations where somebody from the Nebraska side had a law enforcement problem on the other side where maybe there was a fight or an attack, either being the victim or the perpetrator, any of these people who were taken?

[LB625]

CHRIS KLEINBERG: Well, honestly, Senator, I can't...that, if it's an issue...it's not someone that's in my custody that that happens. If they're in my custody and we've taken them over there for a medical treatment,... [LB625]

SENATOR CHAMBERS: No, I meant are you aware of any. [LB625]

CHRIS KLEINBERG: No. [LB625]

SENATOR CHAMBERS: Oh, okay. But it would be the law of the state where the incident occurred that would govern though, ordinarily. [LB625]

CHRIS KLEINBERG: Correct. [LB625]

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SENATOR CHAMBERS: Okay. [LB625]

SENATOR SEILER: Any further questions? Thank you, Sheriff, for coming down. [LB625]

CHRIS KLEINBERG: Thank you very much. [LB625]

SENATOR SEILER: Next proponent. [LB625]

ELAINE MENZEL: Senator Seiler and members of the Judiciary Committee, for the record my name is Elaine Menzel. That's E-l-a-i-n-e M-e-n-z-e-l. And I'm here today on behalf of the Nebraska Association of County Officials. I...unforutnately, Senator Krist is not here, because I was going to certainly compliment him. His statement of intent reflected a good share of my sentiments, particularly in terms of dealing with...the interest in dealing with the vulnerable patients, as well as the savings, potentially, to costs of the county entities of which we represent. Essentially, I think the previous testifiers have done a really good job in terms of emphasizing the benefits of legislation of this nature. And I guess I just would like to lend my support, if you would like, for purposes of further study into this if that's the route you choose to go for that...with that, I will open up to any questions if you have any. [LB625]

SENATOR SEILER: Thank you. Any questions? Any questions? Seeing none, thank you. I guess I should explain. Senator Krist had an emergency and had to leave. He didn't abandon you. Next proponent. Any further proponent? Any opponent, against this bill? [LB625]

JANE SVOBODA: (Exhibit 7) Hello. My name is Jane Svoboda, J-a-... [LB625]

SENATOR SEILER: Slide forward a little bit. [LB625]

JANE SVOBODA: J-a-n-e S-v-o-b-o-d-a. And I'm a lobbyist for kindness education. My sister, Amy Svoboda, was going to commit my 90-year-old dad to an Alzheimer's unit in Wyoming where...and when Indian Hills Manor in the same town, in Ogallala, is available. This bill is wrong. This is not closer to home. Family members cannot visit the patient in their own state. And the family members do not have control of where the patient stays. We pay taxes for services in our own state. This will burden the accounting so another state has to pay for emergency or added services. Hastings is adding over 100 beds. The answer, if we need another facility, we can do this in our own state: Put a facility in North Platte and that takes care of Nebraskans. You can also have group homes in every city and any city. Lincoln already does have group homes. So this has been working out for the people in facilities. Further, the National Missing Persons Bureau quit several years ago. This bill makes American citizens vulnerable to

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be shuffled far away and become missing persons. This bill makes vulnerable all our freedoms. [LB625]

SENATOR SEILER: Whoa! Ma'am, I might ask you a question. Thank you very much for your appearance. Any questions? Senator Chambers. [LB625]

SENATOR CHAMBERS: Oh, may I? I'm trying to understand. Is this a situation where the officials in your city or your county determined that the patient should be taken across state lines against the will of the family? [LB625]

JANE SVOBODA: My sister is the person who decided that, if my dad was to be committed as an Alzheimer patient, she was seeking for him to go all the way to Wyoming. Okay. This... [LB625]

SENATOR CHAMBERS: But it would be a family decision rather than state officials who made that decision? [LB625]

JANE SVOBODA: Sir, your bill does not say that the family determines this. [LB625]

SENATOR CHAMBERS: Here's what I'm probably not making clear. Is this a situation wherein the family, some or one, would want your father in one location and another part of the family would rather he stay in Nebraska? [LB625]

JANE SVOBODA: Yes. Certainly. And there was available at Indian Hills Manor in Ogallala a place to stay. [LB625]

SENATOR CHAMBERS: Would the patient have been subject to any court proceedings so that a guardian, one of the family members, had been given a guardianship? [LB625]

JANE SVOBODA: The court actually decided that he was not able to be committed. His mental capacities improved and he was not sent to either Indian Hills Manor or Wyoming. But this does tend to split up a family in their statements. [LB625]

SENATOR CHAMBERS: Okay. Thank you. [LB625]

SENATOR SEILER: Any further questions? Don't run off. (Laugh) Thank you. Any further opponent? Anybody in the neutral? Senator Krist, when he consulted with me before he left, said

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he would waive the closing. And again, he was called to an emergency. That's why he's not here. Thank you very much. (See also Exhibits 8 and 9.) We will now open with LB281. You don't look like Rick. [LB625 LB281]

ANNA WISHART: Not even close (laugh). [LB281]

SENATOR SEILER: Not even close. [LB281]

ANNA WISHART: My voice is a little less booming (laughter). [LB281]

SENATOR SEILER: You may open. [LB281]

ANNA WISHART: (Exhibits 1 and 2) I am passing out the amendment that we introduced on this bill about a week ago. So good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t. And I am the legislative aide for Senator Rick Kolowski from Legislative District 31 in southwest Omaha. And Senator Kolowski sends his apologies that he was not able to be here today. LB281, with the AM706, which you have in front of you here, creates a Child Support for College Savings Program modeled after the child support savings initiative in Kansas. The Child Support for College Savings Program allows a noncustodial parent owing arrears to the state of Nebraska to open a college savings account with the Department of Health and Human Services for any of his or her children, and I want to be clear about this, as long as the noncustodial parent is current on his or her child support obligation to the custodial parent. That means they have no debt owed to the custodial parent. Their only debt is to the state from what they owed if ADC kicked in. For every dollar contributed by the noncustodial parent to each college savings account, the department shall forgive a portion of the arrears not less than the equivalent of the amount contributed. To implement this program, the Nebraska Department of Health and Human Services shall enter into a memorandum of understanding with the Nebraska State Treasurer's Office. Research has verified the many benefits of college savings accounts for children. Having an account designated for college helps children build positive expectations about college. Educational savings accounts promote the importance of higher education and make the future feel more proximate for children. Children aged 12-18 with a savings account for college had higher math scores and were twice as likely to expect to go to college than their counterparts without a college savings account. Low college enrollment by youth from low-income families is partly due to uncertainty about college affordability. Even small college savings can have a big effect on college enrollment and graduation. Low- and moderate-income children with \$500 or less in savings were three times more likely to enroll in college than children with no savings and four times more likely to graduate. Young adults who had their own accounts designated for college were two times more likely to be on course to complete college--an example would be, you

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know, progressing towards graduation--than those who do not. And children whose parents had saved for their college expenses were less likely to take out high-dollar loans for their college education, putting the children at a lower risk of dropping out of college or accumulating burdensome debt. And all of these research points that I have addressed above are sourced in your statement of intent if you want to read more, further into that research. LB281 is an innovative approach to incentivizing noncustodial parents to pay their debt to the state while investing in college savings programs for children that need it the most. Our office has been working closely with Voices for Children and Melissa Johnson, who runs the program in Kansas, and her team, and we are so grateful for her help in crafting this legislation so that, if passed, it results in the same successes as they have experienced in Kansas. In fact, Melissa is...has been so helpful that she and her team have driven from Kansas today to talk to you about their program and their successes and to answer any of your questions. So with that, I am happy to answer any questions. Actually, though, first I did want to address a document that was given to you by the Department of Health and Human Services. We received this today over the lunch hour and have read through it pretty quickly and a lot of the points that they address in this and the technical concerns are addressed in the AM706. And then some of the other technical concerns that they have are wording issues that we are happy to address, as well, and so what we'll do is we'll go back and take some time to go through this and get you a statement of how we can change that and address their concerns. With that, I am happy to answer any questions. [LB281]

SENATOR SEILER: Senator Coash. [LB281]

SENATOR COASH: Thank you, Senator Seiler. Not to put you on the spot here, Anna, but I'll ask the question for you and, if you don't know, somebody that follows you may. I'm having trouble understanding how you can be current with your child support, which is what you started your statement with, but yet be in arrears with the state. I don't understand how you can say, I'm current but yet I owe the state, because the state is the mechanism by which the child support gets to the noncustodial parent. [LB281]

ANNA WISHART: Right, right. [LB281]

SENATOR COASH: How do those two things connect? [LB281]

ANNA WISHART: Yeah. And this may be something where we need to word it a little bit better in the bill. But what we mean is, say a noncustodial parent becomes delinquent on their payments to the custodial parent. What happens is ADC kicks in. And so then that noncustodial parent, they start getting current on the payments to their custodial parent but they still owe that amount to ADC. And some of the examples that the Department of Health and Human Services gave to us for how a parent would owe money to the state would be foster care, for example. You

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may owe some child support to the state if your kid goes into the foster care system. And so that money would be an example of arrears that would be owed to the state, and this is what Kansas is working with in their program. [LB281]

SENATOR COASH: Okay, because...and I won't expect you to respond to this. We don't like to put the staff in this position. But my concern is, is that, if money is owed to the noncustodial parent, it should go to the noncustodial parent and we...college savings plan is great and...but that...the child support is for the care and feeding of...welfare of the child. And I'm trying to figure out how we can take care of that and save for college. I mean, they're both important, but I'm going to put my priority on making sure the food is on the table before college savings. So I'm just...I'll have to ask...to look at this a little bit more to figure out how those two things can be negotiated. But that's where I'm getting a little hung up. [LB281]

ANNA WISHART: Yeah. And Melissa can...she'll be able to clarify it, as well, how they do it in Kansas. [LB281]

SENATOR COASH: Okay. Thank you. [LB281]

ANNA WISHART: And I really am happy to answer any other questions. [LB281]

SENATOR SEILER: Any further questions? I have one. [LB281]

ANNA WISHART: Okay. [LB281]

SENATOR SEILER: Is there a lien waiver of some sort? Because as I remember that lien, it's a Medicaid lien or some type of social services lien. Does your bill waive that? And if you don't know, that's fine. We can get it from Rick. [LB281]

ANNA WISHART: I do not know that. I do have...let me look here really carefully. So you're talking about Medicaid that may be owed. [LB281]

SENATOR SEILER: Right, or foster care. Some of the benefits that come through HHS usually has a lien attached to any assets. [LB281]

ANNA WISHART: Well, and that's...that is something I'll have to get back to you with. [LB281]

SENATOR SEILER: Thank you. Any further questions? Thank you, Anna. [LB281]

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ANNA WISHART: Okay. Thank you. [LB281]

SENATOR SEILER: Next proponent. [LB281]

AUBREY MANCUSO: (Exhibit 3) Good afternoon, Senator Seiler, members of the Judiciary Committee. My name is Aubrey Mancuso, A-u-b-r-e-y M-a-n-c-u-s-o, and I'm here on behalf of Voices for Children in Nebraska. We're in support of LB281 and want to thank Senator Kolowski and his office for bringing this bill forward. Nationally there has been a growing recognition of the importance of addressing the issues of accessibility in higher education and LB281 would be a first step towards doing that in Nebraska. There are two trends contributing to this challenge. One is that the cost of higher education is increasing at a rate much faster than family incomes. Just over the last five years, the average tuition and fees at public four-year institutions in Nebraska has increased by 16 percent; and over that same time period, median income in the state only increased by 2.2 percent. State budgets have also remained tight, limiting public investments in higher education. Over that same five-year time period, per-student state spending on higher education decreased by 17 percent. This creates a challenge on two fronts. One is that our economy needs educated workers. Some current projections indicate that by 2020, 71 percent of all jobs in Nebraska will require some form of postsecondary education. And if current trends continue, only 47 percent of the population will have some form of higher education by that time. Young adults are also increasingly burdened by student debt. Approximately 62 percent of students in Nebraska graduate with some student debt. And the average individual debt burden for a four-year degree is over \$26,000. This is problematic not only for the individual but for the larger economy. Significant amounts of debt can hinder the purchasing power of young workers who are often significant consumers of durable goods. There has been an ongoing cost shift in higher education not only from the state to the consumer, but from the family to the individual student. States and cities have started to take a leadership role in addressing this issue and one lesson that's becoming increasingly clear is that interventions meant to encourage higher education done at the high school level are coming too late. In order to effectively encourage higher educational attainment, we have to find interventions that are targeted at younger children. States around the country have also started to recognize the promise of educational savings as a means for addressing the issue. And Anna mentioned a lot of the research around this introduction. I also wanted to mention that data from 2011 show that the majority of families currently saving in Nebraska's educational savings plan are higher income. Families in Nebraska within an AGI below \$50,000 make up nearly half the population but less than 7 percent of 529 savers, while those with incomes over \$100,000 make up 18 percent of the population but nearly half of all 529 plan participants. So our current interventions through our tax code aren't reaching the families that need it most. LB281 would be an intervention targeted at educational savings for lower income families and we would urge the committee to advance this bill. Thank you. [LB281]

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SENATOR SEILER: Any questions? Thank you much for your testimony. [LB281]

AUBREY MANCUSO: Thank you. [LB281]

SENATOR SEILER: Next proponent. Next proponent. Any opponents? [LB281]

BRUCE VESPER: Good afternoon, Chairman Seiler. Thank you, Committee. My name is Bruce Vesper, V-e-s-p-e-r. I am actually the founder and president of Partners for Equal Parenting. I'm actually here today to speak on behalf of LB437, but what I just heard just was outrageous. I mean, as a parent who is going through a custody battle, who pays child support, we can't afford any more. We work our butts off to pay the child support. When we get behind, the state will take our license. And so now they're trying to say, well, let's add college to this. I heard the word noncustodial parent. I didn't hear the word custodial parent. How come they're not paying for the college too? This seems to be a one-sided issue. If they're going to bring this issue up, they need to bring it up with the child support committee and not with you guys. This is something that, both situations, if they're going to lower the child support, then they need to address the college issue. That's fine. But if we're going to start adjusting for college, we need to change the reg...the child support, the way it's raised and the way they figure the child support. If we're going to add college into it, we need to adjust that. So I strictly oppose this bill. I hope it does not advance. I want it to die. It does not do anything. If we're going to go off of what Kansas is representing, then they need to also represent the way their child support is brought forth. They also need to represent the way that the parenting act that they presume is different than what Nebraska has. So we need to look at just not only...the other factors, not just the college factor. That's all I have. [LB281]

SENATOR SEILER: Okay. Any questions? Seeing none, thank you. [LB281]

BRUCE VESPER: Thank you. [LB281]

SENATOR SEILER: Any further opponents? Seeing none, anybody in the neutral? [LB281]

RACHEL BIAR: (Exhibit 4) Good afternoon, Chairman Seiler and the members of the Judiciary Committee. My name is Rachel Biar, spelled R-a-c-h-e-l B-i-a-r, and I serve as the assistant state treasurer for the Nebraska College Savings Program. We do not have a position on the underlying policy of LB281. I would like to, however, provide some brief information on the importance of Senator Kolowski's AM706 to LB281. The amendment specifies that the Department of Health and Human Services will serve as the account owner. From an operational perspective, it is vital for the Department of Health and Human Services to serve as the account

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owner for these particular college savings accounts. Because of the confidential information required for these accounts, neither the State Treasurer's Office nor the program manager for the Nebraska Educational Savings Plan Trust would have access to the needed information to manage these college savings accounts. This confidential information, which the Department of Health and Human Services does have, is necessary to open an account, deposit funds into the account, and eventually receive a distribution of the funds for the beneficiary's higher education expenses. It is important to understand that the account owner of the college savings...excuse me. The account owner of the college savings account acts on behalf of the beneficiary. Only the Department of Health and Human Services knows the beneficiary and the personal circumstances related to each child. The Treasurer's Office would not have the important information and we would not be able to track each case. The Department of Health and Human Services already has the ability to retrieve all of the needed information for these particular accounts. So, to summarize, the Treasurer's Office has no position on the underlying policy of LB281. But we do believe that, from an operational standpoint, AM706 is a vitally important addition to LB281. Thank you for the opportunity to testify, and I can answer any questions that you would like. [LB281]

SENATOR SEILER: Any questions? Seeing none, thank you very much for your testimony. [LB281]

RACHEL BIAR: Thank you. [LB281]

SENATOR SEILER: Further neutral. [LB281]

MELISSA JOHNSON: (Exhibit 5) Mr. Chairman and committee members, my name is Melissa Johnson, M-e-l-i-s-s-a J-o-h-n-s-o-n. I am the deputy director for the child support program from the state of Kansas. We implemented a program called our Child Support Savings Initiative. It was a partnership between our state treasurer and our agency so that we could provide some type of an incentive for noncustodial parents. We had incentive programs where we would write off arrears owed to the state of Kansas, but we wanted something that would provide more of a benefit to the children in our state. It is entirely voluntary. It is not mandatory in Kansas. It is implemented by policy and a written MOU with our treasurer's office. A noncustodial parent in Kansas...and I'm going to try to address some of your child support questions, but I also want to give the caveat that I'm speaking Kansas language so it may be a bit different in Nebraska. But in Kansas you can have arrears that are owed to the state because we got a judgment to repay birth expenses that were paid by Medicaid, because the child was on ADC, or the child was in the state's custody. It is entirely possible that at the time the journal entry is filed there is a current child support obligation plus a judgment for the past custody time period or ADC time period. A noncustodial parent can be paying their monthly current obligation but still have these judgments

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that may have been entered at the time of the original journal entry. So in Kansas, when we launched it in June of 2013, we had 6,600 noncustodial parents that qualified. They were...they did not owe any arrears to a custodial parent. Any arrears that they owed at that time were owed to the state of Kansas. And what we had done is, if the noncustodial parents voluntarily chose to participate, then we would make their arrears payment that they would pay just \$1 so that that would give them a little bit more money that they could put into the 529 accounts for the children. They do, if they owe a current support obligation, they still have to meet their monthly current support obligation plus that \$1 payment in order to qualify. And in Kansas, we write off \$2 for every \$1 they deposit. We have had a lot of success. We have closed out...we have closed 11 child support cases where the noncustodial parents have been able to pay off their arrears. In 22 months, these noncustodial parents have deposited \$56,550 into these educational accounts. We have written off about...a little over \$97,000 in arrears that's only owed to the state of Kansas. We did have the opportunity to obtain some private grant funding that has paid for some of the marketing materials that you'll see in front of you. And also, some of the private grant funding allowed for us to provide a match in cases where the arrears are owed to custodial parents. I...you asked questions about how you can be current and in arrears. Did my explanation kind of answer that for you? [LB281]

SENATOR COASH: I guess it does. But if the person who owes...if the parent who owes child support gets behind, right? [LB281]

MELISSA JOHNSON: Um-hum. [LB281]

SENATOR COASH: And so let's just say it's a...they're \$1,000 behind in their child support. What you...what I think you just described is, in Kansas, rather than paying, you know, paying that \$1,000, maybe the...maybe that...let's just say the...he won a lottery scratch ticket or got a bonus at work, so he had the money. [LB281]

MELISSA JOHNSON: Right. [LB281]

SENATOR COASH: Right, and was able to pay that \$1,000 of arrears. Rather than that \$1,000 going to the parent who it's owed, you allow that \$1,000 to be put into a college savings account? [LB281]

