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Judiciary Committee
February 19, 2010

[LB939 LB971 LB973 LB1037 LB1045 LB1046]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 19, 2010, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB971, LB1037, LB1045, LB1046, LB939, and LB973. 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.

SENATOR ASHFORD: Welcome, Senator Campbell, and welcome, everyone, to the Judiciary Committee. The first bill is LB971. Why don't you go ahead and then I'll introduce my colleagues after you give your introduction.

SENATOR CAMPBELL: Okay. I'm Senator Kathy Campbell and for the clerk, that's C-a-m-p-b-e-l-l, senator representing District 25. I think this is the first time I've been before the Judiciary Committee. There are some friendly faces here, that's for sure. [LB971]

SENATOR ASHFORD: This is a good place to be. [LB971]

SENATOR CAMPBELL: Thank you, thank you, I'm glad to be here. I'm going to open this afternoon on LB971, the fostering connections implementation in Nebraska. And I introduced an interim study last year, LR164, as the federal government enacted law in 2008, which was called the Fostering Connections to Success and Increasing Adoptions Act. The federal bill requires many specific things of the states. There is quite a long list of what is required that they will do in fostering adoptions and getting youth into the kind of foster care that they need. LB971 focuses on only three of the items: notifying adult relatives of a child's entry into foster care, sibling placement and visitation, and transitioning out of foster care. So we are only dealing with three of the areas. During the interim, I met with a number of people. But we pulled together a great meeting of advocacy groups, citizens, DHH staff to find out exactly what the department was doing with the federal legislation. And to our encouragement and pleasure the department had decided to adopt a number of elements that were optional to the state but decided to go ahead and work on them. I'm sure Mr. Reckling, Director Reckling will allude to that in his testimony. But we had a great meeting and we decided that we would continue meeting to see how the state was working on its own implementation. I believe that LB971 is necessary because it requires some involvement by the judicial system to ensure that children are given the greatest possible chance for adoption or staying connected to family members, if that is desirable, and to transition out of foster care when they reach adulthood. And I have to say while I am on the fund-raising side of my agency, I listen to a lot of what happens on the program side. And one of our efforts is to really provide some very good transition for young people who are aging out. And for my colleagues, the aging out of state wards is a very important period of time in that

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young person's life. The department has expressed some concerns that I want to make you aware of. And my pledge to the committee is that I'm going to pull together several people to work on changing some of the language in the bill and then I will get back to the chairman when we have achieved that, so that you know we have brought those parties together. The department will talk about a 15-day requirement for notifying adult relatives. We think that's a very valid concern. They are also concerned about a reference to nondelinquents. The federal government does not do that. And we want to make sure that that's in compliance. My staff is reviewing other states because, even though the feds may add additional language, we still may go ahead with the three items that we've talked to you about. So we'll continue to work on the bill, Chairman Ashford, and pledge to you that as we bring those parties together, get the language in very good order, we'll be back and to let the committee know that. [LB971]

SENATOR ASHFORD: Thank you, Senator Campbell. It's great having both you and Senator Coash, who have expertise... [LB971]

SENATOR CAMPBELL: Thank you. [LB971]

SENATOR ASHFORD: ...in this area working on what, to some of us, me mostly, is kind of a murky area but becoming less murky. [LB971]

SENATOR CAMPBELL: Yes, you're doing a lot of work in juvenile justice. [LB971]

SENATOR ASHFORD: Yes. Senator McGill. [LB971]

SENATOR MCGILL: Senator Campbell, what currently happens as a student or a person is aging out? Is there any sort of plan like this that they currently follow? [LB971]

SENATOR CAMPBELL: I think Director Reckling can give you a much better idea. But I know that they do work on a plan, a transition plan. And it's very important that that plan be in place. And I think one of the reasons that we included it in the bill, Senator, was to ensure that the courts were also looking that over. [LB971]

SENATOR MCGILL: Okay. Okay. Oh, okay, because I assumed the department was doing something like this before. [LB971]

SENATOR CAMPBELL: Correct, so that the department would be, the provider would be and the courts would be, because like most of us who have had children reach that age, they pick up the phone and they call and they say, how do I rent an apartment, how do I buy a car, very simple things that they call mom and dad about. For many of these state wards they have no one to call. And that's why the transition plan is so important. Thank you for the question. [LB971]

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SENATOR ASHFORD: Thank you, thanks, Senator Campbell. [LB971]

SENATOR CAMPBELL: Thank you, Chairman. And I will stay around. [LB971]

SENATOR ASHFORD: Proponents of LB971? [LB971]

SARAH HELVEY: (Exhibit 1) Chairman Ashford, members of the Judiciary Committee, my name is Sarah Helvey, that's Sarah with an H, last name H-e-l-v-e-y. And I'm a staff attorney and director of the child welfare program at Nebraska Appleseed. And we support LB971 because we believe it will strengthen enforcement of the Fostering Connections Act in Nebraska with regard to the three provisions that Senator Campbell outlined. My written testimony that I have provided spells out the ways in which these provisions are beneficial to children and some of the research that supports these practices. I'm not going to go through that today in detail because I believe we have some families here who can speak to that from personal experience. My written testimony also details how LB971 differs from existing federal law and state...federal and state law and policy. And in the interest of time, I'm not going to go through that either, but I'm happy to answer any questions. Instead what I want to address is why this legislation is needed and why it's needed now. Putting these provisions in a state statute helps to ensure that every child in Nebraska receives the benefit of these provisions. Under LB971 the court would be responsible to review that these things are happening on a case-by-case basis. Without that oversight, the primary enforcement mechanism at the federal level currently is through the federal review process that happens every few years in which the reviewers only look at a small sample of cases and only look, in a general sense, to make sure that these policies are in place in the state. LB971 would provide oversight in individual cases through already existing court reviews. And as Senator mentioned, a significant number of states across the country have recognized the benefit of this kind of local oversight and have introduced and passed statutes looking at...regarding various provisions of the federal law similar to LB971. And I understand that there may be an argument or concern that we should wait until more federal guidance is issued before we proceed with a bill like LB971. And I want to...I think that waiting would be both unnecessary and harmful. And I just want to mention a few reasons why. First, federal regulations are only specifically required by the federal act with regard to two narrow provisions which are not relevant to LB971. And so it is therefore possible that there won't be any federal regulations issued that address the content of LB971. Second, while there may be federal guidance issued, the language in LB971 closely tracks that of federal law and so it's unlikely that any guidance would be in conflict. And finally, this bill has been in effect for about a year and a half now. And since that time the Nebraska Department of Health and Human Services has not provided clear direction locally on these provisions. The primary administrative memorandum that has been issued fails to set out clear processes to ensure compliance with federal law. Waiting to provide direction and oversight only would serve to deprive Nebraska children of practices which were passed unanimously

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by Congress, signed by President Bush, and which are widely supported by existing research of (inaudible) common sense. Approximately 300 children come into care in Nebraska every month and these children deserve the opportunity to be placed with their siblings and relatives and to have appropriate plans and supports in place for their future. In closing, LB971 is a simple and low-cost way to ensure that all parties in the system are on the same page, because the primary requirements of LB971 are already mandated by federal law and because these court reviews are already occurring, there should be little to no new costs associated with this bill. [LB971]

SENATOR ASHFORD: Okay, thanks, Sarah. [LB971]

SARAH HELVEY: Thanks. [LB971]

SENATOR ASHFORD: Let me remind everyone that we do have a light system. And what that means is that when we get to the yellow light that we ask you to sum up your comments. And then the red light is the stop button, obviously, that makes sense, I guess. Do we have any questions of Sarah? Seeing none, thanks, thank you, Sarah. How many testifiers do we have today on this bill? Okay. Why don't we go with the proponents first, other proponents, I mean. Sarah was one. Kathy. [LB971]

KATHY MOORE: (Exhibits 2 and 3) Committee, I'm Kathy Moore, K-a-t-h-y M-o-o-r-e, executive director of Voices for Children in Nebraska. And I, too, come in support of this legislation. Voices for Children actually worked for passage of the federal Fostering Connections Act and has been very pleased with the progress that Nebraska has made in this regard. We actually were out ahead of this federal legislation initially. And I think that the steps that LB971 will make will ensure that we stay out ahead. In the information that I have provided you, and I'm not going to go through my written testimony, but if you look at this fact sheet you will see that there are a number of children waiting for adoptive placement. Many, many children in Nebraska, ultimately, are adopted by their foster parent or relative caregiver. So many of those waiting children are already in a permanent home, but finalization hasn't occurred. And you will see on the front page that older children in Nebraska are less likely than any other age group to be placed for adoption. So I point you then to the provisions of LB971 which speak to the importance of very early on notifying relatives so that we can place these children most appropriately in the placement that is most likely to be permanent; secondly, keeping siblings together; and third and finally, the need for a transition plan. We obviously always favor a permanent adoptive placement, but again the statistics show us that older kids are less likely to find themselves in that type of placement. So the transition plan called for here will ensure that, as has been stated, not only will the department be working on that plan but the court will monitor and follow up on it. Thank you very much and I'd be glad to answer any questions. [LB971]

SENATOR ASHFORD: Any questions of Kathy? Seeing none,... [LB971]

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KATHY MOORE: Thanks. [LB971]

