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Transcriber's Office

Judiciary Committee
January 25, 2007

[LB83 LB96 LB201 LB335 LB341]

The Committee on Judiciary met at 1:30 p.m. on Thursday, January 25, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB335, LB210, LB83, LB96, and LB341. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None.

SENATOR ASHFORD: We have four bills today. Let me introduce my colleagues: Senator Pedersen is here, Senator Lathrop, Senator McGill, Senator Chambers, Senator Pirsch, and I just saw Senator Schimek, I know she's on her way up, and Senator McDonald should be here shortly. Senator Kruse, you have the first bill today, LB335.

SENATOR KRUSE: Thank you. Mr. Chairman and colleagues, my name is Lowen Kruse, spelled L-o-w-e-n, and District 13. We have LB335 which I'm presenting on behalf of a coalition of Lincoln groups. And I'll say now, if you have a lot of questions about this or you want to find out what's behind some of it, they would be the ones to ask, and they will be following me. For purposes of introduction I would call your attention to the green copy and to two places within it. One is line 19 on page 2, and it changes there and throughout the matter, "such intoxicated person" is changed to a "person who is under the influence of alcohol or illegal drugs." I think that's fairly self-explanatory in that. And then below it, starting with line 23, actually, a person can be given protective custody...this is not a matter of arrest or that type of a thing but it's a matter of a custody of a person who at present is intoxicated..."under no circumstances at present for longer than 24 hours." And here's the key part of the bill: "...except that an individual who has been placed in civil protective custody three or more times in the previous six-month period may be held in civil protective custody up to 72 hours." So the heart of it is to change from 24 hours to 72 hours. My only other comment would explain also why I care about this bill and gladly bring it. Many years ago, when I was young...please don't ask how long...it was my job to be, my full-time job to be working with persons with alcohol addiction. This was at a mental hospital which had the policy that it's self-admit; we didn't take them any other way. And you had to self-admit for 15 days. And I found out the relevance of having them for more than 24 hours. I found it out big-time. I was an intake interviewer and I can tell you I waited a few hours until I was able to make some sense with them, preferably the next morning after coming in. But I'd have as many as ten on a Monday morning. For the first 24 hours, you're trying to dry them out, and I've never been real sure how long it takes to dry them out. It certainly takes more than 24 hours before their head clears up. And the real problem of we would never wanted to...well, that's why we had the policy...we would never turn them lose at the end of 24 hours because even if they are so-called sober, they are hurting; they are in pain. They're going to out and do the only thing they know to cover

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their pain, and that's just more trouble. It would generally be on the third day before you could make real sense in these interviews, and as I always said, get some real food in their stomach so that they have a half a chance of dealing with the world. Now I point out one other thing on this bill that was important to me. This does not direct officers to do this. Some officers have said to me, well, we're not really able to evaluate a drug addiction, a drug impairment, like we can alcohol impairment. I understand that. And if an officer is uncomfortable doing that, then they should take that into account. This does not direct that that has to happen. It doesn't direct that officer be an expert in this matter and it certainly doesn't direct that they have to take them someplace for 72 hours. It does give them the privilege or the parameters for doing what they might consider to be necessary. I think I will complete it there, Mr. Chairman. [LB335]

SENATOR ASHFORD: Thank you, Senator Kruse. Senator Pedersen. [LB335]

SENATOR PEDERSEN: Thank you, Senator Ashford. Senator Kruse, are you aware, in researching this bill, of any instruments that are used to check on other drugs, meaning other than alcohol,... [LB335]

SENATOR KRUSE: No, I'm not. [LB335]

SENATOR PEDERSEN: ...to see if somebody is high, impaired, or...I mean, there's a couple different courses that law enforcement officers take as far as vision and things like that. But there's no instruments that you're aware of that they can use that quickly. [LB335]

SENATOR KRUSE: No, and as you know full well, Senator, and I discovered, this is an imprecise science when you start into that. But, no, I don't know what is being done by these groups to determine the level of toxic. [LB335]

SENATOR PEDERSEN: Are you aware of many different agencies or places in the state of Nebraska, if there's more than just the one here in Lincoln that has to do with your bill? [LB335]

SENATOR KRUSE: There's been some friendly interest from around but I wouldn't be able to identify any number. [LB335]

SENATOR PEDERSEN: Thank you. [LB335]

SENATOR ASHFORD: Thank you, Senator Pedersen. Senator Schimek has arrived and also Senator McDonald. Do we have any other questions of Senator Kruse? Thank you, Senator. [LB335]

SENATOR KRUSE: Thank you. [LB335]

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SENATOR ASHFORD: How many testifiers do we have on this particular bill? Okay. Good afternoon. [LB335]

DERRICK ANDERSON: Good afternoon. I'm Dr. Derrick Anderson, A-n-d-e-r-s-o-n. I'm speaking on behalf of this bill from the medical perspective and the impact it has on as healthcare providers. Alcohol in itself is a chronic problem. The issue is that it compounds other medical problems that they may or may not have. Alcohol is directly related to problems such as liver disease, hypertension, heart disease, diabetes. We deal with those issues on a singular basis and then we have to deal with that also on a alcoholic level. The problem with that is that even when they go through treatments, especially short-term treatments, only 50 percent of the people that go through the program continue to take their medications. Now, that would be a very bad number if I was just talking about 50 percent of my diabetics not taking their medications on a regular basis. That would be very poor control of my diabetics. The way to improve my chances of increasing their health is by controlling that main problem of alcohol disease. It's a long-term problem; it's not on a daily basis or a weekly basis. It's over years that they develop some of these alcoholic problems. Just to give you an idea, moneywise, that I found, and these are numbers from 2003 and these can be found on the [CDC.gov](http://www.CDC.gov) Web site: 424,000 visits and admissions and discharges were related to alcohol--directly related to alcohol in 2003. And those are for people over 15 years old. If you multiply that by an average of \$1,500 to \$2,000 a day for a hospital stay, and then multiply that times 5-7 days for an average stay for an alcoholic disease, now you're talking \$6 billion in that year was spent directly related to alcoholic disease. The goal of our facilities and our programs is to increase the chances of long-term abstinence from alcohol. That also is going to increase their chances of dealing with their long-term medical problems: hypertension, diabetes, heart disease. It is our opinion as a group that extending that stay is going to give us a better chance to do that. One day they frequently come in, sober up, and then they go back to alcohol, and then they might come back that same night. So we have a number of frequent flyers. And we have some of our group that will talk about some of those numbers and some of those problems. So, questions? [LB335]

SENATOR ASHFORD: Thanks, Doctor. Any questions? [LB335]

SENATOR PEDERSEN: Thank you, Senator Ashford. Doctor, where is it you work? [LB335]

DERRICK ANDERSON: My practice is on 1800 O Street. [LB335]

SENATOR PEDERSEN: Here is Lincoln? [LB335]

DERRICK ANDERSON: Yes, sir. [LB335]

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SENATOR PEDERSEN: Do you work a lot with the place here in Lincoln called Cornhusker Place? [LB335]

DERRICK ANDERSON: I am the medical director there--a medical consultant. [LB335]

SENATOR PEDERSEN: That's where you do a lot of your practice. Do you see people being brought in there for reasons other than alcohol and drugs, where the police are just trying to get them off the street? [LB335]

DERRICK ANDERSON: No, not necessarily, but when they are brought in for that we commonly find other chronic problems that I get consulted. Diabetes is a big one. Hypertension is another big one. So it's a compound problem. People think that they're just being admitted for their alcohol, when in actuality they have other medical problems that are exacerbated by their alcohol use. [LB335]

SENATOR PEDERSEN: Are there any other agencies or places like Cornhusker Place in the state of Nebraska that you're aware of? [LB335]

DERRICK ANDERSON: I'm aware of some of them; I couldn't name them for you. Some of my colleagues that will follow will be able to name some of those places for you. [LB335]

SENATOR PEDERSEN: This is different...the Cornhusker Place is different than any other county, but my guess is, like in Omaha, if that happened, they have to take them to the county hospital. It's the county hospital that would take them and do a more of a psychiatric committal. Would that be true? [LB335]

DERRICK ANDERSON: Sure. True. And that goes back to healthcare dollars. You know, the ER in a hospital is much more expensive than to stay at the Cornhusker Place. [LB335]

SENATOR PEDERSEN: Well, I'm very aware of the work that you people do at Cornhusker Place. I've used it many times and I am in awe of what you do, and I have never found another place in Nebraska where I could actually get somebody who was physically detoxing and could go through a medical detox with a lock and key, and you need that. And my fear is if we don't take care of people like this, then we are going to be taking them to jail and locking them up where they get no services. I'm talking about city jails, not...and county-type jails...because they don't have those kind of services for detox. [LB335]

DERRICK ANDERSON: True. [LB335]

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SENATOR PEDERSEN: Thank you for what you do. [LB335]

DERRICK ANDERSON: Thanks. [LB335]

SENATOR PEDERSEN: Thank you for testifying. [LB335]

SENATOR ASHFORD: Thanks, Derrick Anderson. I'm sorry, Senator Chambers. Doctor? Derrick Anderson, could you return please? [LB335]

DERRICK ANDERSON: Yes, sir. [LB335]

SENATOR ASHFORD: I'm sorry. Senator, I didn't see you. I have sit up like this more. [LB335]

SENATOR CHAMBERS: Derrick Anderson, thank you for coming and testifying. You're looking at this from what I heard you say, as a medical problem for these people? [LB335]

DERRICK ANDERSON: Yes. A long-term medical problem. [LB335]

SENATOR CHAMBERS: This bill seems to address it as a law enforcement problem, in a way. But here's what I want to ask you: In this bill it says in existing language that a person can be taken to a facility or a jail. Now, if a person is taken to a jail and is going to be required to stay there three days when he or she hasn't committed a crime, that's a longer, quote, sentence, unquote, than some crimes carry. So what is there that can be done for this person that is remarkable enough to justify depriving him or her of freedom for three days when no crime has been committed, when no judge has been involved, there's been no due process of any kind, and in some cases there's been no medical determination with reference to anything related to this person because it starts with the discretion of an officer? So how do you justify taking a person's freedom for that long a period of time when no crime is involved? [LB335]

DERRICK ANDERSON: Our preference would be that they come to our facility. Given those three days we would hope that they would be able to make some better decisions about their long-term medical problems and the long-term consequences of what they're doing. In one day I can't guarantee that just because he's sober, he's going to make the decisions that we think that might be best for him. [LB335]

SENATOR CHAMBERS: Well, realistically, there's not much that can be done for a person like this in three days, either, is there? [LB335]

DERRICK ANDERSON: No, but we can get them into a long-term rehab program which is much more effective as far as maintaining abstinence than the two-, three-days,

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one-day stay. [LB335]

SENATOR CHAMBERS: So you want to hold that person long enough... How would you get him or her into a long-care circumstance? Would there be some kind of legal action involved in that? [LB335]

DERRICK ANDERSON: We would hope that they would voluntarily go into that. [LB335]

SENATOR CHAMBERS: But if they don't? [LB335]

DERRICK ANDERSON: But if they don't? Well, we can't make them do that, but we have to give them a legitimate chance of doing that. [LB335]

SENATOR CHAMBERS: So if they don't want to stay three days, why should they be compelled by law to stay there for three days? Let's say it's me. [LB335]

DERRICK ANDERSON: Right. [LB335]

SENATOR CHAMBERS: And by the way, when Senator Pedersen said he's used Cornhusker services repeatedly, he didn't mean as a person who needed those services. He was assisting somebody to come there and receive the services. (Laughter) [LB335]

DERRICK ANDERSON: Sure. Right. Right. (Laugh) [LB335]

SENATOR CHAMBERS: Okay. Not everybody who might read the transcript would know Senator Pedersen as I know him, and they would wonder what is going on. If it's me, I don't want to go with a cop anyway, so he puts the grabs on me and I resist, and I say, you're not taking me anywhere. So he uses a TASER on me. Have you all considered anything such as that occurring? [LB335]

DERRICK ANDERSON: No. [LB335]

SENATOR CHAMBERS: We don't make drunkenness a crime, do we? [LB335]

DERRICK ANDERSON: No. [LB335]

SENATOR CHAMBERS: So if it were not for this language, unless a person who is intoxicated is violating another law, that person cannot be taken into custody by an officer, can he or she? [LB335]

DERRICK ANDERSON: I don't know how to answer that, to be honest. [LB335]

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SENATOR CHAMBERS: Okay, I'll ask somebody else who might come up. [LB335]

DERRICK ANDERSON: Right. [LB335]

SENATOR CHAMBERS: But I'm not persuaded. I had talked to a man and a woman earlier for whom I have a great amount of respect, and they both knew that I didn't have any time to look at the legislation, but said I would listen with an open mind. But now that I've had a chance to read it, my mind is quickly closing on taking a person for that amount of time for the reasons that you give. And let me read this so you won't think I'm attacking you or your rationale. In the existing law, it says when we talk about this civil protective custody, it shall be used only as long as is necessary to preserve life or to prevent injury, and under no circumstance for longer than 24 hours. Then comes this new language about 72 hours. If a person is...how long do you think you would have to keep a person to prevent danger to life or prevent injury if all the person is, is intoxicated? [LB335]

DERRICK ANDERSON: Well, there are complications of drinking every single day and then us making them stop. And one of those would be a seizure, and that can be life threatening. And so typically if you are admitted to the hospital...and that's why the hospital stay is 5-7 days because if you're admitted to the hospital in a controlled environment, they're going to at least keep you there for 2 days. [LB335]

SENATOR CHAMBERS: But a medical decision is made by somebody. This starts with a cop. And a cop can take a person to jail under this, and that person can be held for 24 hours even if, in fact, the person is not under the influence. And this... [LB335]

DERRICK ANDERSON: But there is a potential for life-threatening complications. A seizure is a life-threatening complication. [LB335]

SENATOR CHAMBERS: That's what you're looking at. [LB335]

DERRICK ANDERSON: I can't guarantee that in 24 hours someone that has been every single day for 15-20 years is not going to have a seizure. And I've seen that happen before. [LB335]

SENATOR CHAMBERS: Well, that's not the purpose of this legislation, because based on that hypothetical... [LB335]

DERRICK ANDERSON: That's part of the purpose. [LB335]

SENATOR CHAMBERS: ...you could keep somebody forever. And because we don't trust medical personnel to take people's freedom or cops... [LB335]

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DERRICK ANDERSON: We're not going to keep them forever. [LB335]

SENATOR CHAMBERS: Wait a minute, Doctor, if you don't mind. [LB335]

DERRICK ANDERSON: Yes, sir. [LB335]

SENATOR CHAMBERS: ...or cops to take people's freedom. We put currently a limit of 24 hours. Doctors, nurses, other well-intentioned people may say, in our judgment we know what's best for this person and we're going to keep them here however long we think is necessary, but we, as policymakers, have to be conscience always of a person's constitutional right to be free unless a violation of the law has occurred which would justify depriving that person of freedom for a significant amount of time. And from what I've heard so far, and I shall keep listening, I do not see a justification to hold a person for 72 hours when, as you pointed out, even if they're sent to a hospital they talk about a longer period of time than that, so all this can do is keep somebody off the streets, so to speak, or in somebody's custody, and perhaps in a jail for three days. And I'm saying those things so you'll understand my point of departure, and it has no criticism with reference to the work you all do once somebody comes into your clutches...I mean, your hands. [LB335]

DERRICK ANDERSON: Okay, in response from a medical point of view, medically I would prefer 48 hours minimum. That would make me feel more comfortable that the people that are high-risk for medical complications are not going to have those. I would feel much more comfortable than 24 hours. That's my medical point of view. Ultimately... [LB335]

SENATOR CHAMBERS: Do you think...(a) if a person gets full-blown AIDS, that person is going to die, do you agree? Full-blown AIDS. [LB335]

DERRICK ANDERSON: Yes. [LB335]

SENATOR CHAMBERS: Should we say that because a person has full-blown AIDS and may not take care of himself or herself adequately, we should allow that person to be taken without any process other than a determination by a medical person that he or she has full-blown AIDS and put in a facility and compelled to accept treatment even if he or she doesn't want it? [LB335]

DERRICK ANDERSON: No, I can't make anyone do treatment. [LB335]

SENATOR CHAMBERS: Then why should we make... [LB335]

DERRICK ANDERSON: My ultimate goal is that I helped them make the right decisions about their healthcare and their health in general. [LB335]

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SENATOR CHAMBERS: Why should we make somebody who is drunk submit to this when the state makes alcohol sale and consumption legal? It's a big industry. A lot of people make their living at it. So if a person is going to engage in what the state allows...and for your information, when senators get invited to various functions there's always a happy hour; they have liquor flowing...I never go to any of them; I read this that that's what's happening...why because this person's sickness is alcoholism should we deprive that person of liberty when we're not going to do it to anybody else with any other disease? [LB335]

DERRICK ANDERSON: The judgment is impaired when you're intoxicated. So are they making their best decisions when they're intoxicated? No, they're not. [LB335]

SENATOR CHAMBERS: Well, suppose a truck driver is sleep-deprived and he is pulled off the road because the truck is weaving, but other than that no violation has occurred which would justify putting that man in jail or that woman, because women drive trucks, and the officer wants to put this person through a chemical test for alcohol or drug misuse or abuse, and finds out nothing is wrong with this person other than being deprived of sleep, should that officer be allowed to take that person to jail because obviously his or her judgment is impaired? [LB335]

DERRICK ANDERSON: Right. I mean, I don't all the laws, but I believe that does count as a form of intoxication. [LB335]

SENATOR CHAMBERS: So then you think we should let... [LB335]

DERRICK ANDERSON: Just like if they were to take...have been on some kind of sedative medication. [LB335]

SENATOR CHAMBERS: Well, they can't be locked up for being sleepy. But if they could, you would feel that they should be... [LB335]

DERRICK ANDERSON: They would be driving under the influence. [LB335]

SENATOR CHAMBERS: You think they should be locked up, too, for 24 hours so they can get some sleep? [LB335]

DERRICK ANDERSON: I would not want them on the road, sleep-deprived. I mean, that's all I can say about that. [LB335]

SENATOR CHAMBERS: That's not what I asked you. [LB335]

DERRICK ANDERSON: That's all I can say about that. [LB335]

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SENATOR CHAMBERS: We're talking about depriving people of their freedom. Should that person be taken to jail, which can happen to one of these people, and held for at least 24 hours? Is that your feeling? [LB335]

