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Judiciary Committee
January 23, 2009

[LB19 LB90 LB201 LB203]

The Committee on Judiciary met at 1:30 p.m. on Friday, January 23, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB90, LB201, LB203, and LB19. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None. [LB90]

SENATOR ASHFORD: Good afternoon, everybody, and welcome to the Judiciary Committee. My name is Brad Ashford from Omaha. Let me introduce you to...do we have a full house? I know Amanda wasn't feeling well. Is she feeling better? Yeah. Let me introduce Senator Kent Rogert; Senator Steve Lathrop; Senator Brenda Council; Senator Colby Coash from Lincoln; Senator Mark Christensen from Imperial, (laugh) boy, that's a long ways away; and Senator Scott Lautenbaugh. Stacey Trout is committee counsel, and Christina Case is the committee clerk. We have four bills today and the first one is LB90. We have, for those of you who, many of you have been here before, many have not, we have a little light system that applies to everyone except for the introducer. And we'd ask you to kind of watch the lights. When it turns yellow, it means you've got to kind of wrap up, and red means we eject you from the seat. I mean not literally, of course, but...so with that, Senator Heidemann, welcome. And Sally's here. (Laugh) We don't get Sally here very often so, good afternoon. [LB90]

SENATOR HEIDEMANN: Good afternoon, Senator Ashford, and members of the Judiciary Committee. I'm Senator Lavon Heidemann, spelled H-e-i-d-e-m-a-n-n. I represent District 1 in the southeast corner of the state, and I'm here today to introduce LB90. LB90 would repeal Section 29-4203 of the Nebraska Revised Statutes. By repealing this section it would remove the requirement that a written consent and a waiver of physical personal appearance must be signed by the detainee or prisoner when an audiovisual court appearance is made in a nonevidentiary criminal proceedings. Removing this requirement would allow for audiovisual court appearances to occur at the judge's discretion. Audiovisual court appearances may only be made in nonevidentiary criminal proceedings. They would not occur at anytime when witnesses testify or when evidence is presented. The court could still require that physical appearance of an inmate, if so ordered. If allowed to be utilized more frequently, the use of audiovisual court appearances could improve public safety as prisoners would not have to be transferred between facilities. The Tecumseh State Correctional Institution is located in Johnson County, which is the legislative district that I represent. In Johnson County there are numerous court appearances made by the inmates from the Tecumseh State Correctional Institution. There's an increased security risk involved when transferring these inmates to the Johnson County Courthouse in Tecumseh. The inmates are transported in vans to and from Tecumseh State Correctional Institution with two or four unarmed guards. The inmates are easily able to communicate the

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schedule of dates and times of appearances to others outside the institution. Upon arrival at the courthouse, there's one armed deputy, but there are no metal detectors as this is cost-prohibitive for Johnson County. Therefore, there is an ample opportunity for a security breach, which places the staff at risk as well as the general public. I introduced the same concept two years ago in LB533 and it was advanced to General File on a 7-0 vote with the committee amendments. LB90 is drafted to reflect the committee amendments. When I became interested in this legislation, I found out that at least 19 other states allow for the use of audiovisual appearances in certain nontrial court proceedings, of which the court is responsible for deciding if such appearances should be made in 8 of those states. When I introduced this legislation in 2007, I requested an Attorney General's Opinion on the issue. The opinion found that if the waiver requirement is removed, there was no violation of the Sixth Amendment of our federal Constitution, or state counterpart, Article I, Section 11, of the Nebraska Constitution. This was because audiovisual court appearances are not allowed to occur for trials or for any other form of evidentiary hearing. A criminal defendant would not have the need or opportunity to confront witnesses in the course of an appropriate audiovisual court appearance. Since I introduced the legislation two years ago, a pilot project has been initiated in Johnson County. In the spring of 2007, an audiovisual court appearance capability was installed between TSCI and the District Court in Johnson County. As the fiscal note reflects, one-time setup costs at TSCI for the pilot program and dedicated line were approximately \$10,000, with the ongoing annual charges of approximately \$2,200 for the T1 fiberoptic line. The Department of Correctional Service predicted that as new technology becomes available, these costs could both be reduced at TSCI and other facilities that implement it. Since the pilot program began in Johnson County, approximately one-half of the inmates chose not to waive their right to appear in court. By letting the courts decide rather than the inmate it would make the audiovisual system more cost-effective. Although my primary objective behind this bill is for public safety purposes, the use of audiovisual court appearances has the potential to save money over the years. If prison guards that transport the prisoners are usually...the prison guards that transport the prisoners are usually paid overtime so that the prison they work in may remain fully staffed. The department estimates that \$20,000 to \$55,000 per year could be saved on approximately 150 to 225 annual court travel orders if audiovisual court appearances were used at TSCI, the Omaha Correctional Facility, the Nebraska Correctional Youth Facility, the Nebraska State Penitentiary, the D and E Center in Lincoln, and Correctional Center. Tim Nelson, the Johnson County public defender, initially approached me with the idea for this bill. He was unable to be here today because he already had trials scheduled when I informed him of the hearing date. The Johnson County Attorney and the judges in Johnson County all support this concept. I believe that Robert Houston, the director of the Nebraska Department of Correctional Services, will follow my testimony and will probably be able to answer your questions on a lot of this, probably better than I. I urge the committee to look with favor upon LB90 and advance it to the floor of the Legislature. If you have any questions, I will try to answer them. [LB90]

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SENATOR ASHFORD: Thank you, Senator Heidemann. And I do recall this bill was before us and with the change, you feel you've dealt with the issues that were raised at that time, is that correct? [LB90]

SENATOR HEIDEMANN: Yes, I do. And it seemed like it dealt with the issues that you had and others had. [LB90]

SENATOR ASHFORD: So these amendments are in the bill? [LB90]

SENATOR HEIDEMANN: Yes. [LB90]

SENATOR ASHFORD: Any questions of Senator Heidemann? [LB90]

SENATOR COUNCIL: I do have a question, Senator Ashford, and maybe I'll ask you first because... [LB90]

SENATOR ASHFORD: I may not answer, but go ahead. [LB90]

SENATOR COUNCIL: And maybe I don't have the entire bill, but what I have...what was provided to me was just that this section is outright repealed. So when we're talking about, Senator Heidemann, the types of video hearings that this statute would apply to, what types of hearings are you referring to? All court appearances? [LB90]

SENATOR HEIDEMANN: What's that? [LB90]

SENATOR COUNCIL: All court appearances? [LB90]

SENATOR HEIDEMANN: No, just nonevidentiary, preliminary court appearances. [LB90]

SENATOR COUNCIL: Thank you. [LB90]

SENATOR ASHFORD: Thanks, Senator Heidemann. [LB90]

SENATOR HEIDEMANN: I probably will waive closing. I have some committee members that want to see me back in Appropriations, if that will be all right. [LB90]

SENATOR ASHFORD: All right. [LB90]

SENATOR HEIDEMANN: Thank you very much. I appreciate it. [LB90]

SENATOR ASHFORD: Thank you. Who would like to testify on LB90? How many

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testifiers do we have? Two, and Bob, come on up. [LB90]

BOB HOUSTON: (Exhibit 1) Good afternoon members of the Judiciary Committee. My name is Bob Houston, H-o-u-s-t-o-n. I'm director of the Nebraska Department of Correctional Services. I appear before you today to offer support for LB90. LB90 proposes to repeal the existing Nebraska Revised Statute 29-4203. The existing statute provides an inmate shall sign a waiver for his or her appearance at a scheduled court appearance, and instead make the appearance via audiovisual equipment. The Tecumseh State Correctional Institution piloted such an audiovisual court option with Johnson County Court in May of 2007. Since the pilot started, seven offenders have attended proceedings remotely through this option. An additional three inmates have been scheduled for telecourt, but the cases were closed before any appearances happened. Ten individuals physically attended court in Johnson County during this time frame. That means 50 percent of the inmates at TSCI opted to attend the court proceedings via the telecourt. Our agency and the court both reap the potential benefits when we use the telecourt system. By using telecourt, the department avoids the cost associated with transporting inmates off-site, lessens the potential security and safety risks of transporting inmates to the staff and public to their safety and gains the ability to use transporting staff at other posts in the facility. The court benefit includes security concerns or risks. Eliminating the security risks associated with transporting offenders off-site to court eliminates the risk to the community. For the telecourt to be effective the equipment needs to be used. LB90 attempts to increase the opportunities for this to happen. Statute does still require that the inmate must physically appear for trials. Also, statute allows for judges or magistrates to require physical appearance of the inmate. I am pleased to have the opportunity to discuss this issue before the committee and will be willing to take any questions. [LB90]

SENATOR ASHFORD: Okay. Any questions of Mr. Houston? Yes, Senator Lathrop. [LB90]

SENATOR LATHROP: Good to have you here, Bob. I do have some questions. This is something that they've done as a pilot program, so you've actually seen it done? [LB90]

BOB HOUSTON: Yes. [LB90]

SENATOR LATHROP: See...I'm reading the ACLU has some concerns and I'm just wondering if some of those concerns relate to the technical...is the camera on all the time? Sometimes is there a break in the feed? What's the experience that you've seen with respect to this process? [LB90]

BOB HOUSTON: Well, I have had no reports that that's been a problem. I've been down to see the equipment, go to the room, and was down there for the test when we first set it up. I have had no reports of that being of any concern. [LB90]

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SENATOR LATHROP: And generally, what would take place is at your Tecumseh facility you have a room with a camera and then the inmate sits in a chair or something like that and the camera is trained on them. [LB90]

BOB HOUSTON: Yes. [LB90]

SENATOR LATHROP: So that an inmate can see the judge and the judge can see the inmate on their respective TV monitors. [LB90]

BOB HOUSTON: Yes. [LB90]

SENATOR LATHROP: Where is the lawyer in all this for the representing? Is that person in the courtroom or is that person sitting next to the attorney? [LB90]

BOB HOUSTON: Well, my understanding of it is, is that person would have the option to either be in the courtroom or we would bring them into the facility, if they so chose to be there. [LB90]

SENATOR LATHROP: The attorney. [LB90]

BOB HOUSTON: The attorney, yes. And the attorney would be right in the room with them. It's a...the room is not a large room but it's not a small room either. It has ample room. [LB90]

SENATOR LATHROP: And I don't know if these questions are going to be beyond your understanding of the court system, but are we basically talking about things like bond settings, and pleas? [LB90]

BOB HOUSTON: Yes. When evidence is not being presented and where there's not, as I understand it, there's not the cross questioning that would go with some proceedings. [LB90]

SENATOR LATHROP: Would summary judgment on a post conviction or something like that? [LB90]

BOB HOUSTON: Things of a nature where it would be the judge and the person speaking to one another. [LB90]

SENATOR LATHROP: So, it's either judge and the lawyer or judge and the inmate, but no witnesses. [LB90]

BOB HOUSTON: Well, you know, that I couldn't tell you. [LB90]

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SENATOR LATHROP: Well, if it's nonevidentiary, that would suggest to me that there are no, that there is no evidence and there's no witnesses. [LB90]

BOB HOUSTON: As I understand it, at least for now, it does not include that. It's nonevidentiary hearings, and not being an attorney to be able to define that any farther than that. [LB90]

SENATOR LATHROP: All right. Half of the people now are waiving their right and proceeding with the video conferencing? [LB90]

BOB HOUSTON: Yes. [LB90]

SENATOR LATHROP: Any problems to report at all? [LB90]

BOB HOUSTON: No, none that's been reported to me. The inmates are motivated to have this happen also. When the inmates working our industries, for example, they clock in and they clock out. And then also they have to go through searches, very intrusive searches. And then they have to be cuffed up and taken down there. So the inmates that waive really just don't want to go through the trouble that goes with going down to court. I don't think it's going to be of concern to the other inmates that didn't waive their appearance. [LB90]

SENATOR LATHROP: Do you get some people that won't waive just so that they can have a field trip up to the Douglas County or wherever they want...? [LB90]

BOB HOUSTON: I would think, you know. [LB90]

SENATOR LATHROP: Thanks. [LB90]

BOB HOUSTON: You bet. [LB90]

SENATOR ASHFORD: Bob, my concern, as it was before, though I voted to put the bill out, it was the issue of the translators and interpreters. In my, in my, you know, my travels this summer across the state and talking to interpreters about...it is an issue. I mean, and I don't know, you're going to have some savings. I don't know if that would allow you to provide for additional interpreters. [LB90]

BOB HOUSTON: We have full-time interpreters in the department. [LB90]

SENATOR ASHFORD: Are they at these facilities? [LB90]

BOB HOUSTON: Yes, we have interpreters assigned to that facility. [LB90]

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SENATOR ASHFORD: Okay. So they would be present at the facility during the hearing? [LB90]

BOB HOUSTON: They can be. [LB90]

SENATOR ASHFORD: Or would they be... [LB90]

BOB HOUSTON: And we also have contract interpreters. Most of our interpreters... [LB90]

SENATOR ASHFORD: As long as there's an interpreter in the room, I think that would be my concern. And I think you gave the same answer the last time, but generally are the interpreters in the...are available in the room? [LB90]

BOB HOUSTON: We could make them available. And, you know, whatever we need to do to get an interpreter there, we'll do that. [LB90]

SENATOR ASHFORD: Yeah, okay. And I'm not sure what percentage of cases, maybe 20 percent of the cases would involve, I'm guessing. [LB90]

BOB HOUSTON: Yes. [LB90]

SENATOR ASHFORD: But an interpreter is present at the facility at all times. [LB90]

BOB HOUSTON: Well, they could have a day off but if we know that we're having a court proceeding, we have other interpreters from other institutions we could bring down, if need be. [LB90]

SENATOR ASHFORD: Okay. Senator Christensen. [LB90]

SENATOR CHRISTENSEN: Chairman Ashford. Thank you, Bob. How big a video screen, I was just reading through some of this. Is it, you know, you sit up there testify, you see the upper half. Are you going to see an image as big as you would live or is it a small screen? What is actually used? [LB90]

BOB HOUSTON: Well, if I remember right, I'm guessing. Connie, is it 42 inches? Yes, it's good size. [LB90]