SENATOR ASHFORD: Next proponent. Katie. [LB971]

KATIE ZULKOSKI: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, and I am testifying in support of LB971 as a member of the board of directors of the Nebraska Court Appointed Special Advocates Association. Court Appointed Special Advocates, or CASAs, are appointed by judges to speak in court on behalf of the safety and well-being of children that have been abused and neglected. And many of the children that are served by CASAs are in court to determine home placements, and as such, bills like this are very important to our association. And we would like to thank Senator Campbell for continuing to work on these issues. We think that many of the things included in this bill are considered best practices, but we would like to see them included in statute to ensure that they are happening. And with that, I would answer any questions. [LB971]

SENATOR ASHFORD: Senator Council. [LB971]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford. And I meant to ask this question of both Senator Campbell and Ms. Moore. But with regard to older children and the effort to make contact with relatives, is there something as a part of this effort to...I know we notify relatives, but to really aggressively pursue relative adoptions? And let me tell you the context I want to put it in. At least it's been, in my experience, not all the time, but I've had experiences where there were relatives available to assume guardianship and potentially adopt an older youngster but there had been more or less a practice or policy of the department not to provide financial assistance to those families. And in fact I can recall an occasion where a relative was contacted and had asked about assistance and they had a tremendously difficult time with that because the assumption was on the part of the department that they were doing this solely for the income. Is that addressed at all in LB971 and what has been your experience in that regard? [LB971]

KATIE ZULKOSKI: I apologize for allowing you to ask that entire question before telling you I may not be the best person to answer that. There is, on page 6 of the bill toward the bottom of the page on line 23, it does say that information shall be provided to apply for kinship guardianship, so it addresses that information be given on that. I am not sure of the practices of how that is...how individuals have been treated in those cases. [LB971]

SENATOR COUNCIL: Okay, thank you. [LB971]

SENATOR ASHFORD: Thank you, Katie. Next proponent. [LB971]

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LINDA COX: (Exhibit 4) I am the Foster Care Review Board's Special Projects and Data Coordinator. My name is Linda Cox, L-i-n-d-a C-o-x. The board is here today to support LB971. I'm not going to go through my written comments verbatim. I just want to hit some of the high points. We have seen a number of cases in which children have been in care for quite some time before relatives are found. And when that happens, children are then removed from a foster family with which they have bonded and feel safe to be placed with relatives who often, from their perspective, are strangers who just happen to share a common heredity. And we are hopeful that the prompt identification and assessment of relatives that is required by this bill will help eliminate some of this. We also are hopeful that this would help to speed the identification of paternity. For 282 of the children under age 6 that were reviewed by the Foster Care Review Board during 2008, paternity had not been established, which was about 24.2 percent of the children of that age group that were reviewed. Further, 177 of those kids had been in care for 12 months or longer at the time and still did not have paternity established. Prior to that establishment, the family's ability to care for the children cannot be addressed. If the mothers are unwilling or unable to provide care the children can't be freed for adoption until paternity is resolved. This often involves then a lengthy process of giving the father an opportunity to prove whether he is capable and possibly going towards a termination. So we're hopeful that this will speed up this process so that things can be identified and addressed in a more timely manner. We're also glad to see the provision that relatives be given more information about how they can participate in the care and placement of the child. We receive a number of calls from relatives who are very confused about how the system works. They may not have had the ability to interact with the system prior to that. And so I think this is a laudable goal. We're also supportive of being able to have sibling contact. We see a lot of that not happening at the current time and especially for helping those older children as they're preparing to transition out because so many are ill-prepared for adult living. I'd be happy to answer any questions. [LB971]

SENATOR ASHFORD: Any questions of Linda? Seeing none, thank you, Linda. Next proponent. Opponent? Neutral? Todd is here, oh, we have two neutrals. Go ahead, then Todd. [LB971]

MELANIE WILLIAMS-SMOTHERMAN: (Exhibits 5 and 6) I actually am turning in also a proponent of one of our families, a proponent testimony. I don't want to see the red light so I'm going to read fast. My name is Melanie Williams-Smotherman, M-e-l-a-n-i-e W-i-l-l-i-a-m-s hyphen S-m-o-t-h-e-r-m-a-n. I'm executive director of the grassroots collaborative known as the Family Advocacy Movement, which is made up of families with personal experiences related to the issues of foster care and the central register. I thank the Judiciary Committee for offering the opportunity for families to speak in more depth about our experiences and to offer our own insights and thoughts about how our system is not functioning as it must to support the safety and well-being of children and families in our state. Before I read my testimony, I want to be clear that I respect

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Senator Campbell's focus on these issues for children. And I do believe that Mr. Reckling is sincere in his desire to improve conditions for families. Nevertheless, I have a role to bring attention to service issues currently faced by Nebraska families. I'm here both as a representative for my own family as well as a spokesperson for countless other families who have identified devastating systemic problems in the way the child protection system in Nebraska treats children and families, too often resulting in tragic outcomes. Families' constitutional rights have been violated by Nebraska's child protection system and our children's sense of well-being has been compromised and our integrity as parents disrupted by identifiable issues within the system's approach to families in crisis. For this reason, rather than ignoring our families' reality, in order to speak about the potentially redeemable aspects of revising a fundamentally flawed statute, I ask that you indulge our awareness of important parts we've identified as being missing from the original statute and also from this bill. What is missing is any apparent acknowledgement that most children removed from their homes are not actually abused or neglected but simply suspected of being abused or neglected. According to several reports, including figures showing the rate of actual substantiated cases of abuse and neglect offered by the Nebraska Department of Health and Human Services and statistics of appealed cases eventually overturning lower court decisions, the majority of cases brought to HHS are found to not warrant traumatizing children and devastating families by putting us through unbearable turmoil. Only about one-quarter of suspected child abuse reports actually hold up when they are investigated thoroughly or when one strips out lower court rubber stamping of department and prosecutorial tricks, as we see it, and family rights violations, which are most often exposed in higher court settings. These figures suggest an alarming statistic. Consider this again, of all the reported cases of child abuse and neglect, as many as three out of four children are needlessly removed from their homes and families, and often kept out while precious budgetary resources are spent attacking the integrity of families rather than spent on targeting wraparound services to help preserve them. What's missing from this bill is the articulation of system accountability that promises consequences for department actions that work to divide families needlessly and a clarity that expresses an understanding of what actually happens to children emotionally and sometimes physically when they are made wards of the state. [LB971]

SENATOR ASHFORD: Melanie, I'm going to ask you to...we have your comments, I assume. [LB971]

MELANIE WILLIAMS-SMOTHERMAN: I do. And I submitted six copies, I didn't...next time I'll bring ten, but... [LB971]

SENATOR ASHFORD: Well, we can make...well and we have a copy machine. We don't have a lot of money in the state though. [LB971]

MELANIE WILLIAMS-SMOTHERMAN: I'm sorry, I thought we had five minutes. Next

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time I'll be more careful. [LB971]

SENATOR ASHFORD: No, you're very good and you may get a question about something. But any questions? But we do have your comments and we get the drift of what you're saying. Thank you. [LB971]

MELANIE WILLIAMS-SMOTHERMAN: Yes, thank you. [LB971]

SENATOR ASHFORD: Any other neutral testimony? [LB971]

TODD RECKLING: (Exhibit 7) Good afternoon, Senator Ashford and members of the committee. My name is Todd Reckling, R-e-c-k-l-i-n-g. And I'm here today to testify in a neutral capacity on LB971. I won't read from my testimony but basically highlight three main points that Senator Campbell alluded to. First and foremost is the fact that we believe that because it's a federal requirement that these provisions don't necessarily need to be in state statute. I just share with you based on the comments we heard, yes, federal guidance has come out. But, no, it is not complete. We have heard that, meaning the states, that sometime soon the federal government will issue additional requirements for clarification. They have actually asked the states to help them look at the definitions around a sibling and a relative, does it mean half-sibling, step sibling? So there's further federal guidance that will be coming out. My second point is I, too, believe that relative notification is absolutely crucial. This bill will put the time frame for notification at 15 days, which is calendar days not work days, instead of the federal guidance which issues these states an allowance of 30 days. And it doesn't say you're trying to make notification, it says notification will be made. It's problematic when you have other relatives that the parents may not be able to identify right away, those relatives may be in other states, those relatives could be in some type of hospital situation and just not available for us to make that immediate contact. But, yes, I absolutely concur that that notification needs to occur. The time frame and unintended consequences is what's concerning. My final point on this is related to the fact that the federal Fostering Connections requires that all types of juveniles and young kids and children be included in this, which would include delinquents. LB971 does not include delinquents upon our interpretation. I've also provided to you a listing of just some of the technical issues that we've made available to Senator Campbell as well as she considers the work around this important effort. Be happy to answer any questions. [LB971]

SENATOR ASHFORD: Any questions of Todd? Seeing none, thank you, Todd. [LB971]

TODD RECKLING: Thank you. [LB971]

SENATOR ASHFORD: Any other neutral testifiers? [LB971]