MELISSA JOHNSON: No. We are not diverting any money that would go to the parent. When your child...a child is in foster care, the child support that would have accrued during that time the child was in custody, that money is retained by the state. When the child is on ADC, for the child support that was due and owing for that time period the child was open on that cash assistance, that child support would be retained by the state. So when I say state-owned arrears,

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it's because that money will be retained by the state. Now there's time periods that may exist when the child is not in custody and that money is clearly due and owing to a custodial parent. We're not diverting any of that money. We're talking about just if the case has arrears only to a state...the state owed due to those type of situations. [LB281]

SENATOR COASH: Prior to this program you're describing where the parent owed the state then, what were you doing? You're just, like, writing it off at the end of the year, suing the... [LB281]

MELISSA JOHNSON: We...no, we didn't write it off at the end of the year. [LB281]

SENATOR COASH: I mean, did you ask for a judgment against them? [LB281]

MELISSA JOHNSON: We...when you get the initial order, you can get a judgment at that time for anything that's past due as far as if the kid was in custody past due or the ADC from past due. And then ongoing, if the kid, after the original order, comes into custody, those months become the state's. So it...we don't have to go back and get some...a new judgment every time. It would exist. And then it's not something...I'm trying to figure out how to best describe it. [LB281]

SENATOR COASH: So would you...so what you're trying to do is you're trying to incent the parent who says, well, I'm...I got...I'm current but I owe the state \$1,000, I'm not going to pay them, but if I can say instead I'll put it in a child...a college savings account, it'll be wiped off. [LB281]

MELISSA JOHNSON: Right. [LB281]

SENATOR COASH: Okay. [LB281]

MELISSA JOHNSON: Exactly. And even a lot of our noncustodial parents, they may be paying right now. Say your current obligation is \$100 a month, so you're paying your \$100 you owe every month. And they may be paying an extra \$50 to go towards those arrears. So we tell them, you only have to pay an extra \$1 to go to those arrears, so that gives them \$49 that they would have otherwise been paying that they can put in that 529 account, and we give them double credit for that. [LB281]

SENATOR COASH: Okay. I understand. That's more clear to me now. [LB281]

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MELISSA JOHNSON: Okay. And, sir, you had asked about the liens. [LB281]

SENATOR SEILER: Yes. [LB281]

MELISSA JOHNSON: Every quarter...we have access on-line. We maintain these accounts as the state of Kansas also owns them. Every quarter we go in and look and see how much has been deposited, and then we have our legal department file a partial release and satisfaction for the amount of money that we've written off. [LB281]

SENATOR SEILER: And that's in your state law. [LB281]

MELISSA JOHNSON: That...none of ours is by state law. Ours is all just by policy and by a written memorandum of understanding with the treasurer. [LB281]

SENATOR SEILER: Right. [LB281]

MELISSA JOHNSON: But those are the policy instructions to our staff and our staff go in and then they file that partial release every quarter. [LB281]

SENATOR SEILER: Okay. That answers the question. [LB281]

MELISSA JOHNSON: Then we also send a letter to the custodial parent or to the child in care of the custodial parent every quarter so that the custodial parent and the child know that they've got this account out there and that they know that there's money waiting for them so that they have that future education. I would also say that we've seen that a larger percentage of the individuals that have participated have been parents whose children may have been in foster care but they now have custody of their children back. Those parents may not be terribly incentivized to want to pay back the state when you've had their children from them, but having the option for those parents who are now trying to maintain a home and have their children back in their home, the ability to set aside the money that will entirely go for the child's benefit and it will cost them half as much. The materials I provided for you today also included a brochure that just gives a little bit more about our program. So are there any other questions? [LB281]

SENATOR SEILER: Thank you very much for your coming up and appearing and bringing us up to date on this. [LB281]

MELISSA JOHNSON: Thank you. [LB281]

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SENATOR SEILER: Any further people in the neutral? This will close the hearing on LB625 (sic--LB281). And I'm going to ask you to do something I've never done before. I'm going to ask you to clear the hallway so I can discuss with the committee the emergency that Senator Krist had, if you'd be so kind. Except, Senator Hadley, will you stay? Thank you very much, ladies and gentlemen, for your cooperation. I really appreciate that. The record will show that Senator Krist waived final closing and the... [LB281 LB497]

SENATOR COASH: That was Kolowski's bill. [LB497]

SENATOR SEILER: Pardon? [LB497]

SENATOR COASH: That was Senator Kolowski's bill we just did. [LB497]

SENATOR SEILER: Krist. Oh! Anna waived closing. [LB497]

SENATOR HADLEY: Oh! Anna waived. [LB497]

SENATOR SEILER: I hope she did. [LB497]

SENATOR COASH: She did. [LB497]

SENATOR SEILER: At this point, I'd like to open the hearing on LB497. Senator Hadley. [LB497]

SENATOR HADLEY: (Exhibit 1) Thank you, Chairman Seiler. My name is Galen Hadley. That's G-a-l-e-n H-a-d-l-e-y. I represent the 37th District which is basically Kearney and part of Buffalo County. I'm here to open on LB497. Currently, Nebraska is an equitable, meaning fair, distribution of marital assets in the case of divorce, annulment, or legal separation. Currently, the property will be divided between the spouses in a fair and equitable manner. There is no set rule--I want to repeat that--there is no set rule in determining who receives what or how much. The court considers a variety of factors. For example, the court may look at the relative earning contributions of the spouses, the value of one spouse staying home, at home or raising the children, and the earning potential of each. A spouse actually, technically, could receive anywhere from 0 to 100 percent. But a testifier later will talk about the zero to...or one-third to one-half rule in the division of the marital properties. LB497...and the amendment I handed out is the bill. The amendment I handed out is the bill. I'm sorry. I should have said that earlier. LB497 changes the distribution of marital assets and also applies debt to an equal ownership. The spouses are deemed to equally own all income and assets earner or acquired during the

marriage. This means that both husband and wife are deemed to equally own all money earned by either one of them during the marriage, even if only one spouse is employed. In addition, all property acquired during the marriage with community money is deemed to be owned equally by both the husband and wife, regardless of who purchased it. Equal ownership also applies to debts. This means both spouses are equally liable for debts. In most cases, this includes unpaid balances on credit cards, home mortgages, and car loan balances. In any action for divorce, the court should presume that an equal division is an equitable distribution of the property. Again, the presumption is that an equal division is an equitable distribution of the property and shall distribute the marital property equally unless the court specifically finds in the decree that such a division is inequitable and sets forth the reasons. In the event the court finds that an equitable division of the marital estate is inequitable, the court shall specifically state its basis for finding in the decree and shall take into consideration the following in determining the distribution of the marital estate: the length of the marriage; an antenuptial or a prenuptial agreement of the parties--the court shall have no authority except as otherwise provided to amend or rescind any such agreements; the age, health, occupation, amount and source of income, vocational skills, employability, and liabilities of each spouse; contributions of each spouse to the marriage, including contributions to the care and education of the children and the care and management of the home; the expectation of pension or retirement rights acquired prior to and during the marriage; the amount and duration of any spousal support awarded to either party or a property division in lieu of such support; and the tax consequences to each party. LB497 does not change how alimony or child support is determined. The person that asked me to bring this bill is an attorney from Kearney, will be here to testify, and will talk about the legal background of what they call the one-third to one-half rule that we now have in Nebraska and the court cases that led up to that rule. But I would be happy to answer any questions that you might have. [LB497]

SENATOR SEILER: Any questions of Senator Hadley? Thank you, Mr. Speaker. [LB497]

SENATOR CHAMBERS: May I? [LB497]

SENATOR SEILER: Oops. Senator Chambers. [LB497]

SENATOR HADLEY: I was just getting ready to leave. [LB497]

SENATOR CHAMBERS: And parting is such sweet sorrow. I wasn't prepared for sorrow just yet. Senator Hadley, if one of the persons were to be left an inheritance by a relative who died, is...what would that be covered under these specified items, if there is one? I've tried to go through it, but I just got the amendment. [LB497]

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SENATOR HADLEY: Senator Chambers, my understanding is the marital assets would be the assets received during the marriage. So if someone was left money prior to... [LB497]

SENATOR CHAMBERS: No. I mean if somebody...if a relative croaked during the marriage. [LB497]

SENATOR HADLEY: During the marriage, I think that, to my understanding, that would be part of the marital assets we're talking about here. [LB497]

SENATOR CHAMBERS: So if they're married and say they're ordinary people, neither one has that much and there might be one who had a little more than the other. And then there was a \$3 million estate left to one of those parties, according to this, there is a presumption that there should be an equal division even of that? [LB497]

SENATOR HADLEY: Yes, that's correct. [LB497]

SENATOR CHAMBERS: I'll listen to what the testifiers say. [LB497]

SENATOR HADLEY: Okay. [LB497]

SENATOR CHAMBERS: But I wanted that out there so whoever can answer it will be able to cover it then. [LB497]

SENATOR HADLEY: Thank you. [LB497]

SENATOR CHAMBERS: Or do you know the answer? [LB497]

SENATOR HADLEY: No. I do not. [LB497]

SENATOR CHAMBERS: Okay. [LB497]

SENATOR HADLEY: I did not have enough personality to become a lawyer. I became an accountant instead. [LB497]

SENATOR CHAMBERS: (Laughter) I don't have anything else. [LB497]

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SENATOR SEILER: Anybody else? Thank you, Mr. Speaker. [LB497]

SENATOR HADLEY: Thank you, Mr. Chair. [LB497]

SENATOR SEILER: Would you like...would you name that witness and have him come forward to... [LB497]

SENATOR HADLEY: Senator, Regent Kent Schroeder. [LB497]

SENATOR SEILER: Okay. [LB497]

KENT SCHROEDER: (Exhibit 2) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Kent Schroeder, K-e-n-t S-c-h-r-o-e-d-e-r. I've been practicing law in Kearney, Nebraska, since basically 1968. The current law with respect to the division of property and some minor reference to an award of alimony has been on the books many, many years. That law is laced with two words throughout the law, called "reasonable" and "equitable." Unfortunately, in 1960 and 1962, our Supreme Court decided to define, with respect to the division of property, the words "reasonable" and "equitable." That case, the ideology of the case started in 1960 with a case called Kramer v. Kramer, later cited in a case by Justice Carter two years later. And in that case, Jablonski v. Jablonski, the Supreme Court said this, and listen to this very carefully: We point out that this rule provides no mathematical formula by which the property shall be divided or by which alimony award can be exactly determined. Generally speaking, awards of this court in cases of this kind vary from one-third to one-half of the value of the property, depending upon the facts and circumstances of the particular case. Now what I find interesting about that paragraph out of the Supreme Court Opinion in Jablonski, is they start out by saying there is no mathematical formula, but we're going to give you one and it's one-third to two-thirds of the marital estate. In answer to Senator Chambers' question, the marital estate has been, continues to be, and this bill does not change that, anything acquired during the marriage, it either has to be earned or acquired during the marriage. If somebody inherits some money, that is not defined as a marital asset. Assets brought into the marriage are not also marital assets. There's exceptions to the rule. If I bring in a 1965 Corvette that's a piece of junk and during the marriage I improve it by putting an engine in and totally remodeling, that portion that was...improved the car during the marriage would be considered a marital asset but the original Corvette would not be. So this bill does not change the current law as it is. I have provided the committee with a memo that probably more adequately defines what it is that we're about to do here. I know that the family law section of the Nebraska Bar Association was opposed to the original LB497. I have spoken with a number of members from the family law section who now support this. I'm growing weary, quite frankly, ladies and gentlemen, of explaining to wives, particularly farm wives, why I was awarded one-third of the net marital farm estate in spite of the

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fact that I was in charge of the household, I cooked the hired hands' meals, I grow corn and soybeans to the co-op, I pulled calves, and you're telling me that I'm entitled to one-third of the net marital estate after 35 years? This is a pretty sad tale. So I would encourage the adoption of LB497. Questions? [LB497]

SENATOR CHAMBERS: May I ask a question? [LB497]

SENATOR SEILER: Senator Chambers. [LB497]

SENATOR CHAMBERS: Did you have the opportunity to say what you wanted us to hear by way of your explanation--I mean you didn't have to cut anything short--during the time you had to speak to us? [LB497]

KENT SCHROEDER: The only thing I would say to you, Senator, in speaking to a client of mine when I explained to her the one-third to two-thirds rule, she said to me, I wonder if one of those Supreme Court judges would think it was reasonable and equitable if their wife after 35 years got two-thirds of their judiciary retirement? [LB497]

SENATOR CHAMBERS: Well, if she were married to a judge, she should get 90 percent of it. (Laughter) Okay. [LB497]

KENT SCHROEDER: Questions, please. [LB497]

SENATOR SEILER: Senator Morfeld. [LB497]

SENATOR MORFELD: Mr. Schroeder, so you were saying...I was trying to listen to what you were saying and also read your memo here. The last...this really stems from a Supreme Court case in the 1960s? Is that correct? [LB497]

KENT SCHROEDER: It started out with a case called Kramer v. Kramer where it said there is no mathematical formula for determining what alimony is but it generally would be one-third to one-half of the net marital estate. Now, interestingly enough, that law has never been applied in Nebraska. I've never had a client that was awarded one-third to one-half of the net marital estate and called it alimony, ever. Then Justice Carter comes along, or Justice Spencer comes along two years later, and he adds to that paragraph that I just read you the words: by which the property shall be divided or by which an alimony award may be determined. And so out of nowhere we've now decided that the division of property can land somewhere between a third to two-thirds. [LB497]

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SENATOR MORFELD: Okay. Thank you. [LB497]

KENT SCHROEDER: Yep. The only state, by the way, in the nation that has that rule. [LB497]

SENATOR SEILER: The Corvette case you described, is that the take off of the case that was over at...just west of Grand Island with the irrigated quarter that was improved by the wife? [LB497]

KENT SCHROEDER: No. No, that...no, I don't think so. [LB497]

SENATOR SEILER: Okay. There was a case over there. [LB497]

KENT SCHROEDER: Yeah. [LB497]

SENATOR SEILER: I wondered if you'd tried that case. Okay. [LB497]

KENT SCHROEDER: No. [LB497]

SENATOR SEILER: Senator Chambers. [LB497]

SENATOR CHAMBERS: Now that I'm having a chance to read the material you gave me...and understand, we just got this. [LB497]

KENT SCHROEDER: I know. [LB497]

SENATOR CHAMBERS: So maybe if I'd had a chance to...now when I get down here on the first page where we're looking at the words of Judge Spencer... [LB497]

KENT SCHROEDER: Right. [LB497]

SENATOR CHAMBERS: ...he says, the rule provides no mathematical formula by which the property shall be divided or by which an alimony award can be exactly determined; generally speaking, awards of this court in cases of this kind vary from one-third to one-half of the value of the property, and so forth. So that means that it could be as low as one-third but no more than one-half, if I understand what this is saying. [LB497]

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KENT SCHROEDER: Well, I don't think you could interpret it by saying it's no less than a third but no more than a half because then you've lost 16.5 percent. It...the rule really should read one-third to two-thirds. If one spouse gets one-third, the other spouse is going to get two-thirds. [LB497]

SENATOR CHAMBERS: That's true. But it seems to me... [LB497]

KENT SCHROEDER: Yeah. I have never understood why they called it the one-third to one-half rule, unless they were... [LB497]

SENATOR CHAMBERS: So here's the way I looked at it going just by what they said. And obviously, you went to law school to be a lawyer. I took legal...I went to law school but I hadn't practiced. But I try to put myself in the position not of using logic at all but looking at the words that they use, because sometimes they might say we do not read anything into a statute that's not there, nor do we read anything out of a statute that is there, then they may do one or the other in deciding the case. So it seems to me it's starting with the notion that you have one person who ordinarily might be entitled to all of it. Instead of you getting all of this, the award is what that other person is going to get. And during those days, the woman was the other. So she will get from one-third, as a minimum, but in no case more than one-half. That's the only way that I can interpret it because, like you said...well, you said it. I won't even try to repeat it. But it seems to me that what I said is what I can gather from the words they actually use, that one is being...having something subtracted and that which is subtracted would be at least one-third but no more than one-half. So the man would be the one who would be deemed to be entitled to everything. But if you had this principle in place and both of them contributed equally to what the property would be, this couldn't work because each would be entitled to half--well, if you're going to divide it on the basis of what each brought to the marriage. [LB497]

KENT SCHROEDER: I'm not quite sure... [LB497]

SENATOR CHAMBERS: Okay. [LB497]

KENT SCHROEDER: I follow your logic to a point. When you say that each spouse is going to be entitled to 50 percent of the net marital estate, are you talking about LB497? [LB497]

SENATOR CHAMBERS: No. I'm looking...I'm trying to get to the... [LB497]

KENT SCHROEDER: You're talking about the current... [LB497]

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SENATOR CHAMBERS: ...ways that it can be interpreted. [LB497]

KENT SCHROEDER: You're talking about the current law. Yeah. [LB497]

SENATOR CHAMBERS: So maybe we need to disregard the language in this case. [LB497]

KENT SCHROEDER: Well, you haven't argued very many cases before the Supreme Court then, because they don't disregard it. I can tell you that. [LB497]

SENATOR CHAMBERS: Well, I've argued traffic cases and won but nothing that's dealing with something like this. [LB497]

KENT SCHROEDER: By the way, your comment about "those days" suggested those are historical days. They're not. [LB497]

SENATOR CHAMBERS: I think... [LB497]

KENT SCHROEDER: Out in central Nebraska, there was a practicing or a sitting district judge whose unannounced rule but known rule was that, if this is an agricultural marital dissolution, the wife was going to get 40 percent, the husband get 60 percent. That's just the way it was. [LB497]

SENATOR CHAMBERS: Okay. Then I'm going to just look at this case that...this bill that we have and try to go from there. [LB497]

SENATOR SEILER: Senator Williams. [LB497]

SENATOR WILLIAMS: Thank you, Chairman Seiler. Kent, you've done this for a long time. LB497, as amended with AM807, as I'm understanding this, this then would bring in the presumption that we start from equal. [LB497]

KENT SCHROEDER: Correct. [LB497]

SENATOR WILLIAMS: And then from that presumption, based on a series of items here, the judge could make a determination of something other than that. [LB497]

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KENT SCHROEDER: True, true. Let me give you... [LB497]

SENATOR WILLIAMS: But it gets rid of the presumption, however it is interpreted, by different district court judges of where we are now. [LB497]

KENT SCHROEDER: The original LB497 actually had no wiggle room or discretionary powers of the court. It was 50/50. That's just the way it was. And I think that's why members of the family law section and practicing family law members said there needs to be some flexibility in this bill. [LB497]

SENATOR WILLIAMS: Well, they had nothing to argue about. [LB497]

KENT SCHROEDER: Right, yeah, you'd would be...nothing to argue about. But let me give you an example of a situation where the court might not divide it 50/50. State employees, their retirement program by statute, if they never contribute to it, is enhanced by 5 percent here by statute. So the spouse of the state employee really had nothing to do, even during the course of the marriage, with the enhancement of that state employee. Now the contributions, yes, I can see where that would be a marital asset. But the increase of 5 percent because of a statute, what did she do to enhance that? And I can see a judge saying, well, that portion of the increase that was statutorily enacted by the Nebraska Legislature, I'm going to kind of consider that as a nonmarital asset and I'm going to give it to your husband and, therefore, now the division is 55/45. That would be an example. [LB497]