SENATOR CHRISTENSEN: So you can get pretty good image then and be able to see reactions, facial expressions, things this direction, is my question. [LB90]

BOB HOUSTON: Yes. Yes, you can. [LB90]

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SENATOR CHRISTENSEN: Okay. Thank you. [LB90]

SENATOR ASHFORD: Thank you, Bob. [LB90]

BOB HOUSTON: Okay. [LB90]

SENATOR ASHFORD: Any other proponents? [LB90]

JON EDWARDS: Good afternoon, senators. My name is Jon Edwards, J-o-n E-d-w-a-r-d-s. I'm with Nebraska Association of County Officials. This bill was presented to our board. They examined it last week and voted to take a position of support on LB90. As this program goes forward, the thought is that there may be an opportunity for some efficiencies there and I think you've heard the technicalities of the bill, and procedure as it currently is. So we go on the record in support of this bill. [LB90]

SENATOR ASHFORD: Thanks. Any questions? Thank you. Any other proponents? Opponents? Neutral? Okay. That concludes the hearing on LB90. We'll move to Senator McGill, LB201. [LB90 LB201]

SENATOR MCGILL: Chairman Ashford, members of the committee, I'm Senator Amanda McGill, that's M-c-G-i-l-l, and I represent the 26th District. With LB341, in 2007, the Legislature unanimously and in only two weeks after introduction corrected a very grave problem in our state's efforts to protect our most valuable assets, our children. Prior to the 2007 amendment to Section 43-1230, courts of foreign countries were free to place Nebraska's children where one parent lived outside of the United States in abusive and neglectful homes, and our Nebraska courts were powerless to do anything about it. With the help of the Nebraska Bar Association and the National Conference of Commissioners to Uniform State Laws, in 2007 we passed model legislation which kept the best of the international provisions of the Uniform Child Custody Jurisdiction and Enforcement Act, while at the same time providing, under certain situations, our Nebraska courts with the final authority to prevent foreign courts from subjecting these Nebraska children to documented abuse and neglect. LB201 solves a procedural problem which could not have been anticipated in 2007. The current law is subject to an interpretation which allows an abusive parent living in a foreign country to dangle the foreign court's child custody order over the head of the Nebraska parent and child indefinitely without actually attempting to enforce it in Nebraska and thereby thwarting the protections we put in place in 2007. As a result, the abusive parent can continue to torment the child from abroad by threats and uncertainty. LB201 closes this gap by providing that a Nebraska court can exercise child custody jurisdiction and protect the child jeopardized by the foreign court's order through the implementation of our 2007 law, even if the foreign parent delays or withdraws his or her efforts to enforce the foreign decree. The bill does not change the substance of the law, just the procedural

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aspects. The Nebraska Bar Association and the National Conference of Commissioners on Uniform State Laws have no position on the bill and acknowledge that it solves the problem it intends to correct. The attorneys in the case are here to answer any of your technical questions about the law. And I would urge you to advance LB201 to the floor. I also have an emergency clause amendment that we accidentally left out of the bill that I will offer to the committee. Thank you. [LB201]

SENATOR ASHFORD: Any questions of Senator McGill. Seeing none, thank you. Do we have any proponents? Do we have any opponents on LB201, by the way? How many proponents do we have? Okay. Hi. [LB201]

SUSAN LIEN: My name is Susan Lien, L-i-e-n, and I'm the parent of a child that is under this circumstance. She's under the jurisdiction of a foreign court order. And there has been a judgment in the courts in Nebraska saying that she has, in fact, been abused or neglected while in Canada. After LB341 was passed by the Nebraska Legislature and it became Section 43-1230, we attempted to affirmatively apply 43-1230 in a Nebraska court. The response from the judge was that it's a shield, not a sword. Which means that we can't go in with a court order. We have to wait for the folks in the foreign country to bring on a motion to enforce their court order. And then the shield goes up to protect her from abuse. At one point my daughter's father and his family did motion to enforce the foreign court order. We counterclaimed with 43-1230 and they withdrew their motion to have the foreign court order enforced. I think that 43-1230 was very carefully crafted by a group of people that gave it thoughtful consideration. And, you know, the presence of it alone is protective of children in that folks who have abused children in foreign countries know that it exists now in Nebraska. And that shield will go up for children when...if and when they motion to enforce their foreign court order. In my daughter's case, the folks in Canada don't want to enforce the foreign court order because they know what the evidence is and they know that when they motion to enforce it the evidence is there that the judge in Nebraska will seize jurisdiction of the case. And I think, you know, everybody involved in crafting the law approached this matter as if we were assuming that there would be a legal remedy. But we're not dealing with folks who operate within the parameters of the law or the court process. Some of the things that have been going on with my daughter are the folks from Canada, either themselves or they hire people to run constant surveillance on her. They follow her to school in the morning, follow me taking her to school in the morning. Which is typically a benign activity, unless you want to know what time the child is arriving, what door she goes in. These folks have threatened to sue Lincoln Public Schools if LPS as much as notifies me of their presence or intent to take her directly out of school and run to the foreign country with her. I've...my daughter is not safe at school. In December, as recent as December, folks from Canada appeared at her school. And Lincoln Public Schools had to call in security for the entire day. And Lincoln police officers had to walk my daughter and I to our car after school to make sure we were able to leave school safely. My daughter is not safe outside, at school, at home. She can't...she's a ten-year-old. She

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can't go outside to play with friends, or ride a bike, or walk home from school with friends because the constant threat of being abducted is there for her. And we're not able to use provisions like the Uniform Child Abduction Prevention Act. She's been harassed, followed, been... [LB201]

SENATOR ASHFORD: Susan, I'm going to ask you to sum up. [LB201]

SUSAN LIEN: Okay. [LB201]

SENATOR ASHFORD: Just some...go ahead and sum up. I'm not...just... [LB201]

SUSAN LIEN: All right. I just, you know, feel that the remedy is there to give her her freedom back. And ask you to consider LB201. [LB201]

SENATOR ASHFORD: Any questions of Susan? I see none. Thanks. [LB201]

SUSAN LIEN: Thank you. [LB201]

SENATOR ASHFORD: I'm sorry what we did last year didn't fix it. Hello again. [LB201]

RICHARD DUCOTE: Senator Ashford, hello again. Senator Ashford, members of the committee, my name is Richard Ducote, D-u-c-o-t-e. I'm the Louisiana attorney who represents Ms. Lien and her daughter and was here before you and had the distinct pleasure of working with the Legislature and the State Bar and the National Conference of Uniform State Law Commissioners to craft and to have enacted, in what I'm told is record time, this protection in LB341. Again, we could not have anticipated this gap. We could not have anticipated the uncertainty that this procedural gap left for this and other children. And would just urge and very much appreciate the very kind interest that all of you have shown Ms. Lien and her daughter over the last couple of years. If you have any questions, I'll be happy to answer them. [LB201]

SENATOR ASHFORD: Yes, Senator Council. [LB201]

SENATOR COUNCIL: Yes. Please, would you pronounce your last name again. [LB201]

RICHARD DUCOTE: Ducote. [LB201]

SENATOR COUNCIL: Ducote. I don't want to mispronounce your name. And first I want to thank you for promptly responding to my inquiry. But I still have some open questions with regard to how this will actually operate. Is it the intent of the amendment of the existing legislation to allow for an original cause of action, not to recognize a foreign child custody, or is it the intent to allow for an original action for child custody? And

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that's where I'm getting confused as to what the objective is. [LB201]

RICHARD DUCOTE: And it's a very, very good question. And it is a very confusing situation. And, I believe, you saw the decision that came from the district court in response to the filing of what, in essence, was an original cause of action to use party to 1230 (d) as a sort. I think in response to your question, the answer would be it's both. It would allow, because if Nebraska had jurisdiction already under the existing provisions of the Uniform Child Custody Jurisdiction and Enforcement Act, then we would not need any of this because we would not have to deal with the foreign decree to begin with. But because there was no other provision under which the Nebraska courts could exercise child custody jurisdiction under the act in the face of the foreign court decree, 1230 (d) was the only provision that said under those circumstances another provision of the Uniform Child Custody Jurisdiction Act could be invoked by the district court to exercise child custody jurisdiction under the same conditions. Gets complicated. What this does is say that, yes, if there is a foreign court decree out there that puts the child in significant demonstrable risk of child abuse and neglect, as defined by Nebraska law, a parent or a person who is a custodian could come to the Nebraska court. Whether or not the person with the foreign decree was coming, knocking at the door saying, enforce my decree and present the decree and say, look, this decree puts my child at risk; please take jurisdiction under 1230 (d), and the Nebraska court could do it. Or if, as in this case, they come and they try to enforce it, and then when countered with 1230 (d) and all the evidence, they withdraw it, just kind of dangle it around and run with it to school and expect the school principal to try to interpret and try to figure out whether an international decree is valid or whatever, it allows at that point for the Nebraska court to simply take jurisdiction after making the proper findings, adjudicate child custody, and implement the provisions of the Uniform Child Abduction Prevention Act as well. So it will do both. But you still have to have, in either circumstance, a foreign decree that puts the child at significant and demonstrable risk of abuse and neglect. [LB201]

SENATOR COUNCIL: Okay. So you have to have a foreign decree. [LB201]

RICHARD DUCOTE: Yes, ma'am. [LB201]

SENATOR COUNCIL: And allegations that there are conditions that place the child...and you have to establish that evidentially. [LB201]

RICHARD DUCOTE: Absolutely. [LB201]

SENATOR COUNCIL: Okay. And that's, I guess, where I'm trying to get to, Mr. Ducote. If the parent in Nebraska doesn't have custody, or in this case at one point in time did have custody,... [LB201]

RICHARD DUCOTE: Right. [LB201]

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SENATOR COUNCIL: ...and...but let's use the example where the parent in Nebraska does not have primary custody and has evidence that the child is being abused or is at risk of being abused in the foreign jurisdiction. Would the nature of the complaint be to come to the Nebraska court and plead or seek an order invalidating or not enforcing the order? And then, once that is done, then be allowed to make a motion or file a subsequent complaint themselves for child custody? I guess, I'm just procedurally... [LB201]

RICHARD DUCOTE: That's correct. [LB201]

SENATOR COUNCIL: ...because it's going to raise another concern in the district court decision there were concerns expressed not only about subject matter jurisdiction but personal jurisdiction. So how do we...how do you exercise personal jurisdiction if the intent here is to gain custody of the child? [LB201]

RICHARD DUCOTE: Well, I think there are two responses to that. First of all, I...you're correct that the cause of action that would be pled would be don't recognize the foreign decree because it puts the child at significant and demonstrable risk of abuse and neglect. And exercise child custody jurisdiction because the criteria for the court to exercise child custody jurisdiction, under 1230 (d), are the same as...in other cases the problem... [LB201]

SENATOR COUNCIL: Under the Uniform... [LB201]

RICHARD DUCOTE: ...right, under the UCCJEA. The problem is under the UCCJEA, if there is another court that is exercising child custody jurisdiction,... [LB201]

SENATOR COUNCIL: Who won't relinquish it. [LB201]

RICHARD DUCOTE: ...that won't relinquish, then the other state can't do it. So this kind of usurps that provision. But second of all, the personal jurisdiction issue has been already resolved in this situation and in similar situations. After the initial judgment in the child custody case which ruled that this was a shield and not a sword, there was also simultaneously moving its way through the courts a tort case. And in that case the same judge had ruled that there was no personal jurisdiction over this father. And the tort case that was appealed to the state Supreme Court and the Nebraska Supreme Court, in a decision that is a hornbook in and of itself on personal jurisdiction, ruled that for the purposes of the tort jurisdiction there was personal jurisdiction over the Canadian father. So I think that analysis of personal jurisdiction would apply here as well. We did not appeal the personal jurisdiction issue in the custody case. There is juris prudence in other states and similar situations that talk about personal jurisdiction for matters of status, such as paternity, such as custody, that apply a much more lenient test than you

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do for tort jurisdiction. So I think this, and I'm confident that this solves both the subject matter jurisdiction issue and the personal matter jurisdiction issue. [LB201]

SENATOR COUNCIL: Okay. And what I want my colleagues to know, I don't want us to think that by passing this piece of legislation that it fixes this problem and doesn't present the opportunity...and I believe that it still presents the opportunity for a district court judge to say, okay, you know, you've complied with the statute with regard to coming in and requesting that this court not recognize or enforce this foreign child custody order. But if you want to get to step two, which is for this court to exercise jurisdiction and provide a remedy on child custody, I think you're going to run square, headlong into the personal jurisdiction issue that the district court judge raised in this. And the reason I'm making these points right now, I don't want you to come back here two years down the road and three years down the road and say, oh, oops, you know, we still have this personal jurisdiction problem out there. [LB201]

RICHARD DUCOTE: And that's an excellent point. And I think one way to solve that could be to put language in here that says that the court has ongoing and continuing child custody jurisdiction and personal jurisdiction over a... [LB201]

SENATOR COUNCIL: Upon a finding that there is...that the provisions of (d) have been met. [LB201]

RICHARD DUCOTE: Right, right. That would be one way to solve it. And I think that's an excellent observation. [LB201]

SENATOR COUNCIL: Okay. And then my last question to you, Mr. Ducote, looking at subsection (f), is it really necessary to have that language, "The absence or dismissal, either voluntarily or involuntary, of an action for the recognition and enforcement of a foreign court's custody determination"... "shall in no way deprive the," is that necessary? [LB201]

RICHARD DUCOTE: That is the actual language in this bill that's operative. Because what we tried to do is to cover all the conceivable situations that a person holding a foreign custody determination could do. Either they do nothing, they do a little bit, they back out, or the court rules that there is a procedural defect with their attempt to enforce it and then dismisses it. So we tried to be thorough in setting up every possible contingency for what could happen with a foreign parent's attempt to enforce the decree. So I think in the same vein that you're concerned about that personal jurisdiction issue, I think it's probably a good idea to have all that covered and to add that language about the personal jurisdiction in there. [LB201]

SENATOR COUNCIL: All right. Because my thought is if the statute reads that this...a court of this state shall have initial and ongoing jurisdiction, so that provides you with the