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VICKY WEISZ: (Exhibit 8) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Vicky Weisz and I'm employed as a research professor of psychology at the UNL Center on Children, Families, and the Law. I am also the Nebraska Court Improvement Director coordinating improvement efforts for the Nebraska courts in their work with abused and neglected children and children in foster care. I was also a practicing child clinical psychologist before I began working for the university and the courts. Today, I am here as a private citizen and although my experiences and observations stem from my job, my views do not represent the views of the university or of the Nebraska Supreme Court. I will also just summarize some of the points. And I do want to talk a little bit about some of the reasons behind the three provisions that are included in LB971. And the first is the timely notice to relatives. And just explain a couple of reasons why that is important. The most important reason is, and it's always good to put yourself in the shoes of the relatives in this kind of situation. If a child is removed from their parents because of the parents' inability to safely care for them, what one would want is to find out about that fairly quickly if you're a grandparent or an aunt, an uncle or even an older sibling to the child, because ideally you could provide a safe and loving and nondisruptive place for the child while their parents deal with whatever. But then if...the opposite side of it is something that Linda Cox referred to is that if relatives are not notified early on they can appear with rights about a year, year and a half, two years later, after the child has already formed strong attachments to another family. And that's a tragedy for all involved at that point. And there's really no good way out. The second thing I just wanted to mention about the sibling issue is that every panel of foster youth I've ever heard, and if anyone has had the opportunity to listen to foster youth what they talk about is the pain they have felt for losing contact with their siblings. And they usually understand why they might have to have been removed from their parents because they might understand what their parents' problems were, but they don't understand why they have lost their siblings. So part of this addresses that. The transition plan for youth, those plans are created now, I believe, but judges never see them. And so what this...with all aspects of LB971, it provides for judicial oversight. So rather than having a monitoring during a federal review that happens every three or four years as to whether Nebraska is in compliance, every child would have contact with their siblings, whether their relatives have been notified, and a transition plan reviewed by a judge. Thank you. [LB971]

SENATOR ASHFORD: Thanks, Vicky. Any questions of Vicky? Thank you. Any other neutral testifiers? Senator Campbell, would you like to close? [LB971]

SENATOR CAMPBELL: Just a brief comment. Thank you, Chairman Ashford and committee. I wanted to respond to Senator Council's question because we didn't quite get to that. There are a number of financial assistance that can go to a family member. And one of the best programs that is a part of the LB603 package that we put together last year is Senator Howard's bill on guardianship and adoption. And now there is some support systems in place for family members or anyone else on adoption or

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guardianship which, Senator Council, I think goes a great way, a long way of helping families who may take on this responsibility. And that part of the LB603 package has been a great success. I think the department has already started making contacts. [LB971]

SENATOR ASHFORD: Well, they even have...don't they have a hot line in place and they've contacted...I talked to someone with Lutheran Family Services or they've contacted 100...some huge number of families. [LB971]

SENATOR CAMPBELL: Yes, that part of the LB603 package has started... [LB971]

SENATOR ASHFORD: Right. [LB971]

SENATOR CAMPBELL: ...and will go a long way to respond to the question that you had. For the rest of the committee, we will work with...we'll bring a small writing group together, we'll try to get the technical parts taken care of. And as soon as we can, we'll be back to the Chairman. [LB971]

SENATOR ASHFORD: Thank you. Do we just...on that LB603 piece, are we going to get, maybe I'll ask Todd later, but are we going to get some...a report back on that adoption piece as to the families. Okay. That will go into the committee, the 603 committee? [LB971]

SENATOR CAMPBELL: He must be nodding. Yes. [LB971]

SENATOR ASHFORD: All right. That's very important work, I think. [LB971]

SENATOR CAMPBELL: Thank you. We'll be holding additional committee meetings as soon as we sort of get out... [LB971]

SENATOR ASHFORD: That's right, Senator McGill knows the answer too. [LB971]

SENATOR CAMPBELL: Yes, she's your great representative there, for sure. [LB971]

SENATOR ASHFORD: Yes, she is a wonderful representative. [LB971]

SENATOR CAMPBELL: And Senator Coash is also on our committee. [LB971]

SENATOR ASHFORD: And Senator Coash is a great representative. And I'm not on it. [LB971]

SENATOR MCGILL: We're all great. (Laugh) [LB971]

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SENATOR LATHROP: Well, some of them are good and some of them...let's not get carried away. [LB971]

SENATOR ASHFORD: Okay, thanks. Some of them are good. But thank you very much. [LB971]

SENATOR CAMPBELL: Thank you very much. [LB971]

SENATOR ASHFORD: And having recognized a couple of my colleagues, I would like to recognize Senator Coash from Lincoln and Senator Christensen, Mark Christensen from Imperial, Senator Lautenbaugh from Blair, Senator Rogert from Tekamah, Senator Lathrop from Ralston, Senator McGill from Lincoln, and Senator Council and I from Omaha. And Stacey Trout is our legal counsel, Christina Case is committee clerk, they all do a great job. Jamie and Sara are gone, our two pages that are with us every time. So let's go on to Senator Lautenbaugh. Oh, he did come. Okay, come on up. We moved you to last but then here you are. [LB971]

SENATOR FULTON: The last shall be second, as they say. (Laugh) Thank you, Mr. Chairman, members of the committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent District 29. I bring to you LB1037. LB1037 is intended to facilitate the collection of arrearages in child support by authorizing child support enforcement to take administrative action against an obligor's license or property after one month of arrearages have occurred rather than the current three month amount. Mr. Chairman, I have had some discussions with the department and I understand that this bill would be very difficult to implement. And I say this somewhat shamefacedly, but I recognize that there could be some problems in implementing this bill. So I will leave myself at the mercy of this fine committee and say that I would just ask that the committee hold onto this bill, if that's possible. [LB1037]

SENATOR ASHFORD: Thank you, Senator Fulton. Do... [LB1037]

SENATOR ROBERT: Oh, that ends the hearing. (Laughter) [LB1037]

SENATOR ASHFORD: No, that's all right. Thank you. And I know you've got some other bills so...no questions? Are there any testifiers on this bill? Seeing none,...oh, there are. Keep in mind what Senator Fulton has just said. [LB1037]

TODD RECKLING: (Exhibit 9) How about if I just submit my testimony, would that suffice? [LB1037]

SENATOR ASHFORD: Why don't you do that, Todd, that would be great. And Katie can do the same if she likes. [LB1037]

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TODD RECKLING: Thank you, committee. [LB1037]

SENATOR ASHFORD: Your name, Todd Reckling is here and he's going to submit some testimony and Katie. [LB1037]

KATIE ZULKOSKI: Katie is just going to state very shortly on the record, my name is Katie Zulkoski, Z-u-l-k-o-s-k-i. I'm testifying on behalf of the Nebraska State Bar Association. We recognize that while there may be some problems with this bill, we would like to see this important issue addressed. The three month time frame can be long for someone who continually has to appeal this process. So we do think looking at the one-month time frame would be something to be addressed. [LB1037]

SENATOR ASHFORD: Thank you, Katie. Any questions of Katie? Seeing none, any other testifiers? Okay. LB1045, Senator Lautenbaugh. [LB1037]

SENATOR LAUTENBAUGH: Which bill are we on because I have... [LB1045]

SENATOR ASHFORD: It's your bill, LB1045. [LB1045]

SENATOR LAUTENBAUGH: I know, but there's two in a row though. [LB1045]

SENATOR ASHFORD: Then LB1046 is after that. [LB1045]

SENATOR LAUTENBAUGH: Understood, but my numbers don't match the order on the sheet. So are we doing jury commissioners now or are we doing speedy trial? [LB1045]

SENATOR ASHFORD: We're doing... [LB1045]

SENATOR COUNCIL: Jury commission. [LB1045]

SENATOR LAUTENBAUGH: Okay, fair enough. Thank you, Mr. Chairman, members of the committee. My bill is unique this session in that you cannot lose your license under this bill. What it does do, however, is address provisions regarding a jury commissioner. I know it doesn't come up very often, but I used to be an election commissioner (laughter) and in that capacity, in Douglas County, I was also the jury commissioner. And there is a statutory scheme that determines when counties have separate election commissioners when the county clerk is, when the Governor appoints one, and also when the jury commissioner is also the election commissioner. This is a bill that is...will only affect Sarpy County for the foreseeable population future. And the Sarpy County Election Commissioner is here to clarify why this is important. And I will be happy to take any questions but I'd be happier to defer to him even. [LB1045]

SENATOR ASHFORD: Okay. Yes, Senator McGill. [LB1045]

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SENATOR MCGILL: I have a random question. But I'm looking at the fiscal note and why do we even have fiscal notes from the city of Imperial, Omaha and Fremont? Do you know why the Fiscal Office would have...I mean it says nothing because, of course, it doesn't impact them. But what is the... [LB1045]

SENATOR LAUTENBAUGH: Yeah, that is unusual. I would... [LB1045]

SENATOR MCGILL: ...the process of getting these fiscal...do you have any idea? [LB1045]

SENATOR LAUTENBAUGH: I can't help with that. [LB1045]

SENATOR MCGILL: I just think that's bizarre, to be honest. [LB1045]

SENATOR LAUTENBAUGH: I think it's that darn city of Imperial just insinuating itself into everything. I mean,... [LB1045]

SENATOR MCGILL: (Laugh) Yeah, but I don't know what process they're going through in the Fiscal Office that they're asking those cities and...okay, I just wanted to point that out. [LB1045]

SENATOR LAUTENBAUGH: No, I have no idea. [LB1045]

