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Judiciary Committee
February 14, 2008

[LB1106 LB1107 LB1130 LB1142 LB1159 LB1160]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 14, 2008, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1130, LB1107, LB1160, LB1159, LB1142, and LB1106. 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: Welcome everyone. We have six bills today and they're all important. We ask, as many of you have been here on many occasions and some on some occasions and some of you are probably new to the committee, but on some of these bills where we have agency testimony or others that are...that have been here before, if you can talk amongst yourselves and try to keep your testimony not redundant, that would be fabulous. We...most of you are familiar with the light system, but we'd ask you to confine your testimony to the lights. The orange light would give you kind of notice to sum up, and the red light is the ejection seat thing. Senator Synowiecki has the first two bills. Let me see. Senator Vickie McDonald is here, from St. Paul, Nebraska; Senator Pirsch from Omaha is here; Dwite Pedersen from Elkhorn; and Senator Ernie Chambers from Omaha; and I am Brad Ashford, also from Omaha. So Senator Synowiecki, LB...how many you are here on LB1107? Wow! Oh, maybe one person is here. Senator Synowiecki, are you ready to begin?

SENATOR SYNOWIECKI: Well, Senator Ashford, I thought I was going to begin with LB1130, because we had one...

SENATOR ASHFORD: Oh, that's what you are going to do. I'm sorry, LB1130. I apologize. We're going to start with LB1130.

SENATOR CHAMBERS: And may I let them know what my assignment from the Chairman is? Some people have a way of not looking at the lights when the red light comes on, and I've been assigned to call their attention to it. And without being rude I intend to do that. The Supreme Court has that rule and people honor it and they respect it. And we are not being respected when people just go on and on and it becomes necessary to say the light is red, because I'm prepared and willing to do that. When the light is red I will say it, but it doesn't mean a person has to stop in mid-sentence. They can give two or three more sentences to end decently and in order, but today they won't be allowed to just act like they didn't see it and go on and on.

SENATOR SYNOWIECKI: Time. No, I was just... (Laughter)

SENATOR ASHFORD: Let me try to get myself back into this process. No, Senator Synowiecki, proceed.

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SENATOR SYNOWIECKI: With LB1130. Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is John Synowiecki. I represent District 7 in Omaha. I bring before this committee LB1130, which is a bill that merges Probation and Parole Supervision Services under the Department of Corrections. As well, the bill additionally creates the Office of Court Services under the judicial branch. Members, this legislation is the culmination of an almost decade-long public dialogue on the future of Nebraska's criminal justice system. That dialogue among criminal justice experts, public policymakers, and respected members of the judiciary has sought ways to achieve balance and solutions among a diverse set of long-term public policy issues. These issues include an undeniable growth in our prison system, the significant strain on our public treasury to construct and operate new prisons, the utmost concerns of public safety, and finally, mechanisms to ensure that criminal justice sanctions include a genuine opportunity for effective and long-term rehabilitation. After countless hours spent in working groups and on task forces, the Nebraska Legislature, under the leadership of Senator Kermit Brashear, Senator Ernie Chambers, and Senator Dwite Pedersen, took bold steps to create and expand community corrections efforts. These initial efforts, while bold and innovative, are continuing to evolve. Next, the citizens of Nebraska were asked to weigh in on these issues directly. In November 2006, Amendment 4 was placed on the ballot and provided an opportunity to remove the final hurdle to true reform within our criminal justice system. The citizens of Nebraska responded with a resounding vote for innovation, government efficiency, and a combined approach to Nebraska's probation and parole functions. The citizens of Nebraska sent a clear message to us that these issues are bigger than any personalities involved. They sent a clear message that the entrenched institutional bias among bureaucratic interests resistance to change must be rejected. They sent a clear message that Nebraska's public safety and Nebraska's budget cannot be sacrificed to a bureaucratic interest. I appreciate that innovation and change from the status quo can create uncertainty among the rank and file state employees, particularly as they may come to believe that their jobs are at risk from whisper campaigns that do not reflect the true nature and intent of these needed reforms. I am confident through my work with frontline probation and parole officers that as true partners we can move forward. They know, as do I, that by not acting, by not moving forward, we only silence the will of the people, and we forsake the future of Nebraska's criminal justice system and accept, instead, duplication and loss of effectiveness. While the increased level of collaboration that has been occurring between probation and parole is appreciated and welcomed, there unquestionably continues to exist administrative barriers that interfere with the criminal justice system goals. Having probation and parole supervision under different branches of the government and under two entirely different administrative frameworks certainly serves as a barrier in providing a continuum of offender services and is not conducive to a seamless community corrections model. Additionally, as community corrections in our state continues to evolve toward criminal offender management, it increasingly moves away from the mission and scope of Nebraska courts. LB1130

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affirms that probation and parole offender-based services share many similar characteristics. LB1130 affirms that state-sponsored services and resources that are useful to offenders as they navigate toward rehabilitation are all located in the executive branch. These services and resources include but are not limited to workforce development, housing assistance, veterans assistance, public behavioral health, public medical assistance, childcare assistance, and temporary assistance to needy families. LB1130 affirms that presentence investigation reports serve as a critical element in the judiciary sentencing deliberations. The presentence investigation officer's report provides comprehensive individual offender case histories and assessments that provide the judiciary useful insights in assisting with the delivery of proportionate and fairer criminal offender sentencings. An administratively aligned presentence investigation officer is necessary to preserve the unique duties in fact-gathering in preparation for the judiciary. I would like to thank Senator Ashford and members of the committee for your interest in the bill, and there will be some folks testifying behind me as well. [LB1130]

SENATOR ASHFORD: Any questions of Senator Synowiecki? I'd like to welcome Senator Lathrop and Senator McGill who have joined. Would you be closing, Senator Synowiecki? [LB1130]

SENATOR SYNOWIECKI: I may, Senator. [LB1130]

SENATOR ASHFORD: All right. How many testifiers do we have on LB1130? Okay. Great. Let's have the proponents first. Do we have a proponent? We got to have one or two of those. Chief. [LB1130]

CHIEF JUSTICE HEAVICAN: Mr. Chairman, members of the committee, I am Mike Heavican, the Chief Justice of the Nebraska Supreme Court, here to speak on behalf of LB1130. As Senator Synowiecki noted, this bill would split probation. It would preserve with the court the presentence investigation functions of probation, as well as the drug courts and the juvenile probation staff. The rest of the Probation Office, that means the supervisory functions and the community correction functions, would be transferred to the Department of Correctional Services. Our fiscal note estimates that that would mean approximately 245 FTE would be transferred to the Department of Correctional Services; \$11 million-plus General Fund dollars would be moved to the Department of Correctional Services; approximately \$3,400,000 in pass-through General Fund dollars would be moved to the Department of Correctional Services; approximately \$2,700,000 in annual revenue from various probation fees would also be moved to the Department of Correctional Services. The bill also transfers a portion of existing fund balances in two probation cash funds to corrections. If those transfers were to happen today using balances in each fund as of January 31, 2008, the following would occur: The probation cash fund, which primarily is utilized for drug testing and electronic monitoring, \$113,000-plus would go to the Department of Correctional Services, and approximately

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\$40,000 would remain with the Supreme Court budget. For the Probation Program Cash Fund, which is used primarily--this is offender fee money used primarily for treatment and evaluation--of that, close to \$7 million would be transferred to the Department of Correctional Services, and \$1,700,000 would remain with the Supreme Court. The fiscal note also estimates that 207 FTE would remain with the court; approximately \$9.5 million General Fund dollars would remain with the court; \$2 million-plus pass-through General Fund dollars would remain with the court; approximately \$600,000 in annual revenue from various probation fees would remain with the Supreme Court, as well as approximately \$350,000 in educational fee money. There is, as part of the bill, there is an advisory committee of judges set up to work with the Department of Correctional Services in the supervisory and community corrections area, which is very important to the judges. I want to thank everybody on our staff who worked to make...come up with the estimates and to do this in an equitable kind of way. And I would lastly like to note that the court feels that community corrections involves policy decisions best left to the legislative and executive branches, and that carrying out that policy decision is best done by those policy decisions...excuse me, decisions is best done by the executive branch. To paraphrase the Chief Justice of the United States Supreme Court, the courts are like umpires in a game of baseball, it's a judge's job to call balls and strikes and not to pitch and bat. Community corrections is more in the realm of pitching and batting, and we therefore feel that it properly should be with the executive branch. I would be happy to entertain any questions from anybody. [LB1130]

SENATOR ASHFORD: Any questions of the Chief? Senator Chambers. [LB1130]

SENATOR CHAMBERS: Mr. Chief Justice, this is a policy decision that we're being asked to take and the Supreme Court is taking a position on this policy rather than just explaining how it would impact. So what is the compelling reason for the Supreme Court to suggest to the Legislature what the policy decision ought to be? [LB1130]

CHIEF JUSTICE HEAVICAN: As I noted, Senator Chambers, and I guess you are noting the irony of this, but we think probation now, as you are aware, the supervisory part of probation is becoming a larger kind of thing. It is becoming community corrections. The court certainly has no opposition to community corrections and the concept of community corrections. But as I noted in my presentation, we think that community corrections and the policy decisions involving community corrections are best left with you and left with the executive branch, and carrying out those policy decisions is best left with the executive branch. [LB1130]

SENATOR CHAMBERS: Is it the court's feeling that the court cannot discharge these responsibilities and duties should the Legislature, which is the policymaker for the state...if the Legislature decided, as a policy, those functions should remain with the Supreme Court, is it your testimony that the Supreme Court is not capable of carrying out these duties and functions? [LB1130]

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CHIEF JUSTICE HEAVICAN: No, we've done that in the past and we'll do that in the future, if that's the policy of the state, and we'll do the very best job we can and we'll do a good job. I would, however, note that the judicial branch is not set up to run programs, to be an executive branch, which sometimes makes it awkward for us. But as I said, we've done it in the past, we'll do it in the future. [LB1130]

SENATOR CHAMBERS: So you do see a problem with the nature of this work that is to be done, if not conflicting with what the judicial branch does, it could create, as you described it, an awkwardness by the judiciary doing something which the judiciary may not feel completely comfortable and at ease doing? [LB1130]

CHIEF JUSTICE HEAVICAN: That is correct. [LB1130]

SENATOR CHAMBERS: Does the court have an opinion relative to whether or not this should be placed under the Governor's control, or should be what's called a noncode agency so that it would have some independence? [LB1130]

CHIEF JUSTICE HEAVICAN: We don't really have an opinion on that. [LB1130]

SENATOR CHAMBERS: Okay. [LB1130]

CHIEF JUSTICE HEAVICAN: Obviously, it could be approached from different ways, yes. [LB1130]

SENATOR CHAMBERS: That's all I would have. Thank you. [LB1130]

CHIEF JUSTICE HEAVICAN: Good. Thank you. Other questions? [LB1130]

SENATOR ASHFORD: Thanks, Chief. [LB1130]

CHIEF JUSTICE HEAVICAN: Thank you. [LB1130]

SENATOR ASHFORD: Robert. Proceed. [LB1130]

BOB HOUSTON: (Exhibits 1 and 2) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Bob Houston, H-o-u-s-t-o-n, and I'm here today to testify in favor of LB1130. As this committee is aware, the idea of merging Parole and Probation Administration is not new. In the past, this committee has deliberated on merging probation and parole with the desire to deliver community-based correctional services in the most efficient manner possible. LB1130 would merge the community supervision aspects of probation into our department, while the courts would retain duties related to presentence investigations, drug courts, and juveniles. I'm here today

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to state that should the Legislature pass LB1130, the Nebraska Department of Correctional Services would implement the merger in an efficient and professional manner. This bill allows for one year of planning and implementation that I believe is needed for this task. The planning time will be productively used to ensure positive outcomes during and after the merger process. We will proceed effectively, yet we will be sensitive to the concerns of employees, judges, and criminal defendants. Our department has a long history of handling the state's most challenging population with dignity and respect. We attend to the needs of our staff that spend all day performing difficult yet rewarding tasks. Likewise, probation officers find that high caseloads, technical court processes, and oftentimes demanding clients creates a most fascinating career. As a result, we share a deep respect and understanding for our colleagues in probation. In light of the uncertainty of the state's financial situation, the cost of the merger is a significant factor. However, the benefits of merger may outweigh its initial cost. With the merger our state could have a seamless delivery of community services that facilitates planning and continuity of sanctions based on the best practices, and will give us greater faith and reliance on community corrections, and lessens our reliance on incarceration. Secondly, this bill may offer cost avoidance. Prisons are not cheap. Annual operation costs for large prisons in Nebraska exceeds \$30 million each. Every year our delay of construction preserves precious resources for other priorities. I truly respect the difficult task of protecting the public from nearly 20,000 probationers without walls, fences, gun towers, is an incredible responsibility on the probation performs most skillfully each day. Our department is composed of 2,400 staff that will work in what national experts consider a positive, supportive culture. If this change occurs, I want you to know that probation officers, supervisors, administrators, support staff will be welcomed into our department. We also recognize the very special bond that is created in the court with a diverse work team. We will drive all efforts to maintain and fortify these relationships. The success and expansion of community services depends directly upon interdependency, trust, collaboration with judges, and with our court members. I hope this presentation has given you a fair perspective of my thoughts. [LB1130]

SENATOR ASHFORD: Thanks, Bob. Any questions? Senator Chambers. [LB1130]

SENATOR CHAMBERS: Mr. Director, this bill would give the director of corrections, which in this instance happens to be you, the authority to appoint the Adult Probation and Parole Administrator. [LB1130]

BOB HOUSTON: That's correct. [LB1130]

SENATOR CHAMBERS: That would tend to make that person accountable to you, isn't that correct? [LB1130]

BOB HOUSTON: That is correct, Senator. [LB1130]

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SENATOR CHAMBERS: How would that person be removed and by whom? [LB1130]

BOB HOUSTON: Well, those are...we have eight at-will positions in the Department of Corrections now, so it would have to be decided as to whether or not that person would be an at-will person. The way we make the appointments to the at-will positions is sometimes through the normal hiring process, and then in consultation with the Governor's Office. [LB1130]

SENATOR CHAMBERS: But this legislation does not make...determine that it's at-will, which means a person can just be told, when they come to work, it's over. [LB1130]

BOB HOUSTON: If it's an at-will position. [LB1130]

SENATOR CHAMBERS: And that's not in the statute, in this proposal? [LB1130]

BOB HOUSTON: I did not read it in to be there. [LB1130]

SENATOR CHAMBERS: I didn't either. But since it involved you, I thought you may have picked up something that I missed. This troubles me because it is giving corrections the power over people who never were under the jurisdiction of the Department of Corrections. Isn't that true? [LB1130]

BOB HOUSTON: That's true, Senator. [LB1130]

SENATOR CHAMBERS: A probationer has never been locked up. [LB1130]

BOB HOUSTON: That's true. [LB1130]

SENATOR CHAMBERS: So now the Department of Corrections, which deals with people who are incarcerated, will have dominion over those who never have been incarcerated. And, in effect, they're put on the same basis as those who are incarcerated, who were paroled into the community. Isn't that true? [LB1130]

BOB HOUSTON: On the same basis, yes, it would be true that they would be under the department and subject to the same...to the rules that are established for the department. [LB1130]

SENATOR CHAMBERS: Why should a person who has never been locked up, be placed under the jurisdiction, control, and even whim in some cases, at worst, of an agency which deals currently only with people who have been incarcerated? [LB1130]

BOB HOUSTON: Well, we have...we deal with community corrections also, Senator.