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opportunity to come in and make the argument that the foreign custody order isn't valid and shouldn't be enforced because of the substantial evidence that the child is at risk. Now if you come in and do that and establish that, then by virtue of subsection (d) of the current statute, the court has jurisdiction regardless of what the other party does in that case. I'm just trying to avoid confusion. [LB201]

RICHARD DUCOTE: Well, but you see what you're saying there is exactly what we thought would happen in this case. But because they came and they did try to enforce it, and then we asked the court to make the findings. And then because they voluntarily dismissed their action, the court said, well, at that point I lost jurisdiction to decide it because they pulled it back. So that's why I think the language is important that it's not...that the...just as the purpose of this entire legislation, LB341 and the current legislation, is to prevent the foreign court from controlling what's done in Nebraska to protect Nebraska children, this prohibits the parent holding that foreign court judgment from controlling whether or not the Nebraska court can implement the protections of 1230 (d). So the whole purpose is to put everything, all of the control within the jurisdiction of the Nebraska court without it being manipulated from outside the border. [LB201]

SENATOR COUNCIL: Okay. That answers my questions. Thank you. [LB201]

SENATOR ASHFORD: It's a good discussion. Yes, Senator Lathrop. [LB201]

SENATOR LATHROP: That was a really good discussion. And I have questions that come from it because Judge Merritt, who decided this case, said what we did two years ago can be held up if somebody, in this case, from Canada tries to come into Nebraska and say I have a Canadian order, this child is going home with me, this let Judge Merritt say, not so fast. [LB201]

RICHARD DUCOTE: Correct. [LB201]

SENATOR LATHROP: And the amendment that we're working on today is to allow the noncustodial parent in Nebraska to file a proceeding in Nebraska in anticipation of the custodial parent wanting the child back, perhaps after a visitation. And to say, well, we have these allegations about something that was going on up in Canada. And I've done enough divorce work, and you apparently specialize in it, to have kids manipulated on a visitation where, you know, the parent that's got the visitation says, you know, just say this and just say that, you don't want to go back for a variety of reasons. The difference and maybe my point is that if you have somebody who is in Canada or somebody who is in Germany or somebody who is even further away than that who is the custodial parent and has a legitimate order, with allegations you can essentially stop that person from getting their child back. And his only choice is to come from Germany all the way to Lincoln, Nebraska to respond to those allegations... [LB201]

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RICHARD DUCOTE: Well,... [LB201]

SENATOR LATHROP: ...when the order was entered in Germany or Canada or wherever we're talking about. [LB201]

RICHARD DUCOTE: Well, I think the first thing is it's not just about allegations. There has to be proof of the substantive or significant demonstrable risk of abuse or neglect. That has to have been...has to be established. I mean, the... [LB201]

SENATOR LATHROP: By the way, I've heard the evidence in this case. I'm not questioning the evidence in this particular case. [LB201]

RICHARD DUCOTE: Right, and there's an adjudication that it all occurred as well. [LB201]

SENATOR LATHROP: Pardon me? [LB201]

RICHARD DUCOTE: There's an adjudication here in the tort case that it all occurred. [LB201]

SENATOR LATHROP: No question about it. But this is policy and not designed to handle one case. [LB201]

RICHARD DUCOTE: Sure. [LB201]

SENATOR LATHROP: And I'm concerned about the custodial parent who has an order making them the custodial parent that's from Germany, someplace that's a long ways away and expensive ticket to get back here. [LB201]

RICHARD DUCOTE: If a parent wanted to do that they would have to...I mean, any parent in any situation can simply refuse to obey a court order, and it's going to require the parent who has the court order, with or without this bill, in any situation, in any jurisdiction to come and go to this jurisdiction and try to enforce it. And that happens every day. People have to enforce custody and visitation orders over state lines. So I don't think this increases or decreases that requirement that people do that if they have a court order. That's the first thing. The second thing is that even in any...in a jurisdiction without this particular provision, under the Uniform Child Custody Jurisdiction and Enforcement Act and its predecessor, the Uniform Child Custody Jurisdiction Act, there was a provision for emergency jurisdiction that would allow a court under these circumstances where a parent said, hey look, you know, my child is subject to an order from Kansas and the child is being abused so I want the child protected here. There were provisions that the court could issue an emergency order, have an evidentiary

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hearing, and maintain jurisdiction only long enough for the matter to be sort of frozen and some assurances made that the jurisdiction, the proper jurisdiction would be dealing with the issue and sort it out. That's what Judge Merritt originally attempted to do here. He issued a protective order. And he said, as soon as Canada has a trial and has a trial based on evidence and based not on affidavits and things like that, then I'm...I don't have jurisdiction anymore. And that's one of the things that was prior to the LB341 in 2007. So the concerns...you're absolutely right about the concerns. Those concerns are there under the old law, under the new law with or without this law. And again, I think the solution, and it's in this bill, is that facts have to be adjudicated and things just aren't decided on allegations. People are always struggling with that. You know, one of the concerns about...and the Uniform Child Custody Jurisdiction Act is unique in this respect. It really equates courts of foreign countries with our own courts of the United States. And the procedures in other states are vastly different. And due process is a concept that may not be recognized to the same degree as here. But the...for the purposes of the UCCJEA, they're sister states. So those are concerns. [LB201]

SENATOR LATHROP: Okay. [LB201]

RICHARD DUCOTE: That might have been a long answer. [LB201]

SENATOR LATHROP: It was a long answer. But I...and I'm not sure, the problem still exists. [LB201]

RICHARD DUCOTE: Right. [LB201]

SENATOR LATHROP: And it's the difference between somebody saying, well, I'm going to file a proceeding, somebody from Germany where the order has been entered, he can say, well, I'm going to file my proceeding in Lincoln, Nebraska and go get my daughter back. That person has actually agreed to file a proceeding, and submitted himself to the jurisdiction of the court. The difference is this provision is going to allow the noncustodial parent to drag this guy...to give him the choice--either you can sit in Germany and let this happen to you, or you're going to have come back to Lincoln, Nebraska and answer the allegations. [LB201]

RICHARD DUCOTE: But, say, under that scenario without this law the parent simply does nothing and just says, I'm just going to...I'm not going to court, I'm just going to stay in Nebraska. So that... [LB201]

SENATOR LATHROP: What's wrong with that? Tell me, that's the part I'm missing too. Tell me what's wrong with that. Because we have an order right now that says or a law that Judge Merritt has looked at and he said, you have a shield. When he tries to come from Canada to Lincoln to get the daughter back you can hold this statute up, you can

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have a hearing in Lincoln, show that there's big problems up in Canada, and you get to keep the child here. Right? [LB201]

RICHARD DUCOTE: That's correct. [LB201]

SENATOR LATHROP: That's where we're at before this amendment. This amendment is going to allow the person in Lincoln to say, guess what, we're having a hearing in Lincoln, you better get a plane ticket and get here. I know that you gave me the daughter for the summer or whatever, whatever it typically is, and now you're going to have to come back and answer some allegations I've got against you in Lincoln, Nebraska. And all the evidence of those allegations, incidentally, are events that took place in Germany. Right? Which is the convenient forum, that's where the evidence is, that's where the witnesses are to these horrible things? [LB201]

RICHARD DUCOTE: Possibly under that scenario. [LB201]

SENATOR LATHROP: Okay. This is a uniform law and we work with the uniform law...lawyers. I forget the name of them. And I see Larry Ruth sitting back there. Is this a uniform paragraph that we're adding to this? Is the uniform guys all okay with this or... [LB201]

RICHARD DUCOTE: They are. They take no position. [LB201]

SENATOR LATHROP: Or are we departing from the uniform? [LB201]

RICHARD DUCOTE: They take no position. And as you probably recall, under LB341, the bar came in and the uniform law commissioners came in to oppose the bill. We sat down and worked out the compromise. And we've been in communication with them. Senator McGill's office has been in communication with them. And they have agreed that this bill solves the problem, but they have no position one way or another. [LB201]

SENATOR LATHROP: Okay. [LB201]

RICHARD DUCOTE: But if I could just clarify one thing. Suppose this bill didn't exist or the law didn't exist and you had a parent with a foreign decree and the child was here. If the parent who had the child here did nothing, and for the parent in the other country to get custody back they would have to come here anyway and try to enforce it. So I don't think there's anyway to solve... [LB201]

SENATOR LATHROP: Or he could do nothing,... [LB201]

RICHARD DUCOTE: Or he could do nothing and the child would be here. [LB201]

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SENATOR LATHROP: Our fictitious father in Germany could just decide, she's right, I'm not going over to the United States or to Lincoln, Nebraska to try to get my daughter back. Otherwise, I'm going to have to answer these allegations, and just let it be. [LB201]

RICHARD DUCOTE: Right. But then the problem you have is the problem we have here. The schools don't know how to deal with this. There is no custody order from Nebraska telling law enforcement, telling the schools, telling other people how to resolve the issue of who has authority to act on behalf of the child. And that's the big problem we're facing here. You know, judge...interestingly enough, when they withdrew the efforts to enforce the Canadian order, Judge Merritt issued an order, because we were trying to deal with the schools, saying for the Canadian order to be recognized it has to be enforced in Nebraska, by a Nebraska court, and I see no evidence that that's ever been done. Which is absolutely correct. But that still doesn't tell the school officials to ignore the people who come down from Canada. They're not attorneys, they're not judges. The police, the Lincoln police, when the people come to school and they're waving the Canadian order, they look for something from a Nebraska court. And we have not been able to give them that. [LB201]

SENATOR LATHROP: Unless Mom goes back to Canada where the abuses took place, where the witnesses are, and where the evidence is, and files her own proceeding in the Canadian court. [LB201]

RICHARD DUCOTE: That would be another remedy, sure. [LB201]

SENATOR LATHROP: Okay. [LB201]

RICHARD DUCOTE: But then...then... [LB201]

SENATOR LATHROP: Who wants to go to Canada? (Laughter) Right? I mean, it's a lot easier to do it... [LB201]

RICHARD DUCOTE: Well, for this purpose. Well, and again, this is a Nebraska child. This is a child by law, under 1230 (d), who could not be within the jurisdiction of the Nebraska court, unless she was on the same footing as other children who Nebraska had jurisdiction over. The only thing that deprived the Nebraska courts of jurisdiction over this child or any child who is defined by 1230 (d) is the whim of a foreign judge who could have said, I'll defer all this to Nebraska. Because most of the evidence of abuse is actually in Nebraska in this case. It's... [LB201]

SENATOR LATHROP: Yeah. But we're talking about generally a policy as opposed to the specific data. [LB201]

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RICHARD DUCOTE: Right. [LB201]

SENATOR LATHROP: One last question. How many states that have this uniform law have added a paragraph similar to (f)? [LB201]

RICHARD DUCOTE: I don't know of any others. Maybe Mr. Ruth would know. But... [LB201]

SENATOR LATHROP: Okay. You have answered my questions, thanks. [LB201]

RICHARD DUCOTE: Thank you. [LB201]

SENATOR ASHFORD: Just so I...there is a tort case...there is a tort decision where there was a finding, well, there was a finding that the court had jurisdiction and could enter, by the Supreme Court, affirm... [LB201]

RICHARD DUCOTE: Reversed. [LB201]

SENATOR ASHFORD: Or I mean reversed, said there was personal jurisdiction. [LB201]

RICHARD DUCOTE: That's correct. [LB201]

SENATOR ASHFORD: And that's the case, the Supreme Court case we read. That's the only other order, other than the '07 order. [LB201]

RICHARD DUCOTE: Well, as a result of the Supreme Court decision on personal jurisdiction, the case was remanded to the district court. The father did not appear... [LB201]

SENATOR ASHFORD: On the tort case, in the tort case... [LB201]

RICHARD DUCOTE: ...on the tort case. [LB201]

SENATOR ASHFORD: ...but not on any... [LB201]

RICHARD DUCOTE: No, he withdrew at the same time. In fact, these cases were going parallel through the court proceeding. The trial on our use of 1230 (d)... [LB201]

SENATOR ASHFORD: Right. [LB201]

RICHARD DUCOTE: ...was set for December 28 of 2008. [LB201]

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SENATOR ASHFORD: All right, okay. [LB201]

RICHARD DUCOTE: In November he withdrew that. We had the damages trial on December 24 and Judge Merritt had already determined he had committed all the sexual abuse and entered a judgment of \$255,000 against him for the abuse. [LB201]

SENATOR ASHFORD: Right. But no order regarding...based on the passage of the bill last year. [LB201]

RICHARD DUCOTE: Except that he didn't have jurisdiction to implement it when the father withdrew. [LB201]

SENATOR ASHFORD: If it's brought to you, but it was withdraw... [LB201]

RICHARD DUCOTE: Right, that's correct. [LB201]

SENATOR ASHFORD: So that's...okay, all right. [LB201]

RICHARD DUCOTE: That's where we are. [LB201]

SENATOR ASHFORD: And that's what Senator Council and Senator Lathrop were alluding to. [LB201]

RICHARD DUCOTE: Right. [LB201]

SENATOR ASHFORD: And I just wanted to make sure of that. Okay, thank you very much. [LB201]

RICHARD DUCOTE: Thank you very much. [LB201]

SENATOR ASHFORD: Wow, stimulating. Any other proponents? [LB201]

SHERI WORTMAN: Senator Ashford and members of the committee, my name is Sheri Wortman. I'm the local counsel here in Lincoln, Nebraska in this case. And I just want to make two really quick points about this case. Some of your hypotheticals brought up circumstances that this law really doesn't apply to because the minor child in this case has been a habitual resident of Nebraska. And this law requires that the child be a habitual resident of Nebraska as defined...as set forth in the section. And so this is not a case where you can go in as a noncustodial parent, take your child on visitation, not return your child, and use this law and file an affirmative action here. [LB201]

SENATOR ASHFORD: Because they're not habitual. [LB201]

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SHERI WORTMAN: They're not a habitual resident. [LB201]

SENATOR ASHFORD: Okay. [LB201]