SENATOR SEILER: Senator Chambers. [LB497]

KENT SCHROEDER: Yes, Senator Chambers. [LB497]

SENATOR CHAMBERS: If that determination was made by one judge, that would not bind any of the judges. That would have to be something the Supreme Court would declare, wouldn't it? In other words, if a Douglas County judge made the interpretation, gave the one you just gave us, it wouldn't bind a Sarpy County judge to say the same thing, would it? [LB497]

KENT SCHROEDER: It might not, might not. [LB497]

SENATOR CHAMBERS: Okay. So we still could have variations in how these divisions of property...we could have as many variations under this...if we took the amendment that's been offered to us with all of the provisos... [LB497]

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KENT SCHROEDER: Right, right. [LB497]

SENATOR CHAMBERS: ...we could have the same disparities that exist today based on the interpretation of a given judge as to what this language means and what it should apply to. [LB497]

KENT SCHROEDER: Technically, I agree with you. From a practical standpoint I disagree with you for this reason: This, LB497, requires the district judge of the trial court to explain why they deviated from the equal presumption rule. So at least now we have a decree of dissolution that says, I have deviated from the equal presumption rule for the following reason or reasons. Now on appeal you could argue about the judge's decision with respect to those reasons was equitable. [LB497]

SENATOR CHAMBERS: I agree. But a judge could say my wife...your wife is a state employee and that statutory increase in the value of that pension is not going to be considered a marital asset. But the other side would argue, but I had to contribute things to make it possible for that person to get to work, I drove that person to work, I took care of the responsibilities in the home while that person worked, so but for what I did that person wouldn't have even had a job, so anything that accrued to that person by virtue of holding that job, which could not be held but for me, has to be considered a marital asset. I'm not saying that's the way it would go. But there is no way for us to be sure. And then, as you pointed out with the paper you gave us, one of the judges...now is the second part...on page 1, where the additional language by which the property shall be divided, did that become the Opinion of, decision of the court when that was stated? [LB497]

KENT SCHROEDER: Yes. [LB497]

SENATOR CHAMBERS: Or that was just a judge's dicta? [LB497]

KENT SCHROEDER: That is the edict of the Nebraska Supreme Court. [LB497]

SENATOR CHAMBERS: Okay, so... [LB497]

KENT SCHROEDER: You could read Court of Appeals and Nebraska Supreme Court Opinions until you can't see anymore and they will cite that Kramer v. Kramer and Jablonski case until you're red in the face saying, what are you doing up here arguing with us, Mr. Schroeder, our award here fell within the third to two-thirds rule. [LB497]

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SENATOR CHAMBERS: But they can change the way they said the earlier decision was to be construed. They can construe that earlier decision differently, and that earlier case. They don't always say, we're overruling that prior decision. [LB497]

KENT SCHROEDER: Yeah. Well,... [LB497]

SENATOR CHAMBERS: All I'm doing is putting into the record, so that people who think that if this amendment would become the bill and you have now what's considered a basis for more rationality, all you really do is create more arguing points. [LB497]

KENT SCHROEDER: I disagree. LB497 overrules the one-third to one-half rule. [LB497]

SENATOR CHAMBERS: Yeah, but it puts something in its place that could put you right back there because that could be in the mind of the judge interpreting these things and would interpret these in such a way that he would wind up right back where they were. [LB497]

KENT SCHROEDER: Well, if he were to interpret it, as you suggest, he would be...he or she would be doing something contrary to the law enacted by the Nebraska Legislature. [LB497]

SENATOR CHAMBERS: And that doesn't happen? (Laughter) You are a lawyer. You know. [LB497]

KENT SCHROEDER: Oh, I...I'm (laughter)... [LB497]

SENATOR CHAMBERS: And you know what my problem is? I've read too many cases also. But, see, we're in a position where we have to make the...we are the ones who create the law, ostensibly. [LB497]

KENT SCHROEDER: Well, you don't... [LB497]

SENATOR CHAMBERS: But the law really means... [LB497]

KENT SCHROEDER: You don't create case law. [LB497]

SENATOR CHAMBERS: But the law, I was going to say, the law really means what the court says it is through interpretation, construction, and the way that they deal with the words that we put in the statute. [LB497]

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KENT SCHROEDER: Well, until there is a case before the Court of Appeals of the Nebraska Supreme Court challenging a particular statute and what it means or what it doesn't mean, and if that case never gets to the court system, the law that you passed is the law. [LB497]

SENATOR CHAMBERS: And it means whatever any lower court judge says it means. [LB497]

KENT SCHROEDER: Exactly, yeah. I gave the Nebraska Supreme Court a chance to overrule the third to a half rule six months ago in a petition for further review and they declined to do so. [LB497]

SENATOR CHAMBERS: Right. [LB497]

KENT SCHROEDER: So we've been wrestling now for 55 years with a rule of law in the state of Nebraska that is totally different than all the other 49 states that deal with family law. [LB497]

SENATOR CHAMBERS: Now I'm going to be the judge and you're presenting your case. I would say, would you please spell your last name for me? That's what I'm asking you. [LB497]

KENT SCHROEDER: S-c-h-r-o-e-d-e-r. [LB497]

SENATOR CHAMBERS: And we pronounce that Shroh-dur (phonetically) or Shray-dur (phonetically)? [LB497]

KENT SCHROEDER: Well, it depends upon if you want an A in a course or a C in a course. [LB497]

SENATOR CHAMBERS: So if I want the A, how would I pronounce it? [LB497]

KENT SCHROEDER: Well, as I had a musical instructor who was from Germany one time said that, while you're here, Mr. Shray-dur (phonetically), we'll pronounce it Shray-dur (phonetically). [LB497]

SENATOR CHAMBERS: You stole what I was...you're a mind reader, too, aren't you? (Laughter) See, that...you don't win because you're a smart-aleck. (Laughter) He knew what I was getting at. But in a way, just...that's a good example to show what... [LB497]

KENT SCHROEDER: You know, Senator Chambers, your red light is on. [LB497]

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SENATOR CHAMBERS: (Laughter) But by virtue of his acquiescing and my continuing in this way, he waived the requirement that I comply with the light. And I'm doing this not for your sake but so that people will know sometimes that it's not a lawyer not doing his or her job. It's not necessarily the Legislature not being willing to try to resolve something. Ultimately, it's going to depend on what the Supreme Court says in the case that's before it at that time. So you might come with all kinds of...well, let's say... [LB497]

KENT SCHROEDER: Good intentions. [LB497]

SENATOR CHAMBERS: ...ancillary cases from other states that say exactly what you say. And if what you said and those cases said were accepted by this court, then there might have been further review and maybe a different Opinion or decision handed down. And if they see that coming but they don't want to make that decision, then they just deny the further review. [LB497]

KENT SCHROEDER: That's right. [LB497]

SENATOR CHAMBERS: And that can happen. [LB497]

KENT SCHROEDER: Yes, it can. [LB497]

SENATOR CHAMBERS: And I believe it has happened. And I'm not trying to pander to you. But I've read cases. But my opinion doesn't mean anything. Your opinion doesn't mean anything. Our opinion doesn't mean anything unless we pass/write a law and state the decision that the court handed down and indicate that the purpose of this law is to reverse that decision and then write it in such a way that that's the way it is done. So we would have to write, the Legislature, it finds or intends. And all I'm saying, not that I disagree with your interpretation, your presentation, but if we accept what you are saying as a basis for changing the law to what's in this amendment, there is no assurance that, the way an ordinary person would read this and understand it, there is no assurance that that is the way a court will read it and understand it. And it's going to have to start with the lower court and then it's going to have to be appealed. And the appellate court, whether it's the Court of Appeals or the State Supreme Court, would have to do something one way or the other. And even if the Court of Appeals did it, then the person could try to get it to the Supreme Court. And I don't know how long that would take. [LB497]

KENT SCHROEDER: Long time. [LB497]

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SENATOR CHAMBERS: Now with all that having been stated, I think I'm hearing you say that if this language were accepted there might be a greater likelihood that this automatic one-third, one-half, whatever that means, is not going to become the standard but you are requiring some kind of process to be gone through by the court. Even if they want to arrive at that position, they're going to have to write out that process that they went through, even if it's erroneous, and try to make it at least credible, whereas now they can just make a statement and that's it. I'm not trying to put words in your mouth or interpret what you mean. But is that what you're getting at when you say that a deviation from this presumption of equal ownership by requiring these...this process to be gone through, it may not wind up ever with an equal division, but it would require an explanation of why the deviation and to the extent that the deviation occurred. Is that where you're going? [LB497]

KENT SCHROEDER: As a proponent of my bill or the bill that I asked Senator Hadley to introduce, your analysis couldn't even...couldn't be more eloquent. [LB497]

SENATOR CHAMBERS: Then... [LB497]

KENT SCHROEDER: Thank you. [LB497]

SENATOR CHAMBERS: (Laugh) And I don't have any more questions, Your Honor. [LB497]

SENATOR SEILER: (Laughter) Okay. Any further questions? I have...just a second, Mr. Schroeder. The...you cite the Overton v. Overton case, that it started in...just before you and I started practicing. And I always remembered Judge Irons' rule that in a farm divorce he would take all the property and divide it out. Then the...especially the corn or the beans and the cattle. Then he would say, now we're going to talk about alimony. And he'd go back and grab the beans the corn and he'd count that toward the husband's income. So he used it on both sides of the ledger and then gave the wife the alimony to make up the difference and left him no income to pay it. Do you satisfy that in your new bill? [LB497]

KENT SCHROEDER: I don't see that happening in the new bill. [LB497]

SENATOR SEILER: Or the...okay. [LB497]

KENT SCHROEDER: Yeah. I think, you know, I've seen what you've suggested happen before. But there are nuances to trying to do that and it's just not a simple mathematical formula because now, in an award of alimony and an attempt to equalize the division of property, the wife is now

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paying income tax on the alimony and the husband is getting a deduction. So unless you start factoring that in, you know, it's another problem, so, yep. [LB497]

SENATOR SEILER: Okay. Thank you very much for your appearance. [LB497]

KENT SCHROEDER: Thank you. Thank you so much. [LB497]

SENATOR SEILER: Thank you for coming down. [LB497]

KENT SCHROEDER: Yeah. [LB497]

SENATOR SEILER: Next proponent. Next proponent. Seeing nobody scrambling from their chair, next opponent, opponent, against the bill. [LB497]

KATIE ZULKOSKI: Good afternoon, Chairman Seiler, members of the Judiciary Committee. Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying today on behalf of the Nebraska State Bar Association. I have physically written my comments on the green copy, but I am testifying to the amendment, AM807. And we appreciate Senator Hadley and his staff providing us with the amendment. However, the bar association does continue to be opposed to this legislation. Specifically, we think judicial discretion in these types of cases is so important to maintain. And also, on page 2 of the amendment when we start to list the considerations that a judge should be considering, those lists, as you all know, just year after year then need to continue to be addressed, adding and subtracting considerations from those lists. So those would be our concerns and I'd be happy to answer any questions. [LB497]

SENATOR CHAMBERS: What did you refer to on page 2? I'm sorry, I missed it. [LB497]

KATIE ZULKOSKI: On page 2 of the amendment, the...starting out about line 7, it says what the judge should take into consideration in determining the distribution of the estate. And then lines 9-22 are those considerations. [LB497]

SENATOR CHAMBERS: And you're opposed to that. [LB497]

KATIE ZULKOSKI: Opposed to putting into statute what those considerations would be. It doesn't really appear to leave room, if there was something else the judge should consider, doesn't appear to leave room for that. [LB497]

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SENATOR CHAMBERS: So are you saying that this language is too restrictive by listing these items? [LB497]

KATIE ZULKOSKI: I'm saying that is a concern, that it could be too restrictive. In some cases those may be the perfect considerations, but in others they may not. [LB497]

SENATOR CHAMBERS: So then you're opposed to the whole bill, as the green copy is, and the amendment too. Okay. I just wanted to be sure I was understanding what you're saying. [LB497]

KATIE ZULKOSKI: Yeah, thank you for clarifying. [LB497]

SENATOR CHAMBERS: Okay. [LB497]

SENATOR SEILER: Any further questions? Senator Morfeld. [LB497]

SENATOR MORFELD: We hear a lot about judicial discretion. When is judicial discretion not appropriate? Because it seems like if I talk to a judge, they want all the discretion that, you know, they can possibly have. So... [LB497]

KATIE ZULKOSKI: I think within...I mean, as the earlier testifier and Senator Chambers were pointing out, you all pass the laws, make the laws, and then the judges work within that. And to the extent judicial discretion fits in that, we think it's really important. [LB497]

SENATOR SEILER: Further? Seeing none,... [LB497]

SENATOR CHAMBERS: I guess you shut him up (laughter). [LB497]

SENATOR SEILER: ...thank you very much. Further neutral testimony. [LB497]

SENATOR CHAMBERS: I thought hers was opposed. [LB497]

SENATOR SEILER: No, she was neutral. [LB497]

SENATOR CHAMBERS: Oh. [LB497]

SENATOR EBKE: No, she was opposed. [LB497]

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SENATOR COASH: She was opposed. [LB497]

SENATOR MORFELD: She was opposed. [LB497]

SENATOR WILLIAMS: Opposed. [LB497]

SENATOR SEILER: Opposed? Oh, I'm sorry. [LB497]

SENATOR MORFELD: She was definitely opposed. [LB497]

SENATOR SEILER: Any further opposition? Any further opposition? Anybody in the neutral? Seeing none, Senator Hadley, you may close. [LB497]

SENATOR HADLEY: I realize you have another long hearing, but I appreciate your taking the time to hear this. I learn more about the law every day from "Professor" Chambers and other people in the body. But I do want to take just one minute. I went to a Supreme Court hearing the other day and it was an argument that hinged on the term "personal property," and it had to do with a TERC bill and whether or not an error made by an assessor is correctable. The bill we wrote referred to real property and personal property in one part of the bill and only real property in the second part of the bill. So I guess my only point I did...it kind of hit home to me that words do make a tremendous difference in the laws that we pass because you have a Supreme Court ruling that's going to be based on whether or not we left out two words, whether we meant to leave them out or whether or not...so I thank you for taking the time to hear this. I think it's some things we could talk about. I don't think we have to solve it this session, but we certainly maybe can work on it to make it better. [LB497]

SENATOR SEILER: Okay. Senator Chambers. [LB497]

SENATOR CHAMBERS: For the record, Senator Hadley, whether a person may agree with whatever I'm saying or not, what you said makes it clear why I might pick a word and say, this word is one word but it does have consequence when we're putting it in a statute. And there can be an argument for an hour over that without it being a filibuster. Would you agree? [LB497]

SENATOR HADLEY: I would agree entirely. And we need to get it right. [LB497]

SENATOR CHAMBERS: Thank you. Thank you. I don't have anything else. [LB497]

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SENATOR HADLEY: Thank you. [LB497]

SENATOR SEILER: Anything further? [LB497]

SENATOR HADLEY: Thank you. [LB497]

SENATOR SEILER: The written documents submitted and the documents in the hall that have been signed will be made part of this record. This record is now closed. And, Senator Ebke, you may open on LB437. [LB437]

SENATOR EBKE: (Exhibit 1) Thank you, Chairman Seiler and fellow members of the Judiciary Committee. For the record, my name is Laura Ebke. That's L-a-u-r-a E-b-k-e. I represent the 32nd Legislative District, which makes...which is made up of Saline, Jefferson, Thayer, Fillmore Counties, and the southwest portion of Lancaster County. I appreciate the opportunity to talk to you today. I'm here today to talk about LB437 which seeks to address a critical public health issue in this state, one that is inadequate parenting time awards in divorce and paternity cases. LB437 is a compromise bill that reflects hundreds of hours of effort by individuals who are concerned about this issue. It reflects input from practicing family law attorneys, judges, shared parenting advocates, mental health experts, and domestic violence groups; and in spite of that, not everybody agrees on every element of this bill. No one thinks that LB437 is perfect, but most people I think agree that it would be an improvement over the status quo. As many of you know, if you've been around for a while, that shared parenting has been a regular issue before this committee. Shared parenting bills have been introduced almost every year over the last decade. Indeed, I think most recently my predecessor from District 32, Senator Karpisek, introduced a piece of legislation or two on this. I had somebody actually, as a side note, ask me what was going on in Saline County that we were both on this issue. Since 2007, at least 11 shared parenting bills have been introduced. As you'll see from the time line that's been handed out--I think everybody's gotten the book as, you know, that was distributed--and that's on tab 3 of the booklet, a lot has happened since last year. First, the Nebraska Administrative Office of the Courts published what might be considered a landmark parenting time study which showed the average parenting time for noncustodial parents in Nebraska is about 17 percent of the total annual parenting time. This is only half of the minimum parenting time recommended by the mental health industry. This suggests...this study also found significant variations in parenting time awards among Nebraska judicial districts. This variation amongst judicial districts, I would argue it runs contradictory to Article V, Section 19, of the Nebraska Constitution which requires that all court rules and practices be uniform throughout the state. Second, the Scottsbluff Star-Herald editorially endorsed shared parenting shortly after the study was introduced. Third, a shared parenting bill, LB1000, was introduced last session. Shortly after it was introduced, there was a drafting committee formed which agreed on compromise language that was acceptable to

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the various stakeholders involved. Unfortunately, the legislative session expired before the compromise language could be acted upon. And LB437 reflects the same compromise language with some modifications. And so I will let, you know, with respect to the specific language as it was carried over from last year, I will let some of those who were involved in that discussion provide more details. If you look at tab 6 on your...on the handout, there was a landmark mental health study, which was published, in which 110 of the world's leading child development experts endorsed shared parenting. Again, you've got a copy of that study. And fifth, the petition was filed with the Nebraska Supreme Court which asked the court to adopt the compromise language by administrative rule. The court did, however, dismiss the petition without comment. Finally, the Nebraska Child Support Advisory Commission recommended changes to our Child Support Guidelines to encourage shared parenting. And with respect to this final point, I'd like to point out that members of this committee, not many of whom are still here, but a few members of this committee last year said that the Child Support Guidelines needed to be revised before the committee took action on the parenting time issue. That has now been largely completed. Child support should no longer be an obstacle to parenting time reform. Like to give you some background on the mental health research that supports LB437, and that can be found on tab 7 of the handout. This bill is supported by more than 40 peer-reviewed mental health studies which show that children who live in shared parenting environments after divorce are: (a) less depressed; (b) have fewer health problems; (c) have fewer stress-related illnesses; and (d) are more satisfied with their living arrangements than those who don't. We all recognize that there are exceptions to the rule and that not in every case is this going to be possible. But you know, the nature of most research, and especially social science research, is that we look at the trends, we look at the norms, not at specific situations. Each of these studies also show that the number of days children live with each parent is strongly correlated with child outcomes. In a nutshell, time with parents matters. According to a Legal Aid representative, all of the evidence shows, and this is a quote, all of the evidence shows kids are more likely to finish school, less likely to do drugs, and less likely to be involved in criminal behavior when two parents are involved in their lives, regardless of whether they live in the same household, unquote. There is a clear trend nationally toward shared parenting. In the last three years, shared parenting laws have been enacted in Arizona, Arkansas, and South Dakota. There are currently at least 16 shared parenting bills pending around the country, with at least two more about to be introduced. LB437 is modeled on an Arizona law that took effect in 2013. The Arizona law was drafted by a broad-based committee comprised of judges, attorneys, mental health professionals, court staff, anti-domestic violence advocates, fathers' rights advocates, researchers, and lay parents. The law encountered almost no opposition and passed the Arizona House 45-9 and the Arizona Senate 29-0. No significant issues have been reported regarding the new law. Let me emphasize just a few more things about LB437. First, LB437 only applies when parents can't agree on a parenting plan. Parents always retain the right to agree to whatever parenting arrangement works best for them. Second, the bill tries to encourage the types of parental behavior that are associated with positive child outcomes and discourage behavior that is associated with negative outcomes.