SENATOR ASHFORD: Well, it's always a mystery isn't it, Senator McGill, the whole fiscal note issue. [LB1045]

SENATOR MCGILL: Exactly, I just wanted to point that out. [LB1045]

SENATOR LATHROP: And for those people that wonder why we laugh so hard when you talked about being a jury commissioner or an election commissioner, it comes up like four times a day when (inaudible). [LB1045]

SENATOR LAUTENBAUGH: Pretty much. [LB1045]

SENATOR LATHROP: Okay, just so that they understand. [LB1045]

SENATOR ASHFORD: Thank you, Scott. Do we have any proponents? Maybe it will clarify the Imperial issue. [LB1045]

SENATOR CHRISTENSEN: It's a great place. [LB1045]

SENATOR ASHFORD: Yeah, it's a great place, Senator Christensen. [LB1045]

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WAYNE BENA: (Exhibit 10) Good morning...afternoon, excuse me, Chairman Ashford and members of the Judiciary Committee. My name is Wayne Bena, W-a-y-n-e B-e-n-a, and I currently serve as Sarpy County's election and jury commissioner. I come before the committee today in support of LB1045 as well as being a person in the unique position of being the only jury commissioner being affected by LB1045 and that's on purpose. After the 2010 census count, Sarpy County will more likely than not surpass 150,000 residents. Once this occurs, under the provisions of Nebraska Revised Statute 25-1625 (4), the duties of a county's jury commissioner will be transferred to the county's clerk of the district court. Such a move in Sarpy County would possibly cost the citizens tens of thousands of dollars each year as well as unnecessarily interfere with a process that is currently working in our county. By approving the changes in LB1045, it allows the status quo to continue within our county. In the packet of material I have presented please find a letter of support from Sarpy County clerk of the district court, Carol Kramer. I've also spoken with the judges of our county's district court and they support our office continuing the duties of the jury commission. Due to the timing of this committee hearing, there was not an opportunity for me to present a final resolution in support of LB1045 to the Sarpy County Board as there was no meeting of the board between the time this hearing was scheduled and today's hearing. A resolution of support of this bill is being presented in the coming weeks for their consideration. Once action has been taken on the resolution, it will be sent to the committee. I urge the committee to approve LB1045 and allow its consideration by the full body before the census has been completed. Before I close my remarks, I'd like to say that I enjoy my duties as jury commissioner in Sarpy County and I would like to keep them. I have a great team in the Sarpy County Jury Commission Office and they do a really great job of making sure that all needs of our citizens are met. And we'd like to continue that role. In answer to Senator McGill, it's my understanding that the Fiscal Office contacted many of the different jury commissions across the state to see if this would have any impact on them. But we did not get a call as being the only one it was impacting. [LB1045]

SENATOR MCGILL: It's just pretty clear that it wouldn't have an impact on them and so... [LB1045]

WAYNE BENA: I know that they contacted Lancaster, I just spoke with the Lancaster Election Commissioner, who is also the Jury Commissioner, yesterday. They said that they had contacted him and he said it had no impact. So they were probably just seeing if any of the counties would have any impact. But I can assure you I am the only county...in the fifth section of the bill it has 200,000 and more, that's Lancaster and Douglas. There is not another county that is over 100,000 except me. And since it's...the 150,000 is based upon the census, there will not be another county for, I would believe, ten years that would be affected by this law change. I thank you for your time. And I anxiously await any questions the committee might have. [LB1045]

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SENATOR ASHFORD: I think it's fairly straightforward, you want to continue to be the jury commissioner. [LB1045]

WAYNE BENA: Correct. [LB1045]

SENATOR ASHFORD: Okay. I get it. [LB1045]

WAYNE BENA: It's simple as that, but this was also in... [LB1045]

SENATOR ASHFORD: Don't cloud it. (Laughter) [LB1045]

WAYNE BENA: No, I enjoy the duties. And speaking with our clerk of the district court, our judges within Sarpy County, they're comfortable with the current situation. The only thing that is preventing that is this current law. And I'm not a person that likes to go against state law, so we bring this before you to get that changed. [LB1045]

SENATOR ASHFORD: Thank you very much. Any other testifiers? No questions it doesn't seem. So thank you. Any other proponents? Opponents? Neutral? Senator Lautenbaugh, do you have any closing? [LB1045]

SENATOR LAUTENBAUGH: You seem pretty confident no one else wanted to speak on this, Chairman Ashford. But you did really cut the bill down to its essence. This would allow Sarpy County to continue doing what it's doing. And I would urge your support. [LB1045]

SENATOR ASHFORD: Thank you. LB1046. [LB1045]

SENATOR LAUTENBAUGH: Yes. Thank you, Mr. Chairman, members of the body. This is another occasion where I'm going to defer to the experts that come behind me because this is a change in the criminal law, it deals with speedy trial. It's specifically to address an opinion in State v. Williams, where there were so many indefinite continuances that in the end it exceeded the statutory time allotted for a speedy trial. This would address that and allow the prosecution to continue within certain parameters. Once again, I'll be happy to discuss this but I know I have a county attorney coming to actually explain what this would do and how this would address the problem more clearly and ably than I probably can. [LB1046]

SENATOR ASHFORD: Thank you, Senator Lautenbaugh. Any questions? Okay. Proponents. Come on up. Go ahead. [LB1046]

KIMBERLY PANKONIN: Chairman, members of the committee, I am Kimberly Pankonin, P-a-n-k-o-n-i-n. I'm a deputy Douglas County attorney here on behalf of the Nebraska County Attorneys Association and I'm here in support of LB1046. First of all,

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I'd like to thank Senator Lautenbaugh for introducing this important legislation. I want you to know that we are all very mindful of the right of the speedy trial statute to make sure that an accused has a speedy trial. However, what's been happening a lot in trials is there are problems where the statute is being used and utilized in a way that is actually preventing a speedy trial and usurping the criminal process. The statute clearly, under 29-1205, if you look at it for the intent it says, the speedy trial is to effectuate the right of the accused to a speedy trial in the interest of the public and prompt disposition of criminal cases. Continuously in Douglas County, and I know other counties, Sarpy County has had similar situations, we're having problems where a defendant is using the statutes to delay a speedy trial to hope that, in essence, the case will get stale and it will benefit him. So specifically that was addressed. And we had...the Supreme Court came down, in February of '09, with a decision under a case of State v. Williams, and in that the Supreme Court has recognized the problems with the statutes and has said that the statutes need to be changed and that's why we're here before you. Just to give you a little background on that case, the case was Wesley Williams, it was a case that I was involved in. It's a case that took six years to be disposed of. In November of '03, Mr. Williams kicked down the door to his estranged wife's house, stabbed her 20 times in front of her two toddler children. After several continuances by the defendant, approximately seven, up to '06 the eve of trial the defendant filed a motion to discharge. Getting that resolved took nine months. Came back two months later, he files another motion to discharge. Getting that resolved by the appellate court took five months. So in essence what has happened is this type of interlocutory appeal that's under the statutes right now is causing a delay of justice. So what we're asking is you to track the language to codify some of the suggestions by the Supreme Court in putting in the language from the Supreme Court, which is what we have proposed in the statute. And we are asking for a tweaking or an amendment to ultimately resolve the problem that a denial of a motion to discharge is not an appealable final order. This is the way that the federal court system is doing it with their speedy trial and specifically the federal courts have upheld. Specifically, in closing, the right to a speedy trial is meant to protect the defendant from delay, not from the trial itself. Thank you. I'll answer any questions? [LB1046]

SENATOR ASHFORD: Very well, any questions? Senator Lautenbaugh. [LB1046]

SENATOR LAUTENBAUGH: What are the problems that these delays would cause for prosecution? [LB1046]

KIMBERLY PANKONIN: What are the delays? Like, specifically in this case I can tell you in the Williams case the state got ready, got ready, got ready. Defendant continued the case, continued the case, continued the case. Each time the state would be ready, seven continuances. A week before the trial then the defendant filed motion to discharge. The judge went through that, went through a process to evaluate all the continuances and based upon that he overruled that motion. The state of the law now

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the defendant then is allowed to appeal that and stop all proceedings, and then the court loses jurisdiction, and therefore it went to the appellate court, which took, in the first instance, nine months. Then it came back, then set for trial, continued by the defendant, continued by defendant and he filed again a motion to discharge, basically the same grounds. And there is no protection in there to stop it. So in that six-year period the state has lost witnesses, we've had crime lab personnel that retired, you have witnesses...even a witness actually for the defendant could no longer be found that had went to Alaska. So it affects everybody in this delay of justice with memories, availability, evidence, and lastly it does take a tremendous toll on the family. [LB1046]

SENATOR LAUTENBAUGH: So how would you say this bill addresses that then specifically? [LB1046]

KIMBERLY PANKONIN: I think what is important and in the Supreme Court's own language they suggested this language that's tracking the statute as we have it right now, Senator. They say, Justice Wright wrote, "I write, however, to point out that the statutes relating to the right to a speedy trial are flawed and are subject to abuse. Because of continuances granted at the accused's request or with his consent trial has been postponed for years beyond the six month period." He put, "the solution is amending the speedy trial statutes. If an accused extends the trial date beyond the required six months, then the accused should be deemed to have waived the six month trial requirement." And he said there's a protection in there because there's always the constitutional right to a speedy trial that is always in place. [LB1046]