SHERI WORTMAN: In this case my client had custody of the child. They entered an order in the foreign country taking custody away after she may...evidence was produced about the abuse allegations. And she stopped allowing the visitation. And that's how this all transpired. But we have to remember this only applies to Nebraska children. This is not anything where people can abuse this law and just come to Nebraska after, basically, abducting their own child and not returning on visitation there. There's the Hague Convention, there's a whole bunch of other things that are utilized in that circumstance. And also in this case, most of the time if you have a custody order from another nation or another state you enforce it according to the law, which is filing a judgment, and you follow the proper proceedings set forth in this state and every other state in the United States. Under this act you are to properly enforce your judgment, that's what's required. And that's why when we passed the previous amendment it was to deal with people who follow the law and presuming that they were going to seek enforcement here as they have done before. And as soon as we filed our response to that we were set for a bifurcated trial, one, to first determine...the first day was to determine whether the abuse had occurred. We were going to have to prove up. And then the second was to have the trial on the affirmative custody if the court so found that abuse existed based upon an evidentiary hearing. And so I just want to clarify that this isn't the type of law that can be abused in the hypotheticals that you were setting forth. Does anyone have any questions? [LB201]

SENATOR ASHFORD: Yes, Senator Council. [LB201]

SENATOR COUNCIL: Ms. Wortman, I'm going to ask you the same question. When you get the affirmative custody side of this proceeding, is there not a personal jurisdiction issue over the noncustodial parent? [LB201]

SHERI WORTMAN: There could be in certain cases. I think that you raise a valid concern in that I agree with attorney Ducote that I think that it probably wouldn't hurt to have some language in there stating that in a case where abuse is found on a Nebraska child here in Nebraska, personal jurisdiction exists to deal with specifically, and it can even be limited to the custody issue. [LB201]

SENATOR COUNCIL: Okay, maybe we can get a constitutional ruling on it. [LB201]

SENATOR ASHFORD: Yeah. Well, I think you...I think, Senator Council, you made a good point. [LB201]

SHERI WORTMAN: Right. [LB201]

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SENATOR ASHFORD: And he is the noncustodial... [LB201]

SHERI WORTMAN: Well, not anymore. [LB201]

SENATOR COUNCIL: Well, technically she's the noncustodial. [LB201]

SENATOR ASHFORD: Because of the change. [LB201]

SHERI WORTMAN: Technically now because of the change. [LB201]

SENATOR COUNCIL: Right, right. [LB201]

SHERI WORTMAN: And what we're really just wanting people to do is follow the legal procedure. If you don't follow the legal procedure then this amendment will allow...provide you some protections against people who aren't willing to file the legal...follow the legal procedure. [LB201]

SENATOR ASHFORD: Yeah. Let me just, when did the custody change again? Just refresh my memory, when did the British Columbia Court change custody? [LB201]

SHERI WORTMAN: I believe it was March of 2007 or '08. [LB201]

SENATOR ASHFORD: After...no. Okay, we can get that information. I'm sorry, Senator Lathrop. [LB201]

SENATOR LATHROP: If you have some language, you ought to share it with us on the personal jurisdiction. [LB201]

SHERI WORTMAN: Okay. [LB201]

SENATOR LATHROP: Because I think Senator Council made some very valid points, which is, how do we...on what basis does the court have to take jurisdiction over? Even if you answered his mail or took something from the sheriff, what's to say we have any jurisdiction over some guy in Canada or Germany or Chile? [LB201]

SHERI WORTMAN: And I think we can make it very limited so that...it doesn't mean they are here, that any other case could cause personal jurisdiction over that person. And that's done in the Uniform Code... [LB201]

SENATOR ASHFORD: Yeah, because we don't want to be stuck on this case. [LB201]

SHERI WORTMAN: No. [LB201]

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SENATOR ASHFORD: We have to be stuck on the policy... [LB201]

SHERI WORTMAN: Yes. [LB201]

SENATOR ASHFORD: ...that applies to everybody. And we understand the gravity of the matter regarding Susan Lien's family. But we have to be...make policy. So... [LB201]

SHERI WORTMAN: Well, and this...the way this is drafted, so few people would fall into this category really because you have to get past all of these evidentiary... [LB201]

SENATOR ASHFORD: I could see it happening though. [LB201]

SHERI WORTMAN: Yes. [LB201]

SENATOR ASHFORD: Thank you. [LB201]

SHERI WORTMAN: Thank you. [LB201]

SENATOR ASHFORD: Are you in a neutral position, Larry? [LB201]

LARRY RUTH: I am. I don't think that's within your hands, I'm not sure. [LB201]

SENATOR ASHFORD: Okay. [LB201]

LARRY RUTH: Senator Ashford, members of the committee, my name is Larry Ruth. I am a uniform law commissioner from Nebraska. I'm not appearing today as a registered lobbyist. Wow, you've had a real good presentation on jurisdiction here. And I applaud you for the kind of questions you've been asking. And I think, Senator Council, you've asked a very good one. If you're going to be looking at some language to have a continuing personal jurisdiction, I think, we would certainly want to look at that. That's a possible way of correcting your problem. We looked at this language that was submitted in the new subsection (f). It's very similar to what is in (d) now, uses the same test. Didn't look like it expanded on the public policy issues that were involved. And accordingly, we didn't think we would take a position on it. We are certainly following it because it is a Uniform Act. No, we haven't had it adopted by a committee to...looking at it. What we typically do is wait a couple years to see how the bills are actually being used, the circumstances that are being used, and then look at them and do revisions every several years. This is certainly one that the committee will be looking at. I say "the committee," it's the committee that drafts this language. But I would say (laugh) I ran across the word *sui generis* today and my word for the day. And it...a word for the day picks up words that Obama has been using recently and apparently it came out. And I've always loved that word, one of a kind. And I'm reminded of that here in this case.

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I'm also reminded of the fact that every piece of legislation has a story. And if you don't know the story, you don't know how the bill or how the law...why it was drafted the way it is. And this is a good example. But we are neutral on it but we're willing to participate in anyway with any drafting. Thank you. [LB201]

SENATOR ASHFORD: Thanks, Larry. I believe...Senator McGill. [LB201]

SENATOR MCGILL: I'll waive. [LB201]

SENATOR ASHFORD: Okay. Thank you all. That concludes the hearing on LB201. Senator Rogert, LB203. First of all, how many testifiers do we have on LB203? A couple. Why don't we come up to the front, just kind of move up to the front if there's some seats up there, and we'll go from there. Senator Rogert. [LB201 LB203]

SENATOR ROGERT: Good afternoon, Chairman Ashford, and the members of the Judiciary Committee that are left. My name is Kent Rogert, I represent the 16th Legislative District, and I'm here today to introduce LB203. LB203 was brought to me by the County Judge's Association to address a potential appearance of impropriety. Currently, each judge of the county court in counties having more than 100,000 inhabitants is allowed to contract with the constable to serve legal process such as summons, writ of garnishment, or other legal document. I believe that Douglas County is the only county utilizing constables at this point in Nebraska, and they are paid by those for whom the process is served. The fees for the service is set by statute. The current law authorizes litigants to designate which constable should serve process in his or her case. LB203 would eliminate the ability of litigants to select the process server and instead, have the constable designated by the court. While I do not believe that there is any actual impropriety, I believe that this legislation would address a possible appearance of impropriety that could occur if all documents by a high volume litigant such as a collection agency were designated to one constable. I offer this legislation for the policy implications. And I ask that you would address the technical questions to those who testify after me, and I would urge the Committee to advance LB203 to General File. [LB203]

SENATOR LATHROP: Thank you, Senator Rogert. Anybody have any questions? Seeing none, you want to stick around and... [LB203]

SENATOR ROGERT: Well, I've got to be here anyway, so, yeah. [LB203]

SENATOR LATHROP: I guess you're sticking around, so you can make a decision about whether or not you want to close. Judge McQuade, you are a proponent. [LB203]

THOMAS McQUADE: I am. I guess, Mr. Chairman isn't here right now. Are you the new Chairman? [LB203]

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SENATOR LATHROP: I'm the Vice Chair, yeah. [LB203]

THOMAS McQUADE: Mr. Chairman, members of the committee, my name is Tom McQuade. I'm the presiding judge of the County Court in Douglas County, and as Senator Rogert told you, Douglas County is the only county in Nebraska that I'm aware...well, there's only two counties allowed to have constables under the statute and that's Lancaster and Douglas, and Douglas is the only one that uses constables. And under the original statute as it was enacted in 1941, constables were contracted with the...actually the county judges appoint them. And then about 15 years ago, we came in and asked the Legislature to put a phrase in the statute that said that the constables were independent contractors. They were not employees of the state of Nebraska, and they would be required to sign a contract supplied by the Supreme Court Administrator's Office. And that's the way the statute stood until about ten years ago when a small number of collection companies came in and requested that they add paragraph two, which is the one that allows them to designate the constable they want to serve their papers. And when that occurred I was not too concerned about it. It didn't really...I didn't think there was going to be any problem with it at the time so there was no opposition to it and the bill was passed. Now over the last ten years, we, the judges of Douglas County, have recognized that what has occurred, we believe, gives the...it's an opportunity for impropriety. We give them a great incentive for impropriety, and I think we have the appearance of impropriety because of what is occurring. Now the reason we did this this year is because the Chief Justice had an audit of our court in our civil division because we are so shorthanded there. He will not give us any more new employees. We've begged for them for years. We are at this time light years behind in all of our filings. The lawyers are up in arms. They're mad, they should be. But the audit came back with a number of little points, say, do this, do this, do this, do this, and you'll save time. Well, one of the points was, do you realize how much time your clerks are spending doing processing all this paperwork on the designation of a constable. Now, I didn't realize it because I'm not a clerk. I don't work there. They ran me through the process and the audit that the Chief Justice gave us, it was, we could save probably an hour and a half a day of one person's time if we didn't have to do that designation part. So I...when you figure that out, that's one employee for one day. If we could have one employee come in for one day, we could clear up some of our backlog. So now it became even more critical for us to get this changed so that we could start running our courts. And I see that I'm supposed to stop, so. [LB203]

SENATOR LATHROP: Well, I think I'll ask you a question and maybe give you an opportunity to expand a little bit further. You were talking...how many constables do they have in Douglas County right now? [LB203]

THOMAS McQUADE: We have ten. [LB203]

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SENATOR LATHROP: And is the problem that only some of the ten are being routinely designated for service of process? [LB203]

THOMAS McQUADE: Yes. [LB203]

SENATOR LATHROP: And what you're looking for is the change in the law so that the assignment of service of process when somebody files a new lawsuit the defendant has to be served, the service of that process and any other papers that might be assigned to a constable is done on a random basis. [LB203]

THOMAS McQUADE: Well, it's not done on a random basis. The way we did it before, which worked very well, was every case has a number. And at the end, the last number is one through ten, one through zero. And so every constable is designated a number and if you're constable number two, you get every case that ends in two. And then when that happens, you get everything that comes after that because in some of these filings, you file a case, okay, that goes to a constable, goes to constable two. Then they come in and...because they get a judgment, then they come in and they want a debtor's exam so that paper has to be served. Now it has to be...who's going to serve that? Who's going to designate it? Well, no, it's number two. And so that way our clerks don't have to go through the file, they don't have to check anything. They just go, it's number two. Well, if it starts at number two, it stays with number two. And then they have garnishment papers, it goes to number two. We have replevins, goes to number two. So if you do it that way, it's just routine. Our clerks don't have to do anything and they save a lot of time by doing that. [LB203]

SENATOR LATHROP: And it evens out the caseload. [LB203]

THOMAS McQUADE: Well, then everybody gets 10 percent. [LB203]

SENATOR LATHROP: Okay. What's the harm in the way that it's being done now, which is, the lawyers can come in and say I want constable A to do it? [LB203]

THOMAS McQUADE: Well, this is...no, okay. I went...a few years ago I was having a problem with one of the lawyers. And I went to him, I said, why do you designate two constables to do all of your filings when you've got ten of them there? He said, well, I went and did a study and in my study I found out that these two constables are getting...they serve better than these other people. I said, okay. And so I took up on a trip of my own study, and it was just bull. It was absolutely not provable at all and he was not correct. And I called him on it and unfortunately, he disappeared in the middle of the night and has never been heard from since, so I don't know what happened. But the problem is there and it's just the appearance of the problem. Let me just give you an example. The other day I was going through some files. I was doing my signing and I had a lawyer who said they wanted to serve an individual by residential service. What

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that means is, the constable goes out, leaves the service on the door, and then the lawyer sends a letter, just a regular first-class letter, saying you've been sued and here it is. So the constable leaves it there, the person sends it by first-class mail. Okay. Now, in the files I'm looking through I see that there's a constable return it says, unable to serve, and then it puts down "moved." The people are gone. Now this really creates a problem for the lawyer because I'm denying that. I'm not going to have him have residential service left at a place where I know the people moved. But that's what he wanted me to do. So I denied it. Now, he's going to have to go and find out where these people moved to. It's going to take him hours worth of time. If the constable had just put down, unable to locate, I'd have signed that paper because I wouldn't have known any different. Now, if I'm paying somebody \$5,000 a month or \$10,000 a month to serve my papers, and it's my business, I'm going to tell you, you don't have to put down "moved." And that's not required. That's not legal. This constable went out of his way to find out if they moved. I commend him for it, because a lot of them don't. And then they give me a return from a post office that says, the address...they haven't given any forwarding address, so we...then, it's okay. Well, how many people move from their apartments and their houses and never give a forwarding address. They never even think about it. Well, some of them do it on purpose. I don't care, but if they're not there, this service is no good and we're doing this to people all over the place. It's just not fair. I mean, this was set up to be a fair system and we're screwing them. And I don't like it and I don't like the way it looks. And I think, at the very least, we have the appearance of impropriety here at the very least. [LB203]

SENATOR LATHROP: Okay. I think you've answered my question and I appreciate the explanation, Judge. Senator Council has a question for you. [LB203]

SENATOR COUNCIL: Yes, Judge McQuade, you kind of touched on it. You said you conducted a survey with regard to this particular constable. What performance evaluation system is in place with regard to the constables? I mean, how do the judges know which constables are doing, you know, the job properly, which constables are not doing the job, is there any evaluation system in place? [LB203]