DERRICK ANDERSON: No. [LB335]

SENATOR CHAMBERS: Okay. [LB335]

DERRICK ANDERSON: But they are high-risk because they are putting other people at risk. [LB335]

SENATOR CHAMBERS: So mere impairment isn't. It's what causes the impairment that you're looking at. [LB335]

DERRICK ANDERSON: Yes. [LB335]

SENATOR CHAMBERS: If it's alcohol rather than sleep deprivation, then you can lock that person up. [LB335]

DERRICK ANDERSON: There's a stronger argument to do that. [LB335]

SENATOR CHAMBERS: Okay. Thank you. [LB335]

DERRICK ANDERSON: Okay. [LB335]

SENATOR ASHFORD: Senator Pedersen. [LB335]

SENATOR PEDERSEN: Thank you, Senator. Doctor, as far as the police involvement goes, once they bring them in and drop them off, they're done aren't they? They don't say, you keep this person for 72 hours, if this law was in effect, or keep them 24 hours? They only bring them in and just drop them off, is that right? [LB335]

DERRICK ANDERSON: I believe that's the case. Others will be able to support that, but I believe that's the case. [LB335]

SENATOR PEDERSEN: Do you not have some decision about when they're going to stay longer or not, being a physician? [LB335]

DERRICK ANDERSON: Depending on their level of impairment and other medical factors, yes, I can say that they have to be sent to the hospital for further evaluation because of medical risk. [LB335]

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SENATOR PEDERSEN: Having your knowledge of Cornhusker Place, and maybe somebody can talk later about it, what is your percentage of those that are coming in intoxicated, and those that you would consider using other drugs? [LB335]

DERRICK ANDERSON: I would have to defer that to one of the other testifiers. [LB335]

SENATOR PEDERSEN: Thank you, again, Doctor. [LB335]

SENATOR ASHFORD: Thank you, Doctor. [LB335]

JAMES BAIRD: (Exhibit 2) Good afternoon, Senator Ashford and committee. Senators, my name is James Baird, B-a-i-r-d. I'm the executive director at Cornhusker Place in Lincoln. I'm here to testify in support of LB335 because over the years our society has changed. In 1979 this Legislature passed civil protective custody as a process of dealing with people who are under the influence of alcohol. At that time, this civil protective custody legislation read that they could be held up to 12 hours. In 1981, following testimony back here at the Legislature, it was pointed out that in 12 hours that most people who were leaving our facility, many of them still were under the influence of alcohol; that they had not detoxed in 12 hours. In fact, anybody who tests above .36 is not zeroing out within the current 24-hour time frame. So the bill was amended in 1981 to move it from 12 to 24 hours. And the history of the legislation was to move something that had been in the criminal justice system, namely somebody being arrested for drunk, and move it into more of a healthcare, a helping situation, such as civil protective custody. The legislation is also very clear that this is not a criminal arrest. Civil protective custody is good. It's a safe way to detoxify people. It's an alternative to jail and a criminal record for people. Our agency supports the mental health committals when people are under the influence of alcohol or drugs, that they come to our facility to be detoxed before moving to a crisis center. It takes more of the medical approach to alcoholism and drug addiction. And what may be perhaps unique about our agency, is Cornhusker Place, is that we have nurses on duty 24 hours a day, and as you just met our medical director, Dr. Anderson. Since the bill was passed and amended in 1981, while I have a hard time exactly quoting the cases that's been referred to that are the actual cases that went, I'm aware of at least one case that went to the Eighth Circuit Court of Appeals. It involved several questions around the legality of taking crack cocaine from somebody as well as the legality of whether they should have been held in civil protective custody. I'm not a lawyer and I'm sure that there are other people more of an expert of addressing that issue if there are some issues around constitutionality of the law. We really see the change of moving to 72 hours as being a good service to help, not to punish people. What's very clearly from the years that I've been there, that people with chronic addictions can't make good decisions. And most people who don't have a chronic addiction perhaps have family and friends to help support them and guide them through. Most people with chronic addictions have driven away their family, their friends, or employer, and have no one to support them. Last year at Cornhusker

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Place, we had over 5,200 admissions in the civil protective custody, and we had 209 individuals who were in civil protective custody three or more times. And that group accounted to 2,078 admissions into our facility. The top ten individuals recorded in 685 admissions and all of them at some point in time during admission into our facility had breath alcohol levels of over 3, and as close to as high as .475. We say that people that test .50 need to be in a hospital and so we will not take them. What we do at 24 hours, we're releasing people at the highest times for relapse, and they're going to leave our facility and they're going to use drugs or alcohol to prevent the effects of the withdrawal from the substance they've been using. Our facility helps treat people through the withdrawal. We use Ativan and Librium under Dr. Anderson's order to treat people. Within the last quarter of October through December, we treated 119 individuals with Librium or Ativan to help them through the withdrawal. We've also taken 87 people from local hospitals after they were initially stabilized to finish the detoxification and referral. Our chronic repeaters are men and women; 22 of the 209 are women. The point, I guess, to kind of maybe...I was given this card by one of my case managers and it really points out where we are. It has the client's name on it and I won't share that, but on their card of working with him: November 1, client first in admission into protective custody after staying out for three weeks. November 14, client in protective custody; has a swollen eye from being in a fight; client is thinking about going to detox one of these days. November 17, client in protective custody; staff is encouraging client to go to detox. December 10, client is deceased. And that's the bottom line with what happens with this chronic population. And while some may view it's okay for people to drink themselves to death, I think that there is a better way for our community and our society to try and help that person so they can at least be in a situation to make a good judgment. Twenty-four hours for this chronic population isn't long enough, plus we're seeing more and more people that are there with a mixture of alcohol, drugs, marijuana, heroin, cocaine, you name it, and including prescription drugs. Thank you. [LB335]

SENATOR ASHFORD: Thank you, Mr. Baird. Any questions? Senator Chambers, then Senator Pedersen. [LB335]

SENATOR CHAMBERS: Mr. Baird, eventually on this committee I'm going to become known as the "Grand Inquisitor." In this bill, the word "intoxicated" is stricken and replaced by the words "under the influence." Which term describes a person who has consumed more of whatever the substance is? In other words, will a person be considered under the influence prior to becoming intoxicated? [LB335]

JAMES BAIRD: I don't think I can answer that definition of the terms. [LB335]

SENATOR CHAMBERS: Well, you tell me what they are and what they mean to you. [LB335]

JAMES BAIRD: Well, the language in the bill was not part of what I was involved in

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updating. It was involved with counsel looking at the old language. [LB335]

SENATOR CHAMBERS: Are you a doctor? [LB335]

JAMES BAIRD: No, I am not. [LB335]

SENATOR CHAMBERS: Oh, okay. Then I won't bother you with that part. But I'll try to stick to what you discussed. You mentioned that after 24 hours that may be the period of time when an individual is going to start experiencing withdrawal symptoms. And if you could keep them, I presume, for three days, you would help them through that period of withdrawal which means you have weaned them off the drug or the alcohol, is that what you meant to say? [LB335]

JAMES BAIRD: I think that's...it's treating them through the process of that whole withdrawal from alcohol or drugs. It's to help them get through that process of whether that might be anything from the shakes, elevated blood pressure, seizures that they'll have, and a variety of other issues. Where when they're showing signs and symptoms as determined by one of our nurses, following standing orders from our medical director, we do utilize Ativan and Librium to take (inaudible) off and to try and make the person more comfortable and reduce the chances of going into a more serious condition of DTs or other issues that may come from them. [LB335]

SENATOR CHAMBERS: Do all of these people who receive this treatment do so voluntarily? [LB335]

JAMES BAIRD: Yes, they do. [LB335]

SENATOR CHAMBERS: Do they sign a release saying that they're voluntarily receiving this medical treatment? [LB335]

JAMES BAIRD: On the voluntary detox side, everybody comes in and it's voluntary for them to walk in the door or to move from protective custody to the voluntary detox. [LB335]

SENATOR CHAMBERS: Well, I'm talking about the ones that are taken into custody, perhaps even against their will. Are any of those people kept beyond 24 hours for this treatment you mentioned? [LB335]

JAMES BAIRD : No, we do not hold anybody past 24 hours. The statutes says, we can hold them a maximum of 24 hours. And so we're going to release them at that time or if not before, when their breath alcohol level returns to zero and their behavior is not such that they're perhaps violent or threatening or showing signs of withdrawal. We're very reluctant to provide Ativan and Librium to somebody who is in civil protective custody

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because we can only hold them 24 hours and we don't want them to have Ativan and Librium and go back out and drink and use other drugs, because they could turn something from being a helping situation to more of a life-threatening situation. So when I talk about treating people, we're really treating people who voluntarily move to the our voluntary program. They're there freely. They go through an admission process, a rights advisement. It's a... [LB335]

SENATOR CHAMBERS: And without being rude, just so we can move forward, how long do these people remain with you? The voluntary ones who receive this treatment. [LB335]

JAMES BAIRD: The average is right around three days. [LB335]

SENATOR CHAMBERS: Okay, and... [LB335]

JAMES BAIRD: It will range from one to maybe eight or nine days. [LB335]

SENATOR CHAMBERS: Okay. Now, have you had any of these people to relapse and come back again to you? [LB335]

JAMES BAIRD: Yes. Yes. [LB335]

SENATOR CHAMBERS: So your treatment doesn't cure anybody of anything, does it? It's a temporary fix, in a way. Without giving them the drug, you might help them through the difficult time when the withdrawal symptoms are most evident, but that's not...you're not saying you cure people of alcoholism or drug addiction in that short a period of time, are you? [LB335]

JAMES BAIRD: Well, I don't think you can cure people of addiction. It's really a lifelong maintenance process of treating that issue. What I'm really saying is, we have them for three days or five days in the voluntary detox side. That gives our staff time to talk to them, gives them, through the treatment process their head gets a little clearer, their blood pressure returns to more normal, and they're acting better and feeling better and understanding. We think we have a far better chance of then saying, here are some treatment options for you to use. [LB335]

SENATOR CHAMBERS: Okay. I understand what you're saying. You keep talking about Cornhusker Place. What about the person who is put in jail? You think they should stay in jail for three days under this bill? A cop says, you're going to jail. And I say, well, take me to jail but you can't keep me there. He says, I'll keep you there three days. So I'm in jail and who's going to get me out when the law says they can keep me for three days? [LB335]

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JAMES BAIRD: Speaking from a limited point of view as far as our area here, is that there isn't anybody goes to jail for being drunk. It's not a crime. What you do have is people that will end up in jail because their behaviors usually draw the attention of business owners and shop owners or police officers, and there are other crimes related to this, whether it... [LB335]

SENATOR CHAMBERS: Such as... [LB335]

LARRY BAIRD: ...may be panhandling, et cetera. And that would probably be the only time around, in this area, that they would go to jail. [LB335]

SENATOR CHAMBERS: So then they combine panhandling or being a nuisance by their presence with something that says they can be locked up for at least 24 hours for intoxication, and they use that to get these people out of the hair of businesspeople? [LB335]

JAMES BAIRD: No, no. [LB335]

SENATOR CHAMBERS: Should we strike from the existing law the word "jail" then? [LB335]

JAMES BAIRD: I think that's a great idea. Others may not agree with that. I really think that putting them in a proper facility such as Cornhusker Place is the only way to go. It takes them out of that criminal justice system. [LB335]

SENATOR CHAMBERS: How about...and this is just your opinion and I'm not going to quarrel with you...the existing law says, "The law enforcement officer who acts in compliance with this section shall be deemed to be acting in the course of his or her official duty and shall not be criminally or civilly liable for such actions." And this section includes the part where it starts with, and the officer's discretion or judgment this person is going to be handled a certain way. Well, suppose the officer purporting to act under this section inflicts violence on the person, and says, well, I thought it was necessary to use that degree of force to drag him or her off to this facility? Then there's no criminal or civil liability for that cop, is there, it would seem. [LB335]

LARRY BAIRD: That's probably a question beyond my... [LB335]

SENATOR CHAMBERS: Okay. [LB335]

LARRY BAIRD: I would surely hope that we're not in a day and age where people would use violence just because somebody may be having an addiction problem would be my greatest hope. The other issue is... [LB335]

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SENATOR CHAMBERS: You and I have the same hope. [LB335]

LARRY BAIRD: Pardon? [LB335]

SENATOR CHAMBERS: You and I have the same hope but I have a little bit more experience in this area than you, and you've answered all of my questions. I have no more of you; thank you, Mr. Baird. [LB335]

LARRY BAIRD: Okay. Thank you. [LB335]

SENATOR ASHFORD: Senator Pedersen. [LB335]

SENATOR PEDERSEN: Thank you, Senator Ashford. Mr. Baird, the important part of this bill is you only want to use this 72 hours when somebody has had three times of being picked up or placed in your facility in the last six months, isn't that right? [LB335]

JAMES BAIRD: Right. [LB335]

SENATOR PEDERSEN: So by that they're giving a demonstration that they're not being able to completely detox before they make the decision to sign themselves out. [LB335]

JAMES BAIRD: Right. And that's the reason we talk to everybody that comes into civil protective custody. We give everybody the opportunity to move to the voluntary detox program because that period of time when they come in and they test .30 or .40, and during that initial time period they're not interested in having conversations. You know, we just need to observe them and monitor them and get them down to a point where they're feeling like maybe talking; they're considering something. Getting them into the voluntary detox side continues to get them fed, medically observed, et cetera, et cetera. And then our counselors and our case managers have an opportunity to, here are some options. And if they...and there are who have, because of this, have taken that step and no longer within this group of chronic people. And that's great. I wish there was that magic button, or as they have on TV, the "easy" button. But there isn't any such animal in this. [LB335]

SENATOR PEDERSEN: Mr. Baird, are you aware of any other facilities like yours in the state of Nebraska? [LB335]

JAMES BAIRD: Yes, the Campus of Hope in Omaha provides very similar services to what we provide. I'll say similar services in the sense they provide civil protective custody, voluntary detox, short-term treatment, intermediate residential treatment. [LB335]

SENATOR PEDERSEN: But they don't use medical detox, do they? [LB335]

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JAMES BAIRD: I don't...the last information I had, they did not have a full-time nurse on duty. [LB335]

SENATOR PEDERSEN: And you people use medical detox. [LB335]

JAMES BAIRD: We're probably correctly called a medically supported detox as versus a medical detox being in a hospital. [LB335]

SENATOR PEDERSEN: Well, if you're using Librium or medications for detox, I would consider that medical detox. What would happen if your facility is full? If the CPC is full? Where do these individuals go? [LB335]

JAMES BAIRD: Well, and we do have that problem. We've run full over 100 times a year for juveniles or adults. And so if you look at what are the options, one is they stay on the street; two, they may need medical and could be sent to a hospital; three, if they're violating some type of law they could end up in jail; and the... [LB335]

SENATOR PEDERSEN: Stop there. How often is that one used? [LB335]

JAMES BAIRD: I really can't answer that. I don't have those statistics. [LB335]

SENATOR PEDERSEN: I see Chief Casady here. Maybe he'll be able to answer some questions. [LB335]

JAMES BAIRD: Chief Casady probably would. [LB335]

SENATOR PEDERSEN: Thank you. [LB335]

SENATOR ASHFORD: Anyone else? Let me just ask a couple of questions. The 5,600 people...5,246 admissions? Are those admissions under the civil protective custody? Under this law? [LB335]

JAMES BAIRD: Yes. [LB335]

SENATOR ASHFORD: And if we were to include drugs with alcohol, do you have any idea of how large an increase you would experience at Cornhusker? There would be an increase. [LB335]

JAMES BAIRD: There would be an increase. I'm not sure. The reason I would say that is people will tend to use alcohol to offset meth and stuff. [LB335]

SENATOR ASHFORD: Right, I understand that. But there would be an increase.