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We're responsible for over 800 people that are on parole. We are also responsible for nearly 700 people that are in our community centers. But what you say, it's true: Those are individuals that have been in our prisons previous to being placed on this status. [LB1130]

SENATOR CHAMBERS: And these people on probation are not former locked-up people. Okay, that...I'll go to something else. I do have problems with the bill, but I just want to touch on some without requiring you to iron out everything that I see as a problem in the bill. It says that this appointment of the administrator will be with the consent of the Board of Parole. Does that mean, as you read it, that the board could veto an appointment that you wanted to make? If their consent is required and they withhold it, that person you wanted as the administrator would not be appointed, correct? [LB1130]

BOB HOUSTON: That's correct. [LB1130]

SENATOR CHAMBERS: So there could be some tension that could develop between the director and the Board of Parole? [LB1130]

BOB HOUSTON: That is correct. [LB1130]

SENATOR CHAMBERS: Does that tension exist right now? [LB1130]

BOB HOUSTON: No, it doesn't. [LB1130]

SENATOR CHAMBERS: So we'd be building in the possibility of it, if this becomes law. [LB1130]

BOB HOUSTON: That is correct. [LB1130]

SENATOR CHAMBERS: Okay. And I'm not being argumentative. [LB1130]

BOB HOUSTON: No, I understand. [LB1130]

SENATOR CHAMBERS: I hope it's clear from the way I'm asking the questions. Now this administrator would direct the funding that would be used to augment operational and personnel costs associated with the development, implementation, and evaluation of enhanced parole, probation-based programs, and so forth. Is there any funding authority, in terms of directing it, which is under you as the director of Corrections right now, or would this be a new activity? [LB1130]

BOB HOUSTON: This would be a new activity. I'm responsible for the department's budget, and this would become part of that. [LB1130]

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SENATOR CHAMBERS: And what kind of employees would you have to hire to help you carry out the new duties that are imposed on you by this bill? [LB1130]

BOB HOUSTON: Well, I would think I need somebody that knows probation. That is not something that's in our experience base, in our department, but by a few people. And so we need somebody that knows those operations and the technical aspects of the courts and presentence investigations and so forth. [LB1130]

SENATOR CHAMBERS: It is our responsibility as senators to formulate policy, but I'm going to see if I can coax an opinion from you. And if you feel it's beyond what you want to comment on, you don't have to do so. Maybe I ought to make it a rhetorical question. The question in my mind is, what sense does it make in the name of efficiency to bring together two elements, parole and probation, which are not the same, in a department which has not dealt with and is not equipped, in my mind, to deal with one aspect of it? And I get that from your testimony now because you've never dealt with it before. There are new duties which are not those that are carried out by the Department of Corrections, so we're going to have to hire different people to help do that. We're going to have to bring people into the Department of Corrections who can do this work which currently is not being done by the Department of Corrections. We have created a system that can bring about tension between the Board of Parole and the Department of Corrections, and all of that is going to bring about greater efficiency in the handling of parole and probation? Is it your view...? This is the question I want to put to you after having kind of let you know how the question might be loaded. You've read the legislation, I presume, because you're here in support of it. Are you convinced that it will create more efficiency in the handling of probation than currently is the case? [LB1130]

BOB HOUSTON: The bill needs work. I mean, there are things in there, as you indicated, that can be points of tension. The attractive aspect to it...there are a lot of things that would be very difficult with this merger, the core processes and so forth, and the Chief Justice tended to that as to how that would be split off--and there are a lot of differences in our culture and how we spend our daily responsibilities. There are things that have developed over the past couple of years, Senator, that overlap between probation and parole. And I must say that the relationship between us and probation is outstanding, and there are things that we address together... [LB1130]

SENATOR CHAMBERS: But the mere overlapping does not necessarily mean that a merger is the best thing, because there are different agencies that overlap but there is not such an overlapping that they blend, and the only thing keeping them from blending entirely is a technical line of demarcation that exists in legislation. There is not just a technical line dividing the two. There is an actual practical separation and division between probation and parole because they are not the same thing. Does a parole...well, I won't go into all of that. I don't want to take too long. And, in fact, that's all

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I will ask you, but I just wanted to let you know that I see some serious problems that would be associated with this. [LB1130]

BOB HOUSTON: Thank you, Senator. [LB1130]

SENATOR CHAMBERS: But that's all that I would present to you. Thank you. [LB1130]

BOB HOUSTON: I appreciate that. Thank you. [LB1130]

SENATOR ASHFORD: Thank you, Senator Chambers. Thanks, Bob. Next proponent. [LB1130]

LARRY DIX: Senator Ashford, members of the committee, my name is Larry Dix, spelled D-i-x. I'm executive director of the Nebraska Association of County Officials, appearing today in front of you. This became a little bit awkward. I'm appearing on a very small segment of the bill. And I appreciate, earlier this week, having an opportunity to work with Senator Synowiecki and Chief Justice Heavican on a very, very small amendment. And that amendment is not in front of you. It's my belief that Senator Synowiecki is going to hand that to you on closing. I can't say that he will for sure, but I think when he got up on opening it just wasn't handed out. The amendment, in essence, is on page 16, line 9, and after...on line 9, after the word "space" we had worked together to insert "equivalent to the office space available to the probation service on the effective date of this act." And the reason that we went through that process and visited with the Chief Justice and Senator Synowiecki about that is that we have office size constraints within our county courthouses now. And when we looked at this, we looked at it and read it that there was the possibility that if this bill passes then we would have to find additional space possibly in our courthouses for state employees, which we are already doing with probation, but there is a limit as to how much space is available in some of these courthouses. So that's really the reason that we are here, really to describe that and support that amendment. And like I said, it's a little awkward because I know you don't have the amendment in front of you, but that is what the amendment says, and that's really the only piece that we wanted to address on this bill. [LB1130]

SENATOR ASHFORD: Thanks, Larry. Any questions of Larry? Senator Chambers. [LB1130]

SENATOR CHAMBERS: Mr. Dix, in order that I can understand what you're telling us, without your having commented on the wisdom or lack thereof of the merger itself, you want to be sure that the merger does not result in more people being assigned to your courthouses which would require more space than currently is being made available to the people who are there with the way things are now? [LB1130]

LARRY DIX: That is correct. [LB1130]

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SENATOR CHAMBERS: Now this is beyond what you testified to, but if it was felt that because of the merger and the way employees are to be dispersed, and more would be put in your courthouse than are there now but not more space, they would have to just be crowded into that space that is available now. And with the language you're asking us to adopt, they could not say, we need more space, and therefore require the county to provide more space. [LB1130]

LARRY DIX: That is correct. [LB1130]

SENATOR CHAMBERS: There would just have to be overcrowding. [LB1130]

LARRY DIX: That is correct. [LB1130]

SENATOR CHAMBERS: Would they be allowed to put a tent on the lawn of the courthouse? (Laugh) I'm just kidding. That's all I would ask you. Thank you. [LB1130]

LARRY DIX: Thank you. [LB1130]

SENATOR ASHFORD: Thanks, Larry. [LB1130]

LARRY DIX: Thank you. [LB1130]

SENATOR ASHFORD: Next proponent. Opponents? Neutral? Oh. How many neutral testifiers do we have? One. Simera. [LB1130]

SIMERA REYNOLDS: (Exhibit 3) Hello. My name is Simera Reynolds. I'm the executive director for Mothers Against Drunk Driving. Simera, S-i-m-e-r-a, Reynolds, R-e-y-n-o-l-d-s. On behalf of MADD I'm here to voice some concerns about LB1130. Currently, MADD works very well with probation officers in every district across the state to ensure victims' rights and provide programming to misdemeanor offenders about the impact of drunk driving. Currently, approximately 40 percent of those on probation are there because of a DUI offense. MADD has strong concerns about another layer of bureaucracy for the victim. MADD's first concern is the continuity of the continuum of care for victims who have the right, as outlined in Section 90, to provide victim impact statements. MADD has always worked with probation officers to ensure the victim impact statements are included in presentence investigations. MADD would hope that the relationship with the community service officers, if this bill becomes law, would be as strong as the current relationship with state probation officers. Over the last nine years, I have never worked with a parole officer in my capacity with MADD. MADD offers free victim services to victims impacted by drunk driving. Last year alone, we served over 500 victims, and I have personally worked with more than 40 families that have been impacted by DUI homicide. Again, I cannot overstate the importance of MADD's strong

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partnership with probation throughout the state. On the corrections' side, the most MADD has ever been asked to do on behalf of the victim is monitor felony offenders that are being released for victim notification, and to be present at pardon hearings regarding high-risk repeat offenders. The number of victims asking for that service can be counted on two hands. Currently, as structured, the probation officers are tied to the community and reflect the community needs and concerns of the community when addressing misdemeanor offenses. Probation has been an agent in the community by connecting offenders, when appropriate, to proper community groups. MADD sees probation officers as a prevention tool addressing the issues of recidivism. And MADD is not averse to change; I'm just concerned about this particular change. Corrections and parole is a tertiary concept. As an advocate for victims, MADD believes that mixing probation and corrections will not provide any substantial benefit to the victim. In fact, it very well could muddy the waters of a system that is already difficult for the victim to understand and navigate. [LB1130]

SENATOR ASHFORD: That's sort of not neutral testimony, but... [LB1130]

SIMERA REYNOLDS: Okay, well, there wasn't anybody opposed who isn't neutral, is there any neutral... [LB1130]

SENATOR ASHFORD: Okay. No, I'm just kidding you. [LB1130]

SIMERA REYNOLDS: You're giving me...is that rhetorical? [LB1130]

SENATOR ASHFORD: Yes. [LB1130]

SIMERA REYNOLDS: Thank you. [LB1130]

SENATOR ASHFORD: Thank you, Simera. No questions? Thank you. Yes, Senator Chambers. [LB1130]

SENATOR CHAMBERS: Just one. From the work that you have done in your organization, in this very sensitive area more has to be taken into consideration than what has been called efficiency in terms of the arrangement and organization of these two agencies. [LB1130]

SIMERA REYNOLDS: Correct. [LB1130]

SENATOR CHAMBERS: Okay. And I do understand the things that you said, so I won't have you rehash those. Thank you. That's all that I have. [LB1130]

SIMERA REYNOLDS: Thank you. [LB1130]

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SENATOR ASHFORD: Any other neutral testifiers? Yes, sir. [LB1130]

RICHARD CHISHOLM: I'm opposed. [LB1130]

KATHRYN LIEBERS: We didn't move fast enough. [LB1130]

SENATOR ASHFORD: We did move right through that. Come on up. [LB1130]

RICHARD CHISHOLM: Chairman Ashford and members of the committee, my name is Richard Chisholm. I live in Wahoo, Nebraska, and I'm on vacation today and here to testify as an individual citizen. I have concerns about this bill. Because of experience in probation and having some knowledge of the probation system and the corrections system, I don't feel it's in the best interest of the probation staff, probably the parole staff, or the citizens of the state for this bill. A Vera report was ordered last year, and I would encourage all of you to read it very carefully. In that report, I think it detailed that probation staff and parole staff were both against a merger such as this, and it also stated a conclusion--concluded that it may be premature to merge probation and parole in Nebraska. It said, a more specific plan for consolidation that focuses on the following questions, and then it listed five questions. And as a citizen of rural Nebraska, I have a concern that this merger, which is really a split of probation and parole into supervision with Department of Corrections and court service officers who would do adult county and district court presentences, predisposition investigations for juveniles, supervising juvenile offenders, and also doing intake, which involves getting calls from law enforcement when they take a juvenile into custody and making a determination as to whether or not they should be detained, I feel that's going to impact those officers to the point, in rural areas, that they won't be able to continue to provide all those services in the way they're presently providing. There are 17 offices that are one-person probation offices across the state. I don't know the plan for how they would split those offices. I believe that this is going to be something that's going to cost more because of mileage and lost work time. I also believe that juveniles will get lost in this mixture because when a judge is waiting for a presentence or predisposition report, that takes emphasis. I also believe that misdemeanor offenders may get lost in the shuffle when they're moved over to the Department of Corrections. I have some concerns about all the programming fees. There's a number of fees that are generated. And I also have concerns about this bill--I'm speaking kind of quickly now since I have the yellow light--but I also have concerns about this bill that our goal, corrections as well as probation, is to try to reduce the population of prison inmates, and I'm not sure that this is going to work towards that goal. I believe that the Department of Corrections does an excellent job and I believe probation does an excellent job. I feel like that when you have the probationers that are going to go to corrections, I feel like that's going to change the mentality of how to supervise those offenders and it's going to be a more punitive approach; where right now, with evidence-based practices, we're doing a lot of programs in the communities to keep offenders out of prison. [LB1130]

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SENATOR CHAMBERS: I have a question, because the red light is on, you have to stop. [LB1130]

RICHARD CHISHOLM: Okay, okay. [LB1130]

SENATOR CHAMBERS: And this is not just to give you time to go on. [LB1130]

RICHARD CHISHOLM: Okay. [LB1130]

SENATOR CHAMBERS: As somebody with experience in this area, you're telling us that the nature of the work of probation is different from the work of parole. [LB1130]

RICHARD CHISHOLM: I believe it is, from my experience talking to parole officers as well as my experience in probation, yes. [LB1130]

SENATOR CHAMBERS: I thought that's what...but I just wanted to be sure that was precisely what you were saying. Thank you. [LB1130]

RICHARD CHISHOLM: Okay. [LB1130]

SENATOR ASHFORD: Senator Schimek. [LB1130]

SENATOR SCHIMEK: Thank you, Mr. Chairman. I'm sorry that I didn't catch what town you are from, and are you a probation officer? [LB1130]

RICHARD CHISHOLM: Yes, I am. [LB1130]

SENATOR SCHIMEK: Okay. [LB1130]

RICHARD CHISHOLM: I'm from Wahoo, Nebraska. [LB1130]

SENATOR SCHIMEK: Thank you. Appreciate your testimony. [LB1130]

RICHARD CHISHOLM: Okay. [LB1130]

SENATOR ASHFORD: Senator Pirsch. [LB1130]

SENATOR PIRSCH: I'm sorry. I was introducing a bill in another committee, and so I didn't have a chance to ask, but when...it looks like the overarching, I guess, reason behind the bill is one of efficiency. What is it...how would you comment, I mean, what general types of ways are they different such that you wouldn't have efficiency through combining them? [LB1130]

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RICHARD CHISHOLM: Well, I don't think it's going to provide efficiency in the rural areas when you're going to split the supervision and presentence functions in the rural areas, because you're...well, I'll give you a good example. In one judicial district, like with O'Neill and Broken Bow and Ord, I think, there's four officers up there. And to split those, they're going to have to travel twice as much to conduct presentence investigations, twice as much to supervise offenders. That's going to cost more money to do that, and it's going to cost more time on the road, which contributes to time away from work. And in a lesser degree, it's going to do that to every rural district in the state. [LB1130]

SENATOR PIRSCH: Okay, thank you. [LB1130]