Third, the bill tries to reduce the level of conflict that currently exists in the family law system by reducing the incentives the current system creates for it. In particular, the bill seeks to reduce the I-win-you-win...or I-win-you-lose dichotomy which research shows is the biggest source of conflict in parental separations. Finally, LB437 provides research-based guidance to the judges about what parenting time arrangements provide the best outcomes for children while avoiding cookie-cutter, one-size-fits-all parenting time schedules. In this regard, LB437 deliberately maximizes judicial discretion, which we've already heard something about today, by using a parenting time floor, rather than a standard parenting time schedule or order. Without going section by section, I'd like to highlight a few sections of LB437. The core of the bill is Section 43-2929(6) which encourages judges to adopt parenting plans that provide for joint legal custody and maximize parenting time for each parent without creating a legal presumption or mandating equal parenting time. This language is intended to give judges flexibility to tailor parenting time schedules to the particular facts of each case. This section also creates a parenting time floor of 35 percent for each parent which cannot be breached except in limited circumstances. The 35-percent floor is supported by more than 40 mental health studies that show children have the best outcomes when they spend at least this amount of time with each parent. The circumstances under which a parent may receive less than 35 percent of the parenting time include substantiated domestic violence, substantial parental unfitness, consent by such parent, persistent failure to exercise parenting time previously awarded, and physical impracticality. Section 43-2929(8) explicitly authorizes judges to award joint legal custody with tiebreaker provisions, as is already commonly done by some judges. This section also authorizes judges to divide the tiebreaker provisions between the parents. This separation of authority reduces winner-take-all or I-win-you-lose outcomes and creates incentives for cooperative behavior by parents. Section 43-2929(9) requires judges to consider whether a party has engaged in manipulative behavior in any proceeding in which parenting functions are at issue. This section includes a nonexhaustive list of such manipulative behaviors which include willfully creating conflict, knowingly making false allegations of abuse, intentionally interfering with access to the child, or willfully interfering with the child's relationship with the other parent. And finally, Section 43-2929(11) reflects the recent recommendation by the Child Support Advisory Commission that, quote, child support shall not be a factor in determining custody of the children; in fact, child support is to be determined after custody of the children has been determined, unquote. I will obviously stick around to close. This committee has devoted thousands of hours over the last few years tackling issues with corrections, juvenile justice, and truancy. The single biggest risk factor for all of these issues, unfortunately, is fatherlessness. The research clearly shows that children who grow up in fatherless homes have substantially higher risk of poor outcomes, including criminality, delinquency, truancy. One of the biggest causes of fatherlessness is inadequate parenting time awards. This committee can reduce this problem by passing LB437. I might just add as an after...as sort of an afterward, Utah recently passed a parenting time legislation. It passed the Utah Senate in the last two days 22-0 with 7 abstaining and in the House 72-1 with 2 abstaining, and it is on the way to the governor for signature in Utah. So I would note, as Senator

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Krist did with his bill, this bill is not a priority bill. I would encourage us to move it to General File. And if there are concerns, I will be happy to continue to work with those who are, you know, concerned about specifics throughout the summer. [LB437]

SENATOR SEILER: Questions? Senator Chambers. [LB437]

SENATOR CHAMBERS: Just two observations, and this is just from me. I read a lot of newspapers, I even read court decisions, and neither Arizona's Legislature nor Utah's Legislature is an example of progressive or sensible legislation. And that doesn't mean in every regard, but on the major issues of the day, they are wrong, in my opinion. So that's strike one. I would like you to look on page 2 of the green bill... [LB437]

SENATOR EBKE: Okay. [LB437]

SENATOR CHAMBERS: ...starting in line 25. I don't think this is something I would agree to. It says, for the record, the Legislature finds it is the public policy of this state that each minor child have frequent and continuing contact with both parents after the child's parents separate or the marriage of the parents is dissolved or annulled and to encourage parents to share the rights and responsibilities of parenthood. Then this sentence is attached: It is the right of each child to have as full and complete a relationship with both parents as possible. If one of the parents has been abusive to the child, I would never say that it's the policy of this state that that child have as much contact with that parent as with the other. So when it comes to findings, I...that would be enough to turn me off with this bill by itself. [LB437]

SENATOR EBKE: And... [LB437]

SENATOR CHAMBERS: But I'm going to look at the other substantive portions and not interrogate you and not interrogate anybody. I've been around this track many times. [LB437]

SENATOR EBKE: Sure. [LB437]

SENATOR CHAMBERS: And sometimes--this might be advice to some of those who are on this bill--the people who have spoken in behalf of certain things would be so abusive, so disrespectful that on at least one occasion the introducer apologized to the committee. And if I'm not mistaken, I may have said, on occasion, if the attitude you're displaying here is what the judge saw, then I can understand why the judge might not have given you anything that you're talking about getting. So I'm not going to agree to anything that will let a child become the stick in either party's hand to beat the other one with and the child is the loser all the way around.

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And, Senator, the only reason I'm telling you this, you haven't gone through these battles. You're like the tabula rasa, the clear, the clean slate, and everything is being written. But this all has a history. [LB437]

SENATOR EBKE: Sure. [LB437]

SENATOR CHAMBERS: And that's why I said I'd make those two observations. [LB437]

SENATOR EBKE: I... [LB437]

SENATOR CHAMBERS: But if I'm very quiet, that quiet should not be mistaken for agreement. [LB437]

SENATOR EBKE: I understand, Senator Chambers. And, you know, I would agree with you that in abusive situations, certainly, we don't want to continue any kind of a regular relationship. Let me just say, and I don't typically talk about this, but I have...although I've been married for almost 34 years and have three children and haven't dealt with this at that level, my parents divorced in 1983 when I was already married and out of school. And I had a number of younger siblings. And even though we didn't have abusive situations in that case, there were still hard feelings. I think we all know that, in most cases, when there is a divorce there is going to be some hard feelings for a while at least. And I lived in a small town where both sets of grandparents lived and I saw that the relationship that my younger siblings had with both parents, but also with my grandparents, you know, was greatly diminished as...out of the results of that. And I, you know, I think about it from the child's standpoint, even though I was an adult by the time it happened, because I saw the difference in what happened in our family. [LB437]

SENATOR CHAMBERS: And since we're giving a little personal history, my wife and I got a divorce. And we got along so well people said, well, you shouldn't have gotten a divorce. I said, that doesn't mean you don't care about the person, but the reason we get along so well now is because we saw that we couldn't live together with each other, so we remained friends. And this is not a boast but just to show how material things don't mean anything to me: Without a court ordering it, I left the house, the car, a brand-new motor home. Everything that was in the house stayed there except my meager inventory of clothing, which nobody in that house would have been able to use. So not every divorce is something where people are...you know, have their claws facing each other. But just because mine was amicable doesn't blind me to what can really happen. And since we're formulating a policy, I would never base it on what transpired between me and my wife. [LB437]

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SENATOR EBKE: Sure. [LB437]

SENATOR CHAMBERS: And on the other hand, if we had fought like cats and dogs, I wouldn't want to premise a state policy on that. [LB437]

SENATOR EBKE: Sure. [LB437]

SENATOR CHAMBERS: So I'm going to keep an open mind, not an empty one,... [LB437]

SENATOR EBKE: Never empty, yeah. [LB437]

SENATOR CHAMBERS: ...and listen to what is presented on this bill. [LB437]

SENATOR EBKE: And I appreciate that, Senator. [LB437]

SENATOR SEILER: Any further questions? Thank you very much. First proponent. [LB437]

JAMES BOCOTT: (Exhibit 2) Good afternoon. Thank you, Chairman. Senators, my name is James Bocott, J-a-m-e-s B-o-c-o-t-t. I'm an attorney that's been practicing law in North Platte, Nebraska, for the past 18 years. About a third of my practice involves domestic relations. Happily married for 20 years this summer and have three beautiful children and I've never had an ax to grind in that regard. So first of all, I think the first question we have to ask is, before we change the law, is there anything wrong with the law, what's wrong with the law? And I want to make sure that everybody understands what's currently wrong with the law, one of the things that I'll be handling today. First of all, people will say later on that they don't like presumptions, they don't like cookie-cutter approaches, but currently we've got some; and if we go through this packet quickly, I want to point some things out. First of all, the first spreadsheet that appears is what's found on tab 4 of page 9 of the materials that Senator Ebke handed out. That's the average over the past ten years. That's five days per month. So that's what we've had over the past ten years as far as parenting time for a noncustodial parent. The next page is entitled "Lancaster County Parenting (Time) Presumption" which goes from 17 to 28.5 (percent). This is currently the presumption in the 3rd Judicial District here in the state of Nebraska. So all the folks that are in this community live with this presumption, and it appears to be working out. The next page is the "Proposed Parenting Time Presumption" of LB437. So I guess if we flip back for a second, we can call that a 4/10 approach, 28.5 is a 4/10 approach, and 35 percent is a 9/5 split, 9...so we're only talking one day difference between what is being proposed in this legislation versus what is already currently the standard practice in Lancaster County, Nebraska. The final spreadsheet, of course, is "Equal Parenting Time." This is a compromise bill. Again, that's not

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what is being proposed. Back to the problems though, the first sheet showed that 17 percent, and I would direct your attention to the first what's called the memorandum of 1999 that follows the spreadsheets. On the second page of that memorandum is paragraph 6. You'll find paragraph 6 states that, for all visitation disputes, you will utilize the attached schedule, and that is an every-other-weekend, 17-percent schedule. I hope you make this available to your clients during negotiation so that they know what the result--this is not a quote--they know what the result will be and they'll reduce or avoid trial. So what we have is judges across the state, this is still in full force and effect in the 11th Judicial District...may I finish? I'm sorry. I'm just about done. [LB437]

SENATOR WILLIAMS: Senator Seiler. [LB437]

SENATOR SEILER: Oh, I'm sorry, I was reading your paragraph here. [LB437]

JAMES BOCOTT: Thank you. I was just about finished. I just wanted to see if I...I wanted to get permission. [LB437]

SENATOR SEILER: Yes, go ahead. [LB437]

JAMES BOCOTT: Okay. Thank you. [LB437]

SENATOR WILLIAMS: Would you please go ahead? [LB437]

JAMES BOCOTT: And the final sheet is the 4/10 split that I was talking about. This is actually taken from the local rules of the 3rd Judicial District. One question just in closing that I would request that you ask opponents of this bill is, for domestic relations purposes, for getting along with the ex-spouse purposes, everything else, what is the difference between 4/10 and 5/9 materially? Why can one work and why can't the other? Because it can. And I would ask you to approve and advance LB437. Thank you, happy to answer any questions. [LB437]

SENATOR SEILER: Senator Williams. [LB437]

SENATOR WILLIAMS: Thank you, Senator Seiler. And thank you for being here. Question: If I am looking at your chart right, and I was looking at this really quickly, the first page in, where it's the 17/83, would you explain that chart to me again? [LB437]

JAMES BOCOTT: Oh, 17 percent, okay, thank you. [LB437]

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SENATOR WILLIAMS: Yes, 17 percent. [LB437]

JAMES BOCOTT: Yes. There was a study done, a very, very comprehensive study, by the state of Nebraska about what the parenting time allocation has been over the past ten years, from 2002 until 2012. And they did a varied sampling to try to get...it was a study that I think is very well done methodologically. And it found that the average parenting time by noncustodial parents over that ten-year period of time was five days per month, or 17 percent. [LB437]

SENATOR WILLIAMS: Okay, that's not in a divorce situation then? That's just in a normal parenting... [LB437]

JAMES BOCOTT: No, that's in all situations together, yeah. [LB437]

SENATOR WILLIAMS: Okay, gotcha. Have you run into any situations...you were talking about presumptions in this situation and on the front of your thing you have the 11th Judicial District presumption at 17 percent. Would you like to add anything to that? [LB437]

JAMES BOCOTT: I don't have anything to add. That...the index was for purposes of showing the memorandum that's attached... [LB437]

SENATOR WILLIAMS: Okay. [LB437]

JAMES BOCOTT: ...that shows the every-other-weekend presumption that throws in some summertime visitation. And what you end up getting is 17 percent, ironically, just like the state average. [LB437]

SENATOR WILLIAMS: Let me ask the question a different way because we've been talking about judicial discretion, and with the number of judicial districts that we have, based on your experience that you've seen, have parenting awards been similar in different judicial districts? [LB437]

JAMES BOCOTT: It depends on the judge. For instance, in Douglas County you have certain judges that stick to every other weekend, and across the state there are judges that do exclusively every other weekend, and it varies. In our judicial district, for instance, we have four judges. We have three that follow the every other weekend, and we have one that's actually fairly progressive, Judge Doyle, and he will...he'll listen to the evidence and he'll look at what's best for kids and he'll make something that he feels is in the children's best interest. [LB437]

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SENATOR WILLIAMS: Okay. Thank you. [LB437]

SENATOR SEILER: Sir, I have one question. I may be reading your charts wrong, but in your 17 percent, did I hear you say that was done with both parents? [LB437]

JAMES BOCOTT: What it represents is the percentage of time that noncustodial parents received pursuant to the study. [LB437]

SENATOR SEILER: Okay, that's what I...that's what I...because it says noncustodial on your chart, that's what I wanted to clarify. Thank you very much. [LB437]

JAMES BOCOTT: Thank you. [LB437]

SENATOR SEILER: Next proponent. [LB437]

DENNIS THOMPSON: Thank you, Chairman Seiler, members of this committee. First of all, thank you for your service to our great state. What I'm about to offer is opinion based on observation, and I do so with all respect to everyone in the room. We all have various stakes in this and we know it's a controversial issue. [LB437]

SENATOR SEILER: Sir, would you state your name and spell it. [LB437]

DENNIS THOMPSON: Dennis Thompson, D-e-n-n-i-s T-h-o-m-p-s-o-n. [LB437]

SENATOR SEILER: Thank you very much. [LB437]

DENNIS THOMPSON: It seems to me that about 32 years ago my wife and I recited our vows before God and a number of other witnesses that we were entering a 50/50 partnership. I've watched over the years, and in particular in the past two years, as this has unfolded. I've watched it in my family and in my community that, across the country but of most importance to me in my community, in my courts, that these cases when they're decided are decided more along the terms of a 70/30 or 80/20. And I concede that there are certainly instances where that may very well apply and be the best, best solution. Domestic violence, abuse, I concede those are issues we don't want to subject a child to. But it is my belief on the other hand that, in most of these cases, it is simply two adults that have over a period of time come to find that they're not compatible with each other anymore. And when children are involved, I would suggest to you that this is when it becomes a very, very critical situation. It's been my observation that in our

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state the judicial system has failed to evolve into the twenty-first century in terms of the divorce and family courts. And we're seeing it in courtrooms all over the country. Responsible, loving, God-fearing fathers are being lumped in with deadbeat dads. They're being deprived of valuable time with their children. And at the same time, I would suggest to you, they're being designated as ATMs for their ex-wives and for the state. Those dollars that these ex-wives are in...or in those cases, rare cases, where husbands receive it, there is no accountability what that money is being used for, whether it's being used to put food on the table, what it's there for. By these very actions, fathers are expected to support their ex-wife's new life choice and try to maintain their own household at well below poverty levels. Regardless of your position on this issue, we as adults have a responsibility to our children and our grandchildren to effect change for them. Let's set aside opinions for a moment. [LB437]

SENATOR SEILER: Okay, somebody... [LB437]

DENNIS THOMPSON: I'm just about to wrap up. [LB437]

SENATOR WILLIAMS: Go ahead. [LB437]

SENATOR SEILER: Okay. [LB437]

DENNIS THOMPSON: If we could just set aside opinions for a moment, step away, special interest groups, paid lobbyists, and take a hard look at what the child support enforcement agencies in their own words emphasize, that children need to have both parents involved in their lives, I think we're going to gain some ground. We don't expect this as an answer to everything, but it's a step in the right direction. And I respectfully ask that you consider this and put the state of Nebraska at the forefront of this very issue for our kids' sake, no more status quo. Thank you. [LB437]

SENATOR SEILER: Any questions? [LB437]

DENNIS THOMPSON: Thank you. [LB437]

SENATOR SEILER: Just a second. I know...you used two terms: a deadbeat and a good father. How do we separate those out? I mean, do we come back into court? [LB437]

DENNIS THOMPSON: I would say that in most cases, and thank goodness I'm not...haven't been exposed to this a lot until recently. But I think it's pretty apparent, going into a courtroom in

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a number of these cases, exactly who those deadbeats are by their actions prior to reaching that point before a judge. [LB437]

SENATOR SEILER: Okay. [LB437]

DENNIS THOMPSON: I really believe that. [LB437]

SENATOR SEILER: Okay, thank you very much. [LB437]

DENNIS THOMPSON: Thank you. [LB437]

SENATOR SEILER: Next proponent. [LB437]

SHAWNA THOMPSON: (Exhibit 3) My name is Shawna Thompson. I'm from North Platte, Nebraska. I'm the one he's been with for 32 years. (Laughter) I wish I could have you all as flies on the wall in my son's home every other Sunday night as my granddaughters are saying their good-byes. In homes across the state, I'm sure it plays out the same way: But why, Daddy, I love you, I want to stay. How do you answer a three-year-old? I can't tell them the grown-up answers to these questions. I can't tell them that family courts in Nebraska only give daddies sole custody less than 8 percent of the time. I can't tell them that mommies get sole custody 84 percent of the time, because they are perceived as the more nurturing, gentler, and that tender-years doctrine is still rampantly believed. I can't tell them over 40 studies have shown children are emotionally, spiritually, physically, financially more stable when they have free and equal access to both parents. I was a full-time grandma who saw my grandkids every day. Now I'm watching as they grow up without half their family--aunts, uncles, and cousins who love them dearly--and they are missing out on half of who they are. I know this experience firsthand. I knew I didn't belong and I asked myself questions my whole life: Why do I laugh when nobody else does? Why do I love to read and mommy and daddy don't even own a book? Why do I have curly hair? Not knowing those answer eats away at your soul, and not having a shared history with your family hurts, even as a grown-up. I can't tell them that family courts encourage perjury, punishes daddies, and places judgment where none should be. Daddies are portrayed as violent and aggressive abusers. My first spanking was when I was 18 weeks old. My most vivid memories are of violent scenes, running and being caught just to be beat with whatever was within reach. I cut my first tooth on a beer can and the smell of sour wine takes me back to violent scenes. The image of blood flying from an alarm clock being bashed into my father's head will be with me until the day I die. Seventy percent of domestic violence is initiated by women. And since I survived my five-foot-tall, 90-pound mom's abuse, I believe that. How or when equal custody is decided, it shouldn't be decided on domestic violence. That is not a part of the family court. Domestic violence should be decided in a criminal court. And if someone is found guilty of that, then by all means take