THOMAS McQUADE: No. The only way we know is when people complain. And I'll tell you what, I'm to the point right now where if somebody comes in my courtroom and says, Judge, I didn't get served, I say, I believe you. I tell them that straight out. I believe you. I cross it out. We start from scratch because there's just a lot of them with me that have lost their credibility. And I'm not the only one. This is not my personal vendetta here. This is from all the judges in Douglas County who feel like there is a real problem here and if we don't stop it, or at least try to stop it, then we're responsible for that. If we're going to be responsible for the courts and if we have the responsibility to find problems, we should have the ability to solve them. Right now I can't solve them because they work for somebody else. They're not answering to me. They're answering to people that pay them. And when I've got a million dollar pie divided up and one

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person is getting 25 percent of it, one person getting 2 percent of it, you can't tell me that doesn't at least say, wait a minute, what's wrong here? And somebody is going to say, what's wrong? [LB203]

SENATOR COUNCIL: Just one follow-up question because it kind of piggybacks on a question that Senator Lathrop asked about what the alternative is, is a random...as I read the proposed legislation, it strikes the ability for the attorneys to select a constable. [LB203]

THOMAS McQUADE: That is correct. [LB203]

SENATOR COUNCIL: But it also says that each judge then will contract with the constable so... [LB203]

THOMAS McQUADE: That was the original statute. [LB203]

SENATOR COUNCIL: Right. So what we would be getting back to is all cases that are assigned to you, any service associated with that would be undertaken by the constable that is contracted to you? [LB203]

THOMAS McQUADE: No. [LB203]

SENATOR COUNCIL: Well, that's the way the language reads. [LB203]

THOMAS McQUADE: No. You mean the language in the statute? [LB203]

SENATOR COUNCIL: Yeah, each judge's... [LB203]

THOMAS McQUADE: No, it just says that we appoint them and they're independent contractors. It doesn't say that they have to deal with our services. [LB203]

SENATOR COUNCIL: Each judge of the county may contract with one constable for purposes of serving or otherwise executing according to law and returning writs or other legal process. So, I mean, arguably, that could be read to mean that that...you contract with the constable that does your service, so I think it... [LB203]

THOMAS McQUADE: We appoint them to do service and they do service and they do it for the court, basically. And what I would like to do...I'm probably going to do some of this anyway is, we're just going to have to in answer to, actually a comment to your question, is we need some standards. We need to initiate them and we need to have some things done. And one of the things that's going to be, I'm going to require them when they put down on that return they were unable to locate, I'm going to require them, I'm going to order them to go out and find out if they moved or if they didn't. If it's a good

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address, put a good address. If it's not a good address, put it's not a good address. That way I know when the lawyers ask me to give this residential service that I say, okay, or no. At least I'm not doing it out of ignorance. And that's just a start. We've just got a lot of these things that need to be done. [LB203]

SENATOR LATHROP: Senator Christensen has a question for you too, Judge. [LB203]

SENATOR CHRISTENSEN: Thank you, Senator Lathrop. I guess actually, Senator Council, that's a majority of it because it seems to me like now you're going to be saying who it is. And so, basically, you can pick who you like instead of having the attorneys pick who they like. Isn't that the way this language is reading? [LB203]

THOMAS McQUADE: I guess you could say that except that all we want to do is do it, first of all, the easiest way. And the easiest way is to give everybody an equal amount, that's all. And the easiest way to do that is by numbers. [LB203]

SENATOR CHRISTENSEN: Okay, but if you're giving...if there's some not doing their job out there, then you can't avoid them bad ones and you're going to have to deal with them equally amount. [LB203]

THOMAS McQUADE: All that the lawyers have to do is come in and tell me, this person is not getting my service done correctly. I will then find out if he or she is being accurate and if they are, I can take steps to rectify that. [LB203]

SENATOR CHRISTENSEN: Thank you. [LB203]

SENATOR LATHROP: Just as a little bit of background for people that are not lawyers. What's important is that you serve something, somebody says they served it, and the guy doesn't file an answer, a default judgment is taken, and the real possibility is that the person never did know they were being sued and in fact a judgment gets taken against them. That's the risk of one of the things you're describing. [LB203]

THOMAS McQUADE: I'm certain that's happened. [LB203]

SENATOR LATHROP: I don't see any other questions. Senator Lautenbaugh has none, so I think that's it. Thanks, Judge. [LB203]

THOMAS McQUADE: Thank you. [LB203]

SENATOR LATHROP: Are there any other proponents? Any opponents to LB203? [LB203]

EDWARD HOFFMAN: Mr. Chairman, and members of the committee, my name is Ed

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Hoffman, H-o-f-f-m-a-n. Thank you for the opportunity to speak before this committee. I'm appearing on behalf of the Nebraska Collectors Association in opposition to LB203. I'll try to keep my comments brief. We've had a discussion of civil procedure issues and I suppose I'd be remiss if I didn't bring up some constitutional law issues with regard to the language. I feel, as written, that there may be some issues, some implications if nothing less, with this language with regard to the due process clause as well as the equal protection clause. My concern is, is that under the due process clause, the constable has what could arguably be, although I'm not making a statement one way or the other at this point, property right with regard to their interest to serve papers in a particular county. It's my understanding from speaking to a duly authorized constable today, that the procedure that they need to go through is to obtain authorization from a county court judge that there is a sort of vetting process that's gone through. And an analysis of their character and background is done. At that point they're authorized or not to serve process within that county and receive papers signed by a county court judge in that particular county. What this bill would do, is my understanding that any authorized, currently authorized constables would have that right removed, or potentially could have that right removed, because presently attorneys have the right to pick a constable of their choosing. The question is, if an attorney wants a particular constable and that right then is taken away from them, what rights have been taken away from that particular constable? Additionally, I'm wondering if an equal protection issue is raised in that those folks or those businesses that would like to engage in this sort of activity, whether they have the authorization and ability to do so presently or not, would have a claim that they aren't being treated equally under the law. I understand that it's just...not just, but that it's a rational base of standard the review that would be done on an equal protection clause. Nonetheless, I wonder if that's an issue. But finally, those are just some brief comments. But finally, I'm wondering, currently we have a system, and I understand at one time that the regulation was something that was an anathema that was no longer, at least that's an issue that might not be as readily apparent. The question is, though, is the regulation necessary? At present, attorneys, it would seem to me, would be in the best position to make a decision as to which constable is providing the best service. I understand the argument that potentially it could be seen as a conflict, but I'm wondering, as an attorney and as a business, it would seem that they would be in a position again to pick the best constable, one that provides the best service. I know in our practice that's certainly what we strive to do. Those are all the comments that I have. If there are any questions, I'd be happy to try to answer them. [LB203]

SENATOR LATHROP: Any questions? Your opposition is constitutionally based? [LB203]

EDWARD HOFFMAN: I think in part. [LB203]

SENATOR LATHROP: In part. And it just seems to me, I think it's...I'm not a

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constitutional lawyer full-time, but it seems to me that we could designate the sheriff as the only person that could serve, and the constables are out on the street and they don't have any claim. We can decide who gets to serve. [LB203]

EDWARD HOFFMAN: I'm wondering if that's accurate, given that they currently have that right. I mean, no disrespect, sir, but I'm wondering, because... [LB203]

SENATOR LATHROP: No. I don't feel like you're quibbling with me but at the same time, it just seems to me that we could say that the person has to be a notary, or we could say the person can only be a duly sworn law enforcement officer to serve papers, and that's what the rule is, and if these guys don't fit the definition, they're out. And I don't know whether they'd have a constitutional challenge to whatever policy we set. [LB203]

EDWARD HOFFMAN: Well, the question is, is do they currently have....and I'm not a constitutional law attorney. That's not the area I practice. But the question seems to me is, do they currently have a property right, arguably do they have a property right with that authorization in order to engage in that business? Because currently, I can't engage in that business, and I don't know that anybody on the committee could either. It may be, but the point of the matter is, is that there are folks out there that do and businesses out there that do. What this would potentially do, this law, is take that right away. And so, and that's a due process now, it's equal protection. I'm wondering if this gives all equal access to this business. I don't know. I mean, it was hard for me to understand exactly how it would be put into place. [LB203]

SENATOR LATHROP: Okay. Well, we appreciate your remarks. Any questions? Seeing none, thank you. Good to see you again, Mr. Hoffman. [LB203]

EDWARD HOFFMAN: Thank you, Senator. [LB203]

WILLIAM GREINER: Hi. My name is Bill Greiner, G-r-e-i-n-e-r, and I'm a live constable from Lancaster County. I'm here to support the fact that I think that the attorneys should be allowed to request who they want to do this service. I've been doing it for 50-some years, and I'm a firm believer that if you take care of business, the business is going to take care of itself. We represent all the collection agencies, not all but the majority of them out of Lincoln and Omaha. We don't return a paper "not found" unless we're positive that they're not there. We check with landlords and we have various means by which we follow a procedure to verify whether or not the people are living there. We try to chase them down to the best of our ability. We do a postal check. We have the pleasure here in Lincoln of having...I've trained all the constables here in Lincoln. I have 31 years on Lancaster County Sheriff's Office and I've trained all the constables here so they know how to take care of business. And we treat people out there with respect when we're serving them, 95 percent of them thank us when we're done, which is

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unusual. We probably have a 95 percent service rate, so we don't just stop. We keep going. We're 24/7. We're out at 11:00 at night serving somebody that goes to work at a place, and as far as getting somebody served and they don't know about it, they can do this by publication as a last resort, and if they don't read the paper, they don't know they've got a judgment either. So that sort of, you know, falls on what the judge said that you know...but I've been doing this for so long. I like doing it. I don't like giving people bad news, but as a job I take it very seriously, and I think that the attorneys should be allowed to request somebody to do the job. [LB203]

SENATOR LATHROP: Very good. Senator Coash has a question for you. [LB203]

SENATOR COASH: Thanks, Senator Lathrop. Your contract is with the judge, correct? [LB203]

WILLIAM GREINER: Yes, Lancaster County Court judge. [LB203]

SENATOR COASH: With the judge, so in that contract, is there language that specifies your conduct as a constable and outcomes expected per your job? [LB203]

WILLIAM GREINER: Well, I'll tell you, I've never been called before a judge yet for not doing what I'm supposed to do. But I think that you're probably right in some respect that we are bound by an oath that goes with the bond, and I think we have to conduct ourselves civilly and above and beyond reproach. But as far as speaking to whether or not that's exactly in there, I can't say. But there's no training involved per se, a school to go to, etcetera, for service of process. [LB203]

SENATOR COASH: If a judge feels...that the judge that you're contracted with feels that you're not fulfilling the requirements of that contract, they can call their constable out on that, is that correct? [LB203]

WILLIAM GREINER: Yes, they can. [LB203]

SENATOR COASH: Thank you. [LB203]

SENATOR LATHROP: Seeing no other questions I think that's it. Thank you for coming down. [LB203]

WILLIAM GREINER: Thank you. [LB203]

SENATOR LATHROP: Are there any other persons here in opposition? Anyone here in a neutral capacity? In that case, Senator Rogert, would you...Senator Rogert waives closing. That will conclude our hearing on LB203. Next up is LB19, which appears to be our own Senator Christensen. Are you ready, Senator? You may proceed. [LB19]

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SENATOR CHRISTENSEN: (Exhibit 2) Okay. Thank you, Mr. Chairman and members of the Judiciary Committee, I am Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District. I'm here to introduce LB19. LB19 would create an incentive to encourage couples planning to get married to complete an eight hours of marriage education. The bill would increase the marriage license to \$75 and implement a ten-day waiting period. The state would recognize the special interest that they have in successful and strong marriage by rewarding couples that complete a marriage education course. The incentive would be accomplished by waiving the ten-day waiting period and requiring the marriage license fee of only \$15. Currently, in Nebraska marriage license is \$15 with no waiting period. The bill would require a proof of completion, an official state certificate of completion created by Health and Human Services to be signed by the provider of the marriage education and the couple. The certificate would indicate the couple has completed at least eight hours of marriage education, which then would be presented to the county clerk. The certificate of completion of marriage education would be made available at all county clerk offices to be used by the providers. In addition, LB19 would give a county judge the ability to waive the ten-day waiting period when presented with compelling circumstances such as terminal illness, immediate transfer to combat...or immediate transfer to combat zone. Marriage education could be provided by any of the following: official representative of a religious institution or his or her designee; any member of clergy authorized to perform marriages or his or her designee including mentor couples or other lay volunteers if they are working in a clergy-supervised program; a school, college, university, or nonprofit community organization; any marriage education provider or program approved by a person performing the marriage; or a provider of counseling services that is licensed as such in this state, including psychologists and psychiatrists. The marriage education course would be required to cover at least four main topics: conflict management in marriage; communication skills; financial management; and parenting skills. County clerk would also be required to send a statement of all certificates of completion to the Health and Human Services to record how many certificates were used the previous month. This is a process already required by marriage license. Also, the bill has an operative date of January 1, 2010 to allow counties and other departments to implement the new process. The state has historically viewed marriage as a privilege subject to regulation and not a right given at birth. We believe that the state has a legitimate interest in promoting healthier marriages by encouraging couples through an incentive to invest time and learning responsibilities and skills needed for a successful marriage. Therefore, it is important that the official policies of the state promote and encourage healthy marriage. It is also very clear that our divorce rates, hovering around 50 percent or more, that something is not quite right. Unfortunately, failed marriages and broken homes not only cause great personal hurt and suffering for those involved but communities, counties, and states are left with some of the cost of picking up the pieces after a marriage or a family falls apart. If we can encourage even a small percentage of couples to take a marriage education

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course, I believe the communities will see the benefits. Is this a bill...is this bill a cure-all for marriages in the state of Nebraska? No. LB19 is a piece of public policy puzzle that several other states are using to promote healthy marriages, I believe a step in the right direction for Nebraska. In conclusion, we educate ourselves on many things but not so much when it comes to this important issue. I would argue that marriage is worth our attention as policymakers. It is essential that we create a structure of laws and incentives to hold up and support marriage because it is one of the key supports that make our society healthy and strong. I want to thank you for your time and would encourage the advancement of LB19 to General File. [LB19]

SENATOR ASHFORD: Thank you, Senator Christensen. Any questions of Mark? [LB19]

SENATOR ROBERT: Oh yeah. [LB19]

SENATOR ASHFORD: Senator. (Laughter) Senator Robert. [LB19]