SENATOR ASHFORD: Thank you, sir. Next. Go ahead. Do you have a statement we can... [LB1130]

RICHARD CHISHOLM: I had another citizen that wanted to... [LB1130]

SENATOR ASHFORD: Well, we can't do that. [LB1130]

RICHARD CHISHOLM: You can't? [LB1130]

SENATOR ASHFORD: No. [LB1130]

RICHARD CHISHOLM: She couldn't be here because of the weather. [LB1130]

SENATOR ASHFORD: I know, but we just can't do that. [LB1130]

RICHARD CHISHOLM: Okay. [LB1130]

SENATOR ASHFORD: Thank you. Come on in. [LB1130]

KATHRYN LIEBERS: (Exhibit 4) Good afternoon. My name is Kathryn Liebers. I am taking a day of vacation to come and appear before you and present my concerns regarding LB1130. I present my response to you as a private citizen. I'm from Norfolk, Nebraska. Due to the nature of probation service delivery in rural Nebraska, I have a unique understanding of what a probation officer's duty and responsibility to the population it serves is. A rural officer is responsible, very simply, for multitasking a number of duties and responsibilities. The beauty of our system allows us to do that. The Vera report, which was completed, indicated specifically that the cultures and philosophies of probation and parole are very different. To expect officers in a combined agency to complete both roles seems to me a great and somewhat grave expectation. The best example I can give you is probation officers and parole officers both

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supervise--that's recognized--but while they are similar functions, they are very different. It is much like putting your right shoe on your left foot and your left shoe on your right foot, and expecting that you will be able to propel yourself as easily as you have otherwise. I have concerns for both probation and parole, because parole's primary function is custody. Parole's primary function is custody; probation's primary function is accountability coupled with treatment, coupled with appropriate programming, and rehabilitation. Both agencies do a fine job of doing what they do, individually. Probation officers, as well as parole officers I've spoken with, are concerned regarding a change in philosophy of a new agency. We are concerned...I as an individual am concerned that if a high-profile parolee is placed on probation and/or on parole and a high-profile or...a shoplifter in county court is placed on probation who is actually going to receive the greater service, and I fear we do a disservice to rural communities as a result of that. I don't know how it would be possible to provide equal service to both offenders. There is cost to the counties. I don't see it increasing effective functioning because of areas where there are only one officer working in one office and covering a great deal of area. Some of the counties where there are only one officer in an office,... [LB1130]

SENATOR ASHFORD: That's fine. Go ahead and sum up, if you would. [LB1130]

KATHRYN LIEBERS: ...they are in some of the poorest counties in the state and they would be responsible for providing space for individuals to complete all of the functions. That's a huge financial burden for those areas. I appreciate your time. If there's any questions... [LB1130]

SENATOR ASHFORD: Thank you, thanks for your comments. Thank you. [LB1130]

KATHRYN LIEBERS: I do have a document that I completed. [LB1130]

SENATOR ASHFORD: That's okay. Thank you. Oh, Senator Pirsch, I didn't see you. [LB1130]

SENATOR PIRSCH: Just as background, how many...do you know how many probation officers there are in the state? [LB1130]

KATHRYN LIEBERS: There are approximately three...just a second and I can tell you. I know that there are...12 times as many...15 times as many probation officers as there are parole officers. I believe there are 200-and-some probation officers, I believe there are 17 parole officers in the state. Our caseloads are roughly...or the caseloads are roughly different, 243...yes, in fact, it's 243 officers in probation and 20 officers in parole. Client caseload: 18,557 in probation; 982 clients in parole at mid-2007. [LB1130]

SENATOR PIRSCH: Okay. Thank you. [LB1130]

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SENATOR ASHFORD: Thank you. [LB1130]

KATHRYN LIEBERS: Thank you very much. I appreciate your time. [LB1130]

SENATOR ASHFORD: We appreciate you coming. And you have something for us. I guess we're back on opponents again. One more. How many opponents do we have? Okay, come on up, sir. [LB1130]

TIM PERRY: Thank you, Senator. My name is Tim Perry. I'm also here on personal time as a concerned citizen. I am a probation officer here in Lincoln. You've heard from a couple of our other staff in the system in the rural areas. Obviously, I am opposed to the merger. Several of the reasons have been alluded to already by previous testimony so I won't go that direction. However, I do have concerns with community public safety. As has been pointed out--parole--Department of Corrections primarily dealing with offenders coming out of the institutions, primarily being convicted of felony offenses. In our probation system, we deal with both the felony as well as the misdemeanors, and a large population that we work with is from the county court. So I have some concerns, if a merger did go through, that the services and how we would deal with that misdemeanor population could be lost, because we work with them in a little bit different manner. Another area of concern would be pay and equity--job security with the merger, both on probation staff, who would go over with that. Also was alluded to, probation performs many multifunctions; we wear many different hats. As pointed out for the rural areas, the officers do adult presentences, adult supervision, work with juveniles, the juvenile intake. Here in Lincoln we are separated out with a separate juvenile office, as well as our adult office. In our adult office we are separated into presentences as well as the supervision units, but due to workload or any changes or adjustments, we can flow back and forth and utilize staff to help pick up that workload and perform the functions. I think it would be a waste of time. With the other, it would be cost prohibitive having a probation officer doing adult out in the rural, at separate juvenile, etcetera. You kind of...the coming and going, I don't see how that would be cost-effective. Also another question comes to mind with the separation. The bill proposes moving supervision under the Department of Corrections, but a question I would propose, isn't problem solving courts and juveniles, isn't that also a form of supervision? Also the duplication of services, I believe there is an issue there. Also with some of my communications with some of our stakeholders in the community, primarily from the treatment providers, there was a comment there from one of them that was, lastly, if it isn't broke, why try and fix it? And the last thing is, what is it going to cost me as a taxpayer? I think that the...it's going to cost more. [LB1130]

SENATOR ASHFORD: Any questions of Tim? Thanks, Tim. [LB1130]

TIM PERRY: Thank you. [LB1130]

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SENATOR ASHFORD: Senator Synowiecki, do you wish to close? Before you do, Mr. Chisholm, I am...I stand corrected. My good colleague, Senator Pedersen, informed me that I was wrong in my ruling. You may submit those...that letter. (See Exhibit 6) I apologize to you. I can be wrong, I guess. I didn't think that was possible. Senator Synowiecki, can you... [LB1130]

SENATOR SYNOWIECKI: (Exhibit 5) Yeah. The only reason, Senator Ashford, I'm coming up here, is Larry Dix referred to an amendment, and I neglected in my opening to share this with the committee. I would say, though, I'm interested in working with the Chairman of the committee and legal counsel. I think we can more than what's in this amendment in terms of county resources. There's parole officers, if we proceed with something along the lines of this bill--and I agree with Bob Houston, it needs some work, and I'm willing to do that in concert with the committee. Parole, right now, is in state resources, and in a lot of counties it would make sense to use those state resources for office accommodations rather than county expense, in some of these instances. And I just wanted to also note that I appreciate the testimony--the opposition. You had a couple chief probation officers up here who are involved in administration, and I appreciate their attending here. Actually, I wish they didn't have to take vacation or whatever they had to do. But I can also assure the committee, from rank and file probation and parole officers, that my office has received a lot of e-mails and a lot of support on this, and I want that noted for the record. Other than that, that's all I have, unless any committee members have any questions. [LB1130]

SENATOR ASHFORD: Seeing none, thanks, Senator Synowiecki. [LB1130]

SENATOR SYNOWIECKI: This one will be very brief. [LB1107]

SENATOR ASHFORD: You have another bill up; that's right. [LB1130]

SENATOR SYNOWIECKI: Yeah. [LB1130]

SENATOR ASHFORD: And make sure Mr. Chisholm's letters that I... LB1107. [LB1130]

SENATOR SYNOWIECKI: Thank you, Senator Ashford. This is a...my name is John Synowiecki. I represent District 7 in Omaha. Originally, drug courts were recognized in the state of Nebraska with the introduction of LB454 by Senator Ray Aguilar back in 2004, where the state gave statutory authority to drug courts and allowed the Supreme Court to adopt a special set of rules to govern those drug courts. Now we are evolving toward young adult courts, mental health courts, and other specialized fields. This bill was brought to me by one of those specialty courts in our state, wishing to have some statutory recognition of what they're doing, and that sort of stuff. And I would defer to the individual that's going to testify behind me relative to this bill. Hopefully, if the committee agrees, we can perhaps have this adopted into some type of committee bill or

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something if the committee is going to put one forward. [LB1107]

SENATOR ASHFORD: Okay. Any questions of Senator Synowiecki? Thanks, John. [LB1107]

SENATOR SYNOWIECKI: And I'll waive closing. [LB1107]

SENATOR ASHFORD: Okay. Janice. [LB1107]

JANICE WALKER: Good afternoon, Mr. Chairman, members of the committee. My name is Janice Walker, W-a-l-k-e-r. I'm the State Court Administrator. I'm here today to testify on behalf of LB1107 and to thank Senator Synowiecki for introducing this. It is quite a simple bill, and as he pointed out, the Supreme Court currently, under statute, must adopt rules for the governance of drug courts. We currently have 21 drug courts around the state serving 1,100 addicted offenders. This legislation will simply broaden the language of the statute to say "problem solving courts" instead of the limitation which we currently have of only drug courts. It is anticipated in the future that the techniques of problem solving courts, we may want to expand those to cover such things as mental health courts, domestic violence courts, a number of other types of services that have been successful in states outside Nebraska. And if we are interested in cost, the average stay for an offender in prison for a year I understand is around \$31,000, compared to the average cost of a problem solving court participant at about \$3,500. If you have any questions I will try to answer those. [LB1107]

SENATOR ASHFORD: Any questions of Janice? Thank you, Janice. Any other testifiers on this bill? Okay. That concludes the hearing. LB1160, I guess that's my bill. Is that my bill? It is my bill. [LB1107]

SENATOR ASHFORD: Senator Lathrop and members of the Judiciary Committee, my name is Brad Ashford. I represent Legislative District 20 in Omaha, and I am here to introduce LB1160 which deals with some procedural changes in how we conduct juvenile proceedings. It, in effect, encompasses three changes to the way we adjudicate juvenile offenders. It was brought forward to me by a number of people. And we've had numerous consultations with juvenile judges and others, including the UNO Juvenile Justice Institute. And some of those individuals are here to better describe than I the changes that we're requesting. First, LB1160 seeks to expedite the process by which juvenile offenders receive the assistance they need to stay out of the criminal justice system in the future. Current law requires that motions to waive criminal proceedings to a juvenile court...and we're all aware of the practice in Nebraska that cases are filed in the district court and are waived to the juvenile court, which is a bit unique. Most states, or all states maybe, would have juvenile case filed directly into juvenile court, but we file them in district court. LB1160 requires motions to waive to juvenile court to be made much quicker than what they are now. And the reason for that is so that we can what's

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called front-load these proceedings, meaning get the services to the juveniles more quickly so that we can, if there are opportunities for diversion, that those opportunities can occur earlier in the process. Offering assistance promptly can be critical in determining the success of assisting juveniles, often in troubled circumstances, and ensuring that they do not reappear in the criminal justice system. This also impacts, and you'll hear testimony about it, that it impacts the incarceration issue with young juveniles who are incarcerated prior to any services being provided, and that's something that certainly moved me. Further, LB1160 offers language ensuring that those involved in juvenile proceedings can take part in this conversation that takes place early in the proceedings. And that, to me, again is very, very critical that we get the parties together, the service providers, the guardians, anybody that would have some involvement together as quickly as possible in a confidential and privileged manner. Currently, the law prescribes ten factors for county attorneys to take into consideration when weighing whether to file in juvenile court as opposed to criminal court. LB1160 would add two new considerations, and these considerations arose out of some of the issues we've had to deal with in Omaha. One is that one of the factors is to determine whether or not the offender has admitted to or been convicted of the unlawful use or possession of a firearm. The second directs county attorneys to take into consideration whether a juvenile court has previously issued an order against future juvenile adjudications of the juvenile in question. Senator Lathrop, thank you for the time and I will defer to the experts who are behind me whom I thank for all their help. [LB1160]

SENATOR LATHROP: Very good. Thank you, Senator Ashford. Are there any questions? Seeing none, thank you. Proponents. Judge Gendler, good to see you. [LB1160]

LARRY GENDLER: Nice to see you. Good afternoon. For the record, my name is Larry Gendler. I'm a juvenile court judge in Sarpy County. I want to talk specifically about the provision regarding mediation, and if I have time I'll try and address the other parts which I also support. I am project chair for Through the Eyes of the Child Initiative under the Supreme Court. This started back in September a year and a half ago to really improve the process for kids and families in the court system, and to make sure we move towards permanence more quickly. One of the things that has come out of this initiative is the use of prehearing conferences and mediation, particularly up front to get services in place and to help these youngsters and families move forward and get them out of the system sooner, hopefully, and successfully. As a result of these efforts, we've seen a lot more mediation occur, as I've mentioned, and we saw a need to include this in the juvenile code. I do have an amendment I'd like to provide to you that... (Exhibit 8) [LB1160]

JONATHAN BRADFORD: I passed them out. [LB1160]

LARRY GENDLER: Oh, you did? Thank you. Great. And the reason for the amendment,

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the language that we initially had in there referenced the Uniform Mediation Act and the other provisions regarding mediation in the state. And in there it talks about the fact that references to abuse or neglect are not privileged or private communications, and can be reported. And we want to make sure, as part of the mediation process in juvenile court on these issues, that those conversations and the information provided remains confidential, with the exception of new incidents. And that clearly...when you have a mandate to report new abuse or neglect, that should continue, but the rest of the conversation remains private. So that was the purpose for this amendment. There will be others also that will testify following me about how these sessions have worked, but I'm just here to tell you that in the short time that we have really been working on this, we have seen a dramatic drop in the number of youngsters that have been placed in out-of-home care. We've seen a dramatic increase in the number of these youngsters that have been able to stay at home with additional support services. So your support of this would be greatly appreciated. I also do want to add that I do support the other provisions, and I'd be happy to answer your questions, particularly with regard to the determination is not (inaudible) which is something frequently that courts do but it's not in the statute; and by codifying it, it will be present for us to use, as well. So with that I'll close and ask if there are any questions. [LB1160]

SENATOR LATHROP: All right. Thank you. Any questions for Judge Gendler? Seeing none, thanks for coming down. [LB1160]

LARRY GENDLER: Thanks. [LB1160]

SENATOR LATHROP: Always good to have you here. [LB1160]

SENATOR PEDERSEN: Good to see you, Larry. [LB1160]

KELLI HAUPTMAN: (Exhibits 9-12) Good afternoon. My name is Kelli Hauptman. I am the staff attorney for the Through the Eyes of the Child Initiative. I work with Judge Gendler. I'll be speaking only to the provision that deals with confidentiality in prehearing conferences. What I have...there are some handouts going about. The top is a letter from myself that talks more about what the initiative does. And I don't want to get into that right now; I just want to focus on what our teams have been doing. We have about 25 teams across the state, and a great majority of them have been involved in these prehearing conferences. And what we can tell anecdotally is that they greatly support what these prehearing conferences are doing and what they have achieved. They all have different practices; each of the teams has their own protocol in how they run the prehearing conferences. One main issue that all of them seem to have is the issue of confidentiality. There's has been a lot of interest in dealing with this issue. Last year we started the protocol development committee which developed a protocol that's available on our Web site, and I have that in my letter. And they also talked about the issue of confidentiality. Some courts right now have local rules that deal with confidentiality and