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[LB335]

JAMES BAIRD: Some. [LB335]

SENATOR ASHFORD: How many beds do you have at your facility? [LB335]

JAMES BAIRD: We currently run at 21 beds, and with some renovation we have the capability into the future to go up to 30 hopefully to meet the needs of Region V because we get people from all counties in Region V, as well. [LB335]

SENATOR ASHFORD: And that's good. And you're financed through, I assume, through grants and other...? [LB335]

JAMES BAIRD: Yes. [LB335]

SENATOR ASHFORD: Not per patient though, or are you? [LB335]

JAMES BAIRD: Under what is within the Health and Human Services, it's an emergency level of service and we're funded on a fee basis based upon expenses. [LB335]

SENATOR ASHFORD: Per person? [LB335]

JAMES BAIRD: Not per person. [LB335]

SENATOR ASHFORD: Right. [LB335]

JAMES BAIRD: And within our region here, the city of Lincoln puts in \$250,000 toward that service. The Region V puts in about \$85,000, and then Region V puts in money for the voluntary detox program, as well. The emergency level of services should be able to be mirrored across the state. [LB335]

SENATOR ASHFORD: Do all six regions have...? Obviously they don't have probably a Cornhusker, but do all six regions have some facility, without having to go into a long... [LB335]

JAMES BAIRD: Probably the most, Region VI, the Omaha area, has something that is close to us. If you move to Region III, they have a voluntary detox but their guidelines from what we've seen, because we get the people brought to us from Grand Island and elsewhere, is that their detox programs will not take people if they're on medication. We have the same issue in Region IV. [LB335]

SENATOR ASHFORD: Okay. Because of the lack of medical staff. [LB335]

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JAMES BAIRD: Yes. [LB335]

SENATOR ASHFORD: That's all I have. Any other questions of Mr. Baird? Thank you for your testimony, Mr. Baird. [LB335]

JAMES BAIRD: Thank you. [LB335]

SENATOR ASHFORD: Next witness? Chief. [LB335]

TOM CASADY: (Exhibit 3) Good afternoon, Senators. I'm Tom Casady. I'm the police chief here in Lincoln and I'm testifying on behalf of the city of Lincoln. I'll be brief. I won't bore you with statistics and I'll try not to be repetitive. I'm sure you hear that from everyone. I'll maybe actually perform on one of those. I'd like to tell you about Levi. Levi got checked into protective custody by my officers last year 128 times. He got arrested last year by my officers 68 times. Kevin got checked into protective custody by my officers 105 times last year and arrested 68 times. Now Ron got checked into protective custody at Cornhusker Place 92 times by my officers last year; he was arrested 29 times. And Johnny has only been in the city of Lincoln three months, but he got arrested 16 times and checked into protective custody by my officers 40 times. Now, those are four guys that are pretty well known by lots and lots of Lincoln police officers. There's a fifth I'll tell you about later. Anything that can be done that slows down that revolving door and moves some of the Levis and Kevins and Rons and Johnnys to help is a good thing for me because it reduces our workload. It reduces the amount of time and energy that we put in to handling this serious social problem that has been dumped on municipal police officers by the Nebraska State Legislature. In the absence of any other services, you gave this to us. We never asked for it or wanted it. But you've given it to us and we are the only provider of the service of taking care of people who are chronically intoxicated and unable to care for themselves in public or quasi-public places. We try to do a good job of it, and I think we've done a good job being the absolute best customer referral that Cornhusker Place has. It's not something we're seeking but we do want to help people that have these kinds of chronic alcoholism problems, because we don't only know Levi and Kevin and Ronny and Johnny, but all the cops that are my age know Vernie. Vernie got better. Vernie died last year; we thought he had died six years ago because about six years ago his revolving door stopped and he actually got dry and went from being an incredible burden on the police and the jail and the criminal justice system into being a productive citizen of this community that helped others. That only happened because he finally was able to get help at Cornhusker Place. And it's never going to happen if the only thing on his mind is getting out at 10 o'clock in the morning and going back at noon. And that's what I would like to see happen and that's why we support this bill. [LB335]

SENATOR ASHFORD: Thanks, Chief Casady. Any questions of the Chief? Yes, Senator Chambers. [LB335]

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SENATOR CHAMBERS: Chief, excuse me, as a law enforcement officer, you are aware of constitutional constraints on people being deprived of their liberty for extended periods of time. There are certain due process requirements that must be met. Some people will say that 72 hours deprivation of freedom is not a substantial period of time if it is not them being deprived of their freedom. Laying aside considerations of constitutional requirements, how long a time do you think a person would need to be in one of these fatalities for it to do some substantive good or substantial good and perhaps helping that person out of the situation that keeps him or her coming through that revolving door? Do you think 72 hours is going to do it? [LB335]

TOM CASADY: Senator, I heard a physician testify that he thought a minimum of 48, and I wouldn't have any better advice than what he provided you. I can tell you that 24 doesn't do it and I can tell you that the real...you can tell just by Levi's experience. If he's in jail 68 times and he's in protective custody 128 times, that means that the only time he's not really are those times that he's in custody at the jail or Cornhusker Place. So 24 hours just doesn't do it. He's back out doing the same thing within a matter of a couple of hours, and if we can keep him...you know, if we just could double the amount of time that he spent in protective custody to 48 hours, we would have cut these numbers in half. He would have been safe, dry, cared for, under medical supervision, for twice as long. And I think in his case, that would have been a decidedly good thing. So that's what I'm trying to tell you is that this relatively small number of really chronic, long-term alcoholics, the people that are getting checked in this many times, they need more than 24 hours. [LB335]

SENATOR CHAMBERS: Although we call that deprivation of freedom a different name, the law says it's not to be an arrest, The impact on the person deprived of his or her freedom is the same, wouldn't you say? [LB335]

TOM CASADY: Pretty much. [LB335]

SENATOR CHAMBERS: Protective custody sounds nice but it's still amounts to the same thing. [LB335]

TOM CASADY: Pretty much. [LB335]

SENATOR CHAMBERS: We're dealing with this legislation and with the current law on the books, with symptoms only, aren't we? [LB335]

TOM CASADY: Yes. [LB335]

SENATOR CHAMBERS: And if we only deal with the symptom, we're not going to solve the problem. There are substantial numbers of homeless people on the streets of

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Lincoln, too, aren't there? [LB335]

TOM CASADY: Yes, there are. [LB335]

SENATOR CHAMBERS: And if they were to be picked up and that's all that was done, when they're released they're going to still be homeless, back on the streets. So there's something other than picking them up and taking them off the street which must be done to address the condition of homelessness, just as something more than being picked up against their will perhaps and held against their will perhaps for a short period of time is not going to get to whatever it is that has that person relying on alcohol or drugs. [LB335]

TOM CASADY: I agree, Senator, and I think civil protective custody doesn't do much for anyone unless you've got available in the community and accessible to people who are poor, treatment for their addiction. And we have that here in this community. We could always use more of it but we do have that for this very population of people at Cornhusker Place in their voluntary detox program and in a long-term care program. [LB335]

SENATOR CHAMBERS: And if this law is not passed because they've attempted it before, what difference is going to be made? Let me ask it a different way: If this bill becomes law, what difference is it going to make? You mentioned that those persons with the fictitious names...I presume the names are fictitious...would not have as many arrests, not because they're not doing something, but because they've been placed under a different kind of arrest by a different name. They're still held perhaps against their will by the state. Isn't that true? [LB335]

TOM CASADY: They are held against their will. My hope would be that some of these, primarily men but some women, would be able to make the jump that Vernie made and really actually get better if they're able to break this cycle for a longer period of time than a handful of hours that they're in Cornhusker Place now. [LB335]

SENATOR CHAMBERS: To your knowledge, whether it's direct or through reading reports or talking to your officers, have any individuals who have fit into this category been charged with a crime for perhaps resisting arrest or assaulting an officer which grew out of the officer's approach to this person because he or she appeared to be intoxicated? [LB335]

TOM CASADY: Yes, which is one of the reasons that I'm very interested in reducing the number of times my officers have to deal with and take into emergency protective custody people with these kinds of chronic diseases. Because every time that happens, there is an opportunity for problems, including violence. [LB335]

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SENATOR CHAMBERS: And some of the arrests may have been because of the interaction between the cop and the person being picked up for his or her own good, isn't that true? [LB335]

TOM CASADY: There wouldn't be an interaction if they weren't intoxicated and weren't unable to care for themselves and needed to be taken into protective custody. If that weren't the case, there would be no interaction to begin with. [LB335]

SENATOR CHAMBERS: But that wasn't the question. My question is, if it were not for this kind of legislation...I might be rephrasing it now to get at the point...the officer could not arrest that person for simply being intoxicated, is that true? Appearing to be. [LB335]

TOM CASADY: That's correct. [LB335]

SENATOR CHAMBERS: But with this legislation, the officer can make that contact with that person, and that person becomes an arrestee with a record perhaps for having assaulted an officer or resisted arrest because of legislation such as this which allows an officer to make a contact which otherwise he couldn't make. Is that true? [LB335]

TOM CASADY: Yes. [LB335]

SENATOR CHAMBERS: So some of these arrests that you cite here could have been not for an independent crime being committed by this intoxicated person, but as a result of how he or she conducted himself or herself when contacted by the officer. [LB335]

TOM CASADY: There would be some of those. I can also tell you that the much more common situation is that a person that's taken and [placed in protective custody could have and otherwise would have, prior to January 1, 1979, would have, gone to jail for public intoxication, for panhandling, for disturbing the peace, for trespassing, for urinating in public, for drinking in public, for having an open container of alcohol in a motor vehicle. That's exactly what we did prior to January 1, 1979. I was here to do it for many years. And now we're diverting lots and lots and lots of those people for those misdemeanor public order crimes that are going to protective custody at detox instead. [LB335]

SENATOR CHAMBERS: But there are some who are being arrested because of what happened when they came in contact with the officer. [LB335]

TOM CASADY: Yeah. On some occasions you'll see someone that's obviously intoxicated and unable to care for themselves, wandering into traffic, stumbling on the street, or just falling down drunk, literally, destitute, probably someone that you know before. And when you go to take them into custody and taken them to Cornhusker Place, there are occasions where they assault or attempt to assault the officer or they

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resist the officer, they spit on the officer, they commit some other kind of crime. And had it not been for the original contact with that person, that arrest would not have happened. There never would have been a charge there because there never would have been any contact between the officer and the person. [LB335]

SENATOR CHAMBERS: That's all I would have. Thank you, Chief. [LB335]

SENATOR ASHFORD: Any other questions? Yes, Senator McGill. [LB335]

SENATOR MCGILL: Do you know how the number three or more times in six months came about? Many of the examples you're giving are more than three times in one month, much less six months. And so were a part of helping make that decision in there? [LB335]

TOM CASADY: I was not. I think a good place to put this, all right, because I'm concerned too. I don't think that people should be held longer than necessary involuntarily, and particularly in a circumstance like this where they haven't had a hearing before a judge. I agree with that. So I think it's wise to limit this so the net isn't cast too far. And I think the alcoholism treatment professionals, you know, Jim Baird and others, would have a better sense of what a good place to put that threshold would be. [LB335]

SENATOR MCGILL: Okay. [LB335]

SENATOR ASHFORD: Thank you, Senator McGill. Senator Pirsch. [LB335]

SENATOR PIRSCH: I think Senator Lathrop had his hand up first. [LB335]

SENATOR ASHFORD: Was he first? Okay. [LB335]

SENATOR LATHROP: Just a couple questions. [LB335]

SENATOR ASHFORD: Yes. [LB335]

SENATOR LATHROP: This bill not only allows for the repeat individual that's been picked up three times to go into the longer-term care, but it also takes us from intoxication to under the influence of alcohol or drugs. You can tell when somebody...and if it's only their first time or their second time you keep them long enough to preserve life to prevent injury, right? That becomes the standard for holding them? [LB335]

TOM CASADY: Yes. [LB335]

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SENATOR LATHROP: So right now you're doing this just with people that are intoxicated with alcohol and you keep them just long enough to preserve life and prevent injury. That's the standard. [LB335]

TOM CASADY: Right. [LB335]

SENATOR LATHROP: Right now, how do you determine that? How long do you keep somebody that's intoxicated if the measure is to prevent injury or preserve life? [LB335]

TOM CASADY: You know, we don't. We literally take the person to Cornhusker Place, fill out a form, sometimes help the staff there with things like getting their belt off or their shoelaces away from them, and then we're done. We're gone. When they get released, what the decision is that's made by the professionals at Cornhusker Place on when they're safe is not our concern and we don't concern ourselves with this. I can tell you there are people that we take to Cornhusker Place in protective custody that are out relatively quickly because the Cornhusker Place staff has found some other way to ensure that they're safe, like a sober relative that will pick them up and take care of them. But we don't concern ourselves with that at all. [LB335]

SENATOR LATHROP: So you don't know how they measure when to let the intoxicated people out? Whether that's done with a breath test or...? [LB335]

TOM CASADY: No, I don't. [LB335]

SENATOR LATHROP: Okay. That's all I've have. [LB335]

SENATOR ASHFORD: Thank you, Senator Lathrop. Thanks, Chief, for your testimony. How many...oh, Senator Pirsch, I'm sorry. [LB335]

SENATOR PIRSCH: No, that's okay. [LB335]

SENATOR ASHFORD: I'm sorry. I've go to start being better at this. [LB335]

SENATOR PIRSCH: It's okay. [LB335]

SENATOR ASHFORD: May I ask how many other testifiers we have on this bill? One, two, three, four, five. If we could...come on up. We've had good testimony. If we could try to be...if you have some new information for us, that would be great. We could try to get into new areas; that would be helpful. [LB335]

TONI ARNTZEN: (Exhibit 4) My name is Toni Arntzen, A-r-n-t-z-e-n. I reside here in Lincoln, Nebraska. I'm here today to testify in support of LB335. My purpose is to share my experience with Cornhusker Place Detox and the numerous stays in protective

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custody. I share with you today a true story I wrote for an English composition class at SCC a couple of years ago. My teacher encouraged me to submit my writing for publication. And what you have in front of you is the March 2006 edition of the AA Grapevine, an effort to reach other alcoholics like me. My name is Toni and I am a chronic alcoholic. Once I took that first drink, I could not stop. I drank to the point of blackout, pass out, and erratic behavior that led to the depths of loneliness and endured trips to the hospital and Cornhusker Place Detox. The difference was that the hospital usually treated me with a single dose of Valium and then turned me away. I was never turned away from Cornhusker Place Detox. My biggest fear was getting through withdrawal symptoms safely. Many times, in vain attempts to get sober alone, my body reacted with seizures 36-48 hours after my last drink. Not to mention the fact that I could not function physically due to shakes, nausea, tremors, hot and cold sweats, and lots of fear that I might die. Cornhusker Place Detox was a place I could go to eliminate that fear and be treated physically if I chose to stay beyond 24 hours. Many times my decision was distorted by early symptoms of withdrawal and all I could think about was another bottle of cheap vodka to relieve the physical suffering, hence the cycle is in motion once again. The seizures often resulted in expensive trips to the emergency room where once again I would receive a dose of Valium and sent home. Alcoholism is a physical disease and withdrawal is a medical problem and should be treated by a physician. This has definitely been true in my case, and this is not just my story, this is the reality for many chronic alcoholics who visit Cornhusker Place Detox each day. I'm going to share a part of my story with you here. "The time to came to blow. It took three tries of exhaling all the wind in my lungs before I registered 0.0. Audrey generously offered me a bed next door where I would be given room and board up to five days. We both knew I needed to stay and we both knew that I would decline the invitation. My mind had been transformed once again by the tunnel vision of desperation. The only relief I could see was Klein's Liquor Store six blocks away. I hoped I could walk that far. After drinking a half pint of vodka, all my aches and pains, physical and emotional, would be nil. My plan was to keep myself bathed in vodka to ward off withdrawal, although the trips to detox continued. The best that I could hope for was to drink myself to death." I will stop there. I got the red light [LB335]

SENATOR ASHFORD: Thank you for that. Any questions of Toni? Thank you for coming today. [LB335]

TONI ARNTZEN: Thank you. [LB335]

SENATOR ASHFORD: The next proponent. [LB335]

JUDY ZOHNER: (Exhibit 5) I am Judy Zohner and I'm here today as a private citizen and also I'm a board member of the Lincoln Downtown Neighborhood Association for Lincoln. And I'm going to divert from what I was going to say after listening to this. I've worked on this bill about six years in my past life as a senator's legislative aide, and I do

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think it's an important bill. Some of the questions that came up, as I know...there are 17 other states that have something similar to this, and it seems to have worked. One of the problems we have with the downtown issue is panhandling. And the Downtown Neighborhood Association feels that it's better to deal with substance abuse rather than having law enforcement pick people up and just lock them up. This is a way that they have a chance to go to the facility and it's an opportunity...they make a choice...I mean, it isn't a choice. When you're on substance abuse...and I have toured this facility before...they are also there for drug abuse and I've seen them go through the process of that. This gives them a chance to make a choice when they've reached a point when their body is cleared of the substance abuse, to maybe seek treatment. And that's basically what we're trying to do. And another question that has come up through the years is the cost-effectiveness of this. And actually because I don't know three times in six months, where we reached that, but the point was that it's less costly for law enforcement to pick them up. And also when you have people, as Jim Baird was saying, that recycle through the system a number of times, you have the paperwork and it's costly to the community. So with that, that's...do you have any questions? [LB335]

SENATOR ASHFORD: Thank you, Judy. Any questions? Senator Lathrop. [LB335]

SENATOR LATHROP: I do. You said you have worked on this bill for a number of years? It's obviously not the first time for it. [LB335]

JUDY ZOHNER: Right. And I guess the other thing I want to say, it has gotten out of committee a number of times, but it wasn't a priority bill. And because of lack of time, it didn't get advanced or it wasn't picked as a priority bill. [LB335]

SENATOR LATHROP: Okay. I want to ask you a couple of questions. [LB335]

JUDY ZOHNER: Okay. [LB335]

SENATOR LATHROP: You've been talking about the Cornhusker Place in Lincoln. We've talked, is it Valley Hope or Hope up in Omaha? [LB335]

JUDY ZOHNER: Um-hum. [LB335]

SENATOR LATHROP: But what if this is happening in Greeley County or someplace that doesn't have a Cornhusker Place? Is this person going to spend three days in jail then? [LB335]

JUDY ZOHNER: I would almost have to defer that. I'm not sure on that. [LB335]

SENATOR LATHROP: I thought since you worked on it you would have an answer for me. [LB335]

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JUDY ZOHNER: I do know they are referred to Cornhusker Place, like when they're in Grand Island and Neligh, so. [LB335]

SENATOR LATHROP: Okay. [LB335]

JUDY ZOHNER: They are transported here (inaudible). [LB335]

SENATOR LATHROP: That's all I have. [LB335]

SENATOR ASHFORD: Thank you, Senator Lathrop. Any other? Senator Pirsch or anybody? Thanks, Judy. Thank you. [LB335]

JUDY ZOHNER: Okay. Thank you. [LB335]

SENATOR ASHFORD: Good afternoon. [LB335]

MIKE FLOYD: (Exhibit 6) Good afternoon. My name is Michael Floyd, F-I-o-y-d. I'm the program manager at Cornhusker Place. Good afternoon, Senator Ashford, Chairman Ashford, and members of the Judiciary Committee. I don't want to take a lot of extra time or cover extra ground, but I do think perhaps there's some questions I could answer for you if you'd like. Perhaps the one about how we determine that somebody is no longer a threat to themselves and that sort of thing. The one thing I did kind of want to touch on was the concept of liberty that was raised earlier. You know, there's liberty, and then there's liberty. And I think anyone who's under the influence of alcohol, or drugs, for that matter, is really not at liberty. And I think actually what we're attempting to do here is actually empower an individual to become free once again from the disease. To give that person a better chance, a greater opportunity at becoming free and actually exercising an informed choice that could lead to additional treatment that could then lead to a different kind of lifestyle that's not going to put them at risk of harm. And with that I would just be willing to answer any questions. And by the way, it's good to see Senators Chambers and Pedersen and Schimek again; it's been awhile. Thank you. [LB335]

SENATOR ASHFORD: Thanks, Mr. Floyd. Thanks for your testimony. Any questions? Thank you. Thank you. Michael, can you help Mr. Floyd? [LB335]

MIKE FLOYD: Thank you. [LB335]

SENATOR ASHFORD: Next proponent. Any opponents? How many...do we have any neutral testifiers here? Then, Joe, you'll be the last witness. [LB335]