SENATOR LAUTENBAUGH: Thank you. [LB1046]

SENATOR ASHFORD: Any other questions? Yes, Senator Council. [LB1046]

SENATOR COUNCIL: Just a...I'm trying to track this. And I'm looking at page 3 of the bill as introduced, LB1046, and that's where basically this issue is being addressed with this addition. And it just appears to me that from the outset it's almost...it appears that the onus is being placed on the defendant if the defendant requests a continuance and the judge doesn't specify the length of the continuance, then there's a duty, regardless of what the reason for the continuance is, it could be a very legitimate reason for a continuance. And if the court just says, okay, we'll...it's continued until we can set another pretrial hearing date. And then it's up to the court, the judge and the judge's calendar when that's set. That's an indefinite period. It's like the onus now under this is being placed on the defendant to do something about the court's calendar. [LB1046]

KIMBERLY PANKONIN: I appreciate that, Senator. I think that sometimes that is a problem that comes into effect. But I think that here the onus is you figure that he is the one that is creating, and it could be legitimate, there's lots of reasons that they would need a continuance. But he's the one that is first stopping the clock with that

continuance. So the onus is on him if something is not in place. Typically, the procedure is he sets a motion to suppress. A specific date is given for that and that is ruled upon. But what we have is, like in the case of Williams for instance, there was an indefinite continuance at the request of the defendant because they couldn't forecast how long it would take to find a witness who had left the state. So something like that, what they did, the court is recognizing there are some that you can't put a time delay on, so the onus would be on the defendant. As opposed to, and I think they had a pretty good example in here, where I think defendants are trying to, if they leave this open thinking the state will forget about it, then they can come back and, you know, I got you. I mean, the Supreme Court even put a little language of the way the statute is right now. It's like Captain Hook chasing the crocodile and just waiting for him...for the state to slip and fall. And the Supreme Court has even recognized that. That's why I think this onus is on the defendant, because the people that...the state and the people who deserve that right to a fair trial are the ones that are being hurt by these continuances. [LB1046]

SENATOR COUNCIL: Well, let me ask you this question then, let's take the last sentence of the addition where it says, "a defendant is deemed to have waived his or her right to a speedy trial when the period of delay resulting from a continuance granted at the request or with the consent of the defendant or his or her counsel extends the trial date beyond the statutory six month period." As I read that, someone could assert, a prosecutor could assert that, for example, the prosecutor requested a continuance and was granted a 90-day continuance. And then the defendant requested a continuance, and by virtue of granting the defendant's continuance it would extend the trial date to a date beyond the six month statutory period. They would be deemed to have waived their right to speedy trial. [LB1046]

KIMBERLY PANKONIN: The way that I read it and the way I think it should read, Senator, is that it's only the period of delay...I would think the part by the prosecution would be excluded from that period of time. Because, typically, in the compilations of time continuances on ours, unless there's like a really good cause, don't go against the defendant. That time still ticks. So I think in here that's why that's phrased "resulting from a continuance granted at the request or consent of the defendant extends the time." So I don't think and I don't think it should, the time of a prosecution, unless it's good cause, should count against the defendant. [LB1046]

SENATOR COUNCIL: Okay, well, I think that needs to be clarified because if a continuance has already been granted and that period has elapsed and now the defendant requests a continuance and the time that resulting...when...the delay resulting now from that continuance extends the trial date beyond the statutory six month period, they are deemed to have waived their right to a speedy trial. I don't think there's anything in that language that prevents that tacking from occurring. So that language needs to be... [LB1046]

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KIMBERLY PANKONIN: And I agree with you. I think that would be a good way to tweak it. Because I can tell you almost never are any continuances on behalf of the state granted against the defendant. So I agree with you, Senator. [LB1046]

SENATOR COUNCIL: We just need to make that clear. [LB1046]

KIMBERLY PANKONIN: I agree. Thank you. [LB1046]

SENATOR ASHFORD: Senator Lautenbaugh. [LB1046]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. And I agree maybe adding the words "solely caused by the defendant" or something there might address that, could be very simple to address. But for clarity's sake here, the sanction against the defendant, they're not waiving the right to trial by jury, they're not found guilty, they're just waiving the claim...being deemed to waive the claim that they didn't get a speedy trial. [LB1046]

KIMBERLY PANKONIN: Correct. [LB1046]

SENATOR LAUTENBAUGH: That's it. [LB1046]

KIMBERLY PANKONIN: Correct, absolutely. [LB1046]

SENATOR LAUTENBAUGH: Okay, thank you. [LB1046]

SENATOR ASHFORD: Seeing no other questions, thank you. [LB1046]

KIMBERLY PANKONIN: Thank you. [LB1046]

SENATOR ASHFORD: Are there proponents? You'll be next after Katie. [LB1046]

KATIE ZULKOSKI: Good afternoon, Senator Ashford, members of the Judiciary Committee. Katie Zulkoski, Z-u-l-k-o-s-k-i, continuing to wear out my welcome on behalf of the Nebraska State Bar Association. We would just like to have on the record our support of this legislation. I'd be happy to answer any questions. [LB1046]

SENATOR ASHFORD: Thank you, Katie. Next testifier. Good afternoon. [LB1046]

LINDA HOGAN: My name is Linda D. Hogan, H-o-g-a-n. I am here today because my sister, Tina Williams, was murdered on November 3, 2003, by her husband, Wesley Williams. These bills need to be changed for other victims of crime. It took the court six years before we got justice for her murder. This law needs to be changed because it seems that the person that commits the crimes gets away with too much. They get away with delaying when going to court. Every time we were ready to go to court it

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seemed that there was a delay one way or the other on their part. If he didn't feel like coming to court, it seemed that he got away with not coming. That is not right. It seems that they have more rights than they really should have. Don't commit the crime if you don't want to go to jail is how I feel. We went through a lot during the process of the courts because there was constant delays, several appeals before we finally went to court to get justice for her murder. I feel that no one should ever have to go through what we, her family, had to go through to get justice for her murder. There was constantly a delay from the beginning time. And each time it made it harder for us to wonder if we were ever going to go to court. There were times when we thought it was going to be over and then again another delay would happen. My sister did not deserve to be murdered like this, she was very...it took so long to get justice for what happened to her. I know that my sister would not want anyone else to go through six years of delays to get justice. [LB1046]

SENATOR ASHFORD: Thank you for your comments, Mrs. Hogan. There might be some questions. I don't see any. Thank you for coming... [LB1046]

LINDA HOGAN: Thank you. [LB1046]

SENATOR ASHFORD: ...down to talk to us today. Any other proponents of this bill? Do we have any opponents? Any neutral testifiers? Seeing none, Senator Lautenbaugh, do you... [LB1046]

SENATOR LAUTENBAUGH: Just briefly, because I think it speaks for itself and the testimony was compelling. I think we need to address this. [LB1046]

SENATOR ASHFORD: Yeah, it's a sad case. Thank you. Thank you, Ms. Hogan. Thank you. All right, we'll move on to Senator Coash's bill next, I believe, because Senator Stuthman is in another hearing, presenting a bill. So this is LB973. [LB1046]

SENATOR COASH: Thank you, Chairman. Members of the Judiciary Committee, for the record, I'm Colby Coash, C-o-a-s-h. I represent Legislative District 27 and I'm here to open and present to you LB973. As this committee may remember, last year I introduced a bill, LB122, that addressed some issues with the child abuse and neglect register. Specifically, we addressed classifications. And what we did with LB122 was just change a name, and through that process some issues were brought up about the overall expungement process and due process that occurs for people who are placed on the child abuse or neglect register. At that time, I promised the committee that I would continue to look at this issue and, to that end, I have, and LB973 is the result of that. As a background, there are three classifications of placement on the child and abuse/neglect register. You can be found as court pending, court substantiated, and now, because of LB122, agency substantiated. It is the agency substantiated classification that this bill addresses. For people classified as agency substantiated

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there is no due process afforded to them prior to being placed on the register. By a preponderance of evidence, evidence which the registrant does not have the opportunity to contest, HHS can place the person on the register as agency substantiated. This...the only opportunity...there is an opportunity for these folks to defend themselves but it's through the expungement process after this has occurred. These proceedings occur at the request of the registered person after they're placed on the registry. So this is a piece of legislation that's trying to reverse that and put the due process at the front rather than at the end of this. I want to give you a couple statistics to share with you. In 2000...I'm going to start way back in '04, in '04, 1,069 expungement requests were made and 61 percent of those were granted. In '05, 994 requests were made, 55 percent were granted. In '06, 927 expungement requests were made and 60 percent were granted. And in '07, the last year of some complete data that we found, 835 expungement requests were made and 68 percent were granted. So there's a high number of expungements occurring when people are now put on the registry. Now in fairness to the department, some of these expungements occur many years after the initial placement on the registry and circumstances for people placed on the registry can change, which can lead to the expungement. Nevertheless, I believe that this high percentage of expungements tells me that maybe if we put something on the front end we could prevent some of these expungements on the back end. So in working with interested parties, including Nebraska Appleseed and the department, Todd Reckling, we have this bill to cure...to remedy the current gap in this process. What LB973 does is allow for an administrative hearing on the front end of the central registry placement for those with the pending agency substantiated status. Within ten days of receipt of this notification of pending placement on the register, the subject could make one request for an administrative hearing. The department would hear the case in no fewer than 10 and no more than 60 days after receiving the request. Within ten days, unless good cause for an extension is shown, the department would hand down their final decision on whether or not to place the subject on the registry as agency substantiated. So that's what the bill does. Before I leave my opening here, I'd like to address the fiscal note for a moment. The fiscal note indicates that there are 1,200 reviews for amending or expunging a child abuse/neglect record and conducted 69 hearings. It's unclear whether or not this was annually. I believe that estimating an initial 2,400 hearings a year is a little bit vast, especially considering that if we had front-end hearings we'd eliminate the expungements that they seem to be doing quite a bit of on the back end. So I'd like to continue to work with this committee and the department to dig into that a little bit further because I think we can address this, this session. Thank you. [LB973]