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prehearing conferences, however they felt like this was an issue to be best decided by the Legislature. The purpose of these prehearing conferences is not an evidence gathering conference. It's about the child. It looks at the child's educational, medical needs, what kind of visitation is best for the child, the kind of contact that the child should have with the parents and with other people, and placement of the child. There are some letters of support in there that talk about why they feel that confidentiality is necessary in these prehearing conferences. And with that I would like to submit to any questions you may have about them. [LB1160]

SENATOR LATHROP: Very good. Thank you, Ms. Hauptman. Let's see if there are any questions before you get away. Doesn't look it. Okay, thank you for coming down. [LB1160]

KELLI HAUPTMAN: Okay. Thanks. [LB1160]

KEN VAMPOLA: (Exhibit 13) Good afternoon, Mr. Chairman, senators. My name is Ken Vampola and I am the county judge for Dodge County. I've been there for about three years, and I'm repeating and I'm redundant to what Kelly Hauptman is talking about so I will keep it brief. Mine is more anecdotal. The successes of the prehearing conferences in Dodge County are outstanding. We implemented them immediately after they were offered to us at the Through the Eyes of the Child conference. We had them up and running within 30 days, and we have reduced foster care in Dodge County from a high in 19...or excuse me, in the year 2005 we had 185 children in foster care. At the end of 2006, we had 106. And I checked with Carol Stitt on Monday, and we have 72 children in foster care in Dodge County, and I attribute much of the successes in Dodge County to these prehearing conferences which not only bring the families front-end loading of services, but also brings a spirit of cooperation which was previously very adversarial conditions between parents, attorneys, guardian ad litem, Health and Human Services, and the county attorneys. I feel these are so successful in bringing the issues to bear at the very, very beginning of the case. In fact, in Dodge County I have a standing order that the prehearing conferences occur within the week that the children are removed. We appoint counsel at the beginning of the case. I worry about financial status later. The parties appear within the week for a prehearing conference to discuss the issues that caused the removal of the children. We are seeing a third of the children going back home under a safety plan, or some of the issues resolved before their first appearance before this court. I am here to advocate of behalf of the confidentiality. I'm not asking for blanket immunity. The amendment that Judge Gendler offered says if there is anything new that would come up, that it would not be confidential. But in order to have the free exchange of information and to not have a chilling effect on these prehearing conferences, it's necessary to have them be confidential. One of the immediate concerns that was raised during our development of our program was, by parents, counsel, saying if it's not confidential, we're not participating. I convinced them that it was an in-process. I rule on any issues as they come. I have ruled in my court that it is

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confidential on a case-by-case basis, but there is no authority at a higher level to support that ruling. And I would note that up to 25 teams, not all teams are in place yet. There are still teams to have their protocols put in place and go into the other counties, and the other teams across the state are constantly raising the issue of confidentiality of these proceedings. I'll end my comments, and if there are any questions. [LB1160]

SENATOR LATHROP: Very good. Thank you, Judge. [LB1160]

SENATOR PEDERSEN: Good to see you, Judge. [LB1160]

SENATOR LATHROP: Are there any questions for Judge Vampola? I do have one before you get away. Are you suggesting that you and Judge Gendler disagree? You said you want these things to be confidential, and I understood him, his amendment, to say probably not disagree with that, except if there is... [LB1160]

KEN VAMPOLA: I'm in favor of the amendment. [LB1160]

SENATOR LATHROP: You do favor the amendment? [LB1160]

KEN VAMPOLA: What...under the original language, what we're trying to avoid is if something comes up above and beyond the reason they're there, sometimes more serious allegations can arise during these proceedings. And we don't want a more serious situation to be protected; merely the issues that are brought at that time. [LB1160]

SENATOR LATHROP: So, the Gendler language, if we can use that term... [LB1160]

KEN VAMPOLA: The Gendler amendment is...I find favorable. [LB1160]

SENATOR LATHROP: All right. That's what I'm looking for. Great. Thank you. [LB1160]

HANK ROBINSON: Good afternoon. My name is Hank Robinson. I'm the director of the Juvenile Justice Institute at the University of Nebraska-Omaha, within the school of criminology and criminal justice. I'll speak to two of the procedural areas of the bill. First is on page 2, in Section 1, requiring the motion of transfer to be made 30 days after arraignment. Unfortunately, one of the things that we've seen across the state of Nebraska, particularly in some of the metropolitan areas where the caseload is quite heavy, a trial date for a juvenile in county or district court may be set as long as five or six months after the actual offense. Obviously this doesn't help us bring interventions to bear in favor of the family and the youth as quickly as would be beneficial to them. The only change that's being requested through the legislation is simply that defense counsel would make that request for the transfer within 30 days of arraignment. That would bring the whole matter to a hearing much quicker, and it can save as many as

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four, five, six months at the beginning of the case. The second part of the bill that I'd like to draw your attention to is Section 5. One of the other things that we struggle with in the state of Nebraska, not so much in outside of the metropolitan areas where county judges also sit as juvenile court judges, but in those counties where we have separate juvenile courts, sometimes it's difficult for the county court judge to ascertain the real benefit of transferring a case from adult court back to juvenile court. And as a result, in some instances we're having cases transferred from adult court back to juvenile court, and juvenile court has basically exhausted all the available resources at its disposal to try to support the rehabilitation of that juvenile. In that case, the juvenile does not benefit; the juvenile court does not benefit; and the other juveniles who are subject to juvenile jurisdiction of that district do not benefit because there is an opportunity cost of having young men and women go through the juvenile court system when there's nothing more that can be done. And with time running out I'll go ahead and rest, and if there's any questions I'll be glad to take them. [LB1160]

SENATOR LATHROP: All right. Thanks. Are there any questions? It doesn't look like it. Thanks for coming down again. [LB1160]

HANK ROBINSON: Thank you. [LB1160]

SENATOR LATHROP: Good to see you. [LB1160]

DEBORA BROWNYARD: Mr. Chairman and members of the committee, my name is Debora Brownyard, B-r-o-w-n-y-a-r-d. I'm here in my capacity as director of the Office of Dispute Resolution of the State Supreme Court. I'm here to, as a proponent of LB1160, and particularly Section 3 in regard to providing for the prehearing conference definition, family group conference definition, and the fact that these would be confidential and privileged. Some of you may recall...and I want to give my thanks and gratitude to Senator Ashford and other senators that brought the Dispute Resolution Act to the Legislature in 1991, and passed that. And the Dispute Resolution Act is what I serve under, and that's what started mediation and intraspace processes in this state in a coordinated way 15 years ago. That particular act has within it confidentiality provisions and training requirements for mediators. And what this act does, what this act will do is provide those same kind of privileges and confidentiality to these additional intraspace processes, which some people say they are mediation, but some say, well, they're a little bit different, and it's called family group conferencing and prehearing conference. So Judge Gendler and his Through the Eyes of the Child committee came up with this language, and I'm very much in support of it. As our society grows, to have more of what we call intraspace processes that are connected with a rights-based system that our courts are, we look to the Legislature for these kinds of additional definitions and protections for the public and for those who are offering their services as facilitators. So I'm just very pleased that it's here and I'm in full support of this, plus the amendment from Judge Gendler. [LB1160]

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SENATOR LATHROP: Very good. Senator Pirsch. [LB1160]

SENATOR PIRSCH: Can you give, because you have the experience, kind of examples of types of issues that were brought up during these types of preconference hearings where...the type of issue that if it were disclosable would probably cast...would probably not occur, but because of the idea of confidentiality, they went ahead and proved productive? [LB1160]

DEBORA BROWNYARD: Well, part of the question is the Dispute Resolution Act defines mediation as a confidential procedure between generally two or a few more people. And a family group conference or a prehearing conference has multiple parties; it's a group dynamic. And so we wanted to have a confidentiality and a privilege provision that would cover this larger group dynamic, and particularly where there is, in these cases, the child welfare cases where you won't just...in a mediation you may just have the mom and the dad, but in a family group conference or a prehearing facilitation, you have the mom and the day but you may also...well, you will have an HHS caseworker, you will have a county attorney, you may have a guardian ad litem, and you may have other lawyers for the parties, as well as grandmas, grandpas. And so because of the additional professional roles that those individuals have with those hats on at this facilitated meeting, we wanted to protect the dialogue there so that it would be privileged communication and would not be held against the mom or the dad or the child outside of that particular preprivileged conversation. [LB1160]

SENATOR PIRSCH: What types of things might you anticipate that would be healthy to discuss but that are currently not brought forward because of that concern about confidentiality? [LB1160]

DEBORA BROWNYARD: Well, the prehearing conference itself is not meant to prove up abuse or neglect. It's primarily an informal time where moms and dads who, for example, if they've been arrested and the children have been removed because of drug abuse in their home, the mom and the dad, when they're at the prehearing conference which is within a few days after removal of the children--there hasn't been a full-fledged hearing yet--but one of the hopes is that this could jump-start the process and that the mom or the dad might say, you know, I'm going to voluntarily check into drug treatment. And maybe they agree to that at that prehearing conference. What we are trying to avoid is then later on a county attorney or a guardian ad litem or someone saying, well, because of the fact they said at the prehearing conference that they were going to check into drug treatment, that that's evidence, if you will, of that abuse. And so it's protecting that kind of informal conversation of a mom or a dad or another party. [LB1160]

SENATOR PIRSCH: So generally it pertains to the types of acts that probably brought...

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[LB1160]

DEBORA BROWNYARD: It could. [LB1160]

SENATOR PIRSCH: ...them to the attention of the court to begin with. [LB1160]

DEBORA BROWNYARD: Yes; right. [LB1160]

SENATOR LATHROP: Very good. Any other questions? I don't see any. Thanks, Debora. [LB1160]

DEBORA BROWNYARD: Okay. Thank you. [LB1160]

KIM HAWEKOTTE: Good afternoon, senators. Kim Hawekotte; it's spelled H-a-w-e-k-o-t-t-e, Deputy Douglas County Attorney, appearing in support of LB1160 on behalf of the Nebraska County Attorneys Association. There's two parts of the bill that I would like to concentrate on, and agree with Dr. Robinson. The first is the motion to transfer cases to juvenile court. In my years of working within juvenile court, I can give you a classic example which is to me the best way to try to understand the need for this change, is if a 16-year-old youth is charged as an adult, say in Douglas County, he easily could sit at the detention center for anywhere from a year to a year and a half, and then the case could be transferred to juvenile court, at which time he would be anywhere from 17 to 17 1/2, and then you're going to try to do some rehabilitative services. Reality is from a practical standpoint, in our opinion, that if a youth is appropriate for juvenile court, rehabilitative services should begin as soon as possible to deal with the issues and be available for as long as possible, and not just for a short time period. So if a case is going to be transferred to juvenile court, it should be transferred and as fast and as expediently as possible to begin those services and work with the issues within that family, instead of having a youth sit and deteriorate in a detention center with no services being involved. So by changing the statutory requirement that any motions to transfer has to be done 30 days from the date of arraignment, it would require the system to deal with that issue up front. The second area that we are in support of with this bill is with regards to a hearing being held within juvenile court in which the juvenile court can determine whether or not a youth would be appropriate for any future services within juvenile court. A classic example that I could think of to give you would be the 17 1/2 or almost 18-year-old youth that has been involved in juvenile court for three to four to five years; the services have been exhausted; there is nothing further that could be offered. A hearing then would be held before a judge with evidence given, and again to me the key is it would be before a juvenile court judge who has worked with this family and worked with this youth to know what services would be appropriate, and then a decision could be made. It then becomes one of the factors to consider whether or not that youth's case would ever be transferred. It's not a sole factor but it would be a factor to consider. With regards to the

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pretrial conferences and the prehearing conferences, the family conferences, I did those for many, many years in my capacity in juvenile court, and I'm also a strong advocate of that portion of the bill. So I'm free for any questions that anybody might have. [LB1160]

SENATOR LATHROP: Great. Thanks, Kim. Are there any questions? I don't see any. Thank you. Are there any other proponents? Are there any opponents? [LB1160]

COLEEN NIELSEN: Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Coleen Nielsen, C-o-l-e-e-n N-i-e-l-s-e-n, and I'm here testifying on behalf of the Nebraska Criminal Defense Attorney's Association in opposition to LB1160. The portions of the bill that we are opposed to are the procedural aspects. Located on page 2 is the attempt to expedite motions to transfer to juvenile court. As I understand from the testimony that the reason for that is to expedite juvenile services, but what this does is create a burden on public defenders' offices with large caseloads. Oftentimes, the public defender will...the public defender's office is not appointed until arraignment, gives 30 days to evaluate the case, and then determine whether or not a motion to transfer should be made. If there are concerns about the juvenile being in detention, the thought comes to mind with this, as to why that the charges were filed in adult court rather than juvenile court to begin with. With regard to Section 5 of this bill, I did listen intently as to the reason for this particular section, but it is confusing to me. The section indicates that anytime after the disposition of the juvenile, a county attorney can make a motion to the court to determine whether or not the juvenile is amenable to rehab services for the juvenile. And the purpose of that is not to take that juvenile out of rehab services, but rather to have this order available in the event that the juvenile is charged again, and then a transfer motion is made. And I question whether or not this is necessary. Already the considerations that are used to determine whether or not a juvenile should be transferred include, under 7, whether or not there are facilities particularly available to the juvenile. And I would contend that what this does is sort of put a presumption on the juvenile, that any time in the future this child will not be amenable to juvenile rehab services. So we would object to Section 5 of the bill, as well, and I'd be happy to answer any questions. (Also Exhibit 7) [LB1160]

SENATOR LATHROP: Okay. Are there any questions for Coleen? Doesn't look like it. Thank you. Any other opponents? Anyone here in the neutral capacity? [LB1160]

BILL MUELLER: Senator Lathrop, members of the committee, I'm Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in a neutral capacity on LB1160. The bar does not have a position on the bill in its entirety. We do have similar questions about Section 5. Section 9, as the previous witnesses have testified to, is the section giving the county attorney this authority to file a motion with the juvenile court. And when our committee looked at this and actually when a judge who does juvenile work looked at this, the first concern we had was, are you violating due process? Are you subjecting the juvenile to double jeopardy if they've been

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in juvenile court? And the way that I read this language, any time after the disposition you can file this motion. And then later in this section it talks about the county attorney filing charges against the juvenile--and I listened to Ms. Hawekotte--if they've been in the juvenile court under her situation for two or three years, and then this motion is filed, can the state then file a criminal charge against the juvenile and start the matter all over again? We may not understand the reason behind Section 5 but we do have concerns about the way that it's currently written, and we'll be happy to work with the previous testifiers and try and resolve this. Be happy to answer questions you may have. [LB1160]

SENATOR LATHROP: Thanks, Bill. Any questions? Doesn't look like it. [LB1160]

BILL MUELLER: Thank you. [LB1160]

SENATOR LATHROP: Anyone else in a neutral capacity? Seeing none, Senator Ashford. [LB1160]