JOE KOHOUT: Mr. Chairman and members of the committee, my name is Joe Kohout,

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K-o-h-o-u-t, appearing today on behalf of the Nebraska Fraternal Order of Police who have taken a position of opposition against LB335. Let me premise my remarks by saying that we don't necessarily have a strong objection to the goal of LB335. We just have concern about the full impact which both Senator Chambers and Senator Lathrop have hit on in terms of the broad statement of both "under the influence of alcohol or drugs," as well as the impact on smaller counties around the state. Not so long ago we were put in the position of without a Cornhusker Place or without the Campus for Hope in Omaha. We were in the position of, in circumstances where there was extreme circumstances like an individual who was under the influence of alcohol or drugs...or under the influence of alcohol, we were driving from location to location trying to find someplace to put the individuals. And now, with facilities like Campus for Hope and with Cornhusker Place, we're fortunate enough to have a place to put them. Our concern, too, is on the system. When we expand the definition of "under the influence of alcohol or drugs," we're concerned about the facilities and whether or not they'll be able to handle the numbers that will come in following the passage of LB335. So with that, I will end my remarks and answer any questions that you might have. [LB335]

SENATOR ASHFORD: Any questions of Joe? Senator Pedersen. [LB335]

SENATOR PEDERSEN: Thank you, Senator Ashford. Mr. Kohout, the way you read this bill...you're a lawyer and maybe you can help me a little bit...the way you read this bill, can jails be used for CPC? [LB335]

JOE KOHOUT: Senator Pedersen, under 53-1121, sub(2), "The placement of such person in civil protective custody shall be recorded at the facility or jail to which he or she is delivered..." [LB335]

SENATOR PEDERSEN: So if we take jail out of there, would that take care of your concerns of the police? [LB335]

JOE KOHOUT: Well, again we get to the issue of whether or not there is going to be a sufficient place to place the individual. And from the conversations our executive board had, it was that jails are really viewed as a last option, but in circumstances like those smaller communities where there may not be...there may be no place to take them or the distance may be so far they end up with them in the vehicle. And two, in terms of...well, I'll leave it at that, I guess, Senator Pedersen. [LB335]

SENATOR PEDERSEN: Do you think it could be changed to add some medical aspect to it? [LB335]

JOE KOHOUT: I believe that they are currently, on line 12, on page 2, hospitals are one of the locations that we can take them to now. [LB335]

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SENATOR PEDERSEN: Well, if they don't have any money and aren't showing any real serious problem, the hospital takes them and dismisses them way beyond the 24 hours. So, thank you, Joe. [LB335]

JOE KOHOUT: Um-hum. [LB335]

SENATOR ASHFORD: Any other? Senator Lathrop. [LB335]

SENATOR LATHROP: Just briefly. You are representing the Fraternal Order of Police today? [LB335]

JOE KOHOUT: Correct. [LB335]

SENATOR LATHROP: So the police's participation or their role in this process is to pick the fellow up or the lady up from the streets that's in some public or semipublic place and very intoxicated? [LB335]

JOE KOHOUT: Correct. [LB335]

SENATOR LATHROP: And they are now under the system as we have it today, taking them to either jail or to one of these facilities. [LB335]

JOE KOHOUT: Correct. [LB335]

SENATOR LATHROP: Beyond that, do they have a stake in this bill? [LB335]

JOE KOHOUT: They don't. [LB335]

SENATOR LATHROP: Okay. [LB335]

SENATOR ASHFORD: Thank you, Senator. Anyone else? Thanks, Joe, for your testimony. [LB335]

SENATOR PEDERSEN: I have another question. [LB335]

SENATOR ASHFORD: I'm sorry, Senator Pedersen. [LB335]

SENATOR PEDERSEN: Thank you, Senator. Joe, you're probably not old enough to remember these years, but there was a time when law officers picked these people up, they would take them down to jail and threaten to book them, and then kept them until they sobered up and then let them go. [LB335]

JOE KOHOUT: Could be. I'm not aware of that, Senator, but. [LB335]

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SENATOR PEDERSEN: Okay. Well, I...there's got to be some way to do this. And as Senator Chambers said, that, you know, I've never been personally in Cornhusker Place, but I'll tell you in all honesty, I wish it had been there when I did need them. So we have to (inaudible) thank you. [LB335]

JOE KOHOUT: And we at no point...we don't want to be understood to be criticizing any facility. We're just concerned about the breadth of the... [LB335]

SENATOR PEDERSEN: Well, I can understand that. But for the policemen's side of the story, I mean, they pick up somebody and they don't want to take them to jail but they want to get them someplace to get some help, but yet we can't keep them there long enough to give them any help. So thank you. [LB335]

SENATOR ASHFORD: And just to follow up on that, my concern from hearing the testimony just simply is there aren't facilities available. So, in effect, what we have is a problem where people are being removed from the street and if there is no facility they're incarcerated for up to 24 hours. I don't know how that gets them detoxed. But that's fine; that's just a comment. [LB335]

JOE KOHOUT: Okay. [LB335]

SENATOR ASHFORD: Thanks, Joe, very much. Thank you all for all your testimony. I appreciate it. [LB335]

SENATOR PEDERSEN: You've got another one here. [LB335]

SENATOR ASHFORD: I'm sorry. [LB335]

LAUREL MARSH: (Exhibit 1) Good afternoon. My name is Laurel Marsh; that's L-a-u-r-e-l M-a-r-s-h, and I'm here today in opposition to the bill for ACLU-Nebraska. Most of the things that we are concerned about have already been mentioned to the committee, but we believe LB335 affords neither substantive nor procedural safeguards for those detained past the point where they are intoxicated and a danger to themselves, and that the law requires such safeguards. And I guess I would hope that as you're considering whether or not to advance this bill to the floor, that you would be able to answer Senator Lathrop's question about what happens outside of Lincoln and Omaha. [LB335]

SENATOR ASHFORD: Thanks, Laurel. I better ask again. Yes, Senator Schimek. [LB335]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Laurel, does ACLU have any position

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on hours detained? [LB335]

LAUREL MARSH: We see it as a due process issue, and that if you're going to extend the hours from 24 to 48 or from 24 to 72, that there should be a reason. And the fear is that in some places where there are not good medical facilities, that it may be used in a punitive way. [LB335]

SENATOR SCHIMEK: Do you have any problem with the 24 hours? [LB335]

LAUREL MARSH: The law is currently 24 hours. [LB335]

SENATOR SCHIMEK: I know, but if you were going to be consistent, would you do away with that? [LB335]

LAUREL MARSH: I can't answer that and I will try to get back to you. [LB335]

SENATOR SCHIMEK: Oh, it's not a big deal. It's a rhetorical question, I guess. But I just wondered where you draw the line between unconstitutional detention and constitutional detention. [LB335]

LAUREL MARSH: And that's something I should already know. I'm apologizing that I don't. [LB335]

SENATOR SCHIMEK: Oh, that's fine. Thank you. [LB335]

SENATOR ASHFORD: Senator Lathrop. [LB335]

SENATOR LATHROP: Yeah, I want to follow up on the same line of question, and that was going to be one of my questions: Do you have a problem with the 24 hours, and you're not sure about at what point does the ACLU have a problem with detaining somebody after they've been picked up for, essentially, public intoxication. [LB335]

LAUREL MARSH: I'm going to guess that when there is a legitimate reason to hold a person so that they are not of danger to themselves or others, that we don't have a problem with it and that there may be community interest that is served by some limited holding. I can't remember discussion about the current law in the terms that Senator Schimek has asked or that you yourself are asking. And I think that my own education that I will make a point of finding that out and get back to the members of the committee if that's agreeable. [LB335]

SENATOR LATHROP: That's find. Let me make sure I understand where you're at though. The bill as it's...before the amendments that are offered in the bill that we're--LB335, allow for law enforcement to pick somebody up if they're demonstrating

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public intoxication, and keep them as long as it takes to preserve their life and their safety. You don't have a problem with that. [LB335]

LAUREL MARSH: As the bill is now written we do not have a problem...or not written, but as the law now stands. [LB335]

SENATOR LATHROP: Now, if they are taking somebody...and I want to move to the substantive amendment which takes us into sort of the three strikes and you stay for up to 72 hours, okay? In that, we've contemplated that they would go into some kind of a treatment facility or some care facility rather than just sit in jail for 72 hours. Would you agree with that? [LB335]

LAUREL MARSH: That is what I have heard. [LB335]

SENATOR LATHROP: Okay. If they are going to a care facility and they have been in or passed through the jail or through this program three different times and they're now on their third or subsequent trip, they're going into a care facility and not into jail. Are you okay with that for 72 hours or do you have a problem with that? [LB335]

LAUREL MARSH: We would still have a problem with it because the person is still being detained forcibly and because there have been no due process provisions to allow them to say, no, I don't want to do this, and because it's a little bit of a punishment or could be interpreted as a little bit of a punishment. I guess the other thing that I still keep hearing is when people said from Neligh or from Grand Island they would bring them into Lincoln or sometimes people from Omaha even come down to Lincoln, and I guess I wonder what happens in smaller towns where they don't have this quality of facility. [LB335]

SENATOR LATHROP: If we got past that though and this was not used except for treatment, you still have a problem and that's because it's 72 hours long. [LB335]

LAUREL MARSH: At this point in time, yes. [LB335]

SENATOR LATHROP: You would agree there is no way we can work due process in there and get a county court judge involved in the 72-hour period. [LB335]

LAUREL MARSH: Well, if you're getting the county court judge involved, then perhaps you're giving due process. [LB335]

SENATOR LATHROP: Okay. Thank you. [LB335]

SENATOR ASHFORD: Anyone else (inaudible)? Laurel, thank you. I think that's...is that it as far as opponents? Senator Kruse, do you wish to close? [LB335]

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SENATOR KRUSE: Yes, briefly, Mr. Chairman. I have a great concern about the spot of the law officer in the small community. I've been there a lot, and the officer tells me at coffee the next morning that he's had to have this person throwing up in the back of his vehicle all night long. I wanted to give him or her a little bit more flexibility, options, but they have to be reasonable ones. I've appreciated all of the testimony. I would simply add that this is for the protection of that person, not for the protection of the police officer. And it's an optional...it's a judgmental call, of course, by the campus not by the officer if you go that longer period. One other comment and this just comes off of my experience: I have interviewed hundreds of these persons of new intakes who have just come off the street. I can guarantee you that they make more sense on the third day than on the second day, so. And that sense is where they can make some decisions about their future that might be in their benefit. It just helps to have had a good meal and then let's talk about it. So thank you for your time on it. [LB335]

SENATOR ASHFORD: Thank you, Senator. Senator Chambers has a final question here...or two...or a final series of questions. (Laugh) [LB335]

SENATOR KRUSE: The Chairman said one. [LB335]

SENATOR CHAMBERS: Senator Kruse, you were an active minister and a pastor at one point in your life? [LB335]

SENATOR KRUSE: At one point, but this was before that. [LB335]

SENATOR CHAMBERS: Were in the soul saving business, in a manner of speaking, when you were serving as a pastor? [LB335]

SENATOR KRUSE: Oh, that's a leading question, Senator. I... [LB335]

SENATOR CHAMBERS: Well, what business were you in when you were a pastor? [LB335]

SENATOR KRUSE: When I was a pastor I was seeking to bring sanity to a community. [LB335]

SENATOR CHAMBERS: Senator, you have interviewed hundreds of these people that we're talking about who may have these alcohol problems, and I have files full of letters from inmates during the time that I've been here. Without calling is a scientific poll, survey, or study, more inmates receive the Lord as their savior in prison than they do from going to church. So you said after three days they seem to make more sense. Well, maybe they're trying to get out of wherever they are. So when people seem to think that somehow saying I accept Jesus is going to make everybody say, well, he can

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get out on parole or she can get out on parole, they accept Jesus. But there might be a question as to the sincerity of that conversion because in some instances when they've been turned down for parole then they become worse than they had been prior to having accepted Jesus. So it's one thing to say that those of us who are in these positions know better for people what is in their best interest than they do. Are we justified in doing that, and with that being the gist of the question, I'm going to ask it a different way. What right do we, when we're dealing with adults, to compel them to be rescued by us who know better than they do what's best for them? [LB335]

SENATOR KRUSE: Senator, thank you for that question. It gives me a chance to say we don't have that right. I have never operated that right and this is the first time this has ever been said. I hope this place is not bugged. But when I was a pastor, I was not in the soul saving business and I did not ever decide for somebody a decision that they should make. Now, that wouldn't be consistent with all pastors but that was not my business. So when I'm talking about on the third day, and this was certainly when I was working at this mental hospital, it would be a matter of opening up the process of their deciding. I never found it helpful to steer somebody to my decision. [LB335]

SENATOR CHAMBERS: Now, here's the context in which I'm asking my question. Here we're being asked, as the state, to determine that these people are going to be protected and rescued and put on the path of righteousness whether they want to be or not because we know that's where they belong. And if we can't get them there in 24 hours, then, by God, we're going to make you stay here 72. And if we can't get you in 72, we'll go back to the Legislature and say, give us six days, then eight days. Do you know why I think they settled on three days? Because if it only took Jesus three days to come alive after being dead, then three days ought to be enough to stop somebody who is drunk from being drunk again. But it doesn't work. And even on that first one, if he was three days and three nights in the heart of the earth...that's what the book says, doesn't it? Three days and three nights he was in the heart of the earth? They say he was executed Friday night. We'll consider that one night. [LB335]

SENATOR KRUSE: All right. [LB335]

SENATOR CHAMBERS: Saturday morning is one day. Saturday night is two nights. Sunday morning he wasn't even there a full day and he's up and walking around. So either somebody doesn't know how to count or in the old days numbers meant something different from what they mean now, right? [LB335]

SENATOR KRUSE: But back to your question, Senator, or your premise. As I understand the law and as I feel myself, only the first qualification counts, and that is to protect this person, not only in this circumstance but in the future. And soul saving and what they might do with their life and if they're a productive citizen, that's just not on the table at this point. [LB335]

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SENATOR CHAMBERS: So if that original standard that was put into the existing law to keep the person being a harm to himself or herself or a life threatening situation, they can be held, but not longer than 24 hours because a determination was made that after 24 hours if the only thing is drunkenness, public drunkenness, then that has been taken care of in 24 hours. Whether after you release them they'll go and do the same thing again that is not even the issue. We're getting now past that to a philosophy now of saying, we need at least three days to change your way of thinking because that's what I heard here today. [LB335]

SENATOR KRUSE: Well, I wouldn't agree with that. I think because of the active verb change...this is not a matter of us trying to change their way of thinking. And with all respect, Senator, at the end of 24 hours, they aren't all sober. [LB335]

SENATOR CHAMBERS: But 24 hours is all you get right now. [LB335]

SENATOR KRUSE: That's right. And that's why I think we need to give them a little more time for some reflection. [LB335]

SENATOR CHAMBERS: Well, if I have anything to say about it, it won't be by taking a person against his or her will because we think that person should be deprived of his or her freedom. There are rich people who get drunk but they wouldn't...you wouldn't take them and put them in jail for any 24 hours. I don't mean you as a person. This society deals differently with those who are down and out and those who are up and about. [LB335]

SENATOR KRUSE: Rich or poor, as has already been under testimony, if you've got the option of getting them to a good home with a sober relative, that is preferable. [LB335]

SENATOR CHAMBERS: But you answered everything I was asking you. Thank you, Senator Kruse. Oh, except one thing: that math problem. [LB335]

SENATOR KRUSE: Yes. Well, I...that wasn't in scripture. That was after scripture. That was in the Middle Ages when I don't account for it. [LB335]

SENATOR CHAMBERS: But in the "Bible," those words are there. But that's all I have. Thank you. [LB335]

SENATOR ASHFORD: Thank you, Senator Kruse. [LB335]

SENATOR KRUSE: Thank you. [LB335]

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SENATOR ASHFORD: Senator Fischer, LB201. Is that correct? How many testifiers do we have on LB201? Go ahead. [LB201]

SENATOR FISCHER: (Exhibit 7) Good afternoon, Chairman Ashford and members of the Judiciary Committee. For the record, my name is Deb Fischer, F-i-s-c-h-e-r, and I represent District 43 in the Nebraska Unicameral. I'm here today to introduce LB201. If I could have a page, please? It's been brought to our attention that there is another statute more on point in addressing the issue that is before you in LB201. We amended Statute 63-3171. That statute deals with giving false information on registering a vehicle in Nebraska. This bill is dealing with people who I believe are committing fraud by registering their vehicles in another state. So we feel that the Statute 60-362, which states that registration must take place in Nebraska, is a more appropriate place for this bill and we will be providing the committee counsel with a significant amendment that will more accurately reflect our intent. Now, let me discuss the concept behind LB201. As you know, my legislative district is made up of 13 counties. LB201 is a bill that I introduced on behalf of numerous county officials and residents in my legislative district who came to me with a growing problem that we have along our state's borders. I want to be clear from the start, though, that this is not just a county problem. The state has a significant interest in this bill proposal. The Highway Trust Fund is affected. Our schools districts are affected. Our emergency responders are affected. Our recreational areas are affected. Our cities are affected and our counties are affected. Nebraska is a relatively high tax and fee state regarding motor vehicle registration. While there are many variables to consider here, a typical car owner will face a several-hundred-dollar registration cost when he or she registers a car or a truck in Nebraska. A typical car or truck owner in South Dakota, which borders many of the counties in my legislative district, will only pay \$82 to register his or her vehicle. A car or truck owner in Omaha who fraudulently registers in Iowa will pay one-half as much as if he or she correctly registered that vehicle in Nebraska. The temptation to commit motor vehicle registration fraud is present in our current situation. LB201 would increase the penalty for fraud in the registration of a motor vehicle from a Class III misdemeanor to a Class IV felony in order to address this growing problem in our state. As all of you know, the maximum penalty for a Class III misdemeanor is three months in jail, a \$500 fine, or both. LB201 would increase the penalty to a Class IV felony which carries a maximum penalty of five years in prison, \$10,000 fine, or both. While this increase may seem severe, the lost revenue from this dishonest activity, I believe is significant. Those of us who correctly report our residence, must pick up the tab for this illegal behavior. The current penalty, in certain instances, may be cheaper than the costs in the registration of the vehicle in another state. If we honestly believe that crime doesn't pay, then we need to prove it with our fines and penalties. Thank you and I'd be happy to answer any questions. [LB201]

SENATOR ASHFORD: Senator. [LB201]

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SENATOR CHAMBERS: I don't think you would so I don't have any. [LB201]

SENATOR FISCHER: Oh, yeah. No, please do. [LB201]

SENATOR CHAMBERS: No, that's all right. I don't have any. [LB201]