SENATOR ASHFORD: Senator Council. [LB973]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford, and thank you, Senator Coash. I remember all the work in trying to move from inconclusive to something more definitive and that individuals would have something that they could challenge and understand what it was they were challenging. [LB973]

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SENATOR COASH: Uh-huh. [LB973]

SENATOR COUNCIL: And it's my understanding, as the process works, and maybe the better person to direct this question to may be a department representative, but the expungement is a court proceeding, is that...or is it under the Administrative Procedures Act? [LB973]

SENATOR COASH: I believe it's under the Administrative Procedures Act. [LB973]

SENATOR COUNCIL: Okay. So it's under the Administrative Procedures Act, so... [LB973]

SENATOR COASH: I can tell you it's not a court proceeding. [LB973]

SENATOR COUNCIL: Okay. Yeah. So the cost should essentially be the same if it's the back end or the front end, because it's still being handled pursuant to the Administrative Procedures Act. [LB973]

SENATOR COASH: That would be my assumption, Senator Council. The whole point of this bill is to prevent the number of...I mean last...I mean we've got close to 1,000 a year of expungements and the intent of this bill is to prevent that number of expungements on the back end by giving people who are going to be placed on the register the opportunity to present before they're placed on the registry on the front end. [LB973]

SENATOR COUNCIL: Okay. So...because maybe I ought to ask this question to the department, but reading the fiscal note, it says the agency conducted 1,200 such reviews, and when it says "such review," is that an expungement? Is that what "such review" refers to? [LB973]

SENATOR COASH: It may be referring to '09. I can tell you that the latest data I have in front of me is '07 data where there was 835. The largest one that we found was in '04 and there was only 1,069, so I'm not exactly sure if... [LB973]

SENATOR COUNCIL: Okay. [LB973]

SENATOR COASH: ...these are just reviews on the front end. [LB973]

SENATOR COUNCIL: Well, I'll direct it because... [LB973]

SENATOR COASH: I do want to find that out as well, Senator Council. [LB973]

SENATOR COUNCIL: Okay. Because it says that the agency conducted 1,200 such

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reviews and conducted 69 hearings, so I mean... [LB973]

SENATOR COASH: I don't know. (Laugh) [LB973]

SENATOR COUNCIL: Okay. Thank you. [LB973]

SENATOR COASH: Death by fiscal note again. [LB973]

SENATOR MCGILL: Can you just mention real quick why it's important to make sure that they're not being put on if they're not actually...I mean that period of time, maybe it takes a couple of months to get expunged but they could lose their jobs during that period of time. [LB973]

SENATOR COASH: Sure. Thank you for that question. This is important legislation because being placed on this registry has a purpose. This is so that the department and people who use the department to screen employees have accurate data so that we don't let bad guys in the lives of vulnerable people, and that's what Child and Family Services is supposed to help, is protect children. But when you're placed on this registry, you have some pretty dire consequences for you. And if you deserve to be on this register...registry, I'm fine with that. If you've abused a child, you shouldn't be in the lives of vulnerable people. But the number of expungements tell me that we can do a better job on the front end so that we're just...we have that due process important...that's important for people on the front end. Because if it happens on the back end, that person could have already lost their job. This has implications for child custody and things of that nature and it can be pretty devastating for folks who end up on this registry any time. And for some it's well deserved and for others it's not. [LB973]

SENATOR ASHFORD: Thanks, Colby. [LB973]

SENATOR COASH: Thank you. [LB973]

SENATOR ASHFORD: Proponents of LB973? [LB973]

SARAH HELVEY: (Exhibit 11) Hello. My name is Sarah Helvey, that's Sarah with an H, last name H-e-l-v-e-y, and I'm a staff attorney and director of the Child Welfare Program at Nebraska Appleseed. For several years, Appleseed has been working to ensure that the central register process, first and foremost, protects the safety of children, but also respects the due process rights of individuals placed on the central register. We first became involved in this issue when we got a number of specific calls to our intake line from women who were in domestic violence situations. They were placed on the central register for failure to protect their child from domestic violence in the home, and after being placed on the central register, as Senator McGill indicated, they either lost their jobs or had limited employment opportunities, which made it even more difficult for them

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to leave the domestic violence situation. And in most cases, these women didn't pose any kind of community safety threat. And then secondly, we became even more concerned when we learned of the expungement rates that Senator Coash outlined. I think Senator Coash did a great job of kind of spelling out what the bill would do. I just want to point out another statistic that hasn't been mentioned. According to the data that I've seen from the department, the largest number of cases are on the central register under this agency substantiated category. I think in 2008 about 2,000 individuals were on the central register under the agency substantiated category, whereas about 1,300 on the court substantiated and 377 on the court pending. So this means that the majority of individuals who are on the central register are placed on in cases where there wasn't enough evidence to file a court case and based largely on caseworker discretion, and I think that's what this bill sort of aims to address. We believe that LB973 is a good step to provide important due process protections for the most commonly utilized central register category and the category for which the fewest protections currently exist, and we just want to thank Senator Coash for his leadership on this issue. And I'd be happy to answer any questions. [LB973]

SENATOR ASHFORD: Any questions of Sarah? Thanks, Sarah. [LB973]

SARAH HELVEY: Thanks. [LB973]

SENATOR ASHFORD: Other proponents. [LB973]

KENT SMOTHERMAN: (Exhibit 12) My name is Kent Smotherman. I'm a father, a software engineer, a chess coach for children, and my name is on the central register. I commend this committee for its initiative to address the important issue of how parents get placed on the central register. As I'm sure you all know, one primary use of the register is by employers to screen potential employees. As a chess coach for elementary school children, I always worry that having my name on the central register will prevent me from helping kids through chess. Also, earlier this very week, my company I work for as a software engineer terminated some of my coworkers. I was lucky because if I had lost my job it could be much harder for me to find a new one with my name on the register. The mere fact that an HHS case manager has the power to affect the livelihood of a family in such a way and without the approval of any court or judge is outrageous at the very least and unconstitutional at most by depriving citizens of the right to the pursuit of happiness. While I recognize what LB973 is trying to accomplish in providing judicial review, it only addresses half of this issue, in my opinion. Hearings are expensive, and preventing their need is far more effective. My own story is illustrative of this point. The prosecutor in my juvenile case offered that if I pleaded to Nebraska Revised Statute 43-247(3)(a) over the actions of my troubled teen daughter, I could have my other younger daughter, who was swept up into the system along with her, home within a week, in time for Christmas. It was further explained by both the prosecutor and my own attorney that this pleading was also known as a no

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fault and that no one would hold me as responsible for the issues my teen daughter was experiencing. The framing of this to me as no fault comes from the first line of text from 43-247(3)(a), which outlines one of three cases in which the juvenile court has jurisdiction, and I quote: "The juvenile court shall have jurisdiction over any juvenile who is homeless or destitute, or without proper support through no fault of his parent." So far, this sounds precisely as no fault was described to me. However, let me continue with the next passage from 43-247(3)(a): "who is abandoned by his parent or custodian; who lacks proper parental care by reason of the fault or habits of his or her parent." This hardly sounds like no fault now. Statute 43-247(a) is far too broad in its scope, using phrases such as "through no fault of his or her parent" in one passage and "by reason of the fault of his or her parent" in another. How can both of these pertain to the same pleading that a parent is asking to agree to? The answer is simple common sense--they can't. And unless 43-247(3)(a) is broken into multiple parts, parents will continue to be caught in the same Catch-22 I was caught in. Yet my name remains on the central register. I could write a letter to get my name removed, but I refuse. My name should never have been recorded there and so I entrust you, my state senators, with making the changes needed so that the other dads like me don't have their names unjustly added as well. Thank you. [LB973]

SENATOR ASHFORD: Senator McGill. [LB973]

SENATOR MCGILL: So just to make it clear, you've kind of kept your name on there as an act of defiance. [LB973]

KENT SMOTHERMAN: Correct. [LB973]

SENATOR MCGILL: And not because you couldn't get it taken off. [LB973]

KENT SMOTHERMAN: Right. [LB973]

SENATOR MCGILL: And I've spoken with a lot of families and yours, I know your story well, who are in similar situations, and so I appreciate you coming here today. [LB973]

KENT SMOTHERMAN: Thank you. [LB973]

SENATOR ASHFORD: Seeing no other, thank you for... [LB973]