SENATOR ROBERT: Senator Christensen, (laughter) I'd like to dissect your bill with you a little bit here. [LB19]

SENATOR CHRISTENSEN: That's fine. [LB19]

SENATOR ROBERT: Okay, page 3, we're going to talk about subsection (3): Any member of the clergy authorized to perform marriages, or his designee. Did you know anybody can do that? [LB19]

SENATOR CHRISTENSEN: Anybody can do what? [LB19]

SENATOR ROBERT: Can perform marriages. In about five minutes you can go on-line and get an ordained minister certificate and you can perform marriages. Anybody can give this class. Part (d), you say: or the program approved by the person performing the marriage. Also anybody can design their own program. So Senator Coash could design your program for marriage, which could mean eight hours of fishing. [LB19]

SENATOR CHRISTENSEN: No, because it lists four areas of things that have to be covered. [LB19]

SENATOR ROBERT: Well, in our day of fishing we could be talking about conflict management, we could have communication on the boat, we could show how to plan for a day of fishing for financial management, and then we can talk about parenting, I suppose. Why do you think parenting skills is a requirement for the education process of a marriage? [LB19]

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SENATOR CHRISTENSEN: Look, there are some marriages don't have kids,... [LB19]

SENATOR ROBERT: Uh-huh. [LB19]

SENATOR CHRISTENSEN: ...very true, but the majority of them have them. And how many times is there conflicts? There are a lot of blended families, which I am one, and it is extremely difficult. And if it isn't well discussed and managed, it becomes a thorn in that marriage and tears it apart. There is...there is nothing here that you are being forced to do. You do not have to take this voluntary program. [LB19]

SENATOR ROBERT: Okay. [LB19]

SENATOR CHRISTENSEN: But why wouldn't you want to improve your chances of a marriage? If you love that person then you should want to spend time with them. You should want to make it better and you should want to be good in at least the skills listed here. [LB19]

SENATOR ROBERT: Why do you require a certificate from the Department of Health and Human Services? [LB19]

SENATOR CHRISTENSEN: You've got to have something that is uniform that can be turned back in, because otherwise anybody could just write, yeah, so-and-so completed this, and a county clerk would have no way to prove. [LB19]

SENATOR ROBERT: And you picked that department just because? [LB19]

SENATOR CHRISTENSEN: We picked that one just because that's where a number of different certificates are made, which would also be your marriage license, I believe, originally, so it just fit to go there. [LB19]

SENATOR ROBERT: Okay. I'm okay for now. [LB19]

SENATOR ASHFORD: Everybody else okay? (Laugh) Senator Coash. [LB19]

SENATOR COASH: I just have a quick question. Do you think there would be a problem with access in remote parts of our state, to find access to these types of programs to be able to participate in these? Does that make sense? I'm wondering if, I mean in Lincoln you'd probably have no problem finding somebody to provide that, but if you live in a rural area, are you going to have problems with access to these programs you think? [LB19]

SENATOR CHRISTENSEN: I do not believe you will, especially on the...through the church or clergy side, because a lot of churches have went to programs where they do

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counseling. They've seen benefits within their own churches and are attempting to improve the relationships of marriages, and you're seeing more of this all the time. And so I guess I, personally, went through it myself and thought it was very beneficial. I had no trouble finding it--grew up in a town of 200--so I don't believe that that will be an issue. [LB19]

SENATOR COASH: Thank you. [LB19]

SENATOR ASHFORD: Yes, Senator Council. [LB19]

SENATOR COUNCIL: I just have a question, Senator Christensen. I've been looking at some of the data and I've had discussions with a mental health therapist, family counselors, one of whom will be testifying soon in support of this piece of legislation, and I have addressed some of my questions to those individuals as well. But one of the documents distributed makes known of the fact that a random survey of couples in four states found that couples who participated in a premarital education program reported higher marital satisfaction and commitment than those who did not. How many of those individuals who participated in that random survey would you estimate participated in a premarital counseling program through a church that they had been affiliated with for a number of years? [LB19]

SENATOR CHRISTENSEN: I guess I don't know. [LB19]

SENATOR COUNCIL: And the reason I make that point, I personally...I don't disagree that premarital counseling assists couples in identifying issues and that those marriages tend to last longer, but I would also submit to you that the data would show that those individuals would have received that premarital counseling through a religious institution with which they have had some longstanding relationship and the counseling relates to core values that they've established through that. I don't know that you will necessarily get...gain the same result if you take couple AB, who have no such association or relationship with a religious institution, and thrust them into that kind of program and expect that to stick to them like someone who comes through another type of program, and I guess that's what I was asking. I mean there's a concern among individuals who have contacted me about this, the access question that Senator Coash asked. Senator Rogert, I didn't know I can be ordained on the Internet in a matter of five minutes. I didn't, I didn't think about that. But I mean, to get the kind of counseling that I think most of us will agree could have some positive effect on the marriage relationship, you're going to be looking at longstanding relationships with religious institutions or qualified mental health providers, and there's a cost associated with that and I don't know what that cost would be and whether it would be enough of an incentive to someone. If the cost of a truly state-of-the-art, well-rounded program is \$270 and to get a marriage license without going through that is going to cost me an additional \$60, I don't know that we're going to necessarily be steering sufficient numbers of people to those types

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of programs. I think what we're going to find is that, you know, the people who have some kind of relationship with a religious institution are going to be inclined to go there and seek that counseling, and they're going to do that whether we have this legislation or not. [LB19]

SENATOR CHRISTENSEN: Well, that was part of the reason why we put reporting in there, so we could look back in a few years to see if it's been working because, if it isn't, it could be easily struck. And as far as if you don't have that relationship, you know, it's still going to come down to the individual couple. Because if you want to make something better, you will. If you weren't looking to make something better, you're probably not going to go through the counseling anyway and you'll pay the \$75 bucks and go on. And so I don't know that that's...was a real concern of mine from the standpoint, I believe either people are going to care to work and make things better or they're just going to go the other route and pay the fee and go on and go forth. So I guess that's part of the reason why it wasn't a major concern to me. [LB19]

SENATOR COUNCIL: Okay. All right. Thank you. [LB19]

SENATOR ASHFORD: How many testifiers do we have? Mark, just wait a second. We've got a few. Okay. How many proponents and...how many proponents do we have? And four. Okay. Thanks, Mark, and you're going to be here so... [LB19]

SENATOR CHRISTENSEN: Yeah. [LB19]

SENATOR ASHFORD: ...you can speak later if you wish, obviously. [LB19]

SENATOR CHRISTENSEN: Okay. [LB19]

SENATOR ASHFORD: ...let's go through the proponents and then we will proceed from there. [LB19]

DAVID BROWN: Hello. My name is David Brown. I represent...just support the bill. I've been married for four years in July, but I've known my wife since I was in 7th grade and we developed a friendship from 7th grade up until high school, dated for an additional three years, and then received six months of counseling. And I say all that just to say that even entering into marriage there were still things that caught me by surprise. And I think two major areas, the reason why I support premarital education is, number one, assumptions that every person, male or female, have when they come into a marriage. And I will say assumptions are basically things that you perceive that will happen or you think that will happen, and then expectations, things that are pretty much nonnegotiable for you and, for me, premarital education helped tailor those. Because expectations that I thought were nonnegotiables for me were things that my wife absolutely disagreed with. And I think that they could have caused huge problems if I didn't go through

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premarital education. I will say that those who don't desire to get premarital education or...and I mean this with all due respect, but those who would go to a counselor who went on-line to receive their degree, I think that just says what type of investment they want to have in their marriage. But I will say the couple that did premarital education with me was through a religious organization, but I had no prior relationship with them. But the things that I like about the bill are these four main areas because I think they speak to core values that you will have in a marriage relationship and a lot of those things were talked about by the people that did my premarital education and they were things that really helped give a foundation for me and for my wife to have a strong marriage. And I will just say, whether they know you or not, whether the people who's doing the counseling know you or not, I believe there's four key values, those that are in the bill, that will help prepare you to have a long marriage, so. [LB19]

SENATOR ASHFORD: Those are worthwhile comments. Any questions? [LB19]

SENATOR COUNCIL: Quickly. [LB19]

SENATOR ASHFORD: Senator Council. [LB19]

SENATOR COUNCIL: Don't mean to pry personally, Mr. Brown, but where did you obtain your premarital counseling? It was through a religious institution? [LB19]

DAVID BROWN: Yes, through Glad Tidings Church, a church of 2,000. [LB19]

SENATOR COUNCIL: Okay. Okay. Was that a church that either you or your wife were affiliated with? [LB19]

DAVID BROWN: Yes, we both went there. [LB19]

SENATOR COUNCIL: Okay. [LB19]

DAVID BROWN: But the people who actually... [LB19]

SENATOR COUNCIL: But what you're saying is that the people who offered the counseling were not necessarily associated, but it was offered through your... [LB19]

DAVID BROWN: No. The people who did the counseling also went to the church, but what I was stating is that they didn't know me and my wife directly because, you know, at a church of 2,000 it's kind of hard to know everybody directly. [LB19]

SENATOR COUNCIL: Thank you. [LB19]

SENATOR ASHFORD: And it's in my district too. (Laugh) It's a wonderful place. Jerry.

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[LB19]

AL RISKOWSKI: Al Riskowski, Nebraska... [LB19]

SENATOR ASHFORD: Al, sorry. [LB19]

AL RISKOWSKI: (Exhibit 3) I'm sorry. Al Riskowski, Nebraska Family Council. I'm executive director with them and have worked closely with Senator Christensen's office in regard to the bill. Just for a little background in regard to myself, I've pastored for over 25 years and also, of our four children, two announced that they are getting engaged or did get engaged over Christmastime, so marriage magazines are very prominent at our house. We've all... [LB19]

SENATOR ASHFORD: Congratulations. [LB19]

AL RISKOWSKI: Well, thank you and that's why I brought it up. I was hoping for a little bit of...(laughter) [LB19]

SENATOR ASHFORD: You got it. [LB19]

AL RISKOWSKI: Also for donations. [LB19]

SENATOR ASHFORD: You got it, the whole thing. [LB19]

AL RISKOWSKI: All right. And it's been an amazing experience for me in that I'd never been to some of these bridal extravaganzas that have happened in Omaha and Lincoln--I went for a few minutes--or to a bridal shop, and this is apparently a hot or a very popular time of the year for brides to get engaged and to look at gowns and I was amazed how expensive they are. I'd like to deviate a little from... [LB19]

SENATOR ASHFORD: I don't know if we can...Al, these are great comments. I don't know what we can do legislatively to deal with that (laugh), you know? But, you know, we'll think about it. [LB19]

AL RISKOWSKI: Would appreciate it. When it comes to this bill, I believe after all of the years of being involved in counseling and Nebraska Family Council has a class that we have provided as well and have done around the state, we have discovered that these four areas are primary areas that often couples will struggle with. And individuals who go through a premarriage type of an education, not only do they learn some of the principles but I have discovered that one of the primary benefits is that it gets them to discuss some of these areas which oftentimes they are not discussing and dialoguing about prior to their marriage. As far as this class being available, I went to Tom Barber, who is executive director of People's City Mission. They would be excited if we would

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create an atmosphere in the state of government, nonprofits, religious groups working together to see marriages increase. I spoke with Ty Schenzel of Hope Center for Kids. He's off of 20th and Lake in north Omaha. What surprised me were many of the kids that come in there, he said, they don't even think in the term of marriage but that this type of a legislation would encourage them to provide a class. I spoke to Mission for All Nations, Mary Anaya there in Omaha; she felt the same way. Lyle Neal, Southeast Community College, he said such a bill would encourage them to begin a class at Southeast Community College. In the state of Nebraska, who performs the marriage ceremony is an individual. It's done in good faith. There is no one checking on the credentials of the individual who performs this ceremony and that's one of the reasons that in this bill, as it was crafted together, we felt we couldn't go beyond the good faith clause idea in regard to who would actually give the premarital education to try and step it up to another level. There is not a vehicle in the state of Nebraska to provide for that. But on the back of this, and I'll conclude with this, the state of Oklahoma is probably one of the primary examples of what is happening in the country. Back in 1999, the governor felt they had one of the highest divorce rates in the country. They not only focused on this type of legislation but they also received TANF money and the government, along with nonprofits and religious organizations, really began working together and they have seen some phenomenal results in the state of Oklahoma. So I've included some of that for you. [LB19]

SENATOR ASHFORD: Yeah, Al, let me...let's get to some questions. [LB19]

AL RISKOWSKI: Yes. [LB19]

SENATOR ASHFORD: Anybody have any questions of Al? [LB19]

SENATOR COUNCIL: I...real quick. [LB19]

SENATOR ASHFORD: Yeah, Senator Council. And I have one, too, but Senator Council can ask. [LB19]

AL RISKOWSKI: Okay. [LB19]

SENATOR COUNCIL: "Rokowski?" Am I pronouncing that...? [LB19]

AL RISKOWSKI: Riskowski. [LB19]

SENATOR COUNCIL: Riskowski. [LB19]

AL RISKOWSKI: Yes. [LB19]

SENATOR COUNCIL: I don't want to butcher your name. Did you, in your testimony,

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say that the Nebraska Family Council currently provides premarriage counseling or premarriage education? [LB19]

AL RISKOWSKI: We have done marriage seminars across the state of Nebraska. [LB19]

SENATOR COUNCIL: Okay. But in terms of established, reoccurring premarriage education programs, you don't do that. [LB19]

AL RISKOWSKI: Not at Nebraska Family Council. I did state that when I pastored for numerous years, I did do those classes. [LB19]