SENATOR LATHROP: I do. [LB201]

SENATOR FISCHER: Thank you. [LB201]

SENATOR LATHROP: Senator, the bill...the problem that you described is that somebody goes into South Dakota and lies about living there, and then brings their car back to Nebraska and drives it around without having to pay the Nebraska tax. The difficulty I have with this is the crime is happening over in South Dakota and not in Nebraska, and so you're trying to increase the penalty for a crime that's actually taken place in South Dakota and not in Nebraska so we'll never be able to use this to get to what you're...you said you had an amendment. Does it address that? [LB201]

SENATOR FISCHER: No. The amendment is just addressing the section of law that I think this should be in. Yes, we have...what I am bringing to you is we have a problem in this state. I don't know how we can solve it. Hopefully, I got your attention by suggesting that we raise it to a felony instead of a misdemeanor, and the question of how do you enforce this. So I guess I'm looking at this committee and hoping you can come up with some ideas on how we can enforce this, what needs to be done, because in my area we have people in Cherry County, in Keya Paha County, and in Boyd County. It's very easy for them to cross into South Dakota. They get a post office box and they're able to register their vehicle there and pay \$82. All of us...well, many people in rural areas know who has done that because they're are friends, they're our neighbors, in many instances. We see them driving through our communities. We know they live there; we know they vote there; but yet they have a South Dakota license plate on their vehicle. So if you can come up with ideas... [LB201]

SENATOR LATHROP: That's more of an operating a vehicle that's improperly registered though than it is the lie that happens when you register it, which is all happening in Iowa or South Dakota. Would you agree with that? [LB201]

SENATOR FISCHER: That sounds reasonable. But we're trying to find some solutions to this. [LB201]

SENATOR ASHFORD: Thanks. Just so I understand it, the amendment is...no, this isn't the amendment. [LB201]

SENATOR FISCHER: That's not an amendment. [LB201]

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SENATOR ASHFORD: Oh, this is... [LB201]

SENATOR FISCHER: That's just referencing the statute that we believe it would be better suited to be in. [LB201]

SENATOR ASHFORD: But the actual language...or the deletion and changing it to a felony is what you're proposing. There's no language change other than that. [LB201]

SENATOR FISCHER: Correct. [LB201]

SENATOR ASHFORD: Thank you, Senator Fischer. Do you wish to...? [LB201]

SENATOR CHAMBERS: I'll ask her one question. [LB201]

SENATOR ASHFORD: I was wondering if you were... [LB201]

SENATOR CHAMBERS: No, she insists. [LB201]

SENATOR ASHFORD: I think she would... [LB201]

SENATOR CHAMBERS: Senator Fischer, ask and it shall be given. You asked me ask you a question. Do you think this bill has a chance to get out of this committee? [LB201]

SENATOR FISCHER: No, I do not. [LB201]

SENATOR CHAMBERS: Okay. So why should I ask you a whole lot of questions? [LB201]

SENATOR FISCHER: I am hoping that I can bring some attention to this problem because it is one, and it doesn't just affect my counties. As I said, it affects the entire state. In Omaha, I'm sure there are people going to Council Bluffs to register vehicles. I'm bringing this to your attention. Hopefully somebody is going to pick up on this and figure out what we can do as a state to address it. [LB201]

SENATOR CHAMBERS: Now, I'll make a comment. Senator Fischer, I don't care where people register...I'm speaking for me...I don't care where they register their car, I don't care if they don't register it at all, I don't care if they park their car in front of their house when it's not operational. None of those things make me any difference. And what my neighbors do has never made me any difference if they did it in their yard or not where it bothered me. So I think there's a tendency...I know you're acting on behalf of noble principles, but there's a tendency on people's part who have a lot of time on their hands to busy-body and be worried about what their neighbors are doing. And if the neighbor

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is not registering the car in Nebraska but I am, then I'm going to make that neighbor do what I'm doing. Well, then go do what the neighbor did and register it at the same place. [LB201]

SENATOR FISCHER: May I respond, Senator Chambers? [LB201]

SENATOR CHAMBERS: Certainly. [LB201]

SENATOR FISCHER: I don't view this bill in that way. I would agree with you that, yes, there are people who probably feel that way. As I stated in my opening, I view it as fraud. I view it as hurting the state, the difference entities that I mentioned. As Chair of the Transportation Committee, I'm looking after the Highway Trust Fund in this regard, too. And it affects all of us. [LB201]

SENATOR CHAMBERS: Couldn't this be considered a part of the...a kind of domestic North America free trade-type of activity, and the free market is prevailing? Because there is nothing illegal about crossing from Nebraska into South Dakota. We don't know what the law of South Dakota is with reference to claiming a post office box as a residence. But there are people who hold national office and they run in one place but, in fact, everything pertaining to their life is someplace else. There is a man named Alan Keyes who was dragged up from Maryland to run against Barack Obama in Chicago because the "Repelican" who was going to run against him had taken his wife to a sex party and was forced to withdraw. So the "Repelicans" needed somebody to run against Obama. And since Obama was black, they had to find a black guy, so they went to Maryland and dragged Alan Keyes up there and they didn't consider that against the law, and everybody knew it. So if that is all right, somebody avoiding paying high registration fees in Nebraska is just innovative, just thoughtful, and I don't want to discourage that in a state like Nebraska where there is not a great amount of innovation. [LB201]

SENATOR FISCHER: May I respond, Senator? [LB201]

SENATOR CHAMBERS: Yes, ma'am. [LB201]

SENATOR FISCHER: I would say I would not classify breaking the law and committing fraud as innovative. [LB201]

SENATOR CHAMBERS: Which law is being broken? [LB201]

SENATOR FISCHER: They are committing fraud by not registering their vehicle in the state where they have that vehicle for over six months. [LB201]

SENATOR CHAMBERS: Okay. We have a different point of view, but I at least

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understand what yours is now. [LB201]

SENATOR FISCHER: Okay. [LB201]

SENATOR ASHFORD: Thank you, Senator Fischer. Senator McDonald. [LB201]

SENATOR McDONALD: You wanted us to come up with some ideas of how we could look at this. When someone has a residence in the state of Nebraska, the insurance company that insure that vehicle, isn't that a place that we can look as far as insuring the vehicle that's registered in another state? Couldn't we do that through the Department of Insurance? [LB201]

SENATOR FISCHER: I don't know about that, Senator McDonald. I believe that the Department of Revenue, and possibly someone coming up after me can correct me on that, but I believe the Department of Revenue has that capability now through software. New car dealers. You receive your certificate, you go to the courthouse, you have to register. That's on file also with the Department of Revenue, I believe. They can send that to county officials. That would be a way to follow up on this to see if the people who purchased the vehicle, registered it and paid taxes in Nebraska, or if not, why. I think are some options out there maybe through insurance that would be a way, too, to address it. [LB201]

SENATOR CHAMBERS: This, though, doesn't just deal new cars. [LB201]

SENATOR FISCHER: True. [LB201]

SENATOR CHAMBERS: Okay. [LB201]

SENATOR ASHFORD: Thank you, Senator Fischer. [LB201]

SENATOR FISCHER: Thank you. I will waive closing. [LB201]

SENATOR ASHFORD: Any other proponents? [LB201]

LAWRENCE TURNER: I am Lawrence Turner, T-u-r-n-e-r. Honorable senators and thank you for giving me the opportunity to speak to you this afternoon. I'm a former county commissioner and also a former officer of NACO. I live five miles from the South Dakota border so I see this happen every day, and it's happening more every year. We have more people abusing this law each year than we had the year before. It's not only happening along the borders. Last year I was at a meeting in North Platte, sat by the mayor of North Platte, and I said, well, you probably don't have this problem in North Platte. And he said, you would be surprised how many South Dakota plates we see in the main streets of North Platte. I also have a friend that shuttles vehicles during the

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canoe season in our area, and he told me that he shuttled one large motor home, people from Lincoln, and the vehicle was licensed in South Dakota. So it's a problem that not only covers along the border but it covers the whole state. And, Senator Lathrop, you said there was crime committed in South Dakota. The crime would be committed in South Dakota. I live about 45 miles from the Tripp County, South Dakota, courthouse. So last fall I decided to go in and see if I could license my vehicle there, to get some information. Once they found out I was not there to license my vehicle but to get information, I didn't learn a whole lot. But the first thing they told me was, I said, what do I have to do to license my vehicle in South Dakota? They said, you don't have to do anything but bring your checkbook and title. You don't have to have a Nebraska license. I wouldn't have had to have lied about a thing. All I would have had to have done is taken my checkbook and title there so they got the registration straight. So really you're not committing a crime in South Dakota. I guess also I did find out there's approximately 50-75 cars licensed in that one courthouse from Nebraska. And if you multiply that, say 65, times...I've just licensed a 2003 Chevy pickup in Cherry County; it costs me \$230 and some, I believe that's what it was. And if you multiply that times 65, if that's an average, Cherry County is losing a sizeable amount of money, and the people that I've talked to this is not only a problem in Cherry County, it's a problem of all adjacent counties or all the way around the state of Nebraska because our taxes are too high compared to other states. Last spring I had the opportunity to visit with a couple county commissioners from Sheridan County, the county to our west. And I said, how many vehicles do you have licensed in South Dakota? Well, I don't know. I says, 50? They laughed and they said, we have more like 150. So, people, this is a serious problem. And it's not only draining money out of the counties, but it's draining more money out of the state of Nebraska, because when you license a vehicle in...buy a new vehicle, license it in South Dakota, you pay a 3 percent sales tax; in Nebraska you pay a 5, and Nebraska is losing that whole 5 percent. So it is a serious problem and it's getting larger every year. When you sit up there along the state line...we have neighbors licensing their vehicle. Like you said. they're innovative; their neighbors do it so they do it. Pretty soon we're all going to be doing it. And I disagree with you in the fact that there's nothing wrong with it, because if I would license a vehicle in South Dakota and pay a 5 percent sales tax, take 5 times a \$25,000, \$30,000 vehicle, whatever that comes to, I have robbed from the state of Nebraska that amount of money. And to me that is no different than going into a bank and robbing money. Thank you. Are there any questions? [LB201]

SENATOR ASHFORD: Thank you. Senator Chambers...Senator Pirsch. [LB201]

SENATOR PIRSCH: I was just going to say I appreciate your comments here today. I do think that, in the aggregate, that the amounts that are escaping are substantial. And I guess we can address them in a number of ways for making our fees and taxes more attractive so the differential, the incentive if you will, is so slight that the individuals are not...that don't tend to do that, but we can also do it through enforcement. I guess my

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question for you today is, with respect to...you've seen this particular proposal, is that correct? [LB201]

LAWRENCE TURNER: Uh-huh. [LB201]

SENATOR PIRSCH: And in your estimation that would...of course, as Senator Lathrop had pointed out, would make it illegal for somebody to register in the process...(inaudible) to be registered? [LB201]

LAWRENCE TURNER: Well, I would like to suggest an addition to that bill, and this is what I would like to suggest is that on the part where...right now, it says the law states that vehicles are to be licensed in the tax district where a vehicle is stored and kept for a greater portion of the calendar year. You may or may not have a copy of that. But I would like to add to that, add or personal vehicles, motor homes, commercial vehicles, they would be licensed where the owner voted in the last election. And then farm and ranch vehicles where the owners own real estate adjacent to both sides of the state line...and we have those in our immediate area, and you have to have in there "adjacent"...those people have the opportunity to license half of their vehicles in, like in our case, in Nebraska, and half of them in South Dakota. And we have ranchers that are doing that, that believe in abiding by the law and so they're doing that. But you have to have in there that they have to have adjacent land on both sides because I have one neighbor that does not own any land in South Dakota but he runs cattle across the line, and he licenses his vehicles in South Dakota, and I know he would continue to do that. And may I have one short more statement besides that? [LB201]

SENATOR ASHFORD: Well, as long...yes, you may have another one. [LB201]

LAWRENCE TURNER: We had two court cases in Cherry County. The first one was this individual I'm talking about. The patrolman picked him up, went to court. The judge fined him \$25 and he went out the door laughing because he saved himself several hundred. The other case was some folks have an insurance agency in Valentine; they also have one in Winner, South Dakota. So he was arrested and our county attorney took him to court, and it was the judge threw it out because they could not verify that that vehicle was there the majority of the...or six months out of the year. There was no way they could actually prove that and so the judge threw it out. And so this is why I would suggest that you take a look at the suggestions I've made. [LB201]

SENATOR ASHFORD: You know, Mr. Turner, I agree with you, quite frankly. I think you're making an excellent point and it's an area of the law that I've always thought needed uniform laws. And not that we can pass federal legislation in this body, but I have always thought that there should be uniformity across the country and that federal highway funds could be tied to that. We make, quite frankly, criminals out of people that really aren't, so I agree with you. And I think you're bringing an excellent point to us. I

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don't have any great ideas on what the state can do to solve it but I do think it's a federal question that needs to be resolved at the federal level. But it's thoughtful testimony and I appreciate it. Thank you. [LB201]

LAWRENCE TURNER: Thank you. [LB201]

SENATOR CHAMBERS: I think the next time somebody in Nebraska sees one of these miscreants driving around with a car licensed in South Dakota, he ought to or she ought to go home, kick off his or her shoes, put on a pot of coffee, get a hot cinnamon roll, eat that cinnamon roll, enjoy that coffee, and say maybe it's best for me to just live and let live. You're not doing anything wrong. And to enforce some of these suggestions would cost so much money, take so much time, that it wouldn't be worth the effort. For example, the case where it couldn't be proved that the person's car was not kept in South Dakota more than half the year. Somebody is going to have to keep an eye and a log on everybody's car in that county by the day on how long it's there, and then say, ah-hah, one day past six months; then this car should not be licensed in South Dakota so you can the cop. And if the cop goes along with it... [LB201]

LAWRENCE TURNER: But if you accept my recommendation, you wouldn't have to do that. [LB201]

SENATOR CHAMBERS: If you do what? [LB201]

LAWRENCE TURNER: If you accepted my recommendation that just use where they vote, you wouldn't have to do that. [LB201]

SENATOR CHAMBERS: Well, some people vote in other states than those where they actually spend most of their time. So if they vote in South Dakota... [LB201]

LAWRENCE TURNER: Well, that is why I suggested you had to leave in there the six months, because there somebody would move into the state after the election, and you've got to have something in there to cover that also. [LB201]

SENATOR CHAMBERS: Or we could just leave it all alone, huh? That's an alternative to all these things is... [LB201]

LAWRENCE TURNER: I'm tired of paying my neighbors' bills--paying taxes. [LB201]

SENATOR CHAMBERS: Is it the one who runs cattle? [LB201]

LAWRENCE TURNER: Yeah. But we also have a business in Valentine. It's an electrical plumbing-type business, has four or five vans. And within the last year, he's licensed them all in South Dakota. [LB201]

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SENATOR CHAMBERS: Well, why don't you just go shoplift something? [LB201]

LAWRENCE TURNER: Yeah. [LB201]

SENATOR ASHFORD: Thanks, Mr. Turner. Any other testifiers? Do we have any opponents or neutral testifiers? [LB201]

SENATOR CHAMBERS: The Secretary of State from South Dakota. [LB201]

SENATOR ASHFORD: He'll be driving in with his South Dakota car. [LB201]

LARRY DIX: Senator Ashford, members of the committee, for the record my name is Larry Dix. I'm executive director of the Nebraska Association of County Officials. Certainly we appreciate Senator Fischer bringing to light a problem that from a county official's perspective we've known has been around for many, many years. One of the things, as I travel the state and hear it, it's not just South Dakota. It's Wyoming, it's Kansas. What we're starting to see is more and more of the high-dollar vehicles, if you will. A lot of RVs, we're starting to see that. I had an opportunity to visit with some folks from South Dakota, a county board member from South Dakota, and she mentioned that there's a tremendous number of RVs that are licensed in South Dakota for the reason, as Senator Chambers said, they're innovative, they're saving some money here or there. I don't want to...most of the points that we were going to bring up from counties, we've talked about that there's certainly a loss of revenue. I think the biggest loser is the state of Nebraska and the sales tax dollars. That certainly I do believe. One of the things that, from the county's perspective that I would throw out for the committee to look at, and certainly Senator McDonald your idea on the insurance, checking the insurance, my understanding is the Department of Motor Vehicles now, there is an insurance database that goes along with that system, and so that may be one scenario to look at. But I would throw out as a suggestion for this group to consider: Right now, when you purchase a car there's a sales title that goes along with it and there's a Form 6 that talks about how much sales tax. And that Form 6 currently is being sent to the Department of Revenue so a copy of that is being sent there and a copy of that is being sent to the counties. Then there's also a process within the Department of Motor Vehicles in their VTR system where they know which cars, where they have been titled, but then, of course, not registered. And it may be something of a solution that's probably going to take the cooperation of the two state agencies to get that data to flow back and flow and to find a match, and then you may be able to come up with and identify folks that are certainly doing something like this. And that's just a suggestion, a thought. We've been kicking this around for years--different ideas. But I throw that out for discussion purposes. [LB201]

SENATOR ASHFORD: Yes, sir, Senator Chambers. [LB201]

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SENATOR CHAMBERS: Mr. Dix, if you know who they are, how are you going to catch them? Are you going to assign cops to go around searching for these cars with these license tags, or what? [LB201]

LARRY DIX: It is about as hard as the problem of trying to determine if they've been there for six months and a day or just a day less than six months--very, very difficult. What that would do certainly is, in essence, get you a list, a potential list. But that...the only other way then, of course, you would have to have someone from law enforcement go out and investigate. [LB201]

SENATOR CHAMBERS: And the two words that I would apply to this would be "practicality" and "feasibility." We might can postulate some methodologies to determine who might be licensing a car in South Dakota when they don't live there, but after that there's nothing practical that can be done about it. You might happen to run upon somebody, a cop might whose not too busy, and decides to pull somebody over. But I don't believe the cop can just pull somebody over because he or she has a different state's license plate because the Constitution of the United States allows for free flow across state lines. And you cannot make it probable cause to stop a person because that car has a license plate from another state. So I don't even see where anything can be done about it other than what was done here today. People can tell us that this is a problem; it's causing difficulty. But that's when I have to tell them this: Not every wrong or evil has a remedy that can be provided through legislation. So I think these people are just going to have to be mad at their neighbors and grump and grouse about the sales tax being too high in Nebraska, and that's all that they can do except get ulcers or a heart attack. [LB201]