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their children away from them. I want to be a grandma again. I don't want to be a visitor who prays that they are safe 84 percent of the time. Daddies' families don't love 84 percent less because they've contributed a sperm, not an egg. I want overnights, slumber parties with my girls, and mostly I want to be able to tell them that Nebraska is a great state that took the price tag off their heads. Help me do that. Although there's things I'd change, 35 percent is a huge improvement over what we have now. Put daddies, papas, "coconuts," cousins, aunts, and uncles into their lives, please. [LB437]

SENATOR SEILER: Further questions? Thank you very much. [LB437]

SHAWNA THOMPSON: Thank you. [LB437]

SENATOR SEILER: Further proponent. [LB437]

JUSTIN THOMPSON: All right. Hello, everybody. Thank you for this time. My name is Justin Thompson, J-u-s-t-i-n T-h-o-m-p-s-o-n. I'm a firefighter/EMT from North Platte, Nebraska. I come before you today as the proud father of beautiful girl who you're looking at right now, Cameron (phonetic) Thompson, who is on your pamphlets my mother handed you. She'll turn four next month and, for the second year in a row, her father will be nowhere to be found. My story is one I'm not afraid to share because in my fight for equality I know change can be brought for not only my child, but for thousands of children who are unfairly punished by a failing system. I was Cameron's primary caregiver from the day she was born, April 26, 2011, until August 18, 2013, when I went to work and had my life stolen away from me while I was doing the job I love and providing comfort for those in need. For the next month, the father who Cameron woke to every day, played with, learned with, and fell asleep next to was completely removed from her life. Cameron has no voice to change this but I do. I am her voice and I am the man God put here to keep her safe. My daughter had a relationship with me and I with her, but due to a system that for far too many years has been broken, our relationship is now crammed into four days a month and my daughter is the one who pays the ultimate price for the decisions made by adults who do not know her and don't know what's in the best interest of her. And losing her relationship with me, she also lost the relationship with her grandparents who cared for her on the eight days a month when I worked. Now she's being raised by a day care while her family sits by and has no control on what she learns and who she becomes. I know that for years judges have been doing what they believe is the best and for them to admit they are wrong is nearly impossible. But we have a generation of children who have been forced into this system who deserve so much more than what they were given. They deserve to know that our Legislatures may not be able to change the past but they want to change the future, so they don't have to grow up asking why their father wasn't there and why they weren't allowed to have a loving relationship with a parent because of a judge's ruling. We as adults who love our children

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need to stand up and say, we're sorry, we were wrong, you deserve both of your parents and we will do what is right, in how to give our children that. No family should have to spend thousands of dollars you could easily put to your child's future to just spend time as a visitor. Being a parent is a God-given right and one we're called to do when we bring life onto this planet. I'm asking for this first step, which you have before you, to be brought to this state. And we need to be leaders in Nebraska. We need to be the beginning of change that the nation will one day look back upon and say this was the right thing, and we can be that starting point. I thank you for your time and I hope you guys look at this and really change what's happening to our children. [LB437]

SENATOR SEILER: Any questions? Thank you for your testimony. Thank you for coming the distance. [LB437]

JUSTIN THOMPSON: Thank you. [LB437]

SENATOR SEILER: Further proponent. Go ahead. [LB437]

BRAD CATLIN: (Exhibit 4) Good afternoon. My name is Brad Catlin, B-r-a-d C-a-t-l-i-n. I come before this committee the third year in a row hoping to find some kind of justice where we've been shown, through the Supreme Court study that you have a copy of, is not being handed out. The copy you have is marked up. Page 41, if you look at it, if you look at the numbers, you see 48 percent of the time pretty much fathers get kicked to the curb in divorces in Nebraska. That relationship becomes a lot like Nebraska Statute 43-245. If you look in your packet, on abandonment, it reads, intentionally withholding from a child, without just cause or excuse, the parent's presence, care, love, protection, and maintenance and the opportunity for the display of parental affection for the child. If I do that, that's abuse. The state does that, poof, magically, that's our best interest. It's a Fourteenth Amendment issue. You can see the numbers. You can see the disparity, injustice handed out in the state. There's no debating that. Apparently, nobody reads it though. I would contend, if the Supreme Court of this state cannot figure it out, that their numbers are in bias, that their numbers are horrible as far as equal judgment being handed out, that they are in violation of the Nebraska Constitution. It's up to this legislative body to produce something that allows them to rule judiciously. Best interest, judicial discretion, we've had that conversation a few times today. Judicial discretion, best interest...63 percent of youth suicides...there's four pages of statistics of horrible outcomes that this causes. If you look at that--I'll pick on one of them--63 percent of youth suicides come from fatherless homes. That alone should be enough to examine the horrible impact of sole custody. Peer-reviewed research shows that mental well-being of kids suffers, but that research is hard to read. I don't expect this committee to do it. It's laborious, it's long, it's hard to digest, but let's just sum it up all in one thing there: 63 percent of teen suicides come from fatherless homes. That's a good thing? That's

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what Nebraska wants? How many kids we got to wreck before fix this, how many kids, and take their lives, because they have their fathers taken away from them? Best interest, best interest, it's a big, fat lie. You look at the horrible outcomes that happen based on what we've got in place right now, it needs fixed, it needs repaired. There's nothing wrong with having the father raise his kids. Ebke's bill maintains that 35 percent is enough. I think it's 20/15 in Nebraska. I'd expect to be treated the same as anybody else. I'll settle for the 35 because that's the number it takes for parental love from both parents to try to reduce these horrible impacts or the horrible impact of not having a father or another loving parent in place. This same Fourteenth Amendment was used recently in an attempt to repeal our death penalty because justice is obviously not handed out equally... [LB437]

SENATOR SEILER: Anybody? Go ahead, continue your testimony. [LB437]

BRAD CATLIN: ...because judicial bias puts racial people actually in line for execution before other people. Fourteenth Amendment works there. Fourteenth Amendment is also coming our way. April 28, the Supreme Court is going to decide upon whether gay marriage comes to Nebraska or not. We don't have a say in that. Fourteenth Amendment will likely give me the right to marry a guy in Nebraska before it'll give me the right to raise my kids. It's a God-given right. It's a natural right. It's something that ought to exist without you guys creating something for it. But here we stand, reduced to 5 days of 30. That's all I have. Thank you. [LB437]

SENATOR SEILER: Okay. Any questions? Seeing none, thank you for your testimony. Further proponent. [LB437]

JOE TRADER: Hello, everybody. My name is Joe Trader, J-o-e T-r-a-d-e-r. Well, here we are again. I feel like some of us are kind of old friends. But another year has passed being a part-time father, another year of heartache and woe. I missed her first haircut, her first day of preschool, and recently found out she calls another man dad because he replaces the 82 percent of time that a judge took from me. But here we are again, fighting for the right to become more than just visitors and paychecks for our children. Do I believe 35 percent of parenting time is fair for one parent? No, but I would take 35 percent over 17 percent in a heartbeat. But according to this bill, myself and others who were denied equal parenting time prior do not matter and have no right to modify our parenting time outcomes. We all know the reason behind this idea and that it will flood our courtrooms, rightfully, with modifications. I believe this is unconstitutional based on the due process of law as just a starting point. Whether in the beginning of the custody process or any time after, we have the right to the same strict-scrutiny process that outlines the Fourteenth Amendment in all other cases. That means decisions based on compelling interests and clear and present proof of unfitness to be determined why equal parenting time should not be granted. In the cases like mine, when the judge puts in an order that I was found to be a fit and

proper parent but denied me equal parenting time with no clear and compelling evidence, clearly proves my fundamental and equal protection rights were violated. There needs to be an amendment to this. And if you believe that I have no right to modify my case in the future, I will prove you wrong. Now everyone knows the family court system wants nothing to do with the constitution being allowed in their courtrooms and because of this the results are devastating. Courts have instead responded with the best-interest-of-the-child standard as its primary compelling interest and way to continue to discriminate when discrimination was abolished. The "best interest of the child" phrase is overused, overly broad, and has no meaning whatsoever. It's a term they use in order to make a biased decision look like it was carefully decided upon for the right decision. I'm asking this committee to: completely remove the best-interest-of-the-child doctrine or come up with an actual meaning referencing the fact that the state cannot act in the child's best interest without first protecting the child's fundamental liberty interests, which include free and equal association with both parents; and realize that, in accordance with the Department of Health in which 110 of the world's leading child experts endorse shared parenting, the best interest of the children educationally, mentally, physically, and constitutionally is equal parenting time with two parents. Whether this bill passes or not, it means absolutely nothing without a judicial accountability outlining the scrutiny and equal protection clauses of the United States, ending the days in which judges can continue to harm the welfare of our children with no proper conviction. Maybe then we can fix the fact that our family court judges are violating Article V-19 of the Nebraska Constitution. For example, one study found joint custody with shared residence ranges from 26 in cases in District 1 to zero in Districts 9 and 12. As a veteran of this war in Iraq... [LB437]

SENATOR SEILER: Joe, Joe. [LB437]

JOE TRADER: Yes. [LB437]

SENATOR SEILER: Just a second. [LB437]

SENATOR MORFELD: Can you just please finish up your last thought here? [LB437]

JOE TRADER: Yes, absolutely. As I watched the 50th anniversary of the Selma...listening to our President speak about the monumental day in the fight for equality and because of what they did the doors of opportunity have swung open, not just for African-Americans but for every American. Women marched through those doors. Latinos marched through those doors. And now gay Americans want the right to equally marry. And now us, the longest and most forgotten people of the segregation fight, here today and days for the right to be equal, pursue our happiness, and keep our longest and most valuable rights as Americans, the right to equal parents. [LB437]

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SENATOR SEILER: Did you get divorced in Douglas County? [LB437]

JOE TRADER: Well, I want to state that I was actually very smart in one aspect, that I did not get married. [LB437]

SENATOR SEILER: Oh, okay, (laughter) that may be. [LB437]

JOE TRADER: I got the...yeah, so. [LB437]

SENATOR SEILER: Where was the paternal case? [LB437]

JOE TRADER: In Douglas County. [LB437]

SENATOR SEILER: Douglas, that's what I was looking for. [LB437]

JOE TRADER: Correct. [LB437]

SENATOR SEILER: Any further questions? Thank you very much. [LB437]

JOE TRADER: Thank you. [LB437]

SENATOR SEILER: Next proponent. [LB437]

LINDIE CATLIN: Good afternoon and thank you for your time. My name is Lindie Catlin. It's L-i-n-d-i-e C-a-t-l-i-n. And please, forgive me, my heart is pounding so I may lose my breath. First off, I want to say thank you for your time and attention. And thank you especially, Senator Ebke, for sponsoring such positive and sensible changes for the Parenting Act. There is nothing scary, at least that I've been able to read, in the Parenting Act. And in cases where domestic violence and sexual assault are at issue, the children are protected. It's in here. Page 2 of the document I printed accounts for abuse situations, so children are still protected under this and those instances are taken into account. In the past, similar changes to the Parenting Act have been allowed to just die here in committee. Why? What's so scary about it? It's good stuff. It spells out both loving parents should have the right to raise their children. And I lost my place, so we're just going to go with it here. Not being a product of divorce--I sincerely thank God for that--I was surprised to learn and in disbelief that judges in the state of Nebraska, which I'm fairly new to, can just dole out sole-custody rulings at such a disproportionate rate. You can...you've each already received a copy of the state's Custody Court File Research Study from

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2002 to 2012. I believe some of the percentages you've been hearing come from that document. Fifty-seven percent of the time in contested cases, judges award sole custody, versus joint, and of those sole custody decisions, 84 percent of the time the woman wins. Why is joint custody not the norm anyway? Aren't we supposed to be an equal-opportunity state, equal rights? If a father loves and wants to have an equal role in raising his own children, why is it that the majority of the time in court he's going to be ruled against? Why aren't his rights better protected? I think our judges need some better guidance, and LB437 helps provide that. Yes, I am a woman, at least as far as I can tell. One might ask, why aren't you in favor of those odds? Well, you know why: because I understand and believe in equal rights. Most of you I assume would, and do, too. A man and woman both bring different things, benefits to child rearing, varied perspectives on life, a different knowledge foundation, skill sets, ways to nurture and love and teach. Each has a unique and special role in his or her child's life. Both should have equal time to help mold their children into well-rounded individuals. And to kind of sum it up here, it warms my heart and it breaks my heart at the same time when I see my 11-year-old stepson cling to his dad when he gets to come to visit in such a limited capacity. Walking down a store aisle, he wraps his arm around his dad's and curls up next to him on the sofa. I see this as a cry out, a boy who dearly misses spending time with dad. The laughter they share and the hugs are in such limited capacity I can't help but question how much love and fatherly affection my stepson is missing out on because of a wonderful male role model. I know there are many other stories, and you've heard some of those already. And I thank you for your time and just ask that you would consider... [LB437]

SENATOR SEILER: Let me ask you a question. [LB437]

LINDIE CATLIN: Yes. [LB437]

SENATOR SEILER: Would...sound like you were talking about a stepchild. Which courtroom did he...did the... [LB437]

LINDIE CATLIN: This is in Richardson County. [LB437]

SENATOR SEILER: Richardson County, thank you. Any other questions? Thank you very much for your testimony. [LB437]

LINDIE CATLIN: All right. Thank you. [LB437]

SENATOR SEILER: Next proponent. [LB437]

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AUDREY GOSSARD: (Exhibit 5) Good afternoon. My name is Audrey Gossard and I'm here today as the mother of two grown children who grew up in a 50/50 shared-parenting situation for 17 years after their father and I divorced. At this point, I'm also a grandmother to a child who is being raised in a 50/50 shared-parenting situation with my son and his ex-girlfriend. LB437 is far from a 50/50 shared-parenting bill. But I feel that setting a standard of ensuring that the noncustodial parent will be given a minimum of 35-percent visitation time with their children, as opposed to the average 17 percent that it is now, is certainly a great step in the evolution of Nebraska's custody laws in recognizing the rights of both parents, as well as their children. For that reason, I am here today in support of this bill. I am also a hair stylist and have been a salon owner here in Lincoln for over 20 years. I talk with many clients every day and have been witness to the ever-evolving and changing attitudes of the people who live in the state as to how parenting plans and custody arrangements should be handled. Twenty years ago, when my ex-husband and I divorced, we almost immediately came to an agreement to share equal time with our two children, partly due to the fact that it simply made sense, due to our work schedules, partly because I'd like to think that we are both wonderful parents who deserve to have our children equally, and mostly because it was the right thing to do for our children. Although we had no doubt that we were doing the right thing, we may have been the only ones, as people simply didn't seem to understand it because the presumption was that the mother would automatically be the primary caregiver of the children after the relationship of their parents had ended. The kids were very young, both under three years old, and people apparently had no faith in the fact that their own father could feed them, bathe them, tuck them in at night, take care of them when they were sick, get them to day care in the morning, etcetera. I had faith in him. I did, after all, choose him to be the father of my children, and I knew he was a good father. So here we are, 20 years later. Our children thank us all the time for the fact that they never had to pack a bag and go visit their father every other weekend. As adults with their own children now, they appreciate it even more that they were able to maintain a very close relationship with both of their parents throughout their childhood. As to the attitudes and opinions of my clients, what a difference 20 years makes. I hear stories all the time where they say, it's just not fair, he is a good father, he deserves to have his kid half the time or at least more than every other weekend, why does the mother automatically get the kids the majority of the time. Whether they were talking about their sons, their coworkers or friends and neighbors, they now simply don't understand why both parents wouldn't be presumed to be good parents who are fit to have their children an equal amount of time. The idea that one parent or another is better or a more fit parent based simply on gender has gone out the window, and people have finally realized that we are now living in an era where both parents contribute equally to both supporting the household and raising the children. Bottom line, times have changed; people's attitudes have changed. They no longer have tolerance for those parents who choose to use their innocent children as pawns to be used for financial gain or to cause emotional pain to their exes. People have come to understand that both parents should have an equal right to parent their children and, more importantly, that the children have the right to grow up with both their parents equally. It's time for the courts in

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Nebraska to recognize the changing attitudes of its citizens and change the way that child custody is handled in this state. Thank you. [LB437]

SENATOR SEILER: Any questions? I have one. You've talked about your clients. [LB437]

AUDREY GOSSARD: Yes. [LB437]

SENATOR SEILER: Which courtroom predominates your clients? [LB437]

AUDREY GOSSARD: Lancaster. [LB437]

SENATOR SEILER: Lancaster? [LB437]

AUDREY GOSSARD: Yes. [LB437]

SENATOR SEILER: Thank you. Next proponent. [LB437]

FELICIA KEISER: Good afternoon. My name is Felicia Keiser, F-e-l-i-c-i-a K-e-i-s-e-r. I'm now a junior at UNL and this is not my first rodeo here, either. My dad, Ray Keiser, and I have been coming to the Capitol to speak with senators about this shared parenting bill for the past seven years. First time here was when I was 13. We brought brownies to buy time from a few of the senators, (laughter) Senator Coash and McGill, just to get our faces out there. But I was a young, young girl and now I'm 20 and I want to be the voice for the baby girls that fathers behind me have. So I'm not here to give my side of the story because I've done it before. Most of the senators know it. It was a mess, but I'm old enough now to be mature and speak about getting change. The 35 percent, it's not what I wanted. I would like 50 percent. But it's what we have and it's a start. So today I'm speaking here for the first time without my father, which is making me nervous, and I just want to know why things have been taking so long. So I'm questioning why it's 35 percent and why we can't do more, and I just have many questions about the progress and the process of the shared parenting bill. Each year, I've been kind of let down every time I come here and I speak and it's...the wording is too long or it's not right or it's just not enough or there's legalities with politics or money between the lawyers or judges or whatever. So what I'm saying is I'm tired of being disappointed but I'm glad that we're taking that step and we're finally getting something. This doesn't help me or my siblings. We're too old for it now, but we don't, you know, we don't mind. We don't want to see any other child go through or any parent go through what we had to go through. So I would just like to kind of ask, like, what needs to be done to get it to push through, I guess, this year, because I've seen it die for the past seven. [LB437]

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SENATOR SEILER: Anybody have any questions? I'll try and answer your question. [LB437]

FELICIA KEISER: Okay. [LB437]

SENATOR SEILER: This is only my second rodeo. (Laughter) They had five before I got here. [LB437]

FELICIA KEISER: Okay. [LB437]

SENATOR SEILER: And we need more...you need more votes. That's what... [LB437]

FELICIA KEISER: Yeah. [LB437]

SENATOR SEILER: ...bottom line. [LB437]

FELICIA KEISER: Okay. [LB437]

SENATOR SEILER: I'm fortunate enough, I have two identical girls, twins, that are under a 50/50 program in Missouri, so. [LB437]

FELICIA KEISER: Okay. Okay. [LB437]

SENATOR SEILER: Yeah. Any further questions? Thank you. [LB437]

FELICIA KEISER: Thank you. [LB437]