KENT SMOTHERMAN: Thank you. [LB973]

SENATOR ASHFORD: ...coming down. Next proponent. [LB973]

KATIE ZULKOSKI: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i, testifying today on behalf of the

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Nebraska State Bar Association. Previous testifiers have done an excellent job in both explaining the need for and importance of this bill, and we will not take more of your time to further explain that. But we would like to have our support of this bill entered on to the record. [LB973]

SENATOR ASHFORD: Thanks, Katie. Oh, thanks for coming. Next proponent. [LB973]

TAMMY WELKER: (Exhibit 13) Hello, my name is Tammy Welker, T-a-m-m-y W-e-l-k-e-r. I am a foster/adoptive parent and I also work for the Nebraska Foster and Adoptive Parent Association. NFAPA is in favor of LB973. This bill will allow foster parents to be able to maintain their privacy, as well as their jobs, in the event there is an allegation of abuse or neglect against them until the investigation is completed and determination of guilt has been founded. NFAPA receives many calls from families that have been put on the central register with no proof of guilt. At this time, when a foster parent is under assessment, their name goes into a central register. For many of our foster families, this is especially tragic as they may be in a profession where they lose their jobs. This affects their families and their livelihood. As the investigations move forward and some of them are found to be unfounded, the family has already lost their job. And if the allegations are inconclusive, they remain on the registry until it can be expunged. Our foster families give up a lot to take care of hurting children, children who lash out when they are scared and angry. As a result, they can make unfounded allegations. Foster families also find themselves up against angry and hurt parents and family members of children that have been removed from their care. Far too often this family is falsely accused as the result of displaced anger and desperate families. Without this bill, these families are then assumed to be guilty until they are proven innocent. LB973 will give families the opportunity to advocate for themselves, maintain their dignity, and keep their jobs, and most importantly, give our foster families the fundamental building blocks that our judicial system is based upon--their right to be considered innocent until proven guilty. Please support our dedicated foster families by voting for LB973. [LB973]

SENATOR LATHROP: Thank you very much. Are there any questions? I see none. Thanks for coming down. Any other proponents? Any...are you a proponent? For or against? [LB973]

CAROLYN SMITH: For. [LB973]

SENATOR LATHROP: For? Oh, come on up. It's your turn. [LB973]

CAROLYN SMITH: Thank you. Good afternoon, everybody. [LB973]

SENATOR LATHROP: Let's have you start with your name and spell your last name for us, okay? [LB973]

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CAROLYN SMITH: Okay. My name is Carolyn Smith, C-a-r-o-l-y-n, Smith, S-m-i-t-h, and I am here in support of the bill, LB973. I have four kids who are adults now. I have four grandbabies that I would die for. I've been married now 14 years. My husband is a correctional officer since 2002. I am almost 45 years old and I am a survivor and a chain breaker of sexual abuse. I believe that the reason that this bill is so important, so, so important, is because people become targeted. I became targeted because of sexual abuse and social workers...okay, I'm on the central registry eight times. Two of them they say are court substantiated. There has never been not one court hearing that has ever have I been in trouble for, for child abuse. They took my kids a total of four times. I always got them right back, except the last time that they took them it took...my little boy was only 8 years old and when I got him back he was just two months away from him being 18. During all this time, my son was put on lithium when he was 10 years old. He was put on Adderall and he was put on Zoloft. He was in nine different placements in just four years. He was sent out of state to relatives that said they were foster care approved. Nebraska did not check on it. I believed they were too. And when...and I got a therapist when I went to Indiana and he did some checking on it after about a month later, he did some checking, discovered that they were not foster care approved. He recommended...he faxed Nebraska, recommended that my son come back home or it's borderline abusing my family. And they did not let him come back home. They put him in a detention center in Indiana for his 12-year-old birthday. He was there for four days. He wrote a page for every day that he was there. I don't know if you all are familiar with what that elderly lady in Omaha that she fired her home health nurse. And when the home health nurse left, she went back to her office and she coded in that she was...died, that the lady had died. So it took a long time for that elderly lady to get her medication and it caused her so much damage. That lady said it was a mistake. It was not a mistake. It was how they coded things in and that's how they work. Sometimes, you know, people become targeted. I know my mouth did not help and I was a fighter and I wish that I would have handled DHHS workers a little bit better. You know, I wish I would have addressed their concerns. But I mean I never have harmed a child and I am labeled a child abuser. [LB973]

SENATOR LATHROP: Very good. Thanks, Carolyn. [LB973]

CAROLYN SMITH: Thank you. [LB973]

SENATOR LATHROP: Are there any questions? You're from Omaha? [LB973]

CAROLYN SMITH: No, I'm not. I'm from Lincoln. [LB973]

SENATOR LATHROP: From Lincoln? Well, we appreciate you coming down here to tell us what it's like to be on this registry and to support the bill. So thanks for being here. [LB973]

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CAROLYN SMITH: Thank you. Thank you for your time. [LB973]

SENATOR LATHROP: Any other proponents? Anyone here in opposition to the bill? [LB973]

TODD RECKLING: (Exhibit 14) Good afternoon, Senator Lathrop and members of the committee. My name is Todd Reckling, R-e-c-k-l-i-n-g, and I'm here today to testify in opposition to LB973. Current law provides that a finding of agency substantiated is entered on the child abuse/neglect central registry if the department's determination of child abuse or neglect against the subject of the report of child abuse or neglect was supported by the preponderance of the evidence. Current law also allows that person whose name has been entered on the central registry to request an expungement, as you've heard, of their name from the registry. That is that they can request their name be removed from the registry. A person's name can be removed from the registry if they find that there's not preponderance of the evidence or if there's good cause to remove them from the register. An example of good cause may be a situation in which the abuse or neglect occurred but the individual provides documentation that they have received help and have successfully addressed the issue or issues which contributed to the incident and should no longer be considered a potential threat to the safety of children. LB973 also provides that a finding of agency substantiated cannot be entered on the central registry until ten days after the receipt of the letter by the subject of such investigation. It further requires that if the subject of the report requests a hearing, the finding cannot be entered on the central registry unless after such a hearing any subsequent appeal have been held. I understand and I support the intent behind LB973. However, changing the process to provide for a hearing and appeal prior to entry of an agency substantiated finding on the register is likely to significantly increase the number of hearings held. In tough economic times, adding additional cost to the state is problematic. It isn't possible to accurately determine the likelihood of individuals requesting a hearing prior to the entry of their name, but of those names who are entered subsequently on the registry, how many would actually appeal that decision? If you want to talk about our fiscal note, I'd be happy to try to answer any of the questions. Just in closing, again, I do want it to be on the record that I understand and support the intent behind LB973 but it does carry potentially a significant fiscal impact for us at the current time. Be happy to answer any questions. [LB973]

SENATOR LATHROP: Senator Christensen. [LB973]

SENATOR CHRISTENSEN: Thank you, Chairman. I guess I struggle right here hearing that your department says absent agency substantiated concern and then they get totally removed, why would our people work for a agency accuse somebody of something if they don't know it's occurred? And to have them thrown on to a list like this that can cause them to lose their job, could throw them into...I just don't even

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understand how one of your workers would put somebody on a list like this. It's one thing to have somebody investigated, another thing to get them put on a list that could cause damage to someone. [LB973]

TODD RECKLING: If I can try to address your question, Senator, it's a great question. I appreciate it. The preponderance of evidence is a standard that's used so if there's not the preponderance then the person should not be put on the registry and that should go in as an unfounded report, so there is no finding on the register. There is that preponderance, however, that would tip the scale to say that more likely than not that that abuse or neglect did occur, and that's the evidence that we use based on that standard of evidence which is called preponderance. In a situation that you're hearing about people being expunged or being taken off the register later on, it doesn't necessarily mean that that didn't occur. That person could have actually had an episode of abuse or neglect. But as I said in my testimony, they may have gone and sought treatment, successfully completed that, and then such time that that is concluded and there's no more concern about them being a threat to a child, then their name can be off the register. So expungement doesn't necessarily equate with erroneous finding on the register in the first place. [LB973]

SENATOR CHRISTENSEN: I guess my struggle comes in, I understand if somebody gets put on the list because they have done it, if they've got the help to become expunged and off. But if somebody gets on that list that's never done anything, that's a real concern to me. [LB973]

TODD RECKLING: I don't disagree with you. They should not be on the register. As you heard Senator Coash talk, there are significant ramifications to having a person's name on this registry and, therefore, it should be used for that intended purpose. I agree with that. [LB973]

SENATOR CHRISTENSEN: I guess what I'm thinking about is two things: One, as I said before, why can't it be investigated first before on the list; and the other thing, what happens to the employee that accused this, that's not substantiated? Because there could be drastic effects on the other side. Because to me, it simply should be an investigation, then proven. [LB973]

TODD RECKLING: And that's the way it is, Senator. We're not able to send out a finding letter until that investigation concludes. Investigation may be done by our department, it may be done by our department and law enforcement, or an investigation may be done by law enforcement. That evidence gathering, that practice, that process of going through and trying to find out whether or not there is evidence to demonstrate and articulate that there is preponderance has to occur before we send out that finding letter. It's erroneous to think that we...that when we get an investigation, for example, when a person calls in a call to our central intake office and we start an investigation, at

that point that person is not on the register. We are starting an active investigation. [LB973]