LARRY DIX: Yeah, you know, and I think what we've brought forward is a problem and trying to... [LB201]

SENATOR ASHFORD: But let me just...can I follow? Are you...? [LB201]

SENATOR CHAMBERS: Sure. You're the Chairman. [LB201]

SENATOR ASHFORD: Well, I know, but I didn't want to interrupt your... [LB201]

SENATOR CHAMBERS: You didn't interrupt me. I wasn't even saying anything when you spoke. [LB201]

SENATOR ASHFORD: Let me just...and I know this has been here many times. I understand that. And the problem has been addressed. But rather than...well, let me just say, I think was Senator Fischer is proposing with her amendment isn't the proper remedy, and I do think that the registration is where you attack the problem because

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you're...it's very difficult to attack the problem by trying to...you know, by addressing the other statutes. So I agree that that's the proper remedy. And a penalty may be twice the sales tax or something to that effect. I think there needs...I think it is a problem so I don't...the fact that you've been here many times or whatever, I haven't been here for 12 years so I don't know that for sure. But I think if someone fails to register their car in Nebraska and they reside in Nebraska, that there needs to be a penalty. There is not now a penalty that I know of and I was asking counsel if there was a penalty. [LB201]

LARRY DIX: No, no. [LB201]

SENATOR ASHFORD: Or maybe there...well, Pete would know that. [LB201]

SENATOR PIRSCH: What happens, in effect, from what I've experienced, has been that they go back and make you pay for the full year if they catch it during that year. And, of course, you've been cited with no registration so you have a (inaudible). [LB201]

SENATOR ASHFORD: Or improper plates or...? What is the actual charge if some...? [LB201]

SENATOR PIRSCH: Well, you be cite...it's quite common to cite individuals for no registration. But again, the proof, as Senator Chambers said, is...because the burden is on the state to produce that beyond a reasonable doubt that the person has met the elements of that offense which would include residing 30 days in the state. It is a difficult one if that does go to trial (inaudible). [LB201]

SENATOR ASHFORD: Okay. Thanks, Mr. Dix. [LB201]

LARRY DIX: Sure. Thank you. [LB201]

SENATOR ASHFORD: Thanks, Senator Pirsch. But I do think it's a worthy issue. Thank you. Senator Fischer, do you have any...? Waiving. Thank you. That concludes the hearing. Senator Synowiecki, welcome. LB83, Senator Synowiecki. [LB201]

SENATOR SYNOWIECKI: Good afternoon, Senator Ashford, members of the committee. My name is John Synowiecki. I represent District 7 in the Legislature. I would like to present LB83 for your consideration. It's a bill to change provisions relating to Nebraska's Work Ethic Camp. LB83 would expand the offender participation at the Work Ethic Camp which is currently limited to those sentenced to intensive supervision probation. LB83 expands the scope of the Work Ethic Camp to act as a transitional phase prior to release on parole. Since its inception in 2001, the state's incarceration work camp has unfortunately been unutilized. As of January 10, 2007, as these little packets we received from the department indicate, the actual population at the work camp is 67. The camp was built with a listed maximum operating capacity of 100

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people. And the Department of Correctional Services notes that the camp could easily house up to 120 people with no increases in current staffing. Since its opening, the Work Ethic Camp has demonstrated consistent underutilization. The Work Ethic Camp is a 7-day-a-week, 24-hours-a-day residential operation. The underutilization of the camp dramatically increases the cost per offender, and perhaps more importantly does not provide our taxpayers with appropriate outcomes. Although the camp may be at 67 percent capacity, they do not and cannot decrease the amount of staff on duty or cut down on the cost of utilities. This makes a significant difference in the cost analysis for the Work Ethic Camp. I believe the lack of probation utilization presents an opportunity for the State Parole Board and offenders transitioning from a correctional institution. The Work Ethic Camp will give the Parole Board another means to meet the needs of offenders. In addition, I believe the Parole Board will be more likely to parole an offender if they are assured that the offender will receive a needed intensive period of structured services and programs immediately prior to release on parole. Furthermore, in 2003, the Legislature passed LB46, the Community Corrections Act. Under that act, probationers and parolees are to concurrently share programs, services, and facilities. I believe it is logical that the Work Ethic Camp now evolve toward a community corrections asset in our state. I want to thank you, Senator Ashford and members of the committee, for your consideration. [LB83]

SENATOR ASHFORD: Thanks, Senator. Any questions of Senator Synowiecki? Yes. [LB83]

SENATOR CHAMBERS: Senator Synowiecki, I don't have questions here but I would like to talk to you in more detail about this concept other than here, you know, through questions and answers. [LB83]

SENATOR SYNOWIECKI: Sure. [LB83]

SENATOR ASHFORD: Thank you, Senator. Do you wish to stay around or...? [LB83]

SENATOR SYNOWIECKI: I'll stick around and see what happens. [LB83]

SENATOR ASHFORD: All right, thanks. You never know. Any other proponents? Bob. [LB83]

BOB HOUSTON: (Exhibit 8) Chairperson Ashford and members of the Judiciary Committee, my name is Bob Houston, H-o-u-s-t-o-n. I'm director of the Nebraska Department of Correctional Services. I'm here to testify in support of LB83. Legislative Bill 83 proposes to allow certain DCS offenders to be housed at the Work Ethic Camp. I've had an opportunity to brief most of you on this. I can read through my testimony or it can be accepted as is and then I can take questions if you'd like. [LB83]

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SENATOR ASHFORD: Do we have any questions of Bob? Thanks, Bob. [LB83]

BOB HOUSTON: Okay. [LB83]

SENATOR ASHFORD: It's hardly worth the walk over. Oh, you probably didn't walk but...(laugh). Any other proponents? Opponents? Neutral? [LB83]

DEBORAH MINARDI: (Exhibit 9) Good afternoon,... [LB83]

SENATOR ASHFORD: Good afternoon. [LB83]

DEBORAH MINARDI: ...Senator Ashford and members of the committee. My name is Deborah Minardi and I speak on behalf of the Office of Probation Administration where I am the deputy administrator overseeing community corrections. I'm here today to testify in a neutral position on LB83, a bill regarding pre-paroled inmates being placed in the incarceration work camp in McCook upon recommendation of the Parole Board. Long before the days the incarceration work camp opened, the Office of Probation Administration and the Department of Correctional Services entered into a partnership. Crossing over the branches of government, this partnership collaborated to design a model that would become known as the Work Ethic Camp. Brought together by the legislative intent to reduce prison overcrowding and provide programming, Probation and Corrections also had a mutual goal to reduce offender risk through a new approach. This approach required that offenders be carefully selected and programming specifically developed to address criminogenic risk factors or those factors that can cause crime. Incorporated in this new approach would be a smooth transition of offenders from the facility back into the community through intensive supervision and increase an offender's ability to live a law-abiding life. This is not the first time that these agencies have worked together. There is a history of collaboration that encompasses Nebraska's development of the Adult Interstate Compact, the felony drug offender program referred to SSAS, the feed for service program where vouchers are offered to both probation and parolees for treatment services, and local initiatives such as Safe Neighborhoods onto the U.S. Attorney's Office, just to name a few of the collaborative efforts. In recent months, this partnership has come together again to work through a joint committee of Probation and Department of Correctional Services staff who are charged by their administrations to examine the fidelity of the Work Ethics Camp programming. Areas of strength have been identified in the programming, as well as those needing improvement. There is a mutual agreement and commitment to work together to improve programming. This work includes strengthening the substance abuse treatment program at the Work Ethics Camp, as well as exploring other ways in which programming could be more individualized in order to best suit best practice and evidenced-base practice. While there has been an ongoing issue having to do with the facility's ability to stay at capacity, one critical point that I would like to make, and that is already identified within the current statute and cannot be overemphasized. That key is

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to ensure that certain designated offenders are targeted for the camp and in need of specific resources that can be provided by the camp. What will make the camp both unique and effective beyond our collaboration between Probating and the Department of Correctional Services is this balance of both the importance of security, structured programming, and transition of targeted offenders. As this Judiciary Committee examines the potential for adding additional offenders, I would just encourage you to consider the research on evidence-based practice and not overlook what is simply put as the right offenders in the right program. Probation looks forward to this highly collaborative working relationship with the Department of Corrections, and I would be open to any questions that you may have. [LB83]

SENATOR ASHFORD: Any questions of Deb? Yes, Senator Pedersen. [LB83]

SENATOR PEDERSEN: Thank you, Senator Ashford. Ms. Minardi, how many beds do we have filled out there up to now? [LB83]

DEBORAH MINARDI: On an average, we average somewhere between 72-75. [LB83]

SENATOR PEDERSEN: And how many beds are there, total? [LB83]

DEBORAH MINARDI: I think it can hold 100. [LB83]

SENATOR PEDERSEN: It could hold 100. Has that been pretty much the number that they've kept there all along, is about 70-75? [LB83]

DEBORAH MINARDI: Yes, Senator. [LB83]

SENATOR PEDERSEN: So that would be 25 good extra beds for this type of thing. [LB83]

DEBORAH MINARDI: Absolutely. [LB83]

SENATOR PEDERSEN: Thank you. [LB83]

SENATOR ASHFORD: Thanks, Deb. Any further testimony on this bill? That concludes the hearing on LB83. LB96. Senator Flood. Oh. [LB83]

DENISE PEARCE: Good afternoon, Chairman Ashford and members of the Judiciary Committee. For the record, my name is Denise Pearce, P-e-a-r-c-e, and I work for Senator Mike Flood. I am here on his behalf today to introduce LB96. I will be quick. LB96 is just a cleanup bill. It amends Section 29-2246 (8), which sets forth the definition of a juvenile intake probation officer for purposes of the Nebraska Probation Administration Act. You'll see on page 2, line 26, that subsection (8) refers to Section

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43-250 of the code. Four years ago, 43-250 was amended to specify that the word "officer" refers to a "peace officer," so you'll see on line 25 of page 2, LB96 amends subsection (8) to reflect that change. That's all we're doing here and that's all I have unless the committee has any questions. [LB96]

SENATOR ASHFORD: Thank you. Do we have any questions? Senator Pirsch. [LB96]

SENATOR PIRSCH: I don't know if you know it. In any other statutes is there a distinction between the word "law enforcement officer" as opposed to "peace officer?" [LB96]

DENISE PEARCE: I can't answer that. I'm sorry. [LB96]

SENATOR PIRSCH: No, that's okay. Thanks. [LB96]

SENATOR ASHFORD: Thank you. Do we have any proponents? Opponents? Neutral? Do you wish to close? [LB96]

DENISE PEARCE: I don't, thank you. [LB96]

SENATOR ASHFORD: That concludes the hearing on LB96. LB341, Senator Schimek. Senator Schimek, could we take five minutes? [LB96]

SENATOR SCHIMEK: That would be delightful. [LB341]

SENATOR ASHFORD: So you can gather your group here. [LB341]

EASE

SENATOR SCHIMEK: (Exhibits 10 and 11) (Recorder malfunction--refer to Senator Schimek's testimony, Exhibit 10A)...her daughter, alone and by plane, to British Columbia to spend periods of time with the father. The problem is that signs of abuse started showing up when the daughter would return home to Nebraska. Because of this, the courts in Nebraska have tried through emergency jurisdiction to protect the girl from harm in the situation in Canada. I believe that in matters of custody and visitation, the most important factor should always be the child. But as I understand it, the problem is that because the state of Nebraska has enacted the Uniform Child Custody Jurisdiction and Enforcement Act or UCC I'm going to call it from now on, the court of Canada has jurisdiction before the courts in Nebraska. So while authorities in Nebraska can build a case that the daughter is being abused by the father while she is in Canada for visitation, the Canadian court is unwilling to halt visitation and retains jurisdiction. And because of the UCC, the state of Nebraska has its hands tied and cannot stop this little girl from being abused. Essentially what is happening, of course in this situation, is that

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a foreign court is dictating what the Nebraska mother must do and the child. The original language, the green copy was brought to me by the constituent and her lawyers. It amends the international application of the UCC by striking existing language that empowers a foreign court with jurisdiction in child custody and visitation matters, thereby giving Nebraska courts the ability to modify an existing order, despite there already being a preexisting order from a foreign court. After the introduction of LB341, we heard concerns from a few individuals regarding potential uniformity and constitutionality issues, and we drafted AM48 which I believe you have in your bill book, but don't even look at it because we no sooner got that amendment drafted than we heard back from the same individuals. So what we think we've done now is brought all the parties together today, and some of these are from out of state. We have agreed upon language between the parties about how this should be handled, and I have and I will share with you shortly one-half of the amendment, and I'll explain why it's broken into halves, or they will explain why it's broken into halves as we get to it. I believe these amendments have provided committee members with a legitimate way that the state of Nebraska can address the problem. If the committee has any suggestions or concerns after you've heard about these amendments, of course we're willing to continue working on this bill because we think it is of some urgency. My constituent and her lawyers, as well as representatives from the National Conference of Commissioners on Uniform State Laws are present today in order to help further explain this. Also, if I could have a page, I have a letter here from a professor at the university who drafted a letter addressing the fact that legislatures do indeed amend uniform acts. That may not be as relevant as it was to the green copy, but I wanted to share it with you anyway. You also have a copy of a letter from the State Bar Association. And I spoke with the association's lobbyist this noon and he assured me that their letter was to the green copy. They have not seen any of the amendments yet, so I wanted you to know that. And I guess the second amendment that's coming down, I should tell you is something is entirely new. And that's why I think it's probably been drafted separately. It is the Uniform Child Abduction Protection Act, and it will...it's relevant to this issue and I think the committee should consider incorporating it into the bill, but that is up to this committee. This is a difficult issue for me because I've not ever had any experience with the Hague Convention or the UCC, so it's been a great learning experience. But it's a complicated issue. The reason it is urgent is because Judge Merritt has issued this temporary order and it will exist, as I understand it, until the Canadian courts have a hearing and render some kind of a decision. So it could happen any time, and this bill is urgent, I believe. [LB341]

SENATOR ASHFORD: Any questions of Senator Schimek? Senator, thank you for...I know you spent a considerable amount of time bringing the parties together on this matter, and I appreciate that. It makes it... [LB341]

SENATOR SCHIMEK: Thank you, and I also appreciate the parties coming together. [LB341]

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SENATOR ASHFORD: Well, it's a lesson to us all that you've done that. Thank you, Senator Schimek. [LB341]

SENATOR SCHIMEK: All right. And if we could have the page, I will have this first amendment passed out. If the other one comes down while we're still here, we will of course disseminate it. If it doesn't, we will get it to your offices as soon as possible. [LB341]

SENATOR ASHFORD: Thank you. May we have proponents? Good afternoon. [LB341]

SUSAN LIEN: Good afternoon. My name is Susan Lien, L-i-e-n. I appreciate your time today. I am a native Nebraskan, raised in a rural community here in Nebraska. I accepted a position in Canada working for the provincial government to give services to children with autism there. And while I was in Canada I gave birth to my daughter in 1998. In the year 2000, I properly sought and was granted from the British Columbia court, an order to return to the state of Nebraska with my daughter so that I could pursue my doctorate degree at the university. She continued to have visitation with her father, as she had before we left; visitations occurring on the Canadian side of the border until April 2004. And at that time, due to her hysterical behavior around visitation, upon returning from one of those visits, I took her to see a local psychiatrist. She disclosed to the psychiatrist events that were occurring in Canada involving her father. She was being sexually abused and the psychiatrist at that time reported him to the Lincoln authorities, the Lincoln police. At that time we went to the Nebraska district court judge, who attempted to follow the procedures as outlined in the UCCJEA, which allow state-to-state, states to communicate about matters about children regarding custody visitation protection matters. And Nebraska's version of the UCCJEA says that you treat foreign courts, treat foreign nations as other states, so the district court judge properly attempted to communicate with the Canadian judge. And the Canadian judge refused to participate in our process. He refused to communicate with the district court judge and he refused to release jurisdiction of my daughter from Canada. And at that time we had already lived her four years, which actually is against British Columbia's own law. The British Columbia order that did come down said that...appointed his parents as supervisors of subsequent visitations. This court order, in effect, didn't change a thing for my daughter. It sent her back to the same people, placed in circumstances that the abuse had originally occurred. The only live hearing that has ever occurred on this matter, has occurred on this side of the border in front of our district court judge twice. Both times the district court judge heard testimony from my daughter and in closed chambers, and at both times he seized the only step available to him under Nebraska law, and that is to seize emergency jurisdiction of her, which is only a temporary measure to give her relief from the abuse. The district court judge in Nebraska urged the Canadian court to listen to my daughter's testimony in a Canadian court. The British Columbia court refused to hear her testimony. They have continued to refuse to give

any credence to U.S. professionals that have evaluated my daughter, including a psychiatrist, a psychologist, and neuropsychologist. When we asked the Canadian court then to, you know,...we agreed with the Canadian court for a British Columbia psychologist to evaluate my daughter rather than choosing the child psychologist that we had proposed the court in British Columbia chose a psychologist whose whole curriculum vitae reflects support for sexual offenders, and her dissertation topic was actually incest as an adult love experience. Given that, I've continued to try to follow the British Columbia orders. I attended an appointment with this psychologist. The British Columbia court refused to put down an order that allowed that psychologist to give a preliminary report in an effort to protect my daughter ahead of time. Instead the judge ordered that my daughter go into the care of her father in order to have this evaluation done with the Canadian psychologist. He canceled appointments with that psychologist last summer; did not attend the appointments; and continued to abuse her throughout that visitation. The British Columbia court has done nothing to vary any terms of the order. The only response they have given is to give my daughter's father a verbal reprimand, although he has violated a number of court orders and has continued to abuse her. And we have shown them that; we have given them that information repeatedly. Yes. [LB341]

SENATOR CHAMBERS: May I ask a question, Mr. Chairman? [LB341]

SENATOR ASHFORD: Yes, you may, Senator. [LB341]

SENATOR CHAMBERS: Where is your daughter now? [LB341]

SUSAN LIEN: She is here in Nebraska. [LB341]

SENATOR CHAMBERS: When these visitations would occur, you were to send your daughter to Canada. [LB341]

SUSAN LIEN: Correct. [LB341]

SENATOR CHAMBERS: If you didn't have the wherewithal to pay the cost of the transportation, what would happen? He would then pay the cost? [LB341]