SENATOR SEILER: Any further proponents? [LB437]

DAVID BAGLEY: My name is Dave Bagley, D-a-v-e B-a-g-l-e-y. I want to thank you all for your time and thank you, Senator Ebke, for putting this bill forward. I am an example on two sides of this. I am a son of a...divorced parents, so I grew up in a home where I had every other weekend. And unfortunately, it was back in the '70s and so I had 24 hours every two weeks with my father, and it strained my relationship with my father. It wasn't what either of us wanted, but it was the way of the world back then. Sadly, here we are, flash forward about 30 years, and now I'm in the system again as a divorced father with a nine-year-old son. And I am facing the same issues with my son that I faced with my father and it's an unfair system. The thing I liked about

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LB437 was that it starts at a level playing field. No parent and no citizen wants to see any child in a dangerous situation. LB437 clearly defines that that dangerous situation is not going to be in front of these children. These children are going to be starting with a level playing field and then, from there, if there are situations that arise that would prevent this child from being in a safe home, then that would be handled by the court. And I fully support that because I don't want kids to be put in harm's way. But when there are two loving parents, which there were when the child was created, when there's two loving parents, both parents deserve the right to have an equal part of that child's life. Now, as a father, like so many other fathers, I assume, you know, I fight for time but that time is not granted. I ask for it all the time, because that's what the court recommends, ask for that extra time. Those folks who ask...who make those statements haven't been divorced. That time doesn't come. It doesn't get granted. You get what you get, what's on the divorce decree. You don't get any more, so it's a frustrating situation to be in. So now I resort to trying to see him at any given opportunity. You know, I coach every sport that he's in just so I can spend time with him. I, like so many other fathers, have to listen to my son talk about his other dad, which I respect his stepfather because his step father is a good man and I'm glad he's there and I'm glad he's safe in his home. But it's not fair to me as his father to have to listen to him talk about another man as his dad. You know, I am his dad. I should be the one that he comes home to at the end of his day. I'm the one who he should be talking to about his girlfriends in the third grade. I'm the one he should be talking to about challenging situations with his friends at school. I'm his father. I deserve that right. Thank you so much for the time. [LB437]

SENATOR SEILER: Any questions? What court did you go through? [LB437]

DAVID BAGLEY: Douglas County, sir. [LB437]

SENATOR SEILER: Thank you. [LB437]

DAVID BAGLEY: Thank you. [LB437]

SENATOR SEILER: Next proponent. [LB437]

TIM PRATT: Good afternoon. Tim Pratt, T-i-m P-r-a-t-t, Douglas County, Senator. [LB437]

SENATOR SEILER: Thank you. (Laughter) [LB437]

TIM PRATT: I didn't prepare for this. I wasn't planning on speaking today. But there were some things that haven't been said, in my opinion, that need to be said in regards to Senator Chambers

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and your statement regarding domestic violence and our need to protect children from domestic violence and our need to protect everybody from domestic violence, whether they be men or women. If you read the Nebraska child abuse statute, it states that any person is responsible for the mental and emotional welfare of a child. And I don't see why one person who is violent to a child overrides the 100 children that are being domestically abused due to a court system that basically rips their father out of their lives other than four nights a month. Okay? I got the Wilson plan--Wednesday evenings and every other weekend. And I'm going to tell you as a dad, it's hard to build a model with your kid. You know, you go out and you buy a model car. You try to put it together. Kids have a very short attention span. You have to wait for that glue to dry. They're there over the weekend. You might get a third of it built. And guess what, you've got to wait until the next Wednesday when you've got a few hours to try to put a little bit more of it together. And then from that Wednesday, mom's got them the next weekend, so you're waiting an entire seven days. It can take up to two months just to build a very simple model. And when I was a kid, me and my dad had it put together in five days, you know. So that's essentially what I wanted to say is that, you know, the vast, vast majority of us love our children dearly and we want to be a part of their lives and, you know, we created them. And we're scared for them. We're afraid for them every night and we lose a lot of sleep. A lot of times, it's the first thing we think of when we wake up in the morning and it's the last thing we think of when we go to bed at night, is their welfare and their safety and, you know, our ability to provide for them when they're with us, because...you know, it doesn't necessarily affect me because I have a real good job. Okay? But I know there's guys out there that can't afford to rent or buy a house where the children can have their own bedrooms. They're sleeping in somebody's basement on their couch, and when their kid comes to visit them, their kid has to sleep on the floor in a sleeping bag. Now you can't tell me that's not being mentally and emotionally abusive to that child. It is. That's all I got. [LB437]

SENATOR SEILER: Thank you very much. Any questions? Again, thank you for coming. [LB437]

TIM PRATT: Thank you. [LB437]

SENATOR SEILER: Next proponent. [LB437]

NADINE HAIN: (Exhibit 6) Senator Seiler and the Judiciary Committee, my name is Nadine Hain. I reside at 4151 Ridgeview Drive in Lincoln, Nebraska. I am the grandmother of a 13-year-old boy who has been waiting for the last eight years for the shared parenting bills to pass. I am for shared parenting and am here to voice my opinion regarding LB437. I feel it's a good bill except for the 65/35 custody issue. As the Parenting Act states, the child or children should have continued access to both parents; 65/35 does not do that. All the psychologists' and doctors'

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articles that I have read, and that's been a lot of them, state that a child should not be kept away from the other parent for more than a week. Some of the parents that you have heard say they only get to see them twice a month. That is two weeks apart. My grandson's is over one-and-a-half weeks every time, which isn't quite as bad as the two weeks. But the way the judges decide this does not make...it does not come to making any sense as to why they should not have equal time for both parents. We have...the way our attorney and the judge messed things up, there are times when it is three weeks because of their little stipulations that they put in, and that's a long time for a child not to see the other parent. We have been here now, and I have been here before, now that the shared parenting started in 2007 and has been in the Legislature and it never went any further. We did all of the public hearings. People have taken off time. We've wasted taxpayers' money. And we still have not gotten any further than we were when we first started. Our children are the future. We need to do something for them to have a good life and be able to have close-to-equal time with both parents. When the judges give custody to only one parent, it puts a lot of stress on one person and then matters are worse. When there are two people to take care of things before, now there is only one. When the children are very small, it's not that bad. As they get older and take part in more sports and other programs, it gets harder for one person and more stressful to do it all, and then we get the bad results. The stress takes its toll and we see kids that are injured and even killed by mothers, by fathers. Some of this happens even because of the noncustodial parent not having enough time with the children and they get stressed about it also. I would hope that we could pass LB437, but I would hope for a little more time, as far as the parents are concerned, to be more equal. Thank you. [LB437]

SENATOR SEILER: Thank you for coming. Any questions? Seeing none, thank you very much. [LB437]

NADINE HAIN: You're welcome. [LB437]

SENATOR SEILER: Further proponent. Anybody? Further proponent? Seeing nobody scrambling from their chair, opponents. [LB437]

JEREMY BARNHILL: My name is Jeremy Barnhill, J-e-r-e-m-y, last name Barnhill, B-a-r-n-h-i-l-l. My divorce was originally out of Douglas County in 2006 where I was given 50/50, equal custody of my kids by Judge Brad Ashford (sic). Later, in 2008, I had my case transferred to Saunders County and without statutory precedence Judge Gilbride removed 50/50, equal custody. I am now also having a case in Sarpy County over another daughter right now, as we speak. And I also am the founder of the group Kids Have Rights Too, which I knew all of you are familiar with. I want to start out by saying thank you to Senator Ebke. Your intentions and your heart were in the right place. I also want to thank the rest of the Judiciary Committee for what you did for our children of our military moms and dads with LB219. I'd like to start out by

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saying I'm definitely for more parenting time with kids for fit parents. I will not sit up here and say that this is an intentionally bad bill because it's not. I just think there are some aspects with this bill that I am against, first one being Statute 43-2329, the best-interest-of-the-child statute. At the bottom of that statute it clearly states, when a court is preparing a parenting plan, the judge must consider joint legal and joint physical custody first. We have a presumption on the books already, yet 73 percent of moms get sole custody. That tells me the judges aren't following what's on the books. Back in November of 2013, Sarpy County Judge William Zastera stated, and I have the transcript to back this up, I run my courtroom, I decide what happens here, not some law or some statute. In June 2013, Max Kelch, another district court judge of Sarpy County, stated, the problem with judges today is they rule too much by tradition rather than the letter of the law. We have another judge in Buffalo County that told the father, you have zero rights when it comes to your child in my courtroom, you have to earn them. Where is that in the statutes? Where is that in the Parenting Act? The fact that this bill gives these judges more discretion and more interpretation than what they have now, the fact that this bill is also unconstitutional based on a Supreme Court law...and I have the case law right here for you, Senators, that states, if a state seeks to deprive natural parents of custody of their children, requiring only proof of...by a preponderance of evidence, which is in LB437, it is a violation of the parents' due process rights. And the case that I'm citing is Santosky v. Kramer from 1982. So...and all I'm trying to say is a lot of these parents behind me sound like...you know, we've got the last bill that we just heard was for equal distribution of assets for divorce. Well, last I checked, kids are part of a marriage too. Are you trying to say assets of a marriage are more important than our kids? Kids should have equal time with both parents. The fact that this bill mandates 35 percent, now you all know our group is sponsoring 50/50, which I'll be the first to say won't work for everybody, but that decisionmaking process should be put back on the parents, depending their situation, versus the judge that knows nothing about their family. Thirty-five...the difference between 50/50 and 35 percent, if you do the math, is a little over one day. [LB437]

SENATOR SEILER: Hold it just a second. [LB437]

JEREMY BARNHILL: I have one last thought and I'll be done. [LB437]

SENATOR MORFELD: Just please finish up, sir. [LB437]

JEREMY BARNHILL: About a month ago, we heard Chief Justice Michael Heavican, and I know you all heard, his State of the Judiciary Address where he clearly stated...and I don't want to quote him because I'm not too sure about all the words he said, but I believe it went something like, my office, my fellow judges, and all the judges below us, our goal for this year is to work together to provide justice and equality for all Nebraskans. LB437 clearly does not provide that.

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And no matter what law that you guys put on paper, with all the good intentions you have, if a judge clearly doesn't want to follow it, they're not going to. We've got the present and current presumption on the books, as an example, and there's nothing on the law books that holds these judges accountable for their bad decisions. Thank you. [LB437]

SENATOR SEILER: Thank you for coming. Any questions? Seeing none, thank you very much. Next opponent. [LB437]

ROBERT SANFORD: (Exhibit 7) Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Robert Sanford, R-o-b-e-r-t S-a-n-f-o-r-d. I am the legal director for the Nebraska Coalition to End Sexual and Domestic Violence. After listening to concerns raised by survivors of domestic violence, the coalition decided it was necessary to oppose LB437. This has been through conversations that have been ongoing during the law year right up through to this past week. You will hear about various aspects of this bill from others following me, and I believe you have heard concerns from others through letters. While the thrust of the bill may be for those cases that do not involve domestic abuse, I would be remiss in my job if I did not address the impact this legislation could have on victims. I have heard from several victims who have indicated a fear that this bill creates for them. Some have even noted concern that, without bruises or police reports documenting abuse, testifying in a hearing such as this could cause problems in a custody case in years to come. I hope that we all recognize that language such as that, beginning on line 10 of page 6, punishes and ultimately silences a victim who does not have physical proof of abuse or witnesses who can testify to abusive behaviors. Do we really want a parent to be beaten and bruised in order to minimize any fear of raising allegations of abuse? When a system turns against someone, I think there is an increased risk that the individual begins to internalize the turmoil they face. Rather than seeking help from victim advocates, counselors, law enforcement, or the courts, individuals may be faced with enduring the abuse or looking for other alternatives. Offender accountability is a big part in providing safety to victims, parents, and children. But in order for accountability to occur, victims must be free to tell their story and the systems involved must take the time to evaluate what is best rather than utilizing a cookie-cutter approach. When systems fail, individuals look for other alternatives. During the public hearing on LB27 earlier this session, Dr. Les Veskrna responded to a question that I believe sums up both sides of this debate very well. Let me share with you what he said: I think if there's one thing that shared parenting advocates have with domestic violence advocates, is that the system just doesn't seem to be able to take enough time to work through those issues and fully evaluate parents; this should be an individual decision for every family because every family is different. I cannot speak for others, but I would agree with Dr. Veskrna's statement. This must be an individual decision for every family because every family is different. A presumption of shared parenting creates a template for judges to follow and limits the reviews of individual families. Because of this, I would ask that you do not advance this bill. Thank you. [LB437]

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SENATOR SEILER: Any questions? Senator Williams. [LB437]

SENATOR WILLIAMS: Thank you, Senator Seiler. Mr. Sanford, thank you for being here. I want to be sure I'm understanding what you're saying from your organization, because I got two messages and maybe...but I want to be sure I got two messages and maybe more. Are you...is your organization opposed to a shared parenting arrangement? [LB437]

ROBERT SANFORD: Our position is that we're not necessarily opposed to shared parenting; it's the getting to that point puts victims at greater risk. And that's where our concern is. [LB437]

SENATOR WILLIAMS: And is your concern about language in this bill that requires some disclosures on child abuse or those kind of activities and the fear that, depending on how that testimony goes, that could affect the trial judge's decisions? [LB437]

ROBERT SANFORD: Domestic abuse right now, for purposes of the Parenting Act as I understand them, anyway, incorporate more than just physical abuse. And without the ability to document that through photographs, through police reports, other types of physical documentation, medical reports of broken bones, things like that, it becomes very difficult for a victim sometimes to prove that they are a victim of domestic abuse. And so the fear is, is that by raising that issue, if they are a victim of something other than physical abuse that rises to that extreme level, they may not be able to meet the burden of proof. [LB437]

SENATOR WILLIAMS: Gotcha. Is there a legislative fix to that issue that you would propose? [LB437]

ROBERT SANFORD: I honestly don't know what that fix is. We have tried to find a fix and... [LB437]

SENATOR WILLIAMS: One of the concerns we go back to is...and we've...the term "judicial discretion" has been tossed out numerous times today. And you seem to be an advocate for more judicial discretion in this issue which currently, as we just heard, under statute we have. But the reality is judicial discretion is being used in a way that does not provide anywhere equal to shared parenting time. [LB437]

ROBERT SANFORD: And I think that the fix to that, actually, is not a legislative fix. It is the ability of counsel to create a record, to appeal that decision, and take it through the Court of Appeals and Supreme Court to prove that the courts are making erroneous decisions. That's for the judiciary, in my opinion, as opposed to the legislative body. [LB437]

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SENATOR WILLIAMS: Thank you. [LB437]

SENATOR SEILER: I have a couple questions, one on your idea of appealing the Supreme Court. I haven't tried divorce cases for a long time, but most of my clients didn't have money enough to go to the Supreme Court. That's a lot of bucks and so I have a little question what we would have there. In one of your statements you said here that you...that this bill limits the judge's ability to treat the family independently. You're talking then of placing the...you're against this bill because you want to place all the decisions in the wide range of decisionmaking in the judge's decision. Right? [LB437]

ROBERT SANFORD: Correct. [LB437]

SENATOR SEILER: That's what you mean by that? [LB437]

ROBERT SANFORD: Correct. Our concern is, is that by placing that standard, the minimum 35 percent, in there that it creates a system where, if you don't agree, if you can't reach an agreement to something else, the party who is...who feels like that they're missing out can throw up their hands, go to court, and they know that they're automatically going to get that 35 percent. [LB437]

SENATOR SEILER: I have a problem with the confidence that...and I'm a lawyer and have practiced for 48 years. But we're seeing a trend that, when a judge's job comes open, we're not getting very good candidates because of the fact that the salaries haven't stayed up with where we can attract good people. So if that happens, then I think you've got a serious...a more serious problem, unless we legislate in this area. [LB437]

ROBERT SANFORD: And I would even take it a step further, Senator. And in the original Parenting Act, not the original that was passed a couple decades ago but the Parenting Act that was passed in 2007, it contained language in there requiring that judges receive training on domestic abuse and other family law-related issues. In 2008, the amendments to that actually removed that, and I think that it's part of the problem, is that the judiciary does not receive adequate training on family law issues. [LB437]

SENATOR SEILER: Okay. Any further questions? Thank you very much for your testimony. Next opponent. [LB437]

MARY KAY HANSEN: Good afternoon. I'm Mary Kay Hansen, M-a-r-y K-a-y H-a-n-s-e-n. I'm a family law attorney. I've been practicing in family law for 30 years, first 25 I've litigated family

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law cases, and in the last five years I've mediated family law cases. I'm also a SADR mediator, which means I can do the high-conflict/abusive. We don't really technically call it mediation, but it's alternative dispute resolution. I've opposed this bill. And I'm not a father's rights attorney. I'm not a mother's right attorney. I'm opposing this bill because I'm a child's rights attorney and I have, really, concerns that it's not going to have the desired effect. I think children should have the opportunity to have a loving, beneficial bond with both of their parents. Both parents should have ample and reasonable parenting time under the arrangements that are best for the child and make sense under the family's circumstances, work schedules, special needs of the child. I have serious concerns that this bill will have a chilling effect on getting people into mediation. Right now, over the last five years, we've had mandatory mediation before any family can go and litigate their custody case. That was part of the past Parenting Act. We've seen a big movement for people, now that they've tasted mediation, to like it. It's effective. It works well. I have cases that come before me that no one thought would resolve, and we come up with a very creative problem-solving process for the family. And one of the things that people have to keep in mind, it's one of the few times that divorcing parents or parents who are no longer parents together--I'll use the term "divorcing," but I know some were never married and it's a paternity action--but they sit at a common table or, if they're not able to sit at a common table, they sit with a common neutral, myself or someone like myself, and discuss the issues and come up with problem-solving resolutions. They're not fighting over a solution. They're creating a solution. And it's really effective for the kids. You give a 35/65, also, we're going to have a rubber stamp, all the courts are going to apply it, all the attorneys are going to tell their clients they're going to get it, and the value of mediation is going to wane. And I think it's a real, real disadvantage to the families. Secondly, I do have concerns about the language in the bill, some of the language regarding parenting rights and responsibilities, as well as some of the language in regards to what should be factored into the best interest of the children. I had sent an e-mail letter, that I had sent to Senator Morfeld earlier, to Senator Seiler and asked to make it part of the record so people could consider that, as well. I've concerns it's going to do the same thing that the equitable distribution bill is going to do. It's going to fix one problem and probably cause five more, and so I wouldn't want that to happen in...with families. I'm not so concerned about what happens with money or farmland. I am real concerned what happens with the children. Is there any questions I could answer? [LB437]

SENATOR SEILER: Senator Morfeld. [LB437]

SENATOR MORFELD: Thank you for coming in today, Ms. Hansen. One of the questions that I have is there's a lot...I mean some of this language looks pretty good in the sense that, you know, you want to be fostering, encouraging, sharing love, affection, contact between the child and the other parent. How do you...in your experience, I mean, how do you think the court interprets that and creates distinctions? [LB437]