SENATOR ASHFORD: Thank you, Senator Lathrop. And we certainly have an open door policy in the Judiciary Committee, and have not heard from Mr. Mueller from the public defenders but we will be happy to look at these questions. The issue, and I'll be very brief, the issue is, in my mind, first of all, is children, young adults being held in detention for inordinate lengths of time. That is a very, very bad thing. It happens all the time. This is a way to address it. And the suggestions made by the public defenders or by the defense counsels and by Mr. Mueller seem rather anecdotal to me. If there are due process issues, we can certainly address them. The other point is the pre...the ability to get that juvenile...the vast majority of cases where that juvenile needs services very, very quickly, is covered here. They get into the juvenile system quicker, and their services are provided and families can be brought together. The testimony by the County Judge Vampola in Fremont is incredibly important. To have the...we're trying to reduce the number of families in foster care. We're trying to make our society better. We're trying to get help to our children. So if there are due process issues, we will address them as we go forward, but I think this is a very powerful idea brought to me by the juvenile judges, and I certainly appreciate their efforts. Thank you. [LB1160]

SENATOR LATHROP: Good. Thank you, Senator Ashford. Are you going to proceed right to LB1159? [LB1160]

SENATOR ASHFORD: LB1159. I can if that be your... [LB1159]

SENATOR LATHROP: If we're not...I don't see Senator Johnson here so. [LB1159]

SENATOR ASHFORD: (Exhibit 14) Okay. Good afternoon, members of the Judiciary Committee. Again, I'm Brad Ashford, representing District 20. LB1159 is the product of

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the...many people again. Kim Hawekotte, who has testified before, worked with me in our office along with the Institute for Juvenile Justice. And the reason for the bill is manifold, but it emanated to a great extent from my becoming aware of some of the issues of truancy as part of the Education Committee and the creation of what is an incredibly important thing in Omaha, which is the learning community. Truancy is a huge issue. Apparently in Omaha, at least in our city, we apparently ignored it for several generations and then all of a sudden a couple years ago we awakened to the fact that, though Senator Chambers has tried to make people aware of it, that we have a huge problem and have had a huge problem with truancy in our city. And it also applies in other parts of the state. The costs of truancy are huge. The SRI International...SRI study of 2007, which is part of the Building Bright Futures initiative, indicates that approximately \$260,000 in lower lifetime wages is the result of truancy and leaving school early. Approximately \$98,000 in decreased dollars in decreased lifetime tax revenues to the state is the result of truancy and leaving school early. The average life span is nine years less. The incarceration rate is 3.5 times higher, and so forth and so on. And this list is a laundry list that goes on for pages. The SRI International study found that approximately 1 out of 5 high school students in the 11 metropolitan Omaha school districts will drop out before graduation. Five of the eight high schools in the Omaha Public Schools district received the dropout, quote, factory label in 2007 study of truancy by Johns Hopkins University. The dropout factory label was given to high schools that had 40 or more percent of students starting their freshman year during the fall of 2006 and not going on to graduate with a graduating class in...I'm sorry, 2002, and not graduate in 2006. While cases can be explained...some cases can be explained by students transferring to one school to another or a student simply not earning adequate credits to graduate on time, the study concluded that an overwhelming number of the dropouts cannot be attributed to these causes. The five Omaha high schools had dropout...these five Omaha high schools had dropout rates of 48, 49, 60, 60, and 52 percent. Clearly, in Omaha, truancy has become an epidemic. LB1159 is a judicial response to what we've tried to do in LB641 and accompanying legislation that this Legislature passed last year. LB1159 amends the rules of evidence in custody hearings to permit certified copies of records related to attendance and performance to be admissible in cases in which child custody is at issue and cases in which a guardian ad litem has been appointed. The bill includes the creation of an exception to statutory prohibition on the disclosure of information about a child to allow certified copies of these school records for specified hearing processes. One of the biggest ironies and tragedies that I learned last year in working on LB641 was how we never can get any data about our children. Confidentiality trumps everything else. So failure, failure, failure, failure is okay as long as everything is confidential, and we need to break through some of this. LB1159 requires foster care children to attend the same school they attended prior to entering the foster care system unless the court finds that this is not in the child's best interest. LB1159...and I might say that there are points of contact between this bill and the prior bill relating to juvenile court and the prehearing conferences. LB1159 makes a child's regular school attendance an explicit issue to be

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considered when determining the child's best interest. This bill removes language that allows schools to define and use the distinction between excused and unexcused absences. Further, it removes language that allows schools to end efforts to meet with parents after the parent refuses to participate in a meeting to address the student's truancy if the request and refusal are documented. However, LB1159 grants schools the authority to refer truancy cases to their respective county attorneys for mediation if the parent refuses to participate and attempts to get the child to attend. Here's the point. The point of all this is that when we have a child who is truant for more than 20 days--which is, I believe, the state statutory limitation--we need intervention. Now it could very well be, and at times it could occur, that these children have very legitimate excuses for not being in school. But when we have a situation, for example, in Omaha Public Schools where between 9th grade, I believe--I believe my statistics are right--between 9th grade and 10th grade they lose somewhere around 2,100 students a year, there's something other than vacation going on here. And what we want to do is we want to be able to bring these parents in and get them into one of these sort of sessions, confidential sessions. And the reason we used the word "mediation"--and Deb Brownyard was absolutely right--the reason we talk about it in terms of mediation is because of the Dispute Resolution Act that was passed in 1991 that protects the parties to make sure that anything that is said in these discussions will not be used against them or will not get outside of that conference. And that was one of the most important parts about the Dispute Resolution Act. What's said in a mediation stays in a mediation. So we got to get at this problem. And certainly the parent could be fined. If the parent refuses to come to one of these sessions, they're just...it does provide a stick. So there are ways that the parent can avoid these things, but if they don't participate in the mediation, if they don't participate in trying to find out why the child is not in school, that they can be fined and they can be fined up to \$100 for a second infraction, and on a third infraction a Class III misdemeanor. I don't know how else to do this. I mean, I don't know how else to do this other than engage the parents this way or the parent involved. As introduced, LB1159 would reallocate any funds not distributed...this is out. I guess I'm not even going to get into this. We left that out. We're going to amend that because we made people mad apparently with that. But in the end, at the end of this, what I'm asking this committee to look at is in these two bills kind of in tandem is, when they're into the juvenile system, the failures in the truancy side are evidenced by the juvenile court side. So if we can intervene at the point when truancy starts to get serious at the 20th time and there's intervention, I think we can shortstop the other problems and hopefully shortstop what has been an epidemic in Omaha, and that is the excessive truancy at the 9th grade level and certainly before that as well. Thank you. [LB1159]

SENATOR LATHROP: Thank you, Senator Ashford. Are there any questions?
(Recorder malfunction.) Senator Schimek. [LB1159]

SENATOR SCHIMEK: Yes. Yes, please. Thank you, Mr. Chairman. I'm not quite sure I'm getting this. This is just for children who enter the juvenile justice system (inaudible).

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[LB1159]

SENATOR ASHFORD: No, and I was vague there, Senator. What I'm saying is there's some interconnection. If...what I'm suggesting here is that if this fails, if we have a failure of the intervention when the child is truant more than the required time, if--there is no intervention really now, very effective intervention--that the juvenile system then is the next line of defense. [LB1159]

SENATOR SCHIMEK: All right. Now does this apply to all children in Nebraska?
[LB1159]

SENATOR ASHFORD: Yes, yes. [LB1159]

SENATOR SCHIMEK: Not just public school students? [LB1159]

SENATOR ASHFORD: It's public school students, I believe, but I...no, state law applies to all students, I believe. I may have to look at that, Senator Schimek. [LB1159]

SENATOR SCHIMEK: Well, I think it does, too, but I wanted to... [LB1159]

SENATOR ASHFORD: Yeah, I think the truancy rules do, but that's something I don't have the answer for right off the top of my head. I think it does. [LB1159]

SENATOR SCHIMEK: Well, at some point I'd like to discuss this more in depth with you. But thank you very much. [LB1159]

SENATOR ASHFORD: Yes, and I'd be happy to do so. [LB1159]

SENATOR LATHROP: Thank you. First proponent? [LB1159]

DEBORA BROWNYARD: Chairman and members of the Judiciary Committee, Debora Brownyard, Office of Dispute Resolution. I'm here to support the bill, particularly Section 12 which has to do with mediation. And I have two stories that I'd like to share with the Judiciary Committee and they both have to do with 13-year-olds who were truant from school and how mediation, while it's not a silver bullet, I would state that bringing people together--family members, school personnel, teachers, moms and dads--at an early stage is what makes the difference in helping the child, a lot of the children return home. In one case I was up on the Omaha reservation, my office was there for 14 years, and large truancy problems there. Thirteen-year-old boy had been truant from school for 10, 15 days, and we called together a mediation with his mom, a tribal elder, a woman, the teacher, the principal, and the 13-year-old boy. And the 13-year-old boy came to the table and he was slumped in the chair, he was a Native American. And my comediator and I worked for about an hour trying to get information out on the table as to what the

problem was. And the 13-year-old boy just slumped down and just would not talk. So we asked to meet with him privately, and when we met with him what he told us is that his history teacher, who at that time was an African-American gentleman, had called him names, some pejorative racist names in the classroom, and he did not want to go back to school because he didn't want to deal with this particular teacher anymore. So we met privately with the African-American teacher, and what he told us is, he said he grew up in the South where racism was rampant and that what he saw--he was called those names--and what made a difference in his life is that he kept getting his education and he went on to become a teacher, and that the name that he called this 13-year-old Indian boy was to try to shock him into paying attention to stay in the classroom. The teacher said that, you know, this was a good motive; he recognized he used a wrong method. Ultimately we were able to bring the teacher and the parents and the elder and the student back together at the table, and the teacher ended up apologizing to the student. The student then opened up and started saying how it impacted him. And the elder was able to weigh in and say, you know, community members were concerned about you, Mr. Teacher; now I understand where you're coming from. And at the end of that two-hour session, we were able to come up with a plan for the boy to return to the class and the apology to happen and healing to happen in the community. And the other case was a 13-year-old girl who was on probation for truancy, and her mom and dad were divorced and that she was bounced back and forth between the two homes. My mediator and I met with the mom and the dad, and we were able to intervene on their communication conflict which was impacting their 13-year-old daughter to the place where then she was able to get back into school because the mom and dad were now able to not fight each other. [LB1159]

SENATOR LATHROP: Success speaks for itself. [LB1159]

DEBORA BROWNYARD: Success. So there is a couple of provisions in the bill that I think need tweaking about mediation and I'm willing to work with the senator on that. [LB1159]

SENATOR LATHROP: Very good, thank you. [LB1159]

DEBORA BROWNYARD: Okay, thanks. [LB1159]

SENATOR LATHROP: Are there any questions? Senator Chambers. [LB1159]

SENATOR CHAMBERS: Am I to understand that this child didn't tell anybody in the school that he had been called racial names by the teacher? [LB1159]

DEBORA BROWNYARD: Senator, that was not...he said he had not talked to anybody at school, no; he had talked to his mom. [LB1159]

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SENATOR CHAMBERS: And she didn't tell anybody at the school that this had happened? [LB1159]

DEBORA BROWNYARD: I don't recall, Senator. [LB1159]

SENATOR CHAMBERS: You remember what you told us of the case but you don't recall whether the parent said anything to the school officials? [LB1159]

DEBORA BROWNYARD: Apparently not, because this was a new piece of information that came out of the mediation session. [LB1159]

SENATOR CHAMBERS: But you don't know whether she told the school officials or not? [LB1159]

DEBORA BROWNYARD: Well, she must not have, because it was new information. [LB1159]

SENATOR CHAMBERS: New to whom? [LB1159]

DEBORA BROWNYARD: To the principal and the teacher that was at the... [LB1159]

SENATOR CHAMBERS: Was the mother there when this discussion was going on? [LB1159]

DEBORA BROWNYARD: Yes, um-hum. [LB1159]

SENATOR CHAMBERS: Did she say she never told the teacher or the principal about it? [LB1159]

DEBORA BROWNYARD: She did not. She must not have, because it was a surprise to them when the information came out. [LB1159]

SENATOR CHAMBERS: Well, there are things that parents tell teachers, and the teachers and the principals disregard it. [LB1159]

DEBORA BROWNYARD: That's true. [LB1159]

SENATOR CHAMBERS: Did you ask the parent whether she had told any of the officials about this? [LB1159]

DEBORA BROWNYARD: I don't recall if I asked them, but all I recall is this was new information that the principal and the teacher heard for the first time at the session. [LB1159]

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SENATOR CHAMBERS: Who invited you into this gathering? [LB1159]

DEBORA BROWNYARD: It was an elder youth mediation program ran by the Omaha tribe, and so I believe it was the tribal mediation officer that called me in. [LB1159]

SENATOR CHAMBERS: And your office was the one that they had a relationship with, so they knew they could get somebody from your office. [LB1159]

DEBORA BROWNYARD: Right, yeah. [LB1159]

SENATOR CHAMBERS: Do you provide this service for a fee or is it free? [LB1159]

DEBORA BROWNYARD: That one was free. [LB1159]

SENATOR CHAMBERS: And others are paid for? [LB1159]

DEBORA BROWNYARD: It's on a sliding fee scale, and according to the Dispute Resolution Act if people can't pay then we're supposed to be able to pay at no fee. [LB1159]

SENATOR CHAMBERS: Do you work for the state or you have a private agency? [LB1159]

DEBORA BROWNYARD: At that time it was a private nonprofit. Now I work for the state. [LB1159]

SENATOR CHAMBERS: And the state is doing the same thing that you were doing in your agency? [LB1159]

DEBORA BROWNYARD: No, no, sir. I'm in the Supreme Court administrative office of the courts, and so I oversee these nonprofits that do provide the services directly. And I've been here for about three years. [LB1159]

SENATOR CHAMBERS: Okay. That's all I had. Thank you. [LB1159]

SENATOR LATHROP: Thank you. Are there any other questions? I don't see any. Thank you. [LB1159]

DEBORA BROWNYARD: Thanks. [LB1159]

HANK ROBINSON: (Exhibit 16) Good afternoon. Hank Robinson, University of Nebraska at Omaha Juvenile Justice Institute. I'm pleased to offer my support for