SUSAN LIEN: Yes. The cost is supposed to be shared. Typically, he sends someone down to pick her up. She goes up there for visitation and then I go to British Columbia to retrieve her and bring her home. [LB341]

SENATOR CHAMBERS: And if you did not make her available for these visitations, what would happen? [LB341]

SUSAN LIEN: I think I could be in a whole heap of trouble. I don't...I would be in

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contempt of court on the Canadian side as well as the U.S. side, because the Nebraska judge's hands are tied. He cannot vary the order although he has to enforce the foreign jurisdiction order. [LB341]

SENATOR CHAMBERS: Now, if you were found in contempt of the Canadian law, what is the punishment for contempt under Canada's law? [LB341]

SUSAN LIEN: I am sorry. I don't know that. I think the worst-case scenario that could happen is...you know, the British Columbia court has already been angered that I've even come into a United States courtroom and given the district court judge evidence that I've had a hearing here. Last summer, because I did so and the judge seized emergency jurisdiction of her, her father...the British Columbia court penalized me, basically my daughter, by giving him 32 consecutive days of visitation. [LB341]

SENATOR CHAMBERS: Is your lawyer going to testify here? [LB341]

SUSAN LIEN: Today? [LB341]

SENATOR CHAMBERS: Is your lawyer here today? [LB341]

SUSAN LIEN: One of them, yes. [LB341]

SENATOR CHAMBERS: Is she going to testify to answer some of these kind of legal questions? [LB341]

SUSAN LIEN: Yes. Yes. [LB341]

SENATOR CHAMBERS: Okay. Then I'm not going to put those to you. [LB341]

SUSAN LIEN: Okay. All right. Thank you. [LB341]

SENATOR ASHFORD: Ms. Lien, could you...I'm going to ask you to sum up. [LB341]

SUSAN LIEN: To sum up? [LB341]

SENATOR ASHFORD: Yes. [LB341]

SUSAN LIEN: All right. I have exhausted every possible resource that I have at my disposal. We have been to the State Department in Washington, D.C. The way the Nebraska law currently stands, the judge's hands are tied by the Nebraska law. If we are forced to continue to send her back into British Columbia, he continues to abuse her, and despite the evidence of at point she was fighting him off during a point where he was abusing her while he was molesting her, chipped her tooth. The British

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Columbia court has done nothing. Under supervised visitation last summer, she came back covered in scabies. These three photos: untreated, infected. She's got scars. And I would think that supervised visitation should be the best-case scenario, and things are seriously getting worse with each subsequent visitation. [LB341]

SENATOR ASHFORD: I appreciate that and we're going to have some other proponents, so. [LB341]

SUSAN LIEN: All right. [LB341]

SENATOR ASHFORD: Thank you for your testimony. [LB341]

SUSAN LIEN: I appreciate your time. [LB341]

RICHARD DUCOTE: Good afternoon. My name is Richard Ducote. I'm an attorney from Louisiana who has specialized in protecting abused and neglected children. Since 1978, I've handled such cases in 44 states. I'm a member of the bar of the United States Supreme Court, federal courts all over the country, and federal appellate courts all over the country. I was retained by Susan Lien to try and find some way to assist in the protection of her daughter against a Canadian court order and a Canadian court that is totally unresponsive to her child's abuse. One of the problems with the UCCJEA is that it treats foreign courts, and that's all foreign courts even courts that have not signed on to what's called the Hague Convention as the equivalent of states of the United States. Now, of course, there are controls that are in place among the various states, and we have some level or a considerable degree of trust and assurance from our brother and sister states of the nation, but there are no controls over what other courts in foreign countries do. And this is the dilemma we have here. What this act does as has been amended is to provide that if a court of this state finds that a particular child is a habitual resident of Nebraska, as defined by the Hague Convention, which is the international treaty that governs child custody decisions, and that the enforcement and recognition of a decree of a foreign court would subject the child to demonstrable and substantial risk of form of abuse or neglect, then the court of this state does not have to recognize and enforce the decree of the foreign country and can do what it would do for any other child in this state. I really want to commend Mr. Kerr and Mr. Fish who came from Chicago with the National Conference of Uniform Law Commissioners who originally were opposed to the bill as presented on the green sheets and who sat down with us this afternoon, and you'll hear from them in a second, to work out a bill that accomplishes both their concerns and the concerns that this child has. And other children, we understand, are in the same position. This is, I think, cutting-edge legislation. It addresses a major significant problem that kids caught between two countries face and the paralysis that the courts here have to protect the kids. And I just want to go through real quickly what this child has told the police that the Canadian court ignores and punishes this mother and punishes this child. This court in British Columbia even

ordered that this child go up there and spend time in Canada even if it meant she missed school. She's seven years old; she can't go to school because she has to go visit. And this is what she's talked about. When we sleep, and then he thinks I'm asleep...I'm a little embarrassed to say, but he touches me between my legs and then makes me feel like I need to go to the bathroom. And I roll over and stretch, and then I roll over to the edge of the bed, and then he gets out of the bed and I go to hide and he follows me. He's at the door and he stands by my door. He touches me and make me feel like I need to go to the bathroom. He touches me between the legs. When he thinks I'm sleeping he puts his hands inside my jammies. This is what she tells the police here in Nebraska. Judge Merritt, who was very moved by this, found her to be credible; begged the court in British Columbia to listen to her. There's more. The reason I don't want to sleep in this bed, there's another reason I don't want to sleep in this bed. He wets the bed and it's gross. He wets the bed and then he tells me that I wet the bed. Really. And at night my jammies are dry and the bed is wet, so how can I wet the bed? I don't know. So when he wets the bed, it's a lot. It's really wet or it's a small spot. And that clearly seems to be references to ejaculation. Then she talks about him touching her improperly in the swimming pool, and then when she protests he shoves her down to the bottom of the swimming pool and chips her teeth. And this is what he did...this is a photograph that the dentist took where she chipped her front tooth from him shoving her down to the bottom of the swimming pool. The Nebraska court...I mean the British Columbia court had no concern about this. And these things have escalated. This was the first discussion she had with the police in July 2004. This is November 2005, the incident with the swimming pool. And then she's also talking about she wakes up, he's in bed with her, and there's a video camera. He has a video camera on the desk and it was scary and I (inaudible) it was on because I knew I could hear it and then so I could hear it running. I got out of bed and then I went into the bathroom because I didn't want to be videotaped. So she goes to bed; she wakes up; her father is in bed with a video camera running. Again, Judge Merritt, concerned, begging the British Columbia court to do something. They have no interest. Again... [LB341]

SENATOR ASHFORD: Counsel? [LB341]

RICHARD DUCOTE: Yes. [LB341]

SENATOR ASHFORD: What I'm going to ask you to do, and we can get a transcript of that. [LB341]

RICHARD DUCOTE: Absolutely. And we can just leave this with the committee. [LB341]

SENATOR ASHFORD: Right. I appreciate that. [LB341]

RICHARD DUCOTE: So, again, I very much appreciate your interest. This bill would solve this problem for this child and for other children in her same situation. And if there

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are any questions, I'd be happy to address them. [LB341]

SENATOR ASHFORD: Thank you. Any questions? [LB341]

SENATOR LATHROP: I do. [LB341]

RICHARD DUCOTE: Yes, sir. [LB341]

SENATOR LATHROP: I want to ask you a few questions. The representation was made by Senator Schimek that the parties got together and worked something out. And I see Mr. Ruth here with the Bar Association who I think was poised to testify against this. Do we have something that everybody agrees on? [LB341]

RICHARD DUCOTE: Yes, sir. With the Bar Association, and Mr. Ruth can speak to this, and again we had...again, every conflict in proposed legislation should be handled as the way we handled it today, and I was very proud to be here and be a part of that. Mr. Ruth can address this as what I understand the situation to be is that the concerns about from the Uniform Law Commissioners were the same concerns that the Bar Association had based on the constitutional issues. They haven't addressed the amendments, but Mr. Ruth, and he can tell you, represents to us that he sees no problem as the bill is currently amended. [LB341]

SENATOR LATHROP: Okay. Just wanted to make sure I understand. We're going to listen to these other attorneys come up here, which is great. Looking forward to it. But you're the first one so I'm going to ask you. [LB341]

RICHARD DUCOTE: Yes, sir. [LB341]

SENATOR LATHROP: We got it all worked out. And there's a lot of technical things that need to be worked out when we're talking about international law, and you think that's been done with this amendment. [LB341]

RICHARD DUCOTE: Absolutely. I am very, very pleased with the substance and the process that we used to get to it. [LB341]

SENATOR LATHROP: Okay. Now I've got another question for you. We're here today because something miserable happened up in Canada and there's a judge up there that doesn't seem to care. [LB341]

RICHARD DUCOTE: A number of judges. [LB341]

SENATOR LATHROP: All right. You've told us you're the expert on this work, that you do it around the country, you've been in 44 states. Here's my question for you, and that

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is today we're looking at a situation where everybody who's here can agree the guy up in Canada isn't doing what he's supposed to. Are we going to enact an amendment to the UCCJEA that's going to frustrate a foreign judge who is doing the right thing?
[LB341]

RICHARD DUCOTE: I don't see that, and that's one of the things that we discussed. And the gentlemen from the Uniform Law Commission are very sensitive to that and I think that was their initial concern with the bill as originally proposed. But as we sat through today, we spent a lot of time basically with each sentence, trying to anticipate what the consequences would be from both sides, and we're able, I think, to negotiate any potential problems that could come about. It's clear that the UCCJEA was not intended to leave children in this situation. There is a provision...and actually the first amendment that was drafted focused in on the clause in the UCCJEA as it stands now in current law that a court of this state need not apply the act where fundamental principles of human rights were being violated. And we approached it from the view that this abuse and neglect of this little girl was a violation of fundamental principles of human rights. There were some concerns about how that might affect other parts and other countries, so we were able to come to some other language that I think solved the same problem without those concerns. [LB341]

SENATOR LATHROP: Okay. I just wanted to thank you for doing that... [LB341]

RICHARD DUCOTE: Thank you. [LB341]

SENATOR LATHROP: ...and not leaving it to the committee to try to unscramble the egg. [LB341]

RICHARD DUCOTE: Again, it was an experience that I was very proud to be a part of, to have people with apparently divergent views coming together to solve a problem. Thank you. [LB341]

SENATOR ASHFORD: Senator Chambers. [LB341]

SENATOR CHAMBERS: I'm going to make a statement which is conditional as far as its application, dependent on what Mr. Ruth and the experts from Chicago have to say. I won't tell the source of this statement because it might turn some people off, but it says: How wonderful it is when brethren dwell together in unity. It's conditional on what they say and so whether I apply it here. But from what you said, I think that might be what we have. [LB341]

RICHARD DUCOTE: Absolutely, Senator. Thank you. [LB341]

SENATOR CHAMBERS: Thank you. [LB341]

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SENATOR ASHFORD: Thank you, Counsel. Do we any other proponents? Is that how we're doing this? [LB341]

SHERI WORTMAN: My name is Sheri Wortman and I represent Susan Lien here in the state of Nebraska in litigation matters involving Ms. Lien and her daughter, for example before the district court and the appellate courts here. And I'm just here to answer any questions you may have about the district court proceedings here in Nebraska and how they've been affected by the UCCJEA and the amendments that we're proposing. [LB341]

SENATOR CHAMBERS: Mr. Chairman. [LB341]

SENATOR ASHFORD: Yes. [LB341]

SENATOR CHAMBERS: In view of what has been told to us I don't have any questions. [LB341]

SENATOR ASHFORD: There may be after we hear from other counsel, but right now I think...thank you for your offer though. [LB341]

SHERI WORTMAN: All right, then I won't take any of your time. Thank you. [LB341]

SENATOR ASHFORD: Thank you. Any other proponents? Opponents? [LB341]

MICHAEL KERR: (Exhibit 12) Good afternoon. My name is Michael Kerr, K-e-r-r. I'm with the Uniform Law Commissioners in Chicago. I do have some kits or materials that should be of use, especially since the second amendment isn't here yet. But I did want to...I came here today to oppose the bill as it is on your green sheets. And the reasons that we were going to oppose the bill were that, after we were reviewing it, we were of the opinion that it was unconstitutional in that it was preempted by international law and the treaty that the United States signed adopting that international law--that's the 1980 Hague Convention--and by federal law implementing that treaty. It's called ICARA. And I have a memo in the kit that addresses our concerns about the bill as introduced. But as everyone has been telling you, we spent a lot of time this afternoon working through language, issues, and concerns, so most of that memo is no longer relevant, assuming the amendments are adopted. I would like to just let you very briefly know who NCCUSL is. The UCCJEA is one of our uniform acts. We're best known for the Uniform Commercial Code and the UCC. The Eighth Circuit Justice Arlen Beam is one of commissioners; Harvey Perlman from the university and chancellor is one of our commissioners; Retired Chief Justice Norman Krivosha is one of our commissioners; Joanne Pepperl who is the head of your Revisors Office, I believe, or is your revisor, is one of the reasons why we have these amendments ready so quickly today; thank you,

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Joanne--is one of our commissioners. And of course you know Larry Ruth; he's one of our commissioners, as well. And I, just to start off, I think it's important to describe what the UCCJEA is. I'm fundamentally here to defend uniformity and to explain to you how the UCCJEA works in conjunction with the Hague Convention. But rather than give a law review article about how international child custody enforcement works, I thought that it might be just more productive to talk about how the amendments that we agreed to, work. First of all, the amendments remove direct conflict with interstate application of the UCCJEA. The UCCJEA has a concept called continuing exclusive jurisdiction. That's the idea, when Nebraska makes a decision and one of the parties and the child move to another state, that that state is going to respect Nebraska's initial decision. And that works very well in the United States. If you look on the kits I gave you, there's a map of UCCJEA adoptions. And you can see that every state either has it or is about to adopt it. It's one of our more successful jurisdictional statutes. And because it's a jurisdictional statute, having uniformity is very important. So I was here to defend the principle of uniformity. That being said, with the amendments today, a lot of the problems that we saw on the initial bill are avoided, specifically that there's no longer any direct conflict with the 1980 Hague Convention's provisions regarding habitual residents. And frankly, the amendments that we drafted, I think anticipate future amendments to the UCCJEA. There is what's known as the 1996 Hague Convention on the protection of children, which deals with modifications after an initial order has been issued and the child moves to another jurisdiction, how the second jurisdiction can take over the modifications, so... [LB341]

SENATOR CHAMBERS: Excuse me one second. Mr. Chairman, in view of the fact of how serious this is, and rather than break his conversation up or require us to ask questions, could we grant him the time needed to explain what they have done? [LB341]

SENATOR ASHFORD: Yes. [LB341]

MICHAEL KERR: Thank you, Senator. I will try to be brief. [LB341]

SENATOR ASHFORD: Within reason. I mean... [LB341]

SENATOR CHAMBERS: Oh, for sure. Well, he seems like a person who will get to the point. [LB341]

MICHAEL KERR: So we were opposed to the bill as initially drafted. The amendments really narrow the problems. They are focused on...there's a two-step...they allow a court in Nebraska to not enforce or recognize a foreign order if the child in question is a habitual resident of Nebraska and therefore there's not a conflict with the Hague Convention, and there is a substantial and demonstrable risk of neglect or abuse to that child if that foreign order is carried out. So it really narrows the universe from where the

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bill was as initially started. I have to say that my job is to defend uniformity, but there are occasions, situations, particular circumstances, where uniform acts need to be tweaked for a particular state. And this is a heartbreaking one of those circumstances, and I think given the fact that we are likely to be looking at amendments to the UCCJEA for this later convention, we are withdrawing our objection based on the amendments that are before you which is AM115. I would like to say that there's also another set of amendments that I don't think are down here yet which address one of the goals of the proponents, and that is for when a child...in this particular case, when a child's foreign order is not going to be enforced because of this flexibility that this change gives Nebraska's courts, there's a concern that that raises the risk of that child being abducted by the left-behind parent and taken, in this case, to Canada, but you could substitute the country. The Uniform Law Commissioners just this summer adopted a uniform act, the Uniform Child Abduction Prevention Act, that addresses in a comprehensive way some of the concerns and language in the initial bill and the amendment before you that is no longer relevant. We presented that act to the proponents. It does accomplish, I think, what they're trying to do in terms of providing prevention of child abduction circumstances. The act essentially gives judges a list of constitutionally valid factors to look at that might trigger an abduction, and gives them a specific set of remedies, constitutionally valid remedies, that they can use to help prevent an abduction, including specifically the situation in Nebraska that this particular bill will address. So this is new. I've included in your kits a copy of the act with the official commentary. Five states have already introduced the act even though it is new, and we expect another probably five or six states to run it this year. We're not running into any opposition. The ABA, the family law section of the ABA is (inaudible) adopting it and it does address one of their concerns. So we're happy to see that this is..it promotes like this act and want it to be part of the bill. So with that, I'd like to pause. If you have specific questions about the Child Abduction Prevention Act, Eric Fish is one of my co-counsel from Chicago and he's be happy to answer those questions. And if you have any questions about my testimony, I'd be happy to answer those now, too. [LB341]

SENATOR ASHFORD: Yes, Senator McDonald. [LB341]

SENATOR McDONALD: Is this going to help this child? [LB341]

MICHAEL KERR: Yes. [LB341]

SENATOR McDONALD: And do we need to put an emergency clause on it so it happens immediately? [LB341]

MICHAEL KERR: It would be a good idea...for this particular case. Because the order from Judge Merritt, which I think is a great order, an example of how the UCCJEA can work and does work to ameliorate these situations is a temporary order. And if the court

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in British Columbia fulfills the condition of that order, then the application via Hague for return of the child can go forward. So if we're concerned about this particular case, putting an urgency or emergency...I don't know what you call it Nebraska..on this bill would make sense. [LB341]

SENATOR ASHFORD: I just have one question. This seems...the word isn't obvious, but it seems very logical that this type of language would be in uniform laws when we have a conflict with a foreign court. Is this...was this not contemplated? It would seem to me this would be something that would be relatively commonplace unless... [LB341]