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MARY KAY HANSEN: I used to be partners with Karen Flowers, who became a judge, and she used to refer to this as a do-right writ--you can put all the do-right language you want in a courtroom order and parents are either going to do the right things or they're not going to do the right things. When I see language like this in a statute, I recognize it's not meant for 95 percent of the parents because 95 percent of the divorced parents are going to do the right thing by their child. They're going to let the child call the other parent when they have a...won a school award or that there's something exciting going on. They're going to share information and photos. It's written for the 5 percent of the people who are in constant turmoil. And language like this will cause more turmoil because something will happen and the mother or father is going to say, they didn't tell me this happened, or you're supposed to be encouraging sharing the love and affection and it was Mother's Day or Father's Day and you didn't have the kids buy me a present, you're in contempt of court, I'm going to have you thrown in jail or I'm going to ask the court to change your parenting schedule or parenting time. Language like that, as well intended as it is, tends to just cause more problems. And you have to keep in mind that, when people are going through a divorce per the parenting plan, they're already mandated by state statute to take a coparenting class. It's called COPED, C-O-P-E-D. It has a standard curriculum and everyone has to file their certificate with the court before the court will accept their parenting plan. So they've already been, gone through a class with a curriculum to do all these things. Putting it in a court order doesn't make it happen. It's going to happen naturally or it's not going to happen. And how do you define it? How do you define encouraging the share of love and affection? I mean, I don't know how...I mean, how do you define that? And how...is someone going to be in contempt of court if they didn't do it? And whose standard is what we're going use? Talk about judicial discretion, I mean...I just...I mean I think it's great thing for parents to do. I just don't know how you legislate it. [LB437]

SENATOR SEILER: Any...Senator Morfeld. [LB437]

SENATOR MORFELD: Just one more question, Ms. Hansen. So you're opposed to this bill and you outline it fairly thoroughly in your letter. I mean, do you think...what are some changes that you think are merited or warranted to our current system? Do you think there are some instances where, I mean, clearly there's some things that are out of whack? [LB437]

MARY KAY HANSEN: Oh, oh, certainly, certainly. First of all, I think every other weekend is horrible. And I thought every other weekend with Wednesday supper night was horrible. Those aren't good plans. But you need creative plans. We have someone here who is a firefighter. I don't know what his schedule is like, but I know I've mediated a ton of firefighter schedules. These guys have Kelly days, at least if they're Lancaster County, so you work, like, five days, 24 hours, and then you get like five days off. Well, giving someone like that an every-other-weekend parenting schedule is ludicrous. What you should do is figure out, with the parents working in mediation and cooperation, how can we make this work? You should never have parenting time

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when you're on 24-hour call. That doesn't make sense. But you sure ought to have your kids as much as possible when you're off. And by the way, maybe the other parent can change their work schedule so when dad, the firefighter in this case, is not working, they up their hours if they have that flexibility. You start looking at those creative things. But, you know, I see people of every-other-weekend schedules or other kind of schedules and they're on Guard duty. Well, you know, it doesn't take a rocket scientist to come up with a creative plan that you don't have mom or dad having their parenting time on Guard duty weekend. Or you have people who work at the Auburn power plant. They have very unusual schedules. Let's come up with something creative. Maybe, every day when the kids aren't in school and dad or mom works a 3:00 to 10:00 shift, let them have the kids during the day off school. There's all kinds of stuff out there. So every time we have a mediation, we have a parenting schedule or we have all the parenting outlines of what we're mandated by law to cover. We have the school schedule for where the kids attend. We should be looking at that school schedule and figuring out what days, where the parents work, how can we maximize the kids being with their parents, not in day care, not with third parties. Every kid deserves the love and relationship with their parent. A kid is better off having time with a bad mom or dad than no time. And I'm not talking about abuse but just, you know, maybe not the perfect parent. Kids just want time with their parents, and kids don't bean count, never. The only kids who ever come in and say, because I've talked to a lot of kids because I get asked to be guardian ad litem in high-conflict divorces, no kid ever says, I want 50/50. They just want meaningful time. Kids are not bean counters. But when the kid comes in and tells me they want 50/50, I know that they have been put in a position by one of their parents to become and advocate, rather than a kid, and that's really sad too. You don't want that to happen to kids. And one of the solutions might be is...we have a real problem in western Nebraska getting mediation because there is, you know, as you know, not a whole lot of attorneys out there. The mediation centers are far and few between and in western Nebraska there is a tendency to waive the requirement of mediation. You talk to anybody in Lancaster County, Beatrice, Gage County, Douglas County, where a lot of mediation is happening, you'll see that the average parent is probably...in my mediations, we tracked it: 40/60 to 50/50 is extremely common, extremely common. But out western Nebraska, they waive it and then you end up with these kind of old-fashioned notions. So it would seem to me, maybe we fix...that mediation becomes more available out there. I mean you could Skype. This...we've got technology. I'm not sure why we're not doing some creative things to cause that to happen, rather than force-feed a schedule upon families and judges. I tend to talk a lot. I apologize. [LB437]

SENATOR SEILER: Senator Williams. [LB437]

SENATOR WILLIAMS: I do have a question. Thank you, Ms. Hansen. And thank you for bringing a great son to our Legislature. [LB437]

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MARY KAY HANSEN: Oh, thank you, who isn't very talkative, apparently, never got a chance. (Laughter) [LB437]

SENATOR WILLIAMS: I just got that...I just got that note handed to me, so. [LB437]

MARY KAY HANSEN: I didn't know that, but yes. [LB437]

SENATOR MORFELD: I was going to make that note, but I thought... [LB437]

SENATOR WILLIAMS: You are the perfect person to ask a question that I've wanted to ask today that I'm not expecting a gasp out of this group. Okay? But this is a question because this is what I was told by a judge that handles these cases recently when I was talking to that judge. And that judge said, in my judgment, joint custody is no custody. Can you respond to that and help me? [LB437]

MARY KAY HANSEN: I'm not exactly sure what they mean. But I think that means with parents, see, when you're talking about joint custody and judges ordering it, that means you're ordering it to a family who can't agree to it themselves because, if they've agreed to it, it's a nonissue. So where judges have issues on joint physical custody, where it's a 50/50 time share, is when one of the parent say, this isn't going to work. [LB437]

SENATOR WILLIAMS: They haven't agreed. [LB437]

MARY KAY HANSEN: And so usually you force it upon them and it doesn't work. The predicted outcome is that...because joint custody, 50/50, generally requires a great deal of cooperation between the two parents. It's coparenting. And if you can't even agree you should be doing this, how do you think it's going to work? I mean that's...and that's the end result. Some of the worst cases I've seen is well-meaning parents who were fearful of losing custody. They agree to 50/50, but they don't get along. They don't communicate. They can't agree on the color of the sky. And so they fight through their children for the next 10-12 years. And so I think that's what you're talking about because, when we're talking about judges and joint custody, if the parents agree to it, it's happening. And more and more parents are agreeing to it. We're talking about forcing upon families where one of the parties says, it won't work, and we say, no, got to make it work. Does that help? [LB437]

SENATOR WILLIAMS: Thank you. Yep. [LB437]

SENATOR SEILER: Any further questions? Thank you very much. [LB437]

MARY KAY HANSEN: Thank you. [LB437]

SENATOR SEILER: Next opponent. [LB437]

VICKY VANDERGRIEND: Hi. My name is Vicky Vandergriend, and I am the former wife of James Creigh who I understand helped to write this bill. I want to speak today about how important it is for children's lives to as closely resemble post...predivorce when it is postdivorce. But before I do that, I did want to share that I had great concern today to testify because of some of the language in this bill. I did testify a few years ago at LB22, and I do feel though, even though I think I could potentially be opening myself up to additional litigation from my former husband, I do think it's important that you hear my stories and others like mine. I do understand that Mr. Creigh has made some comments about our divorce before the various committee meetings in the past, and I'm not going to do that, even though I could provide some more accurate information on the domestic events that have occurred in our divorce. I will, however, suggest that many of the provisions suggested in this new bill were not, are not necessitated by any actions occurring in our case. That would require protection for fathers. Our current system allows each party the equal opportunity to address these issues in their case and allow the court then to make the decision, rather than forcing a particular starting point. In my story, James and I agreed that he would pursue his legal career and I would stay at home with our children, even though I do have a master's in education. And this arrangement did benefit our family. He worked hard at earning a living for us, and I worked hard at being the primary caregiver for our children. Some examples of that primary role were: Our oldest was born with some health issues, so her first year of life, she couldn't really go in public very often. I took her to all of her very extensive doctor's appointments. I was able to stay through the night with her at all of her surgeries. Another example of that primary caretaking: Just a few months ago, our 15-year-old broke his clavicle and had to stay the night for surgery and I asked him...when he was asked if he wanted anybody or who he wanted, he wanted me to stay. And I think that's a reaction of a child to their primary caregiver. Our divorce is considered a high-conflict case. Our case is also ongoing. Our latest custody trial was just this last February. Our children have not had the chance to settle into a consistent postdivorce life because of this constant and ongoing conflict. My former spouse has filed two proceedings to amend our parenting plan since our decree was signed in 2010. I have filed counterclaims and we have settled both of those. We have worked with four different mediators and we've had three different judges assigned to our case, and there's still a large amount of stress and conflict in our children's lives, which is very hard on all three of them, and I don't see it getting better any time soon. In conclusion, I do ask that you don't pass this bill but spend more time understanding what's going to help all of our families. I would like to read this. It was handed to me anonymously after I testified at LB22 a few years ago. It simply says, thank you for speaking up on behalf of survivors and giving a voice to thousands of us, you are a strong and brave person, God bless you. [LB437]

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SENATOR SEILER: Further questions? Seeing none, thank you for coming. [LB437]

VICKI VANDERGRIEND: Thank you. [LB437]

SENATOR SEILER: Next opponent. [LB437]

CINDY GUBBELS: (Exhibit 7) Good afternoon. My name is Cindy Gubbels, C-i-n-d-y G-u-b-b-e-l-s. I'm a local emergency physician representing One Mom's Battle-Nebraska. [LB437]

SENATOR SEILER: Ma'am, could you talk up a little louder? [LB437]

CINDY GUBBELS: Sorry. One Mom's Battle is a national nonprofit organization representing parents who have gone through or are going through custody battles with people with Cluster B personality disorders. This consists of antisocial, histrionic, borderline, and narcissistic personality disorders. We are also calling for education and change in the family court system. Trying to legislate shared parenting in one broad swoop with family disputes is very naive of these types of people that make up the very high-conflict divorce. Divorcing someone with Cluster B personality disorder is a daunting task. They have no empathy for others, including their children. They routinely put their child in the middle of the battle and use them to gain control over the spouse in the court system. They will go on a massive smear campaign against you, spread rumors about you. They will project their faults onto you. If they are an abuser, they will accuse you of being an abuser. If they are an alcoholic, they will accuse you of being an alcoholic. Some of them are very good at it. Cluster B individuals are rarely diagnosed, as they think they are never in the wrong and, as such, do not need therapy or help. It takes lots of resources, including expensive psychological assessments and custody evaluations, to get to the bottom of these very messy divorce cases to find out who the fit parent is and who is not. In these types of high-conflict divorces, there is typically only one parent, the Cluster B parent, that is causing the divorce to be labeled high conflict. If this law is passed and the minimum becomes 35 percent, you take away the court's discretion and decisionmaking authority. Let the courts and judges do their jobs. There is a large body of case law and statutes that already discusses the relevant factors courts should take into consideration when determining custody. One more point I would like to make. If the judge is able to see through the smoke and mirrors and determines the Cluster B personality is unfit and gives them less than 35 percent parenting time, this individual will never see his or her own faults. They will blame others, including the judges and lawyers and ex-spouse, for their fate. They will bring this back to court over and over again to gain what they feel is their rightful 35 percent. Litigation will increase. In summary, this bill, if made into law, will take away judges' authority to do their jobs in high-conflict custody cases in trials, leaving children at the mercy of unfit and abusive parents and increase conflict in litigation. [LB437]

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SENATOR SEILER: Okay. Any questions? Senator? Okay, thank you. Next opponent. [LB437]

TARA MUIR: (Exhibit 8) Good afternoon, Senator Seiler and Judiciary Committee members. My name is Tara Muir, T-a-r-a M-u-i-r. I'm the executive director of the Domestic Violence Council in Omaha. We're a private, nonprofit organization which brings people and systems together in the Douglas County area to lead and unite the community to end domestic violence. Family law has not kept up with the improvements other systems have made in victim safety and offender accountability such as the healthcare or criminal law system has. While Nebraska has made great strides in its family law statutes by emphasizing safety in the best interest of the children, the practice in the individual courts leaves room for improvement. Requiring hearings in open court and on the record with written findings would be a good start. With my testimony I attached stories from survivors who are too fearful to come today. You'll read about how their allegations of abuse were seen as irrelevant or grossly mischaracterized by the family court. You'll read about assault, rape, the children who take on the characteristics of the abuser, and why there is a lack of criminal convictions for assault. You'll read about a mediator who told a victim she'd better agree to the parenting plan because the other party was getting very angry. And you'll read about a bailiff who told a victim the judge didn't like these kinds of cases and she'll likely lose custody. You'll read about the thousands and thousands of dollars in legal fees trying to protect children and abusers who in private tell victims, I will ruin you. We understand the social science research that joint custody works well for families who voluntarily agree to it. This same research does not address the complexities of proving domestic violence. However, LB437 will not improve family law for our most vulnerable families but will worsen it for several reasons. Besides significant interference with judicial discretion, there is no evidence that involuntary joint custody is actually good for kids. But there is plenty of evidence that exposing kids to conflict and abusers' behavior is bad for kids. LB437 puts too much emphasis on false allegations with no corresponding consequences for those who falsely deny the allegations. Several friendly parent provisions in this bill directly contradict the safety provisions already in current law. It is internally inconsistent on this point. It also attempts to change the definition of whose abuse should actually be considered. The bill allows for both parties to waive written findings of fact and conclusions of law which is also contradicting another statute that is not in LB437. But I'm not all gloom and doom today. I, too, visited with Senator Ebke on Sunday...or Tuesday, and I was encouraged by our discussion that this work going forward should be much more collaborative with all concerned parties. I've also given you a report from the Oregon court improvement project that is the most recent and short review of the literature when it comes to custody, childhood development, and domestic violence. Please use our expertise to improve the family law system for families and keep this bill in committee this year. I'm happy to address any of some of the statistics that have been put out, particularly 70 percent of domestic violence is initiated by women. There are some studies out there that women do use violence, they do fight back, but it's usually because they're fighting back. It's not initiated or, if it's initiated, it's a very

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small act of violence and the retaliation against it usually puts the victim back in the hospital.
[LB437]

SENATOR SEILER: Anybody asking any questions? Seeing none, thank you for your appearance. [LB437]

TARA MUIR: Thank you. [LB437]

SENATOR SEILER: Further opponent. Seeing nobody coming forth, somebody in the neutral.
[LB437]

BRUCE VESPER: Thanks again, Senators (inaudible)...thanks again, Committee. I want to kind of start off by answering a couple questions. I think... [LB437]

SENATOR SEILER: State your name and spell it. [LB437]

BRUCE VESPER: Oh, my name is Bruce Vesper, V-e-s-p-e-r. [LB437]

SENATOR SEILER: Thank you. [LB437]

BRUCE VESPER: I am also the founder and owner of Partners for Equal Parenting, a nonprofit located in Fremont, Nebraska. I want to kind of start off by answering a couple questions that you guys had. Senator Seiler, you were talking about how do you determine the bad dad, deadbeat dad from a good dad. Well, you really can't. You literally have to take it by a case-by-case basis. Literally, the people that I have come across and the clients that I've come across, I have developed a term called "show cause" because we have parents out there that are literally just doing things so it looks good for the court. When you look into it and you look at it on paper, oh, it looks like daddy is worried about this or mommy is doing this but, in reality, nothing is going on. They don't go see their kids but, yet, the other parent, the custodial parent, will never file contempt charges on a parent that doesn't want to see it. They simply go, hey, he doesn't want to see his child, that's his loss. So it's really hard to determine that good dad from a bad dad or a good parent, you know, from a bad parent. I mean it literally has to be by the evidence that is presented, psychoevaluations, type of that situation because there are people out there that will literally inquire things just to make it look good--oh, I have to go to mediation. I heard a lady talk about mediation. You know what, here in Nebraska mediation is a joke, it literally is. I took mediation. I paid out the money for my mediation. My ex walked in and said, oh, I don't agree to anything, therefore, I'm out the money and now we are back into court. I was willing to settle on a whole bunch of different items, but she didn't want to agree to anything, so now it was set forth

on the judge to set the parenting plan. Now a lot of people know what the judges are like when they go into court. Why should they give in to anything when they know that judge will give them everything? Judge Gilbride, Saunders County, you've heard that name before. Traditionally, she gives the mother full custody. That's exactly what she got. My lawyer is now filing 23 counts of contempt charges on her. My ex filed 20 counts against me. I was found not guilty on all 20 counts. (Inaudible)...the county you talked about...Senator Williams talked about next about how do we solve that situation with domestic violence and how we get around that issue with the children. Well, it's actually a pretty easy solution. My organization does this. We go out and we pick up the children and we take them to the other parent. We do the transportation. That way, there is literally... [LB437]

SENATOR SEILER: Go ahead. [LB437]

BRUCE VESPER: There is literally no contact between the parents because of either a protection order or domestic violence issues. The transportation has been provided by a separate organization. And if need be and if that one parent has a domestic violence past and has, you know, hurt children or whatever, that doesn't mean he can't be a parent, means he's got problems. We solve that solution by literally offering the supervised visitations. We have an expert in there. We have security in there. This is something that my organization is looking forward to doing here in Nebraska because we don't have that service. Right now we offer the type of parenting plan is just a plain Jane. I mean, literally, it's a joke. We base our parenting time off of school schedules and like that. Well, as a normal parent, their parenting time doesn't get deciphered on how much time they go to work or if they have to work 24 hours. So the...you heard testimony of a firefighter up here and he should only get certain time when he's not working. Well, you know, what, that's not a parent. A parent is finding a babysitter when you have your daughter or your child. That's what a parent does. A parent...50/50, I know this bill doesn't go 50/50 and I've heard literally testimony going, hey, 35 is not enough. But then I've got clients that...like myself, I only got 17 percent. So is 35 enough? Some people say yes; some people say no. Now I kind of addressed the issue of...Senator Williams, you talked about...you've heard testimony about that 17 percent and you asked about that 17 percent. So that 17 percent, where that comes from is considered Wilson's visits here in Nebraska. It's commonly referred... [LB437]

SENATOR SEILER: Could you wrap it up? [LB437]

BRUCE VESPER: Okay...commonly referred to Wilson visits because the Nebraska Supreme Court ruled, Wilson v. Wilson, that that is adequate time, 17 percent is adequate time for a parent to be with their child. I don't think so. [LB437]

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SENATOR SEILER: Thank you. Thank you for coming and thank you for your testimony.
[LB437]

BRUCE VESPER: Thank you. [LB437]

SENATOR SEILER: Next neutral. [LB437]