LB1159. For the last several years I've been involved with truancy work throughout the state of Nebraska, not only in metropolitan Douglas County and Sarpy County, but Saunders County, Buffalo County, Gage County, and several counties out in the Panhandle. And although Senator Ashford is correct that many of the difficulties observed with bad school attendance can be found in Douglas County, Douglas County certainly does not have a monopoly on truancy problems. You don't have to travel too far into the state before you realize that school districts are facing similar sorts of difficulties. Rather than addressing the many parts of the bill, I'd like to draw your attention to one of the parts that has come back to me as being one of the more controversial or more debatable, and that would be in Section 9 on page 23. It's between lines 12 and 15 where the current language "School districts may use excused and unexcused absences for purposes of the policy" is being struck. For some reason, around the state of Nebraska, school districts argue or believe that they're incapable of handling school attendance and truancy problems if they are denied the ability to designate absences as being excused or unexcused. In fact, what the research shows is it doesn't matter how legitimate the reason is for a child to be missing school; what matters is whether or not they are in their seat at the time that the instruction is occurring. In fact, if we look at it from a state level from the Department of Education, there's a minimum number of hours each year that a school district must have its doors open and providing instruction to its students. And if as a result of snow or tornado or fire, whatever--all very legitimate reasons for a school to have its doors closed for a day or two--they have too many days like that, they're forced to lengthen their school day or extend their school year in order to make up for the lost class time. So it's unusual in that when we look at an individual student, that they're not bound by the same guidelines and expectations that are put on a school district as a whole. Several parts of LB1159 are excellent. They do a great job of making it easier for school districts to help parents be more accountable to their students, and at the same time it goes a long ways towards making it easier for the county attorney to be able to weigh whether or not a referral should be filed. One of the objections that the districts have with regard to striking the excused and unexcused dichotomy is that they're afraid that we're going to end up with a number of children being referred to the county attorney for health reasons, for example. If you take a look at the end of this section on page 25, line 6, the language in the statute is retained that the county attorney may file a complaint. The county attorney retains discretion on whether or not a truancy action needs to be filed against a parent. So the likelihood...county attorneys know how little pleasure judges take in cases of truancy where a child has been absent, for example, for treatment of leukemia or something. So that discretion will still be exercised. If you have any questions, I'll take them; otherwise... [LB1159]

SENATOR LATHROP: Very good. Senator Chambers. [LB1159]

SENATOR CHAMBERS: Children don't like to go to school, do they. [LB1159]

HANK ROBINSON: No, sir. They have lots of other things to do. [LB1159]

SENATOR CHAMBERS: Even when you see in comic strips when time comes for school to start, the comic strips--I mean in the paper--they are all showing the negative reaction children have to going to school. They hate it. They try to find excuses not to go. And then when the comic strips are coming out--I read them every day. They are reflective of what goes on in society and sometimes they are far more insightful than the writings of psychiatrists, psychologists, sociologists, and the other professional people. When you're approaching the time of vacation, there is elation on the part of the children. None is sad about leaving the teacher, the books, or anything else. Is that an indication that something is not being done in these schools that ought to be done? [LB1159]

HANK ROBINSON: That's one of the things that all school districts have recognized that they have to improve, and that's called student engagement, trying to make it a more welcoming, more enjoyable atmosphere, and they are working on it. But one of the ironies about what you're saying is that for many elementary-age kids, elementary school is the center of their social world. And so they may grow tired of school towards the end of the year, and as you said, they're all happy to be out, but actually it's cause for alarm if you're looking at a second- or third- or fourth-grade kid who doesn't find some benefit or pleasure in going to school, and it is an example that something needs to be done in order to reinforce their engagement with the school. [LB1159]

SENATOR CHAMBERS: Well, see, since the schools are where all the smart people are supposed to go and they do the educating, they ought to have done something by now, because I hated school when I was going. I hated every day of it. I can't think of any experience I had in school that would make me want to go back or that makes me regret that I'm not in school anymore. And I don't think I'm the only one. So there is always the alibiing, the temporizing and blaming it on the students, in the same way that if people came to the hospital and didn't get well they'd blame the patients--never the doctor, never the treatment, never anything that's supposed to go on in the hospital to treat the condition that brought the patient there. So the parents are blamed, the children are blamed, but never the teachers, never the administrators, never the principals. But they always want more consideration, they want bonuses, they want extra money for doing what they are paid to do, what their contract tells them to do. So I've been waiting to hear somebody speak at some point about problems going on in the schools. The closest that we saw that approach was when the witness talked about mediation, and then ironically it was an African-American saying something inappropriate to a Native American. But nobody ever talks about the numerous cases where black children are mistreated in the schools. At North High they had a parody that ridiculed Martin Luther King and myself, made fun of his "I Have a Dream" speech. The schools did nothing about it. After there was public objection expressed, even by some white people, a teacher who called herself teaching journalism assigned the students in

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the class to write about that, and parents objected. But since North High was a school where the vast majority of teachers are white, a large percentage of the students are black, nothing was done about either teacher. I'm working on a case now where the mother called me. Her child at North High was assaulted by a male student. He choked her, he dragged her in a classroom, was on top of her, and another student came and knocked him off. That's what prevented it from going further. The boy was suspended. He came back to school, threw her down again. The girl was not allowed to call her mother. She tried to figure what could be done, the mother. She called Channel 7. The person who was on the phone hung up on her and said take it to some other television station. I'm going to have to step in and contact the county attorney. Now when this white girl at one of those Bellevue schools or Millard or wherever it was, was raped, it made the newspapers. He was charged and something was done about it. This happens to have been a black girl. The principal did nothing, the teacher did nothing. His handprints were on her throat and nothing was done and she was not allowed to call her mother. Now that's happening at North High School now. I've made my colleagues aware of it in the Legislature, and none of them care, none of them respond. So if it was my child and I went up there and I beat the hell out of the teacher, then I'm the bad fellow. Two parents went to Central High a few months ago. Their child was searched by male administrators and a cop. When the parents expressed objection, vociferously, as they should have, the police came and they were arrested and charged. And it's allowable at Central to have male administrators search female students. Were you aware of that? [LB1159]

HANK ROBINSON: Senator, just to clarify, I'm not with a school district... [LB1159]

SENATOR CHAMBERS: No, I'm asking you, were you aware of it? [LB1159]

HANK ROBINSON: I was aware of the case where the parents went up to protest the search of their daughter and ended up being arrested. [LB1159]

SENATOR CHAMBERS: So you're aware of it. [LB1159]

HANK ROBINSON: Yes, sir. [LB1159]

SENATOR CHAMBERS: Do you think it's appropriate that male faculty members should search female students? [LB1159]

HANK ROBINSON: No, sir. [LB1159]

SENATOR CHAMBERS: Do you think that parents should be notified before somebody searches their daughter behind closed doors? [LB1159]

HANK ROBINSON: Yes, sir. And I... [LB1159]

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SENATOR CHAMBERS: I'm not holding you responsible. But you came up here mentioning certain things, and yet these very traumatic, serious, even criminal actions committed by school administrators are overlooked. Then if parents resort to self-help, we have bills that are going to say, ticket the parents, let the county attorney bring charges, but these other things are not dealt with. [LB1159]

HANK ROBINSON: But, Senator, in many ways this holds the schools far more accountable to student absenteeism than the current bill does. And with regard to the infraction, what the language says in there is that all a parent has to do is demonstrate that their child has been attending school, and the fine is waived. [LB1159]

SENATOR CHAMBERS: That would be like saying that if a cop stops me for no reason, all I got to do after I've been sitting in jail awhile is to show the judge it didn't happen, then I'm let go. A lot of things are done to harass... [LB1159]

HANK ROBINSON: Yes, sir. [LB1159]

SENATOR CHAMBERS: ...not that they think that you're going to be convicted, but they can take you off the street, they can humiliate you, and then when you're let go they said we got you anyway. [LB1159]

HANK ROBINSON: But, Senator, in the truancy infraction there would have to be evidence that the child was, in fact, not going to school. [LB1159]

SENATOR CHAMBERS: Evidence presented to whom? [LB1159]

HANK ROBINSON: To the court. No parent could be convicted of the infraction unless there was actual evidence put in the court proving beyond a reasonable doubt, typical standard in a criminal case... [LB1159]

SENATOR CHAMBERS: And will that parent have to appear in court? [LB1159]

HANK ROBINSON: Yes, sir. [LB1159]

SENATOR CHAMBERS: That's what I'm talking about. [LB1159]

HANK ROBINSON: Well, they would be the defendant. But as the defendant, they could avoid the \$50 fine simply by presenting proof. And it would be much like... [LB1159]

SENATOR CHAMBERS: It's not the \$50 fine. What I'm saying--the point is missed by you, too. I'm talking about the trauma inflicted on people when they're put through these meat-grinding procedures. And you don't have to defend them, you didn't draft the bill.

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You're just giving reasons why you support the bill. But people who come up here need to know that some of these bland statements ring hollow when a person like me hears it. And I'm putting it on you and to you because of the work you do, the position you hold. You ought to be able to deal with what I'm presenting to you without feeling that you're being indicted. I'm talking about a set of circumstances, an ongoing problem. Now if what I'm saying is true about North High and there was this assault on the girl, what response do you think there would be from white people? None, unless it happens to a white girl. Just like the shootings in the black community meant nothing, but when white people were killed at Von Maur everybody is talking about it. It's being talked about now. They're going to have a convention to talk about the response of the community to the Von Maur shooting. I saw that in the paper today or yesterday. So as a black person, it's up to me to call it to you all's attention. This is not a gingerbread and icing world for us and our children. And when white people set the standards, white people dictate what is going to be done, they determine who will be charged, who will be exonerated, which things will be ignored. You need to understand that there are two societies in this city of Lincoln and especially Omaha. And there's going to be a price to pay because some day these young black men with these guns are going to realize that they are not each other's enemy. That cop who humiliated his father in front of him, it will come to him: Well, wait a minute, maybe I shouldn't disrespect my father; I ought to disrespect a cop; that cop had a gun, my father couldn't do anything except stand there and be insulted; he couldn't protect me--and the same thing when he saw his mother insulted. When children see their parents insulted, it's having an effect. As children, they may not be able to do anything. Right now, those who can are directing their hostility in the wrong direction. And when they send it in the right direction, white people are going to be up in arms. Look at these terrible black children. Why don't their parents teach them something? Well, why don't these white people listen when somebody like me is trying to tell them there is a powder keg here and you all don't want to hear it. So I'm trying to do it through your system. And when your system fails and I have to implement something, don't come to me telling me it should have been done through the schools or the churches. I'm raising the alarm. I'm ringing the bell. I've told my colleagues here, they've heard me, and they're tired of it because they're not going to do anything either. I've gone to the FBI, ATF, U.S. Attorney, and the current Supreme Court Chief Justice of this state when he was the U.S. Attorney, and none of them respond. And I've said it publicly and not one of them can say I'm a liar. So what am I to do? What would anybody do when groups like the IRA spring up? Those things don't just happen. They happen when people have tried to use every legal, lawful means to bring about redress of grievances and they don't come. I've been laboring around these white people for 37 years and nothing changes. Well, now suppose I lose my patience and I'm no longer the one saying we respect the Legislature, we respect the courts, we respect the law, and these are the ones who create our problem. And suppose the day does arrive when I've lived most of my life, and now after having spent so many years of it trying to do it the white people's way, I decide to use a different way. Are they going to say that I'm insane? You know why they'd like to say that? So that they can say this is an aberration,

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this is not caused by the conditions under which this man lived and strolled for all of those years. It's not based on the way he saw his children mistreated in the schools, the women disrespected wherever they work, if they go to a grocery store, followed through the mall. And as I've said, when the Von Maur shooting occurred, the only one arrested was a young black man. That's what I'm talking about, and it has to be mentioned in the context of these kind of bills because they are not addressing the underlying causes of truancy. And they're not going to address it by saying to the parent: I'll give you a ticket. [LB1159]

HANK ROBINSON: But, Senator, I agree what you're saying... [LB1159]

SENATOR CHAMBERS: You don't have to respond. You don't have to respond. That's all that I have. [LB1159]

SENATOR LATHROP: Thank you. Are there any other questions? Senator Pirsch. [LB1159]

SENATOR PIRSCH: And I'm working off the green copy of the bill here. With respect to page 9 we're talking about, the 43-1311 states that "the person or court in charge of the child shall" and then skip down to subsection 4, this is the changed language, "Require that the child attend the same school prior to the foster care placement unless the person or court in charge determines that attending such school would not be in the best interests of the child." Could you just tell me again your job title then? [LB1159]

HANK ROBINSON: I run the Juvenile Justice Institute within the School of Criminology and Criminal Justice at UNO. And as with respect to that section, one of the things that...one of the major risk factors that foster children face is that in those instances when they are removed from the care or custody of their parents, it's bad enough that their family unit is unravelling. It doesn't help anything when they're suddenly thrust into a new school. So the purpose of this section of statute was simply to reinforce with the department and with the juvenile courts that all efforts should be made to keep the child in their home school. [LB1159]

SENATOR PIRSCH: Well, I'd agree with you on that. My question is, is this, with respect to where a child...say different school districts are concerned (inaudible) in some cases, correct? Is that a question that a judge alone has clear authority to mandate now currently under the law? [LB1159]

HANK ROBINSON: The judge can approve the placement plan that the department brings forward in a foster care placement or an out-of-home placement. So to the extent that it's made one of the explicit conditions to be considered during the placement, he'd certainly have tremendous influence over it. [LB1159]

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SENATOR PIRSCH: Okay. But can he, quote unquote, require that the child attend the same school? Is that...do you know if a judge has it within his power under current law to do that? [LB1159]

HANK ROBINSON: Senator, Judge Gendler is behind me and I'm sure he'd be far better qualified to answer that. [LB1159]

SENATOR PIRSCH: Very good. Excellent. Thank you very much. [LB1159]

SENATOR LATHROP: Thank you. [LB1159]

KIM HAWEKOTTE: Good afternoon again, senators. Kim Hawekotte, Deputy Douglas County Attorney appearing in support of LB1159 on behalf of the Nebraska County Attorney Association. There's a number of strengths that I just want to briefly point out in this bill and then talk some about how the system needs to come to the plate with regards to the truancy issue. One of the main strengths that this bill first deals with, the change in the statutes both as a parenting plan and also within juvenile court to stress the importance of education. I can't tell you how many thousands of hearings I've sat in juvenile court or with a judge where a judge never even asked if the youth is going to school. We have to make that a priority. If we're going to set the bar high and expect our youth to be in school, we have to have a system that responds and makes it happen. The second main strength of this bill deals with foster children. I've sat through too many cases in juvenile court where these foster children were removed from home, which is a very, very traumatic situation, and then they're put with a foster parent and then put into a totally new school system. I mean, talk about some major trauma all at once. You have nobody around you that is the same person as before. What this bill would require is that that youth has to remain in the original school system they were in when they were removed from foster care unless it's not in the best interest. If there's some type of danger or some reason why they shouldn't be at that school, then that would be a consideration. Third part of the bill does deal with the truancy issue. With regards to the truancy issue, Dr. Robinson talked about the excused/unexcused absence point. I can tell you cases that I would handle in which the youth would have 20 unexcused absences, but once we delved into it they would have 30 to 40 excused absences. In other words, the parent called them sick every day and the school didn't feel that that was...as long as they called in sick, then that was an excused absence. The whole purpose and strengths of this bill is to look at everything as a system and to require the school systems to come to the plate when they need to come to the plate, and also to require the parent to come to the plate. Currently we have, in my opinion, a truancy system that's built based upon sanctions. Kid, you're not going to school so you're not going to school, we're going to remove you from the home or we're going to put you in detention for not going to school. That isn't going to make that youth go to school. We have to develop a truancy system--and Senator Chambers is correct--that deals with incentives. How are we going to get that youth to engage into the school, that

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has the sanctions but also redemption? And this bill covers all of those so those youth can be redeemed, can earn back credits. Now the fourth part of the bill deals with the Coalition for Juvenile Justice funds with regards to county aid. I served on that coalition for a number of years. Those funds are imperative to most of the counties out there with regards to diversionary programs. It's what keeps these kids out of the justice system. The changes, the proposed amendment changes would allow those funds to remain with the coalition so that they could continue to be used for that purpose so that these diversionary programs can continue. I'm more than willing to answer any questions that anybody might have. [LB1159]