MICHAEL KERR: There are two in the UCCJEA, which was drafted in 1996 and completed in 1997. There are two principal ways...outs, as it were...for a U.S. court looking at a situation like this, to not send the kid back to that country. One is a reservation that the act does not apply if the court determines that the country where the kid would be sent, it violates fundamental principles of human rights. And those terms have been defined in the Hague Convention jurisprudence and in a number of U.S. cases. And there's a certain penumbra of factual situations that trigger those kind of determinations. Secondly, if the source country is not a Hague signatory, then that Hague enforcement mechanism isn't available to them. The United States State Department is the essential authority for purposes of the Hague Convention and is instructed to help when a Hague signatory country is looking to get one of its orders fulfilled. When a child is taken in violation of, say, a German order, the Hague, the State Department and, by extension, the state courts send that kid back under the rules. There are exceptions in the Hague Convention, as well, about violation of principles of human rights and child abuse and neglect risks under section 13(b). Finally, in the UCCJEA, there is a significant section on emergency jurisdiction--temporary emergency jurisdiction--where a court, regardless of the statute of another state's order or another country's order, can upon the finding of risk to the child, take jurisdiction, communicate with the source court, send evidence, conduct hearings, et cetera. The failure in this case is that you've got apparently, based on the evidence before you, a court in British Columbia that is refusing to look at evidence, and which Canada is not known as a big violator of fundamental human rights. So it's a little bit surprising, the facts of this particular case. But the source point of failure here was the court in British Columbia not giving up its jurisdiction based on (inaudible) form, or frankly, organic British Columbian law, and not listening to the actual evidence here. There's nothing we can do as a national law conference to control what a court in Canada is going to do. [LB341]

SENATOR ASHFORD: Can the Hague, I mean? Can the con...? [LB341]

MICHAEL KERR: Can the Hague do it? Potentially, but I'm not exactly sure how. [LB341]

SENATOR ASHFORD: Okay. There's nothing in the treaty... [LB341]

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MICHAEL KERR: There are exceptions in the treaty for... [LB341]

SENATOR ASHFORD: Okay, that... [LB341]

MICHAEL KERR: Yeah, okay. [LB341]

SENATOR ASHFORD: No, I understand your point, so... [LB341]

MICHAEL KERR: Right. [LB341]

SENATOR ASHFORD: Another other questions? Thanks, Counsel. [LB341]

MICHAEL KERR: Well, thank you very much. As I said, if you have questions about the specific Uniform Act in the second amendment, Eric Fish, my co-counsel will be happy to address them. [LB341]

SENATOR ASHFORD: Yes, I think we better address the second amendment even though we may not have it. But we need to... [LB341]

MICHAEL KERR: It is in your kits, the information kits, as the Uniform Act. It's the same text except for one additional amendment. [LB341]

SENATOR ASHFORD: Oh, the Uniform Act. [LB341]

ERIC FISH: Thank you, Mr. Chairman and members of committee. As Mike said, my name is Eric Fish, E-r-i-c F-i-s-h, and I'm with NCCUSL. Just to give you the quick Reader's Digest version of the amendment that you guys will be seeing, the UCAPA, which is the Uniform Child Abduction Prevention Act. This amendment builds off of the UCCJEA and the Hague Convention, and fills some of the gaps that those two acts have, and also builds on pre-decree acts which aren't covered by a child custody determination or the Hague. These are conditions where the parents might be separated and the child is with one of the parents but there is no order saying visitation should be done this way or that way. What it does is it provides a mechanism for courts to basically deter post-decree and pre-decree abductions. And these abductions could be domestic, either going to another state, or international. The UCCJEA and the Hague Convention presuppose that if a child is found, they can be brought back to the state they are originally from with their original parent. However, if the child is not found, those acts are not applicable. What this act does is it gives courts the ability to upon their own volition or on petition from a parent, put in certain restrictive measures to keep a child from being abducted. Some of these...the court will look at risk factors when it takes on this hearing. Some of the risk factors would be a parent who has liquidated assets, a parent who has seized passports, a parent who has tried to go back to a

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country that is not a signatory of the Hague. So these are countries that wouldn't reciprocate with an American court if the child was there. Upon that filing of the petition, the judge will go into consultation and take the least restrictive measure for both parents, but the measure that is best protective of the child. And these measures were actually very similar to what was proposed by the proponents of this bill in their original amendment, and these basically can include seizing of passport from the parent, all the way up to having a police officer take the child under custody in emergency situations. Again, though, the judge will be focused on the least restrictive means on both parents, but the ones that in the child's best interests. And as Mike had mentioned, this has been introduced in your sister states of South Dakota and Kansas. And in Kansas it had passed out of their judiciary committee last week. And with that I'd take any questions you guys have. [LB341]

SENATOR ASHFORD: Thank you, Mr. Fish. [LB341]

ERIC FISH: Thank you, Mr. Chairman. [LB341]

SENATOR CHAMBERS: Oh, Lord. (Laugh) [LB341]

LARRY RUTH: This will be easy, Senator. My name is Larry Ruth, R-u-t-h. Thank you very much, Senator Ashford and members of the committee. I appreciate the opportunity to be, I guess, invited to come forward. Bill Mueller usually takes care of the State Bar Association's position. He is in another meeting all afternoon on these kinds of issues. I just would tell you that the State Bar's position on LB341 was as introduced. It has not had an opportunity to see these amendments. I have every reason to think that they'll give strong consideration to the amendments and see where the folks who have previously testified come down, and will come to you with a review of their position. I can't tell you what that would be because they haven't met yet, but that's the procedure. [LB341]

SENATOR ASHFORD: Can I just ask counsel or somebody who would know the answer to this: When was the order in Lancaster County District Court entered? What was the date? The emergency order? [LB341]

_____ : December 22 of 2006. [LB341]

SENATOR ASHFORD: Of 2006. And did it have any...? [LB341]

RICHARD DUCOTE: It expires immediately upon the court in British Columbia holding a hearing. [LB341]

SENATOR ASHFORD: Right. [LB341]

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RICHARD DUCOTE: It can't control, it can't be based under the current law on what the outcome of the hearing is, but if the court in British Columbia simply purports to hold a hearing, then this order expires. [LB341]

SENATOR ASHFORD: And I know counsel, for Ms. Lien, if she could just answer. Have you been notified of a...? [LB341]

SENATOR CHAMBERS: Could she come up so we can get some of this on the record? [LB341]

SENATOR ASHFORD: Yes. Counsel, could you come up? I just want to try to get some context here. Thanks, Larry, for... [LB341]

LARRY RUTH: I have one other comment to make when she gets done. [LB341]

SENATOR ASHFORD: Okay. [LB341]

SHERI WORTMAN: Thank you, Senator Ashford. [LB341]

SENATOR ASHFORD: Can you just give me a little context as to the district court proceeding, what stage it's in and whether...what, if any, communication you've received from Canadian courts or counsel in Canada or anything to that? [LB341]

SHERI WORTMAN: At this time, I have no communication from the Canadian counsel that there has been a hearing scheduled in Canada. But if it's similar to hearings of that nature here in Nebraska, it would only require a three-day notice. And right now, Judge Merritt's order is only in effect until a hearing and an order is issued in Canada. And then regardless of the outcome, for example most likely what they would do in Canada is issue an order, ordering that visitation take place, and then tacking on additional visitation to make up for the visitation that Judge Merritt suspended on an emergency basis in order to protect the child. And that could happen at any time. [LB341]

SENATOR ASHFORD: And that could happen with really only a three-day notice under Canadian law, is that your understanding? [LB341]

SHERI WORTMAN: Well, I'm just saying under Nebraska law it would only require a three-day notice for a hearing but I don't know what Canadian law is so I'm just basing it on here it could happen that fast. I'm assuming that we might have some additional time under Canada law in the sense that hopefully her Canadian counsel will be able to obtain additional time based upon the fact that we have his clients here in Nebraska. But there's just no guarantee; that's the problem. [LB341]

SENATOR ASHFORD: When would the next visitation, under the Canadian decree or

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order when would that occur? [LB341]

SHERI WORTMAN: The next visitation would be scheduled in March, however because...my concern is, because Judge Merritt suspended the December visitation, that they could order make-up visitation to happen at any time really. [LB341]

SENATOR ASHFORD: And that make-up...so it wouldn't...okay, I understand. [LB341]

SHERI WORTMAN: That's my concern. They have the power to do that. [LB341]

SENATOR ASHFORD: That you believe they have the power to do that. [LB341]

SHERI WORTMAN: Um-hum. And they have ordered her to miss school before to make up visitation, so that's...it doesn't necessarily have to happen... [LB341]

SENATOR ASHFORD: In this proceeding there's been prior orders for make-up visitation. [LB341]

SHERI WORTMAN: Um-hum. Yes. [LB341]

SENATOR ASHFORD: Senator McDonald. [LB341]

SENATOR McDONALD: If there was supposedly a leak, say, in letting them know what was going on here, could they do that as soon as possible just to deter what's happening here? I mean, could they force her visitation knowing what we're contemplating? [LB341]

SHERI WORTMAN: Yes, and I am concerned that that's likely to happen based upon having this being more of a public matter now. [LB341]

SENATOR ASHFORD: Senator Lathrop. [LB341]

SENATOR LATHROP: Just as a practical matter, if the court were to set up for a hearing, you'd have some lead time. Then the court can't make it immediate. They can't say, bring the child up here right now for visitation. You'd have a little bit of time. And then, of course, you can not abide by the order for a period of time, too, right? [LB341]

SHERI WORTMAN: Well, my client's position has been, based upon the advice of counsel, is to always abide the order because if for some reason Nebraska does not retain jurisdiction and she is violating Canadian orders, she risks losing that child in a custody case. And that would be more devastating than her suffering abuse on, let's say, four times a year versus all the time. [LB341]

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SENATOR ASHFORD: Let me just follow up...I'm sorry, Senator Lathrop, do you have another...? [LB341]

SENATOR LATHROP: No, that's it. [LB341]

SENATOR ASHFORD: Counsel, if I might ask you, could you come up? Thank you. [LB341]

SHERI WORTMAN: Am I finished? [LB341]

SENATOR ASHFORD: I think you're finished, yeah. You may not be finished but I... [LB341]

SENATOR ASHFORD: Hypothetically, what would it... [LB341]

SENATOR CHAMBERS: Excuse me one minute. [LB341]

SENATOR ASHFORD: I'm sorry. [LB341]

SENATOR CHAMBERS: For the sake of the transcribers, would you give your name again so they'll know who is speaking. [LB341]

SENATOR ASHFORD: Yes, give...I'm sorry. Thank you. I'm glad you're around, Senator Chambers. [LB341]

RICHARD DUCOTE: Richard Ducote, D-u-c-o-t-e. [LB341]

SENATOR ASHFORD: And procedurally, let me just, just so I understand the context here, if, assuming there was as Senator Lathrop suggested, there might be some information that gets out about this hearing or whatever, if we were to pass the compromised language, if we were to expedite that and pass that in an expedited fashion, should that hearing in Canada occur prior to the passage of this is there an issue there? [LB341]

RICHARD DUCOTE: Well, as long as this is enacted as soon as possible, this would be a shield from the enforcement of whatever Canada does. [LB341]

SENATOR ASHFORD: From the enforcement provisions. [LB341]

RICHARD DUCOTE: That's correct. So... [LB341]

SENATOR ASHFORD: And then how would they enforce it? They would send the order to...? [LB341]

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RICHARD DUCOTE: They would send the order...the father's counsel would come and file a petition in the court here in Lancaster County to have that order recognized and enforced. And under the current law, Judge Merritt would have to do that. If this law were enacted with the emergency provision that's in place in the bill as written, I think it's Section 3 of the act, then that would be a shield and Judge Merritt could say, I'm sorry, based on my finding I've already made, and he could have a hearing and make a new finding that the child would be at risk of substantial and demonstrable abuse and neglect, and rule that he would not recognize and enforce the Canadian order. And then as the amendment is written, that court would have jurisdiction to make whatever custody orders and visitation orders it would make for any other child who lived in Nebraska and was just simply a child within his jurisdiction. But I think as Senator McDonald pointed out, that emergency provision is very, very important here because the court has in British Columbia acted very precipitously in the past and has ordered make-up visitation, has ordered all sorts of remediation, and that child has stayed up there this last time for 30 days during the summer with no contact from her mother whatsoever despite orders that she have telephone contact. And those pictures of her legs are the conditions in which she came back. [LB341]

SENATOR ASHFORD: I understand the gravity there. I was trying to get some... Yes, Senator Chambers. [LB341]

SENATOR CHAMBERS: If Canadian counsel were to come here and file a petition in Merritt's court, is there a provision that places a time limit on him in terms of taking up that petition and acting on it? [LB341]

RICHARD DUCOTE: Well, there is the constraints of due process. Under the current law there is some time for Ms. Lien to defend the enforcement only under the current defenses that are available in the UCCJEA. And Judge Merritt though, and we've seen this with Judge Merritt in this case, and this is really to his credit, Judge Merritt has not, because he has a high degree of integrity, has not done anything that he did not feel was inconsistent with the law. So even though his sympathies are in support of this child, he is not bending any of the rules. So I think he would within a very short time, but a reasonable time affording due process, would feel constrained to enforce the Canadian decree. [LB341]

SENATOR CHAMBERS: And what might that period of time be? And I know you don't want to be speculating. [LB341]

RICHARD DUCOTE: We're probably talking 10 to 15 days at the most... [LB341]

SENATOR CHAMBERS: Oh. [LB341]

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RICHARD DUCOTE: ...based on past history. [LB341]

SENATOR CHAMBERS: If we act with alacrity, I think there are things that can be done. And ordinarily, because of the respect I have for the Legislature as an institution, our processes, and how we need to be very careful about establishing precedents which might be outside of what we usually do, the thing about a representative assembly of the people is that flexibility is a part of it, and being a practical pragmatic politician as I am, reality can never be ignored. And since our job is to represent the best interests of the people, and especially where a helpless child is concerned and her welfare has been demonstrated to be at risk, I would do all that I could to find a way to persuade the Legislature to act with haste. We do have a process by which we can expedite the movement of a bill. And I believe, for myself, and I'm sensing from the other committee members that the agreement or arrangements that have been worked out as far as amendments, they will be adopted by the committee. I'm the Chairperson; I can only speak for me. But what I will try to persuade us to do: adopt the amendments, advance the bill to the floor. I will talk to the Speaker and I can't make him do anything but I want Mr. Ruth to understand that the actions of the committee and the Legislature will not be based on what the Nebraska Bar Association may say. I will read the amendments for myself. Having been assured by those who understand the possible constitutional ramifications that would have grown from the green version of the bill to have been resolved, I don't see anything that the Nebraska Bar Association can say that would hinder the enactment of this proposal into law. And remember, I'm just one person out of 48. I'm not a popular person here but I want you to know that there's at least one person who will try to see that we get something done as quickly as possible so that Judge Merritt is not put in the position of having to bend the law so that there is not a worry that somehow this may get to the people in Canada and a court may be vindictive and try to head us off at the pass. So that's about all that I can offer... [LB341]

RICHARD DUCOTE: That would be very, very much appreciated. And I think, from everything I've heard, the issue with the Bar Association will dissolve upon their consideration of the bill as amended. [LB341]

SENATOR ASHFORD: Well, if I might, I just had one other question. But as I, as Chairman of the committee, Senator Chambers, would also talk to the Speaker, I think...very quick. [LB341]

SENATOR CHAMBERS: Oh, good. [LB341]

SENATOR ASHFORD: So we can both talk to the Speaker and we can all... [LB341]

SENATOR SCHIMEK: Well, if we're going to offer...I as the introducer of this bill, will also talk to...(laugh). [LB341]

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SENATOR ASHFORD: Then you should talk to the Speaker and I think we should all...but thank you, Senator Chambers, and I agree with everything Senator Chambers has said. But I just for the record would like to ask, my recollection of the act is that the only, currently, the only attack on the Canadian order would be jurisdictional. They wouldn't be substantive attacks under current law, isn't that correct? They would not be...there would be no ability to attack the underlying... [LB341]

RICHARD DUCOTE: That is correct. [LB341]

SENATOR ASHFORD: ...in that Nebraska decision. So Ms. Lien could go in and suggest or argue that the Canadian court had violated some Canadian statute or some other provision of international law, but could not attack the underlying substantive decision. [LB341]

RICHARD DUCOTE: That's correct. [LB341]

SENATOR ASHFORD: Okay. Could not substitute his findings of fact for the findings of fact of the Canadian court. [LB341]

RICHARD DUCOTE: Exactly. And then this bill would enable, under limited circumstances, only dealing with abuse and neglect, could solve that problem. [LB341]

SENATOR ASHFORD: Right. And I agree. I think assuming...and I assume that this is correct, that I think the committee should and may very well act quickly on this and move forward. Thank you. [LB341]

RICHARD DUCOTE: Thank you very much. [LB341]

SENATOR ASHFORD: Oh. [LB341]

LARRY RUTH: Just continuing, Senator: two points. [LB341]

SENATOR ASHFORD: What could you possibly add to this? (Laugh) [LB341]

LARRY RUTH: What I would like to add is this, that we'll also... [LB341]

SENATOR SCHIMEK: For the record, your name. [LB341]

LARRY RUTH: My name is Larry Ruth, R-u-t-h. And we'll also look at the Uniform Child Abduction Protection Act because that's the other half of the problem here is when someone comes back into this country and then wants to abduct the child, which I think is something we all... [LB341]

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SENATOR ASHFORD: But we don't necessarily have to worry about that. [LB341]

LARRY RUTH: That's not necessary to that... [LB341]

SENATOR ASHFORD: For this particular, but I think it's wise to do that but it's not necessary. [LB341]

LARRY RUTH: Yeah. And Judge Merritt wrote a heck of an order. You ought to read his order; it's a heck of an order. [LB341]

SENATOR ASHFORD: Well, we can I suppose. Get a copy of it. Thanks, Larry. Sorry I haven't read it yet, Larry, but I will at some point. Well, we had it, I guess. Okay. Any other proponents, opponents, neutral? Senator Schimek, do you wish to close? [LB341]

SENATOR SCHIMEK: I won't close, Senator. I'll just say thank you to everybody who was involved in this effort today, and it's very, very helpful. Thank you. [LB341]

SENATOR ASHFORD: Thank you. That closes the hearing on LB341. [LB341]

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Disposition of Bills:

LB83 - Advanced to General File.
LB96 - Held in committee.
LB201 - Held in committee.
LB335 - Advanced to General File, as amended.
LB341 - Advanced to General File, as amended.

Chairperson

Committee Clerk