CASEY KARGES: (Exhibit 9) Good afternoon, Senator Seiler, members of the Judiciary Committee. I'm Casey Karges. I'm the executive director of The Mediation Center. C-a-s-e-y, last name is Karges, K-a-r-g-e-s. I speak for my center, as well as the five other ODR-approved mediation centers that serve 93 counties in the state. Concerning points I want to make, three...probably three points for LB437, first and foremost, I think everybody would agree the best parenting plan would be the one that parents could create. At The Mediation Center, we work with probably 750 parents a year on parenting issues as they try to work through a parenting plan. Mediation has a 75-percent success rate. Most of the time, when parents start working on stuff, they can work through it. Today, I think we're talking about 25 percent of the time there are a variety of ways that we try to find other ways to make those kinds of decisions. In this capacity, some trends...one is an increasing number of high-conflict and domestic violence cases. Before any mediation, we have to meet with each party individually. Over the years, across the state, we're seeing about 30 percent of the cases show some kind of domestic violence where parents should not be in the same room at the same time to mediate this. We have to do it differently to make sure that both parents are as comfortable as possible. Second thing, we're seeing a growing number of parents who are self-represented. They do not choose to have legal representation as they go through the process. We see that growing. And the third thing is, is the growing number of parents who have never been married. Right now in Nebraska it's 30 percent and it's growing. Nationwide, it's growing to probably about 50 percent of the couples who...the parents who have kids, some have had relationships, some have not. As we look at that number of people who are not able to come to an agreement and come back into the court system, we estimate a cost of \$470,000 to subsidize the cost of mandatory parenting mediation. The fiscal impact is due to...research shows 8-12 percent of postdivorce couples remain in high conflict two or three years after divorce; 10-25 percent of all couples in custody issues and presumption states are back in court disputing every issue, as the child's school performances, friends, and extracurricular activities. I think what we're saying is, is if we would do a presumption of parents need to attempt to do a certain kind of parenting time, that there's going to be more conflict and there's going to be more need within the courts but also within mediation. We want to lift up the awareness of probably going to see more of these cases and somehow there would be a cost associated with that. I'd be happy to answer any questions.
[LB437]

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SENATOR SEILER: Senator Chambers. [LB437]

SENATOR CHAMBERS: I've been quiet, but I've been listening. America is a wonderful country. You can make money off anything. (Laughter) Mediation is just where somebody says, two people who don't like each other, if you come with me, talk to me, I'll make you like each other. There was a song based on that, and they never indicated in the song whether they succeeded. But the song sold well because it was sung beautifully. It was called "I'm Going to Make You Love Me," oh, yes, I will, yes, I will. And you could fall in love with the song, but you still wouldn't have loved the person that you didn't love before you heard the song. So when people come to the Legislature, you're dealing with people who are, to be general, no better and no worse than the general (inaudible) of person who comprises this society. So we're called upon to catch lightning in a bottle, to trap a moonbeam in a plastic bag, or to ensnare beauty in a net of words. And sometimes we give the impression that that's what happening. But when I read history and when I grew up as a little boy and was naive enough to believe that things in the "Bible" were so and that things that adults told me were true, I was misled, I was deceived, and when I became undeceived, I didn't believe anything any adult told me about anything. So here's what I got during my religious phase: That "Bible" is thick and the pages are very thin, like tissue. And when God supposedly spoke, there were ten sentences given, and the rest of that "Bible," with those thousands of pages, were interpretations and concepts and notions written by people about what those ten statements meant. And when his son, supposedly his son, came along, he gave a sentence that others had said: As you would that men do unto you, do ye even so to them likewise. And you see where it got him. So when you look at the fact that religions have been spawned from a few words and you go into a law library and you read the Constitution of America or of Nebraska, each comprises a relatively few pages. But all of those books, all of the treatises, all of the law books, the statute books are based on those few pages and the relatively few words, and you have more confusion than ever existed before people know how to write. So people feel good sometimes when they can get the Legislature to write words on paper that will go into a book that are supposed to bind a judge and compel him or her to say what those people who got the Legislature to do that will want the judge to say and which the legislators would like the judge to live by. Then people become frustrated when judges behave like human beings, which means like our children. We say, don't do it, and they do it. We say, do it, and they don't do it. So we get smart. We're going to use psychology. There's something they shouldn't do that they like to do, so we're going to say, go ahead and do it, thinking they're not going to do it. They say, thank you, Daddy, and they do it. Children are smarter than us. So the reason I didn't say anything during this hearing, I indicated in the beginning: I'd heard it all before. When one side of a story is given, it can be very persuasive until you hear the other side. And if both persons speaking are personable and because people are judged by the outside, the man looks like a matinee idol, the woman looks like a goddess, then you're entranced by what they look like, you're enraptured by what they say, and you believe what each one tells you when each is speaking and the other is not there. Then you put them together. And you said some you

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can't have in the same room, they fight like scorpions in a bottle. Then you say, I know what they mean when they say beauty is as beauty does. They look like something, but on the inside there's something entirely different. I don't believe there is a person in this room who is not going to let hope and wish guide their determination would believe that, if we put these words or any other words in the statute books, it's going to make judges do any differently, it's going to make men and women or men and men or women and women behave toward each other differently from the way they do now. Words on paper will change nobody. And those who obey the law usually obey as long as a cop or somebody is watching who will tell on them. So here is what I'm getting to: Judges have to be given discretion. Legislators disagree on what the law ought to be in terms of the words. When we have these hearings, the people disagree. So since we cannot find the words, you do the best you can with what you have to work with. So you create a system where you set people into it and you say, we're going to concede or tell ourselves that you're smarter than all the rest of us. But even if you're not, you're going to do what we can't do, and that's make a decision in every controversy that comes before you. That's the one thing you as a judge must do: You must decide yea or nay, up or down, and we don't have to. But if you decide it differently from the way we want, then we'll condemn and criticize you. But if we were honest about the system, we would say that there is no perfection. These problems are not going to be solved by law books until you have a society of angels, as angels are portrayed. And those who are against gay activity wouldn't like a society like that because all the angels in the "Bible" were male, no female angels. That's why you don't have little baby angels, because we're told that male doesn't reproduce and there are no women angels. But you know what happened? Those males who were angels created by God, who makes no mistakes, were flapping around in Heaven and suddenly--there were mischievous people then--one of them blew and parted the clouds. And those angels looked down and the "Bible" says they beheld the daughters of men and saw that they were fair. And the sons of God went in unto the daughters of men and there were giants in the land in those days. Goliath's father was an angel. Now to sum up what I'm getting to, it bothers me when children who are here through no fault of their own, and if they would have had anything to say about it would have chosen not to be here, become the victims of everything that adults will do. I look at the picture of these beautiful little children. All children to me are beautiful. If I saw a child with one eye in the middle of its forehead, that child would be beautiful to me. I'm like God when it comes to that. You all look on the outside and I look on the inside. And that child, considered ugly, is no less worthy, no less human, no less possessing dignity than those who are considered the little angels. So I think all that has been said today was said in vain. It was a waste of my time and everybody else's time. But I was paid to be here, so we're going to go through the charade and we're going to make a decision, one way or the other. And whichever way we make it, it's going to be wrong in somebody's opinion. But you all will be back next year, and I'll be on the Judiciary Committee. And those who come back will say, this is my...whatever number it is. By then, Senator Ebke will have had a little experience. Then, if I'm not dead and I run again, I'll be here four more years after that. I think the judges have to be given discretion. No two people see the same thing different ways. They talk about something

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happening a certain way in one county, something happen a different way in another county. That's not different from anything that we experience in life. So my colleagues may vote for this bill. But because I don't want to engage in deception and I don't want to make an imperfect system even more imperfect--I'm not saying a bad system worse but an imperfect system more imperfect--I won't vote for this bill. And I will not apologize for it. I said all that I said to sum up all that I could have said during the course of the proceedings. And those of you who watch Andy Griffith, you wouldn't be able to go watch it, because he'll be over by the time we get through. But I'm through now. (Laughter) That's all I had. I used this man for a sounding board because he's paid to listen to people. (Laughter) [LB437]

CASEY KARGES: Thank you, Senator. [LB437]

SENATOR SEILER: Any further questions? Thank you very much for coming. Any further neutral? Besides the two that just jumped up, is there anybody else in the neutral? Okay, thank you. [LB437]

JIM CREIGH: Good afternoon. Thank you, Senator Seiler and members of the committee. My name is Jim Creigh, spelled J-i-m C-r-e-i-g-h. I'm an attorney in Omaha. And as many of the members of this committee know, I've been very active in this issue for the last several years. Last year, at the request of Senator Ashford, I worked with a number of people to try to pull together compromise language which is, for the most part, reflected in LB437. I'm speaking right now because I'd like to just correct some misinformation that was provided by some of the earlier witnesses. I'd like to start by saying that I agree completely with Senator Chambers that kids should not be used as leverage in custody battles. And I would direct your attention to tab 8 in the booklet that Senator Ebke circulated earlier. This is a letter that was sent last summer by ten very respected attorneys, many of whom you know, to the Nebraska Supreme Court asking the Supreme Court to amend the Rules of Professional Responsibility (sic--conduct) for lawyers to prevent lawyers from using children as leverage in custody disputes. I would just observe in passing that there was a letter attached to that letter. That is a letter that was left for me at the commencement of my divorce. And so I would ask you to review that letter and consider that as you consider some of the earlier testimony. With respect to some comments made earlier--I have enormous respect for Mary Kay Hansen--there is actually considerable evidence that shared parenting improves the success rate of mediation. Part of the reason many people believe that the success rate of mediation in western Nebraska is so low is because of the very firm every-other-weekend presumption that most judges in western Nebraska use. As many people will tell you, it's hard to have a mediated solution if one party has no leverage in the discussion or the negotiation. And I would also observe Lincoln has a 30 percent parenting time presumption right now, which is only slightly different from the 35 percent that's reflected in LB437. As Ms. Hansen mentioned, the success rate of mediation is actually very high in Lincoln. And many people believe that part of the reason for that success rate is because of the 30-percent floor in

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Lincoln. Ms. Muir mentioned that there is no evidence that shared parenting is good for children. I would just direct your attention to the article under tab 7 of the booklet that Senator Ebke circulated. There are 43 mental health studies that show shared parenting provides the best outcomes for children in most cases and, further, that traditional every-other-weekend parenting time awards are harmful to children. Robert Sanford made a comment earlier about, you know, why don't people appeal, and the reason why is it's virtually impossible under the current legal standard to have a parenting time award changed on appeal. The appellate court is usually a very high standard of abuse of discretion and so, as a result, parenting time awards are almost never changed on appeal. [LB437]

SENATOR SEILER: Jim, just hold on a second. Anybody...Senator Williams. [LB437]

SENATOR WILLIAMS: Jim, if you'd like to continue, go ahead and wrap up then. [LB437]

JIM CREIGH: I appreciate that. [LB437]

SENATOR WILLIAMS: Thank you. [LB437]

JIM CREIGH: Thank you, Senator. Just in conclusion, I would make two final observations. Some of the language that Robert Sanford questioned in the bill actually came from him. So I would actually like to question or ask Mr. Sanford why he was okay with this language last spring and now, all of a sudden, he's not. And finally, in response to a comment by Tara Muir about the need for more collaboration, I could not agree more strongly. Part of the reason why we've had such trouble on this issue is because of a lack of collaboration in the past. Many of the people involved in this process have tried to systematically exclude shared-parenting advocates. And so I agree wholeheartedly on the need for more collaboration in which all stakeholders are represented. [LB437]

SENATOR SEILER: Any questions? Thank you very much. [LB437]

JIM CREIGH: Thank you, Senator. [LB437]

SENATOR SEILER: Next. [LB437]

KRISTEN BLANKLEY: (Exhibit 10)) Good afternoon, Chairman Seiler and members of the Judiciary Committee. Thank you for allowing me to testify today. My name is Kristen Blankley, K-r-i-s-t-e-n B-l-a-n-k-l-e-y. I am here in my capacity as the president of the Nebraska Mediation Association. I'm also an assistant professor at the University of Nebraska College of Law. At the

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Law College, I teach mediation, arbitration, negotiation, and legal ethics. I am also a state court-approved Parenting Act mediator and I have been mediating these types of cases for roughly two years. As just a little bit of background, the Nebraska Mediation Association, it includes professional mediators from across the state. These mediators come from various areas of practice, including law, health services, education, communication, and others. The association is roughly 100 members strong on a year-to-year basis. Many of our members practice primarily in the area of family law, although not exclusively. In the...I wanted to give neutral testimony today and there are really two things that I wanted to point out. The first is I wanted to take a position or give a comment on something that has not been talked about yet, and that's how do these presumptions, legislative, judicial, through...in judicial codes or otherwise, what does that do to the negotiating, the bargaining power of individual parties? As Mary Kay noted and as my experience has shown, that every family is unique and every family needs different types of parenting arrangements and that this is really based on a wide variety of factors, including the age and developmental stage of the child, of their siblings. Now we're seeing a lot of how do we coordinate plans with step siblings, half siblings, grandparents. We have issues involving parents' work schedules and the like. And by including...have...by any, any type of presumption of custody, either legal or shared, or parenting time, that greatly diminishes the creativity and the bargaining power that there is for the parties because, the parties, what we would like for them to do in mediation and what makes mediation successful is that the parties come into the mediation knowing that their options are limitless. And that's what many of us mediators try to emphasize to the parties: imagine if your options were limitless. And when they come in with presumptions, that significantly limits the bargaining power and the negotiation standpoint. The second item I would like to note is the Parenting Act report that has been the discussion of several, several people who have testified, including Senator Ebke. I wanted to make two notes about that. That particular report is part of a three-phase study that has been ongoing at the Office of Dispute Resolution. Can I finish this point? [LB437]

SENATOR SEILER: Yes. [LB437]

KRISTEN BLANKLEY: Thank you. This is part of a three-part study. The data that has been given out so far is actually only a small portion of what it is that ODR is trying to do. I've been on the advisory council now of all three phases. There will be a more complete study of the Parenting Act, including looking at parenting plans, court data, interviews with stakeholders, mediators, parents, and otherwise. That report is due to be submitted to the Supreme Court and the Legislature in this coming May. The second piece I wanted to say about that Parenting Act data is that the mandatory mediation requirement came into place in...I believe it was in the summer of 2010. The data that you all had, the data that has been collected so far, has been primarily front-loaded between 2002 and 2012, so the effect of mediation on greater awards of shared custody, both joint and legal, is not well reflected given the sample, given the time sample. Thank you very much. [LB437]

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SENATOR SEILER: Any questions? Senator Chambers. [LB437]

SENATOR CHAMBERS: Another reason I didn't say much, I didn't want to comment or question either side, in order not to take sides. For somebody to be able to say they...first of all, as a mediator and a law professor, you're familiar with the word "nuance" or "nuanced." And in the same way that a king said, my kingdom for a horse, I would say, anything that I have for nuanced thinking, which you're not going to find. And it could be described as being able to cut a hair between the north and the northwest side. So for somebody to be able to say they can be neutral in a situation such as this is either to say they have no opinion or they're very objective. They can be dropped between contending forces in the War of Armageddon and not favor one side over the other. So the thing I would ask you, if you needed brain surgery, very delicate, would you go to a butcher shop? [LB437]

KRISTEN BLANKLEY: Of course not. [LB437]

SENATOR CHAMBERS: So when you bring, and not you personally, when matters of the heart, the mind, if you believe in spirit, and the soul to the Legislature, you're going to a butcher shop looking for brain surgery to be performed successfully. We have sharp knives. We have meat cleavers. We have bone saws. But we don't have scalpels and we don't have magnifying glasses or delicate, high-tech machinery or equipment or robots to help us do what needs to be done. So what people who are having the kind of problems that are being discussed for us today, they need to go to a priest, a preacher, or a psychiatrist, but to bring it to us and expect us to find a solution is a mistake. So we have the contending forces that come here today and because the final vote by the committee and the Legislature goes one way or the other, it does not mean a disrespect or a disregard for the other side. And this is one of those issues I think we ought to stay out of. Something had to be put into the law because these kind of matters are going to be brought to a court for resolution. But when attempts are made to fine-tune it in the way that they do with these bills and people want to take their personal experience, I'm always made uncomfortable when somebody feels the necessity to tell me, a politician, about the most significant or heartrending personal experiences and their life expecting that to sway me. It's tragic. But what I think the people who are wise ought to be telling the Legislature: things that are going on now may not be ideal or perfect, and you don't find that anywhere, but leave this area alone, let the judges have their discretion. And you know what eventually this society is going to start teaching its children? Don't get married too young; and while you're not being married, don't have children. That's where a lot of these problems come from. Young people are pushed into getting married when they haven't settled in their own mind what they want to do with their life. They don't even know what major they should take in college. So we want young people, 18-22 years old, to make a decision to bind a person 60-80 years old because that's where the effect is going to be. So if I were God, you know the way I would do it? I'd bring everybody into the world at 100 years old--bitter, meanspirited, hateful, cynical, and all the things that happen as those

delicate sensibilities that you have as a child are squeezed out of you drop by drop, shaved away bit by bit--and as people became younger, they would become better and better and better and better and better, then they would just disappear, and the world would be better off. But instead, they grow old; the years go by; the things they believed in, they never did. So they spend most of their life regretting and blaming other people for getting in their way. Then they want somebody else to come and tell them how to make something out of a life that, whether totally their fault or not, has been ruined. And people make money doing that because everybody either is going to make an honest living or a dishonest living and it's honest or dishonest based on who provides the label. And then, when you come to the Legislature, you're looking for a miracle. So my paradigm for the judge would be Solomon, where there is no law, no rule, but I do what I want to do. So two of these harpies come to me and they say, we both had a child and, because of circumstances, we all slept in the same bed, one of the children was covered up and died of suffocation, and each of us says that the surviving child is mine. And there is no DNA, nothing, so they bring the child to Solomon. And you all have heard this fairy tale, too, but you haven't heard it told to you in this context, so maybe it'll carry some weight. And Solomon said, I'm going to tell you what I will do, I will take my sword and I will halve this child, cut this child in half, and I'll give one half to you and I'll give the other half to you. Well, since it's to be like an Aesop fable, that couldn't be allowed to happen. So one woman said, I think that's the just thing to do because each of us has staked a claim. And Solomon looked at the other woman. And she said, let her have the child. And Solomon said, you must be the mother, and gave her the child. Then here's the slant I put on those stories: She left there laughing and the other one was crying. And she said, he though he was smart, I'm not the mother of the child, she's the mother. But we make stories come out the way we want them to because, when we are an artist, whether with words or paint or music, we create the universe, we inhabit it, and we make those characters do what we want. But in the real world, it doesn't work that way, so I like to tell the story the way it would really come out. That's why I said, in the context that I'm telling it, it'll have more weight, because you probably never heard it like that before. [LB437]

KRISTEN BLANKLEY: No, sir. [LB437]

SENATOR CHAMBERS: That's all I have. And if she's the last of the...what are... [LB437]

SENATOR SEILER: Neutral. [LB437]

SENATOR CHAMBERS: ...the neutral, then that's the last of my comments. [LB437]

SENATOR SEILER: Thank you very much. [LB437]

KRISTEN BLANKLEY: Thank you. [LB437]

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Judiciary Committee
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SENATOR SEILER: Any further in the neutral? [LB437]

JEREMY BARNHILL: I would just like to ask two questions and be done. [LB437]

SENATOR SEILER: You don't get the pleasure. Sorry. [LB437]

JEREMY BARNHILL: Okay. [LB437]

SENATOR SEILER: You may close. [LB437]

SENATOR EBKE: In the interest of avoiding mediation with my colleagues, I will waive.
[LB437]

SENATOR SEILER: Now you can ask him, because the record is closed. [LB437]