SENATOR COUNCIL: Okay. Well, what I'm trying to get a feel for is what would be the average cost of such a class and the average length of such a class. While the legislation speaks to a minimum of eight hours, that doesn't confine the course giver to an eight-hour class. The course giver could structure a class that could be as long as the counseling that Mr. Brown was engaged in. It could be six months and \$700. I'm trying to get a feel for what we're talking about in terms of options and I think I...maybe I haven't been clear in what...the statement that I'm making when I'm asking the questions about the survey results. You know, I believe that religious institutions have been and will continue to be the principle providers of premarriage education. The question is what about the segment of our society, unfortunately, that does not have that kind of relationship? Where do they access that service? And what does it cost them to access that service? Because in my opinion, individuals who go through premarriage counseling through their religious institution, they are the reason why these random surveys show that they have higher marital satisfaction. You know, I'd like...I'd be interested having this survey breakdown of the people who were surveyed, how many of them had their education, premarriage education, through a religious institution and how many went to some private service provider or some other individual. And we have to recognize that there's going to be a segment of our population who don't have that relationship, are going to need to access that service someplace else. And I believe that we, if we're going to legislate something like this, we need to know what their options are, what the cost is. Because if the cost exceeds \$60, there's no incentive for those people to take those classes. And what we've done is enact legislation that, you know, really basically bolsters those who are going to do it anyway and, you know, provides...they don't need the incentive. They're going to do it anyway. (Laugh) I think the purpose of the legislation is get to the people who are not doing it and aren't going to do it, and if we don't have some feel for where they can access it, how much is it going to cost them, how can we evaluate whether or not it will achieve the stated objective, which I don't disagree with, I totally embrace. We want to increase marriages. We want to increase marriages. We want marriages to last. We want to see our divorce rate go down. I don't necessarily believe at this point in time that this...that this legislation is going to get us there. [LB19]

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AL RISKOWSKI: Well, Senator, I appreciate your comments. [LB19]

SENATOR ASHFORD: That's not a question, Al. No. (Laughter) [LB19]

SENATOR COUNCIL: I think there was one in there somewhere, Senator Ashford. [LB19]

AL RISKOWSKI: Do I get as much time for the answer? (Laugh) [LB19]

SENATOR COUNCIL: Yeah, I think there was one in there somewhere. [LB19]

SENATOR ASHFORD: No, go ahead. I'm sorry. [LB19]

SENATOR COUNCIL: Survey says...no. [LB19]

AL RISKOWSKI: Senator, that, as far as access to the program, that was the reason I, personally, went to some of the executive leaders of organizations like the People's City Mission, Hope Center for Kids, etcetera, and asked them if this type of legislation was enacted would that encourage you to provide this type of class. And I did ask them that follow-up question: So what would it cost? And in...I believe, in a number of cases there really wouldn't be a cost. They would provide that for those children or those adults who would come. Now Southeast Community College, there would be a cost in regard to that class, but it would be a larger class, I would assume, that would perhaps last that semester. So there was...I was surprised at the excitement level that I was received with when I went to Hope Center or the missions or Southeast Community College, that they felt that...and perhaps I can relate this comment. Ty Schenzel at Hope Center for Kids, he said, you know, as I think about it, this is not only a class that would help some of these kids think about marriage, because they're not even thinking about marriage, but also it would help them prepare for work. Because especially the two areas, when you speak about conflict resolution and communication, are two very helpful areas even in regard to work and working in society. So it has a greater application than even within the context of marriage. So I think there was ample excitement by people. I do believe also, though, and our hope is, that this type of legislation being passed is only a beginning. As I look at the state of Oklahoma, they've begun to work with single parents. They're working with low-income children. They have been able to write grants and get TANF money and other federal funds that would not only help them expand the program but it also has helped them to write a curriculum in the state of Oklahoma that is standardized, so that in the state of Oklahoma you go through a class, whether you're a pastor or whether you're a provider on any level to teach this class, so it's standardized across the state of Oklahoma. We currently in the state of Nebraska don't have the funds or the ability to do that, and that's why we felt it needed to be drafted this way at this time. But hopefully, in the future... [LB19]

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SENATOR ASHFORD: Al, it's a tie. It's a tie. I timed you both. [LB19]

AL RISKOWSKI: Okay. (Laugh) [LB19]

SENATOR ASHFORD: I timed you both and you both came in at about three minutes and...no. (Laugh) [LB19]

AL RISKOWSKI: All right. Thank you. I will stop. [LB19]

SENATOR ASHFORD: No, it's a good...this is a good discussion and I'm not cutting you off and I think you've made your point. [LB19]

SENATOR COUNCIL: Please cut us off. [LB19]

SENATOR ASHFORD: Huh? (Laugh) No. Just briefly, we...I recall years ago we had bills...and let me just...and then maybe some of the other gentlemen and ladies can talk about this. Clearly, a license for a marriage is a state function. The religious institution of marriage is a separate religious institution. The license that you receive from the state is a civil license and that's always traditionally been the difference. I do think there is a convergence and I absolutely agree with Brenda that there is a convergence and we should encourage marriage and we should encourage religious institutions being involved, no question about it. I mean when we had similar bills in prior years, they were brought to us really as an elongation of the waiting period, you know, and I actually supported a couple of those where...Senator Council mentioned, it's three days, I don't even...is it three days for a marriage license now? [LB19]

AL RISKOWSKI: There is no waiting period at this time. [LB19]

SENATOR ASHFORD: There's no waiting period at all? [LB19]

AL RISKOWSKI: Right. [LB19]

SENATOR ASHFORD: You know, I...it's been awhile, but I, you know, would support something like that and have in the past. I wonder if the better...the better way to go is to, you know, is to provide a longer waiting period and to encourage, you know, providing...institutions like yours and others to provide information in any way they can to those individuals who are going to be married. Because obviously the instruction is important. I'm just suggesting that there is a...there is a significant difference in law between a license and a religious ceremony. I think where they converge we're all better off, and maybe the waiting period is a way to get at that. But that's not a question, but I do understand what you're saying. Thanks, Al. Any other questions of Al? Oh my gosh. Thanks, Al. [LB19]

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AL RISKOWSKI: Okay. Thank you. [LB19]

SENATOR ASHFORD: Next proponent. [LB19]

BOB STELTER: Good afternoon. My name is Bob Stelter and I live and work here in Lincoln, and I thank you for allowing me the opportunity to share a few words today. My wife Pam and I have been married for 15 years and have two children. We both grew up in homes in which our parents' marriages were not strong, with my parents separating on occasion and then divorcing when I was a freshman in college. The most we knew about marriage when we wed was what we did not want in our marriage. Since attending our first marriage conference and receiving the amazing gift of insightful principles and practical tools, we knew that we would like to help bring the message of that exact conference to Lincoln. In 2004 and 2005, we worked with a team of volunteers and coordinated two seminars; now for the last three years helped locally with a nationally known weekend conference. In 2009, it's estimated that nationwide these conferences will reach 40,000 couples. From our end, we observed the training tips and tools and education that is presented to draw married couples into a stronger relationship for themselves, their families, and their communities. We've also observed numerous occasions of marriages being saved from near death and to new hope. Here are a few samples of the value of such marital education. One gentleman wrote: As an engaged couple, we felt strengthened by the words we heard. We grew up. We grew in our commitment to each other and learned new tools to learn in our relationship with each other. Another: I have been married for 15 years and I always thought that I was an okay husband, but after this weekend I learned I need to be an improved husband and I need to improve my relationship and understand forgiveness. Thank you for providing a marriage-saving weekend. Third: As we prepare to get married, I feel this was very beneficial. It will help us prepare as we get ready to get married. I know I have learned a lot from this and I hope the messages can stick with both of us. Last, I could share hundreds of such testimonies, but one underlying, summarizing point is education. In story after story, couples share not only how great the material and tools are from the conference we help with, but they indicate a desire to have had this instruction earlier in their marriage. A great historical leader of our country once said the strength of a nation lies in the arms of its families. If our society requires a license to practice a specific profession or operate a piece of machinery, then no less important should be the supporting aid our society provides through education to strengthen marriages. Thank you. [LB19]

SENATOR ASHFORD: Any questions? Thank you. [LB19]

FEMI AWODELE: (Exhibit 4) My name is Femi Awodele, A-w-o-d-e-l-e. Four years into my almost seventeen-years marriage, I asked my wife for divorce, and I'll bet you didn't know that, Senator Council. (Laugh) And that led to a lot of things in our marriage. And

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eight years ago I resigned my corporate job to go into what I had no idea what I was getting into. What I got into has brought me into about five continents speaking about marriages, seven books, three translated into different languages that I don't even know what it is. But what that has done for me is to let me know the importance of education in marriage. Mr. Brown testified he went through a six-months program. When I joined the church I'm presently in, I instituted that program and now we've not had one person divorce in six or seven years. It's a very intensive program. As a community person or activist so to say, my role there is to help build a great marriage or a good marriage. And one of the things I have seen continuously as I've walked in my community is that a lot of what we are seeing, the violence, the education gap, the poverty, is all related to the home. So we're talking about a healthy home, not just a home. There are two types of home: a healthy one and a nonhealthy one. A healthy one comes with education. We ask our kids to go to school for driving. We ask our kids to go to school for whatever before they get to a certain position, and I think what I've learned in the short time that I've done this, in eight years, is that we need some form of education. Now I come from the religious side of it, but there is also the nonreligious side of it. There is education, to answer my friend's question, there is the nonreligious. If we have this bill or this law as a law, it will force people to go do it. I am privileged to write weekly articles for Omaha Star. I get calls from people I don't know--can I see you? Even in a gas station--I need to come talk to you. Some of them I've drawn in. Some of them I counsel on the phone. Some I still meet. So we need something. Now as I've traveled I've realized that the country of Australia have beaten the U.S. to this. As a country, they passed a law that says you must be educated and they've reviewed it. This is something they passed. This is another review of what they've done. As an African American, the benefit of marriage for the African American man is amazing. One of the places I'm speaking this, this is the best time for somebody like me for speaking, Valentine, I'll be speaking on the benefit of marriage, and what I've seen, I don't know if anybody knows yet, marriage benefits more. The best person that benefits from a marriage is an African American male. So I'm just here to say we need some form of education. For those who I know (inaudible), YMCA is ready to start this, our Hope Center is ready to start this. My friends at Mission of All Nations are ready to start this. I'm ready to do it for free. I already do it for free, seven years running. Thank you. [LB19]

SENATOR ASHFORD: Thanks, Femi. Any questions? [LB19]

SENATOR COUNCIL: Oh, thanks, Femi. [LB19]

SENATOR ASHFORD: Femi, I...go ahead, Senator. No you... [LB19]

SENATOR COUNCIL: No, the same thing. [LB19]

SENATOR ASHFORD: No, I...you know. [LB19]

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SENATOR COUNCIL: We've had our private discussion. He knows my... [LB19]

FEMI AWODELE: Yeah. (Laugh) [LB19]

SENATOR ASHFORD: No, Femi is a very unique individual and, again, and I will, when we have more discussions down the line, hopefully you'll be here again to talk about violence. [LB19]

FEMI AWODELE: Yes, I will. [LB19]

SENATOR ASHFORD: But your work that you've done in the violence area is just really amazing and I applaud you and your positive approach to the problems of our community, so. [LB19]

FEMI AWODELE: Thank you. [LB19]

SENATOR COUNCIL: Well, as you know, Dr. Awodele heads the Healthy Homes Covenant. [LB19]

FEMI AWODELE: Yeah, the Healthy Family Covenant of the... [LB19]

SENATOR COUNCIL: ...the Healthy Family Covenant of the African American Empowerment Network, and we've had the discussion and I, just for the record, Dr. Awodele, the course that you've talked about with these agencies developing, what's the length of the course? [LB19]

FEMI AWODELE: We have looked at the length. I have the curriculum that I have developed that I teach whatever and wherever I go, but I know that the course that I teach is too lengthy. It's a ten-week class. However, and I can...in fact, last year when we testified, I gave everybody a copy. I don't know if everybody remembers that, those who were here. You lost it, Senator Brad? [LB19]

SENATOR ASHFORD: No, I didn't. I didn't. (Laughter) [LB19]

FEMI AWODELE: So... [LB19]

SENATOR ASHFORD: I cannot tell a lie, Femi. (Laughter) [LB19]

FEMI AWODELE: So I have that, but we can reduce that to meet basic things. For instance, Senator Rogert had asked about why the need for parenting class. I'll give you my example. I was whooped. I'm sure you were whooped, but as I grew up I realized that there is a different way to discipline a kid, not that I don't whoop. I still believe in whooping, but I learned something I never heard before, I'm sure my parents didn't

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know it, which is three strikes, which is what I use on my kids now. Don't do that. First time I'll warn you with my mouth, second time my voice will go up, third time you'll be whooped. It's helped and we rarely get to the whooping. So these are some of the things you learn in a class. It doesn't have to be a religious institution. [LB19]

SENATOR ASHFORD: Thanks, Femi. [LB19]

FEMI AWODELE: Thank you. [LB19]

SENATOR ASHFORD: Any other proponents? Opponents? Okay. We have a couple, three? Move up to the front. Good afternoon. [LB19]

SANDRA STELLING: Good afternoon, Senator Ashford and committee. I'm Sandra Stelling, Jefferson County Clerk, Register of Deeds, Election Commissioner, and cochair of our association's legislative committee. I'm here today to ask you to oppose LB19. We have several issues with this bill. First of all, it's very confusing with the \$75 and the \$15. The bill states there's a ten-day waiting period. Right now, there isn't one. If they bring the certificate of education there is no waiting period. This is also confusing on the waiting period time. We just have concerns about this. When we are to mark the license for compelling circumstances, I guess they're going to have to put something on our marriage license on our system now that we're going to have to mark it somehow, so they're going to have to have computer adjustments for that. Will we need to keep a copy of whatever is submitted to us for those compelling circumstances? With the HIPAA laws right now, we do not feel that this is something that we need to be asking the individuals what are the compelling circumstances. Will the Department of Health and Human Services have a complete listing of individuals that we can go to at any time to look it up and make sure that they are individuals that are certified to do the counseling? And one question that we've had come up to us, what happens when the couple gets married, we send this in and the Health and Human Services rejects that marriage license because they're not...the individual that certified that education is not on their list? This is another concern for us. And as we've always said, there are 93 counties. There's going to be 93 ways to do this. And some of the comments that I have heard, yes, I have been married, will be almost 45 years; yes, we did have to go through counseling. I'm not opposed to counseling. I don't think any of us are, but we don't feel that it should come back to us clerks to make that determination that they have had that counseling and the proper counseling. I guess, once again, you know, we feel that marriage is an important part of someone's life and that we want to do it right. We want it down in black and white, you need to do this, you need to do that, so we're all doing it the same way. So once again, I'd like you to oppose LB19 as it is written. [LB19]