SENATOR LATHROP: Thanks, Kim. Are there any questions? Doesn't look like it. Okay. Thanks, Kim. [LB1159]

MARIA NEESMAN: (Exhibit 17) My name is Maria Neesman, N-e-e-s-m-a-n. I'm an administrator for Westside Community Center. Chairman Ashford and members of the committee, good afternoon. I would like to testify in support of LB1159. To start, truancy is, without doubt, one of the most significant challenges our schools and our community are facing. According to the National Center for Education Statistics, almost 1 in 10 students ages 12 to 18 are engaged in truancy at least one school day in the previous weeks. In some cities, absentees are as high as 30 percent. In Detroit, for example, attendance officers investigated 66,000 truancy complaints in 1997 alone. In the Gallup Poll, the public's attitude towards public education, truancy consistently ranks among one of the most often-mentioned concerns for parents. The consequences of nonattendance are significant. Truancy is a powerful indicator for delinquency. Nonattendance is also linked for low academic achievement, lower graduation rates, and increased dropout rates, and decreased employment potential. We feel LB1159 provides a framework to help us address many of these issues. For example, under LB1159 potential grant funds are reallocated to provide student mentoring, tutoring, job skill training, and other related services. LB1159 also aims to keep families and students accountable by allowing citation to truant behavior and providing a mediation option to prevent such behavior in the future. LB1159, if passed, could have a dramatic impact on my building at the Westside Career Center, an alternative setting. We see the effects of truancy firsthand. Though our daily attendance rate is typically 90 or higher, our truancy, we monitor it very carefully. We routinely--basically daily--call the parents or the guardians to inform them and try to get the students in school for the day, even if it's late. In addition, letters are regularly sent to the courts informing them of potential problems, and quarterly updates to probation officers if they are on probation. Basically, our philosophy is: If they're here in school, we can teach them and they can learn, and if they're not, they can't learn. As a result for this attitude, we've taken strong attendance procedure, our last statewide writing test, we scored 100 percent of our students passing the test. Even still, more can be done. We must make an early intervention for truancy a priority. By waiting to intervene in high school, it's often too late. And allowing faster access to the court system coupled with more aggressive means of holding

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parents accountable would be a help to prevent truancy. Thank you. [LB1159]

SENATOR LATHROP: Very good, thank you. Are there any questions? Seeing none, thank you. [LB1159]

LARRY GENDLER: Good afternoon. Larry Gendler, juvenile court in Sarpy County. I'm here on behalf of the Nebraska Coalition, which is a state advisory group to the Crime Commission; it's federally mandated. And I'm specifically wishing to address page 13 in the amendment. The Legislature in 2005 transferred the oversight of grant monies from the Office of Juvenile Services to the Crime Commission, this particular grant fund. And every county in the state is eligible for this funding if they have a three-year plan on file with the Crime Commission and they have a 40 percent match. Ninety percent of our counties participate in the program, roughly 10 percent do not. And our request is that rather than this 10 percent go back to the General Fund, it come back to the grant so that we can redistribute it. I do have some figures just to show you. We've really assisted 20,000 youngsters over the last three years with this grant. The last reporting year we have is 2006. We had 7,000 youth served as a result of the grant, 6 mentoring programs for 356 kids, 1,369 kids performed community service, 10 county-funded alcohol and drug education programs were supported, as well as 18 diversion programs serving 2,200 youth. And this money is really put to a terrific purpose, I think, and this was initially in the bill when it was proposed in 2005. This particular clause was taken out right at Final Reading. So our request is merely that you reconsider putting it back in for us to be able to redistribute it. And I'd be happy to answer any questions you might have. [LB1159]

SENATOR LATHROP: Very good. Senator Chambers. [LB1159]

SENATOR CHAMBERS: Judge, have you finished your presentation that you intended to make? [LB1159]

LARRY GENDLER: I have. [LB1159]

SENATOR CHAMBERS: It's as though I didn't say anything. I had somebody from the county attorney's office up here who didn't tell me, Senator Chambers, if you're willing to have that parent come to our office about the attack against her child at North High and nobody would do anything, we will look into it. I'm going to put it on Don Kleine's desk. I've heard a juvenile judge...you are a juvenile judge, aren't you?... [LB1159]

LARRY GENDLER: Right. [LB1159]

SENATOR CHAMBERS: ...talk about figures and other things, but a case of the kind that I've mentioned did not cause him to turn a hair. This is what I mean. The people who ought to have an interest have no interest. So when I do it my way, don't say I'm

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too harsh, that I'm unreasonable. It's the only way. The insensitivity is there and it's going to stay there. And I'm going to continue to do as I'm doing--and not just here; I'm going to put it on my colleagues on the floor of the Legislature. They have no concern. Now there have been times when people have sat in that chair and talked about problems they couldn't resolve, and I'd tell them, talk to me and I'll work with you on it. That's not the response that I get. So the only thing I can conclude is that these good people, well-intentioned people think I'm making up things and not telling the truth. So that's what I'm going to conclude about your position, rather than that you're a person who is insensitive to what I said and that it makes no difference. And that's all that I would have, Judge. [LB1159]

LARRY GENDLER: Well, can I just say this? Whenever we have youngsters come into court, I know there's more to the story, and one of my responsibilities is to try and get as much of the story as I can possibly get. And I have seen injustices for a variety of reasons. And part of my responsibility is to make sure that people get a fair hearing and I'm duty-bound to do that. [LB1159]

SENATOR CHAMBERS: But when you're here testifying, you're not here as a judge handling a juvenile issue. You're here commenting on policy issues and you are free to comment about things that transpire here. And you could at least say that was the kind of situation about which somebody should have done something. But I guess judges don't feel free to do that, so I'm not going to inquire as to why you didn't say anything. I won't put you on the hot seat, because that's not why you came and it's not what I'm going to do by addressing questions to you. But I just want people to understand that I make judgments about things and about people, and when I see a lack of concern, a lack of being disturbed, then it underscores what I've said. But that's all that I'd have. Thank you, Judge. [LB1159]

SENATOR LATHROP: (Also Exhibits 15 and 18) Any other questions? Thank you for coming down again. Appreciate it. Any other proponents? Is there anyone here in opposition to the bill? How about in a neutral capacity? Seeing none, Senator Ashford waives his close. So that will conclude our hearing on LB1159 and we will then move to...looks like Senator Johnson and LB1142. [LB1159]

ROGER KEETLE: Good afternoon, Chairman Lathrop. For the record, my name is Roger Keetle, K-e-e-t-l-e. I'm the legislative aide for Senator Joel Johnson. He sends his sincere apologies. It's been a long day. He had a long morning, and this is our day when we had five bills, so we're...he's probably...when I left a few minutes ago, he was testifying in Government, and I assume he'd rather get this bill over with than wait for him. With that, this is a really relatively simple bill. LB1142 would authorize a court, a "may" provision if good cause is shown to order postsecondary educational support for a child. The court would consider the age of the child, the academic ability of the child, the child's financial resources, and the financial condition of each parent. Many 17- and

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18-year-olds start their postsecondary education when the custodial parent is receiving child support. However, that generally ends at the age of 19, and this results in what we call educational orphans. The remaining parent, the custodial parent, doesn't have enough money after the child support is discontinued to continue to support that child to complete their education. So what we find is the noncustodial parent may now have remarried, have a second family, and more often than not does not support the child after the age of 19. Now, again, this is a permissive provision, and what we're really just talking about here is a policy decision that would give the authority to a court to decide whether the child should have the opportunity to attend college with the support they probably would have received should the parents had not divorced. One of the joys of a legislative staffer is taking phone calls on senators' bills, and I assure you we have taken a number of phone calls on this bill. And I can assure you, after taking those phone calls, as a staffer I'm more convinced than ever that maybe this isn't a bad idea. The fathers that I have heard from have blamed their attorney, the judge, their wife, and anybody else they can think of, and, to me, have forgotten about the child. And when you take some of these phone calls, for better or worse, you kind of get an impression. And I was, frankly, lukewarm about this bill when the senator decided to introduce it, but when I hear from the opposition I become more supportive every day, because I think that a parent has a responsibility to their first born, and that first born or the first...if the financial resources are there, and that's what a judge would decide, maybe they ought to continue to support that child with the type of education that they have, in fact, received. So with that little subpoint from a staffer who probably shouldn't say anything, I will add that subpoint. [LB1142]

SENATOR LATHROP: Senator Chambers. [LB1142]

SENATOR CHAMBERS: When staff members present bills, they should remember their role and not go beyond that. What you gave was testimony, and you're not the senator. And they'll probably let you close, but Senator Brashear and other chairs did not do that. Staffers present the bill and that is it. And what you gave was your opinion, which you're entitled to, but as a staff member--and I'm just one person--I think these staff people need to remember that there is a line of demarcation between a staff member and the senator. Are you a cointroducer of this bill? [LB1142]

ROGER KEETLE: Senator, you got me. I apologize. [LB1142]

SENATOR CHAMBERS: Okay. You don't have to apologize. I just thought I'd make that point. That's all I have. You don't have to respond. [LB1142]

ROGER KEETLE: Okay. At least, Senator, let me make a recommendation to him, and I...if Senator asked me about this bill now, my recommendation would be he should strongly support it. [LB1142]

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SENATOR CHAMBERS: I don't even understand what you said. I couldn't hear you. [LB1142]

ROGER KEETLE: Oh, okay. Still, Senator...it's still your decision, Senator, and my opinion is just an opinion, which I'm sure has very little weight, but I thought I would render it today, and I apologize. [LB1142]

SENATOR LATHROP: All right. Senator Schimek. [LB1142]

SENATOR SCHIMEK: On another matter, you talked several times about the first born, but this isn't about just the first born. [LB1142]

ROGER KEETLE: This is the first children, the first...yeah, it's not about the...it's the first family; the first family. [LB1142]

SENATOR SCHIMEK: Right. Okay. [LB1142]

ROGER KEETLE: Yeah. [LB1142]

SENATOR SCHIMEK: Thank you. [LB1142]

SENATOR LATHROP: Okay. And by that you're making the distinction between the kids with wife number one... [LB1142]

ROGER KEETLE: All right. That's correct. [LB1142]

SENATOR LATHROP: ...versus the kids with wife number two. [LB1142]

ROGER KEETLE: That's correct. [LB1142]

SENATOR LATHROP: Okay...or whomever. [LB1142]

ROGER KEETLE: Right. Okay, sorry. [LB1142]

SENATOR SCHIMEK: Or three or four or whatever. (Laugh) [LB1142]

SENATOR LATHROP: Can be careful I don't step on something yet. [LB1142]

ROGER KEETLE: Yeah, right. [LB1142]

SENATOR LATHROP: Okay, thank you very much. Do we have...? I see Kent. [LB1142]

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ROGER KEETLE: And we will waive closing. [LB1142]

SENATOR LATHROP: Okay. Thank you. [LB1142]

KENT SCHROEDER: (Exhibits 19 and 20) Senator Lathrop and other members of the Judiciary Committee, my name is Kent Schroeder and I'm appearing in support of LB1142. Permit me to make the following disclosure however. I am not here in my capacity as a member of the University of Nebraska Board of Regents nor am I representing the Board of Regents nor do I represent any one of the university campuses. I previously prepared a one-page explanation in support of the bill's introduction by Senator Johnson, and I believe that's being distributed to you as I speak. I have, as Senator Johnson's aide indicated, received a fair amount or a modest amount of mail, some e-mails, and some telephone calls with regard to LB1142. The support and the lack of support is about evenly split. Most of the nonsupport is anecdotal in nature. There was, however, one common thread from all of those that contacted me: Nobody had actually read the bill. Their information came solely from the Omaha World-Herald article. I brought along a chart that was distributed to you that I tried to simplify by extracting some data from the second page of the handout to demonstrate just how important some type of postsecondary education could be with regard to earned income and poverty levels. As you can see from the chart, the more education one has, those living under the poverty threshold dramatically declines. Judith Wallerstein, in her latest book, The Unexpected Legacy of Divorce, a 25-year landmark study, noted that 25 percent of Americans ages 18-44 are the children of divorce. Among many of her findings is that children from divorced families have less of a chance to go to college. Among the children in intact families, 90 percent had fathers and mothers who contributed to their colleges expenses, while under 30 percent of the children of divorce got economic help. Those opposed to LB1142 will claim they are being discriminated against. They argue that there is no law requiring intact families to support postsecondary endeavors. This is true. If one expands this argument to its logical conclusion, it is just as true that there is no law requiring intact families to support their minor children, so then when intact families dissolve their marriage there should be no court-ordered child support. That, of course, would be disastrous. There are many forms of discrimination in a marital dissolution. A noncustodial parent could move about the United States of America freely. They could move to Montana, California, Missouri, Georgia, and they don't have to seek anybody's permission. A custodial parent, however, must file an application with the court to remove the children from the jurisdiction of the state of Nebraska. Beyond the claim of discrimination, others will claim that LB1142 violates the equal protection clause. New Jersey has a similar statute, and the New Jersey Supreme Court has held that it does not violate the equal protection clause of the constitution. I have attached to one of my handouts, I believe an amendment that needs to be made to it with respect to the age when child support ends. And I would also point out that in Section 5 of the bill, the words "petitioner" and "respondent" need to be replaced by the words "plaintiff" and "defendant," as we have

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removed the language of petitioner and respondent from the marital dissolution sections of our law. And you would also have to modify paragraph 6, line 23, from pages...where it says ages 19 to 23, you would have to modify that to make it 18-23. Thank you for the opportunity to appear in support. [LB1142]

SENATOR LATHROP: Very good. Thanks, Kent. Are there any questions? Senator Chambers. [LB1142]

SENATOR CHAMBERS: I have one question. I'm sure I misheard. Did you say that intact...in an intact family the parents have no responsibility to take care of their minor children? [LB1142]

KENT SCHROEDER: No, I didn't say responsibility. I said there's no law that requires them to support their children. [LB1142]

SENATOR CHAMBERS: And if they don't support them, you think there's no law that punishes them for neglect and these other things? [LB1142]

KENT SCHROEDER: Oh, there is, technically, a law called criminal nonsupport, but... [LB1142]

SENATOR CHAMBERS: So you're not being completely accurate in your representation of what the law is with reference to the requirement that parents support their minor children. [LB1142]

KENT SCHROEDER: I don't think I would say I'm inaccurate. I think I'm speaking in generalizations. [LB1142]

SENATOR CHAMBERS: I got the impression that they wouldn't have to support their minor children under the law based on what you've said. [LB1142]

KENT SCHROEDER: I'm sorry that you got that impression. [LB1142]

SENATOR CHAMBERS: That wasn't your intent. [LB1142]

KENT SCHROEDER: No. [LB1142]

SENATOR CHAMBERS: What was your intent? [LB1142]

KENT SCHROEDER: Well, my intent was to show the difference between the argument that there is no statutory requirement other than the criminal nonsupport. So it's not a question of action; it's a question of inaction. So if intact families do not support their children, that's a product of inaction. [LB1142]

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SENATOR CHAMBERS: But you and I know that the law requires parents to support their children, don't we? [LB1142]