SENATOR ASHFORD: Thanks, Sandra. How many years have you been the... [LB19]

SANDRA STELLING: It will be 45 years. [LB19]

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SENATOR ASHFORD: Or how long have you been the clerk? [LB19]

SANDRA STELLING: Been the clerk? Since 1987. [LB19]

SENATOR ASHFORD: Wow! Good job. [LB19]

SANDRA STELLING: Thank you. [LB19]

SENATOR ASHFORD: Thanks, Sandra, very much. Any other opponents to the bill? You're up. [LB19]

MARY EICKHOFF: I don't want to repeat but...my name is Mary L. Eickhoff and I'm the Richardson County Clerk and I've been married 27 years and I've been the clerk for 23 years also. [LB19]

SENATOR ASHFORD: Wow! [LB19]

MARY EICKHOFF: And so I'm not opposed to the education and the bride and groom having to get the education. I went through it, my husband and I did, and I found a little sheet that they give you this little test afterwards and I found that a few months ago in a closet when I was cleaning out the closet, and I was looking at that, I thought, we shouldn't have got married because (laughter) there was a lot of things not compatible. And sometimes I think, well, yeah, maybe we shouldn't have got married, but we are married. We're happily married. We have our differences but we go on. And we both came from strong homes and so I think that helps a lot. We have a lot of parental support in our hometown. But I just, as the clerk issuing the license, I don't want to be a judge to figure out what's a compelling circumstance. So if you eliminate that, maybe it would be okay. But I do think you need to raise the fee just for the license. It's been \$15 since I've been the clerk. [LB19]

SENATOR ASHFORD: Has it always been? [LB19]

MARY EICKHOFF: Twenty-three years. [LB19]

SENATOR ASHFORD: And there's never a waiting period during that. [LB19]

MARY EICKHOFF: There was never a waiting...I think it changed in '87. [LB19]

SENATOR ASHFORD: Right. [LB19]

MARY EICKHOFF: I became clerk in '87 and the waiting period was abolished then. [LB19]

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SENATOR ASHFORD: Right before that, do you remember what it was? [LB19]

MARY EICKHOFF: Three days. [LB19]

SENATOR COUNCIL: I thought it was three days, wasn't it? [LB19]

SENATOR ASHFORD: Three days. That's right. That's right, because I always thought... [LB19]

SENATOR COUNCIL: That's when I got...I got married in 1985, so that's what I was thinking. [LB19]

SENATOR ASHFORD: I always thought it was three days too. [LB19]

MARY EICKHOFF: And the brides always had to get the blood test, and that was not fair. [LB19]

SENATOR ASHFORD: Right. Right. And now that doesn't apply anymore. [LB19]

MARY EICKHOFF: No, that's gone too. [LB19]

SENATOR COUNCIL: That doesn't bother him. [LB19]

MARY EICKHOFF: Yeah. [LB19]

SENATOR ASHFORD: No, no, that doesn't bother me, but that doesn't apply anymore, does it? [LB19]

MARY EICKHOFF: But I feel that, you know, you need to have the education for, you know, to get married too. That doesn't hurt anybody. But there's a breakdown in our family units across the nation. [LB19]

SENATOR ASHFORD: Well, I was in the Legislature in 1987 and I now feel personally responsible for the increase in the divorce rate. (Laughter) I'm going to have to...I mean, I'm responsible for a lot of things, but I didn't...until you just mentioned that I didn't realize it was that too. [LB19]

MARY EICKHOFF: Yeah. But anyway, I guess, yeah. So that... [LB19]

SENATOR ASHFORD: So thanks, Mary. [LB19]

SENATOR ROBERT: I just have...I have one. [LB19]

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SENATOR ASHFORD: Senator Rogert has a question. [LB19]

SENATOR ROBERT: I had more of a comment on what you just said when you looked at that list and you said, we shouldn't have got married. [LB19]

MARY EICKHOFF: (Laugh) Yeah, we should...there was quite a few things and now I look back at it. [LB19]

SENATOR ROBERT: Here's what I...and here's what I...one of my large problems with this is that everybody is going to go through this counseling and say, wow, we don't get along but we're going to get married anyway. The direct result of this should be talking people out of getting married if they figure out through this process that they're not capable or not culpable to live together. And that doesn't...that isn't what happens. It's not the result of this and that's... [LB19]

MARY EICKHOFF: Right. [LB19]

SENATOR ROBERT: That won't bring down the divorce rate. They're going to do this and say, oh well, maybe you can get along with him, then ten years later get divorced anyway. [LB19]

MARY EICKHOFF: Yeah, but that...with or without the education they could do that, so I don't know. [LB19]

SENATOR ASHFORD: Human beings... [LB19]

MARY EICKHOFF: But what defines a perfect marriage? I...you know? [LB19]

SENATOR ASHFORD: Well, human beings, human beings are complex, don't you think, Mary? [LB19]

MARY EICKHOFF: Yeah, very much so. [LB19]

SENATOR ASHFORD: Yeah. Okay. (Laugh) Thank you. [LB19]

MARY EICKHOFF: So all right. [LB19]

SENATOR ASHFORD: Next? Next opponent. Laurel. [LB19]

LAUREL MARSH: (Exhibit 5) Hello. Good afternoon. My name is Laurel Marsh, spelled M-a-r-s-h, and I'm here on behalf of ACLU Nebraska, and I'll distribute copies of my comments only because they have case cites at the bottom and perhaps you'll find

those useful. ACLU Nebraska strongly opposes LB19's efforts to create hurdles for individuals who are seeking a marriage license. The U.S. Supreme Court has held that the right to marry is a fundamental constitutional right protected by the First Amendment, as the freedom to associate and create intimate bonds with those whom you choose, as well as the Fourteenth Amendment, which is the substantive due process clause. This right is so fundamental that even prisoners who are locked away without the possibility of parole may marry while they are incarcerated. Any limitation or prerequisite to marrying, no matter how well-intentioned, must meet the hardest test of constitutional law, and that is, is there a compelling reason for the new law that impacts a constitutional right? The proponents of LB19 believe that marriage counseling may benefit couples in the long run, and this belief is simply too speculative to allow restrictions or additional hurdles in obtaining a marriage license. While some private faith communities may wish to make premarital counseling a prerequisite for having a ceremony in their worship space, the government has no right to force or require individuals to do so. LB19 represents, excuse me, presents a violation of religious liberty. The bill clearly anticipates that the majority of premarital courses will be offered by religious entities. The First Amendment's guarantee of separation of church and state requires that the government...requires the government to maintain neutral...to remain neutral on matters of religion. To order couples into primarily faith-based programs in order to obtain a license is, simply put, not legal. Even though LB19 allows for the possibility of secular counseling, the bill essentially allows people who undergo religious instruction to obtain more favorable treatment from the government. Finally, from a policy perspective, LB19 is simply a poor idea because there are no credentials or qualifications for the marriage counselors. Again, the constitution views any efforts to burden the right to marriage as illegal unless the government can prove a substantial basis for the burden. LB19 is likely to fail in a court challenge because there is no showing that either marriage counseling would benefit the state and because there is no individual criteria for individual counseling. And we urge the Judiciary Committee to indefinitely postpone LB19. [LB19]

SENATOR ASHFORD: Any questions of Laurel? I would just ask you to...wouldn't you think that the divorce rate would be a compelling reason for the state to get involved in this issue more directly than they have in the past? [LB19]

LAUREL MARSH: Two things: I think that this might be a case of be careful what you ask for because you just might get it. I think that the divorce rate is high, and certainly that is of concern, and that this bill is very well-intentioned. If you put this as a requirement, you may simply motivate more people to not marry and I think that there is a substantial portion of our population who has chosen to live as married couples without the benefit of marriage, thus denying perhaps their children the legal benefits that marriage would bring or access to those rights and economic privileges that marriage...and I think that this will encourage a step away instead of towards. [LB19]

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SENATOR ASHFORD: But if this is too intrusive, does the state have a legitimate interest in providing information, at the point when their license is obtained, on counseling? Is that too...is that too obtrusive or too intrusive to provide? Should the...does the state have an interest in providing information on marriage counseling or premarriage counseling? Would that be too intrusive, in your view? [LB19]

LAUREL MARSH: I think the state provides good information on a wide variety of subjects. [LB19]

SENATOR ASHFORD: No, but let's say in a marriage license situation. Would that be too intrusive? [LB19]

LAUREL MARSH: It would depend on how it was framed. If it was... [LB19]

SENATOR ASHFORD: Well, if it was neutral, I mean it... [LB19]

LAUREL MARSH: If it was truly...if it was truly here's your license and here's where you can go for X,... [LB19]

SENATOR ASHFORD: Right. [LB19]

LAUREL MARSH: ...you know, with a list of regional resources,... [LB19]

SENATOR ASHFORD: Right. [LB19]

LAUREL MARSH: ...personally, I don't see a problem with that. If there is anything that infers that one set of selections or choices should be made over another set of selections or choices, then I think that it would be awkward. [LB19]

SENATOR ASHFORD: Okay. Okay. Because I think in the Australian situation that Femi was talking about there was a--and obviously it's Australia, not the United States--but there was an informational effort and that had...apparently had some positive results, so. [LB19]

LAUREL MARSH: And I did have one other just thought at large when Senator Council was talking about cost information. Having exceeded our state speed laws on one or two occasions, I've been given the opportunity to go to STOP classes. Perhaps that is a model you might look at for an eight-hour class, in terms of cost. [LB19]

SENATOR ASHFORD: Okay. Thanks, Laurel. Any other opponents? Oh, I'm sorry. I think we're finished. Thanks. [LB19]

LAUREL MARSH: Thanks. [LB19]

SENATOR ASHFORD: Any other opponents? [LB19]

LUCAS PETERSON: My name is Lucas Peterson, P-e-t-e-r-s-o-n. I live here in Lincoln in Senator Coash's district and I come today to testify in opposition to LB19, not into opposition of marriage itself. Why I oppose the bill is simple. I believe that government should get out of the business of regulating marriages and that it should be up to individual congregations of faith to determine matters of marital bliss. My opposition can be even clearly witnessed with these walls of this most sacred building, and I can attest to that. As a Nebraskan, I find that our state motto of equality before the law to be such a profound statement because the philosophy behind those words indicate that our state values legal and lawful equity between its various peoples. We are truly a state that is as diverse as urban states here in the country. However, as an American who happens to be openly homosexual, I know all too well that those words ring hollow when spoken by Nebraska's politicians. In fact, I believe that if all politicians in our state were to stand by those words, then Nebraska would be a beacon of a socially inclusive land towards all diversity that identifies our home as the good life. We as Americans have seen intolerance and bigotry at its most vulgar with the passage of Proposition 8 in California. Since then, cities and towns from all across the country, including Lincoln and Omaha here in our beloved state, have witnessed massive protests from all types of people from all walks of life against this injustice. The reason why this happened, I believe, is because of government intrusion upon matters that should be left up to an individual's church. Since the antigay campaigns dating back in the 1970s, socially conservative politicians have made it their priority to legislate big government for their so-called moral values. Little do they realize that my moral values as a gay Nebraskan are shared with them by the virtues of family, hard work, and personal responsibility towards the greater good for the community at large. That is why I view LB19 as no different than Prop. 8, even though it would only apply to heterosexual, monogamous couples here in a state that refuses to acknowledge its very own family members, friends, coworkers, pupils, neighbors, and fellow parishioners of faith who just so happen to be lesbian, gay, bisexual, or transgender. I did not come here today to proselytize what I deem the lack of equality that I have as a gay American and my perception to be willful of the inequity of rights I have as a homosexual towards those who identify as white, heterosexual, Republican, and evangelical. It would be foolish for me to do so because that would label me as a victim. But please bear witness to my testimony. I am no victim of my life. Instead, I am a survivor of bigotry and intolerance and, yes, even hatred. However, if the intent of this bill is to decrease the amount of divorce in Nebraska, then perhaps policymakers should go about it in a forward way as opposed to a straight way. Instead, maybe government should abolish the word "marriage" and its social conception it has towards those who have it and replace it with "civil unions" and expand those human rights to all committed monogamous couples. What else... [LB19]

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SENATOR ASHFORD: Lucas. Lucas, I'm going to ask you to sum up, if you would. [LB19]

LUCAS PETERSON: I have two more sentences and then I'm done. [LB19]

SENATOR ASHFORD: Okay. [LB19]

LUCAS PETERSON: What else does the sanctity of marriage have to lose, other than being meaningless, if it isn't inclusive towards all loving, monogamous couples? That way, all Nebraskans can have true equality before the law. [LB19]

SENATOR ASHFORD: Thank you for your comments. Any questions of Lucas? Thank you, sir. [LB19]

LUCAS PETERSON: Thank you. [LB19]

SENATOR ASHFORD: Any other opponents? Neutral testimony? Senator Christensen. [LB19]

SENATOR CHRISTENSEN: Thank you, Chairman. Just quickly address a couple of things I heard that I think were misunderstood. You'll go in one time, you'll get a license. If you've had...got the certificate, you take your license out that day; otherwise, you get a license, it is valid in ten days. No clerk will have to make a decision if it's a case that...immediate case to allow them to get married, to be exempt, to be married immediately, because it says right in the bill, must be a judge to give a decree. So it's recorded right there. Another statement I heard is guaranteed of...guarantee...the constitution guarantees us freedom of religion, not from religion. Just clarify that one. And this is a voluntary program, not a requirement. That was stated several times, you're being forced to do it. It is not. It's voluntary. You have a choice. And I guess I do look at this bill as just like the STOP class. I've taken the STOP class several times, pay the fee to do it; same type of principle, pretty good example that you can choose to take it or not choose to take it. It's an optional program. Take the STOP or not take the STOP, an optional program. Any questions? [LB19]

SENATOR ASHFORD: (Exhibit 6.) Thank you, Senator Christensen. Any questions? Thank you. It was a good hearing. Thank you all for coming and that concludes all the hearings for today. Thank you. [LB19]

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Disposition of Bills:

LB19 - Held in committee.

LB90 - Placed on General File.

LB201 - Placed on General File with amendments.

LB203 - Indefinitely postponed.

Chairperson

Committee Clerk