KENT SCHROEDER: I understand it. The purpose of it was to demonstrate that when you dissolve your marriage, then why don't we use the same criminal nonsupport statute to enforce the support of children from divorced families? Why do we need court-ordered child support? [LB1142]

SENATOR CHAMBERS: Why is this bill before...did you talk to Dr. Johnson and ask him to offer this bill? [LB1142]

KENT SCHROEDER: Yes, I did. [LB1142]

SENATOR CHAMBERS: You are a regent at the University of Nebraska? [LB1142]

KENT SCHROEDER: I am a regent, but this bill came about because I practiced law for close to 40 years. I predominantly do family law. I see many kids drop out of school for a variety of different reasons. Some of them, I think, are legitimate reasons. Some of them are not legitimate or not, at least, supportive. I see noncustodial parents remarry and have a second family, and so their economic condition is such that they can't continue to support their children with respect to a postsecondary endeavor. That is perfectly explainable, and that's why in the bill the court will be permitted to look at the financial condition of the parties before entering any order with respect to postsecondary education. [LB1142]

SENATOR CHAMBERS: If this bill dies, you won't die with it, will you? [LB1142]

KENT SCHROEDER: Oh, I hope not. [LB1142]

SENATOR CHAMBERS: Okay. Thank you. That's all that I have. [LB1142]

SENATOR ASHFORD: That would be extreme. [LB1142]

SENATOR LATHROP: Go ahead. [LB1142]

SENATOR ASHFORD: Oh, Senator Pirsch. [LB1142]

SENATOR PIRSCH: I just had a question as to the extent of it. Is it...? How old can you be, maximum of it? Is it through 23 then under the law? [LB1142]

KENT SCHROEDER: Yes. [LB1142]

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SENATOR PIRSCH: Okay. That's the only...I just wanted to confirm that. [LB1142]

KENT SCHROEDER: You know, I had...actually I've had a thought about this for a long, long time. I had a gentleman come into my office who had been...his marriage was dissolved in the state of Indiana, and wanted to know if he could terminate his support for his daughter who was attending college. And I said, gee, I didn't know that states had statutes that permitted the courts to order for postsecondary education. And he said, oh, yeah, Indiana is one of them. I said, well, where is your daughter going to school? And he said San Diego State. I said, well, how long has she been there? Why don't you want your daughter to have an education? And he said, well, she's been there ten years. (Laughter) [LB1142]

SENATOR ASHFORD: I can imagine that would be the case at San Diego State. Thanks, Ken. [LB1142]

KEN SCHROEDER: Thank you. [LB1142]

SENATOR LATHROP: That's it. Good to see you. [LB1142]

SENATOR ASHFORD: You can...go ahead. I'm...(laugh). [LB1142]

SENATOR LATHROP: Yeah, that's okay. I'll turn it over to you. [LB1142]

SENATOR ASHFORD: Proponents. [LB1142]

STACY RYAN: Good afternoon to the Judiciary Committee. My name is Stacy Ryan and I am here as a private citizen in support of this bill. In response to the introduction of this bill, I e-mailed Senator Johnson: Sir, I congratulate you on the introduction of this bill. I'm divorced and I have custody of my four children, ages 20, 18, 16, and 16. My ex-husband and I intended that our children attend and graduate from college. My ex-husband attended Regis College in Colorado and Creighton Law School, all paid for by his parents. He is by no means destitute. He lives in a \$500,000 home; owns a second home, as well. He drives a Cadillac and a Porsch. He belongs to the country club and vacationed in Europe last year. However, he patently refuses to help with tuition, books, living expenses, or anything having to do with college. He has refused my requests that he help, as well as requests from our daughter, telling us he is still mad about his attorney's fees. The man has yet to prove he pays his attorney's fees, even though he's been given numerous opportunities in court to do so. Fortunately, between me, their stepfather, and my parents, the kids will attend college. I am sure my ex will be standing at the graduation ceremonies, playing supportive dad. My children's father does not feel obligated to them for college, not legally, morally, or otherwise, and he has pointed out several times to me that under Nebraska law he is not obligated to our children past the age of 19. He also points out to the kids, their grandparents can pay.

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I've been told that you cannot legislate morality, however in this case I think your bill may do just that. Good luck, however, at enforcing this law. My ex-husband, the college deadbeat, is also a sitting district court judge in Omaha. I enthusiastically support this bill. It speaks to my situation which I believe is not unique. In my divorce, both of us have been the noncustodial parent one time or another, but the issue has nothing to do with custodial or noncustodial. The issue has to do with a parent who can help this child but won't. My ex is a college-educated, financially able, supposedly adult, who refuses to provide help to his college-age child because he is mad. We both value a college education. We are both able to put our children through school. And we both intended, when each was born, that they would have a college education provided by us. Our marriage ended but our children's lives should continue as we intended, with the benefit of both parents' finances. I would like to stress just the following points of the bill. Both parents are affected by this bill, and each would pay according to their ability to pay. As I interpret the bill, no court would order a college education be paid by parents who are financially unable to do so. Number 3, the college student may make a contribution, as well. He may be able to obtain scholarships and/or work. This clause encourages cooperation before the children turn 19. Both parents then have a vested interest in their children's success in high school and precollege employment. My ex was never diligent over the children's studies. My ex fights about our children working during his time during the summer, and has suggested that our son work only on my summer time. A parent who does not encourage studies or working while the child is a minor is directly affecting any future scholarship or work ability when the child is 19. Why should the parent care when he won't be paying for college? Last, the only disagreement I have with the language of the bill is Section 1, paragraph 3, which I believe is too vague, and I assume you know what that is. My ex-husband... [LB1142]

SENATOR ASHFORD: Stacy, I'm going to ask you to sum up though if you would. I get... [LB1142]

STACY RYAN: I am right now. I have...we both have one son who is learning disabled and he won't be supported by dad when he turns 19. My ex has a history of difficulty relating to this child, and has directly contributed to any ill feeling on the part of this child towards him. The present language of the bill puts the burden of the relationship up to the child, and should be written in such a way so as to address the actions of the parent, as well. Nebraska children should have the opportunity of a college education with the support of both parents. I urge you to pass LB1142 as law. Thank you. [LB1142]

SENATOR ASHFORD: Thank you. Any questions of Stacy? Seeing none, thank you. The next proponent. Opponent? My goodness. The bar was active. [LB1142]

BILL MUELLER: Mr. Chairman, members of the committee, my name is Bill Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association in

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opposition to LB1142. I am certainly sympathetic and the bar is certainly sympathetic of the needs to educate children. I educate my children--and will. We reviewed the bill, and I have not read the New Jersey opinions claiming that this did not violate equal protection. When we looked at it, we believed that it did, or that certainly is an issue. It treats divorced parents differently than it does those who are not divorced. As Mr. Schroeder testified, there is no obligation in Nebraska for a parent to educate a child, and many parents do not after they reach their majority. If the state decides that that is our public policy, if the Legislature decided that was our public policy, I don't think the bar would have a position on that bill. I'd be happy to answer questions you may have. [LB1142]

SENATOR ASHFORD: Yes. [LB1142]

SENATOR SCHIMEK: Thank you, Mr. Chairman. Mr. Mueller, I would submit that the law as it stands now might be construed to say that children of divorce are treated differently than children of intact marriages. I mean, I think you can make that argument too. [LB1142]

BILL MUELLER: Some are, some are not. I'm... [LB1142]

SENATOR SCHIMEK: That's true. That's a generalization. [LB1142]

BILL MUELLER: I'm always amazed how many mothers and fathers do not believe that they have a duty to provide for their children's educations after high school. [LB1142]

SENATOR SCHIMEK: But my point is that it's the children who are important in this case. [LB1142]

BILL MUELLER: Absolutely. [LB1142]

SENATOR SCHIMEK: Thank you. [LB1142]

SENATOR ASHFORD: Thanks, Bill. [LB1142]

BILL MUELLER: Thank you. [LB1142]

SENATOR ASHFORD: Anyone else? Yes, sir. [LB1142]

GERALD WORACEK: (Exhibit 21) Good afternoon. My name is Gerald Woracek. I reside in Omaha, Nebraska, actually Bellevue. The last name is spelled W-o-r-a-c-e-k, and I'm one of those people that called Mr. Schroeder on the phone and I spoke with him at length for about 20 minutes. And he is incorrect that I did not read the bill. I have a copy of it right here, so he is incorrect in at least one statement. The initial thought of

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LB1142 is, in itself, a good thought as far as it goes, as far as talking about children getting a good education. In the state of Nebraska, the average cost of an education at a secondary level averages from \$2,000 a year to \$10,550 a year. That is just for the cost of tuition. It does not count the travel time, the gas, the room and board, the food, the books, or any of the lab fees that might be entailed. He also incorrectly states that the noncustodial parent is the one that is not always able to pay because they can't pay. Sometimes they don't want to pay. He's is also incorrect in saying that it is only the noncustodial parent that gets remarried, quite often. The custodial parent gets remarried and they have more children also, so that argument is really a moot point, quite honestly. My biggest problem with the bill is the language and the way it's worded. The first and foremost is the word "children" or "child" appears 13 times throughout the article. On page 3, line 25, through page 4, line 1, it talks about a child between the ages of 19 and 23 years of age. A person that attains that age in the state of Nebraska is not considered a child. They are an adult. If they are of sound mind and body and reasonably, they are responsible for themselves. They can buy and sell real estate, they can get married, they can vote, they can legally buy cigarettes, even enlist in a branch of military service. When they reach the age of 21 they can even buy alcohol legally. None of these activities can be done by a child. We're not talking about a child; we're talking about a college-age person that wants to attend school. I'm not going to have time to read the whole thing. I hope you read what I gave you in the pamphlet. In closing, I'd like to say that my parents were of modest means. My mom was a school teacher for 40 years. My dad was a farmer for 40-some years. They helped me with my secondary education. I went to a community college in Omaha, Nebraska, Metro Tech Community College, it's now Metro College. They did not pay for my college. I took out student loans which I had to pay back after I got out of school. It took me seven years to do so, paying about \$50 a month or so, and they paid for the gas for my car. They didn't pay for my car. Parents aren't required to give their children what they want; they're required to give them what they need: food, shelter, clothing. Not everybody can afford to go out and send their kid to Creighton or to Metro or to UNO or UNL or Kearney. They just simply don't have the means, whether they're married or whether they're divorced. That's a moot point. The state cannot dictate that, just because you got divorced, you had bad fortune, now we're going to say, hey, step up to the plate and pay the whole bill just because you got divorced. That's not right. It's not legal. It's not constitutional. I hope you read the article. I wasn't able to go through everything. I appreciate your time. [LB1142]

SENATOR ASHFORD: Okay. Thanks, Gerald. Any questions of Gerald? Thank you, sir. Any other opponents? Neutral? Thank you. That concludes the hearing. Senator Pirsch. [LB1142]

SENATOR PIRSCH: Thank you, Chairman Ashford, members of the Judiciary Committee. I'm Pete Pirsch, representing Legislative District 4, sponsoring LB1106. Currently, Nebraska's Statute 28-1310 prohibits certain intimidating, threatening, or

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harassing activity via the telephone. LB1106 would simply update this statute in light of the development of new communication technologies. Under LB1106, not only would such activity be prohibited via telephone, but now also via any electronic communication device. And you may well remember, this is from last year, LB142, which was part of Senator Friend's bill. It got to the floor and at that point in time I think Senator Chambers very rightfully had questions with respect to the laundry list of...I think the attempt last year Senator Friend took was to list out specifically those type of devices, cell phone, etcetera, etcetera. And so rather than spell them out ad infinitum, we encompassed the range of these new technological devices by terming them electronic communication device. And I think that's in keeping with what Senator Chambers had suggested. And so with that... [LB1106]

SENATOR ASHFORD: That's it? I mean, you're basically just changing the terms to... [LB1106]

SENATOR PIRSCH: Yeah. What it does is it just updates the statute. The statute was written in the '70s when the primary form of communication was the telephone. And nowadays that's probably not even the major form of communication--cell phones, e-mails, etcetera--and so it just encompasses that new technology. [LB1106]

SENATOR ASHFORD: Thank you. Any proponents? You've been here all day. [LB1106]

JEREMY KINSEY: I've been here all day. [LB1106]

SENATOR ASHFORD: Thank you for spending the time. [LB1106]

JEREMY KINSEY: It's interesting. (Laughter) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Jeremy Kinsey, that's K-i-n-s-e-y, and I serve as an executive board member for the Nebraska Fraternal Order of Police. As you know, the FOP represents over 2,500 police officers, deputy sheriffs, corrections officers, and probation officers across the state of Nebraska. I'm a police officer with the La Vista Police Department where I've served for 14 years, and currently I am the sergeant in charge of criminal investigations bureau. I'm here today to speak on behalf of the Nebraska Fraternal Order of Police and the La Vista Police Department in support of LB1106. On a day-to-day basis, my law enforcement colleagues and I routinely investigate criminal cases where victims are intimidated, harassed, or threatened by suspects who utilize electronic communication devices other than telephone. In this day and age, electronic technology has been a tremendous help to law enforcement in conducting investigations, but at the same time it has made it more convenient for criminals to victimize law-abiding citizens. LB1106 will broaden the Nebraska Revised Statute 28-1310 which currently only defines the intimidation of a victim by telephone. In this day and age, technologies abound, and on a daily basis suspects utilize a large

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number of other electronic means to carry out their harassing threats. Today, criminals are using text messages, e-mails, digital paging systems, even more prevalently using social networking Web sites such as MySpace, Facebook to carry out their threats and harassment. The current form of the statute may limit police officers in the pursuit of suspects and oftentimes limits local prosecutors whose interpretation of the elements of the current statute may preclude them from filing a criminal complaint against an offender who, for instance, may have used a MySpace page to post indecent or threatening comments toward a victim. As a supervisor of an investigative unit that deals with these types of crimes on a daily basis, I personally see the difficulty in keeping up with technological advances. To keep up with the criminal of the twenty-first century, law enforcement across the state must continually add new and more advanced crime-fighting tools to their day-to-day operations, such as upgrading radio communications and installing laptop computers in their police cruisers. Keeping criminal statutes current, such as this one being proposed in this bill, is just another tool for law enforcement to fight crime and help give peace and justice back to law-abiding citizens of the state. As one of my colleagues plainly put it, anyone in law enforcement that investigates these types of crimes will benefit from the proposed new elements of the statute. I'll stand for any questions. [LB1106]

SENATOR ASHFORD: Thank you. Any questions? It's pretty clear. Thank you very much. [LB1106]

JEREMY KINSEY: Thank you, senators. Have a nice day. [LB1106]

SENATOR ASHFORD: Thanks for waiting all afternoon. Any other proponents? Opponents? (Laughter) Senator Pedersen, you've always been opposed to this kind of bill. (Laugh) Never mind. Senator Pirsch, do you wish to...waive? Do you want to waive? Okay. We're done. (Also Exhibits 22-28) [LB1106]

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Disposition of Bills:

LB1106 - Held in Committee.
LB1107 - Held in Committee.
LB1130 - Advanced to General File, as amended.
LB1142 - Held in Committee.
LB1159 - Held in Committee.
LB1160 - Held in Committee.

Chairperson

Committee Clerk