SENATOR CHRISTENSEN: Okay. Thank you. [LB973]

SENATOR MCGILL: And it's still...I'm sorry. Do you mind if I go real quick? It's still a concern when over 50 percent, you know, are expunged. And so I just wanted to throw that comment in there again. And I really like that it would be interesting to see statistically if by caseworker there are people who are more likely to put someone on the registry or not. I mean that just might be something that would be interesting to track and see if...I mean Mark brought up a good question--what happens to the employees if maybe they're more likely than others to put somebody on who turns out to be expunged later. It's just a comment I have. I'm not necessarily asking you to address that right now. But, Senator Council, you had questions. [LB973]

SENATOR COUNCIL: Yes. Thank you, Vice Vice Chair McGill. (Laughter) Mr. Reckling, I have a couple of questions just to follow up. I agree with Senator Christensen. One of the concerns I have, I mean it's always all about due process. And we talk about the preponderance of evidence standard and we speak of it in the context of there being equal opportunity to present evidence and my suspicion is that that's not what occurs. I mean it's not a situation where an allegation is made and then evidence...then the accused is provided an opportunity to present his or her evidence and then the caseworker or whomever gathers what other...whatever other evidence and then weighs it. It appears to me, and correct me if I'm wrong and I'll...I'm always willing to accept a correction, that this preponderance of evidence standard is applied to the record that's developed by either the caseworker by his or herself, the caseworker with law enforcement, or law enforcement, not necessarily providing the accused an opportunity to be heard. [LB973]

TODD RECKLING: If I could address your question, you are correct. I'll start with the last end of it and work forward. The other scenario would be if the court actually went through the juvenile court process, but that's not what this bill focuses on. [LB973]

SENATOR COUNCIL: That's not...right. [LB973]

TODD RECKLING: It's just the agency substantiated. You are correct and that's what Senator Coash pointed out in his testimony and introduction of the bill. This would take due process from the back end and put it on the front end. [LB973]

SENATOR COUNCIL: Right, see, and that's...and that's what...that's the concern that I have. We, through a process that does not provide any due process, people lose property and rights, and I think there are serious constitutional implications associated with that. I could be denied income, denied an opportunity to earn income. I could be

denied a property right without having first had due process of law. So I think there's constitutional implications of continuing the process as it exists and that necessitating LB973. But the second horse I'm getting ready to ride is this fiscal note and this is not a good week to bring a fiscal note to me from the Department of Health and Human Services that's based upon assumptions that have no foundation. And that's why I asked the question earlier. This fiscal note says there's 1,200 reviews and 69 hearings. What are the reviews and what are the hearings? [LB973]

TODD RECKLING: Yes, if I could address, I'd be happy to. Thank you, Senator. Let me try to clarify as much as possible, since obviously our fiscal note didn't do a good job for you. What Senator Coash is proposing, again, is to put this process in place up front. What it doesn't do is take away the process on the back end. This is front end, that you couldn't put the person's name on the registry until such a time as this ten day and they went through the process. It doesn't then mean also that later time, that after they've gone through treatment or whatever, they couldn't come still through the process on the back end under the expungement process. So what we tried to do, without having any history of what this would mean, because all of ours is done on the back end, what would happen on the front end. We've looked at what other states have done. There are only about three other states that I'm familiar with that do this--South Dakota, Delaware, and Missouri--and based on their experiences...and it's difficult to directly map it over to what Nebraska would do. They have different time frames. For those three states, their time frames before you enter on the registry is about somewhere between 30 to 60 to 90 days. But they also have what is called differential response, which the state of Nebraska currently doesn't practice, and what that means is right now when we get an allegation of abuse or neglect, we go into an investigation assessment mode. There are other states, through differential response, where they will do what I would call maybe a prescreening, and instead of taking the full-blown route of investigation, they only go more toward a services track. And so when you compare the data, it's hard to tell. But Delaware, for the most part they get tracked under the abuse/neglect track. They see a high rate of hearings being requested on the front end. So it was very difficult. We wanted to be very...as much as possible to have something as we were asked to provide a fiscal note, but at the same time not embellish it or make something up. My evidence is based on this. We know that on...last year we put about 4,000 individuals on the central registry because of this finding of agency substantiated. Our best guess is I don't know how many people would request a hearing up front. Is it the 25 percent, 50 percent, 75 or 100? I don't know what that is and that's why you see multiple scenarios in our fiscal note, because I tried to take a best guesstimate of how many people on the front end. I believe that there would be a lot of people on the front end that would likely request this process to occur, but it still doesn't mean that there's going to be this flip from the back and to the beginning. There could be some, but people would still have a right, based on good cause, to do the expungement. So it's just an unknown for us so...and that's again why we presented multiple scenarios and didn't try to overestimate it or underestimate it but just give a fact that we honestly don't know. But looking at

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Delaware, they in particular have a high rate of people on the front end that do request that. [LB973]

SENATOR COUNCIL: But the question I have, the fiscal note says... [LB973]

TODD RECKLING: Yes, I'm sorry, Senator. [LB973]

SENATOR COUNCIL: ...the agency conducted 1,200 such reviews... [LB973]

TODD RECKLING: Yes, so... [LB973]

SENATOR COUNCIL: ...and that's...what are... [LB973]

TODD RECKLING: ...if I could explain. I'm sorry. The other piece of this, as you indicated earlier, we go through the Administrative Procedures Act so we follow that. The first phase of that is the person will write in a request to have their name expunged from the registry. The first part of that is that I do an administrative review, so I have a program specialist or specialists that actually look at that information and make a determination at their level whether or not the person's name can be taken off the registry. At their point of review, if they believe that that person can come off the registry, that person is off the registry and the central registry is changed to expungement so there is no more official record. If they do not find that that person's name should be off the registry, then that person is told that information and they have a right to request a fair hearing. At that time, it then goes to a fair hearing process with a hearing officer where, your point earlier about due process, they can then have...bring in an attorney, they can bring in any other evidence, supportive evidence, witnesses, whatever they want, and it's an administrative hearing through our hearing office. If at that time our hearing officer concludes that that person's name should be off the registry, it comes off. However, if they don't find it, the person still has that third tier to go through where they can request that through the district court for review of the process. So the hearings that you talk about, when I talk about 1,200, that's how many in process started in last year through the administrative process, and of the 1,200, 69 actually went to hearing. [LB973]

SENATOR COUNCIL: Okay. Now here's a critical piece of data that's missing, and again correct me if I'm wrong. You had 4,000 agency substantiations last year; 1,200 of the 4,000 submitted something that resulted in a review. [LB973]

TODD RECKLING: It's potentially mixing apples and oranges, Senator. The 4,000 is meant to identify those names that went on the register in that year. An expungement...the complicating factor, as Senator Coash identified, the expungements... [LB973]

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SENATOR COUNCIL: It could be at any time, some time. [LB973]

TODD RECKLING: Yes, my registry goes back to about 1976, and so there are people frequently, as the senator identified, most of our expungements are several years after the fact. And... [LB973]

SENATOR COUNCIL: So let me take then a number that's missing between 1,200 and 69. So there were 1,200 reviews. It could have been a review of an expungement...excuse me, of an agency substantiation that went back five years or it could have been one from '09. But you had 1,200 reviews and only 69 hearings resulted. [LB973]

TODD RECKLING: Yes. [LB973]

SENATOR COUNCIL: So were there 1,140...1,131 findings that they shouldn't be on? [LB973]

TODD RECKLING: Keep in mind that there could have been different...I don't have that breakout but there would have been different reasons. It could have been that at that point in time there was not continued or the ability for us through that administrative review process to support that preponderance existed, or it could mean that that person had actually gone through treatment and through good cause their name came off. [LB973]

SENATOR COUNCIL: Well, see, and that's data we have to have in order to evaluate this fiscal note. I mean, you know, it's hard that you have a range of a quarter of a million to darn near a million to accord people, in my opinion, fundamental due process rights, and that assumption being based on 600 requests for hearings on the front end when there were only 69 hearings conducted on the back end. See, I would take the approach that you might have fewer hearings on the front end because it forces your staff to be more careful and more thorough before they propose putting someone on the registry. That's not factored in to the fiscal note, the number of reductions in placements that would result from staff being more thorough on the front end because they were aware that these individuals had a due process right to challenge that on the front end. You might end up with less placements on the registry, which would then, in turn, result in fewer requests for hearings. [LB973]

TODD RECKLING: I don't disagree, Senator, but I think there is a little bit of a caveat that needs to be pointed out. When you talk about a hearing, that's on the tail end of the expungement. A hearing is where it goes past the administrative review into a hearing. [LB973]

SENATOR COUNCIL: Right. [LB973]

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TODD RECKLING: When we talk of hearing on the front end, that is what would be required through this bill,... [LB973]

SENATOR COUNCIL: Right. [LB973]

TODD RECKLING: ...is that we'd actually have to go. So when you compare 69 to an unknown, I'm saying it's not just the hearing, it's the 1,200 reviews. So all we tried to do was say, of the 4,000-plus people that may go on in any given year, what percentage of those may request a hearing? We started at 25 percent. But you're absolutely correct, I don't disagree that hopefully that there would be fewer requests because we would have that preponderance right up front. But at the same time, just having that opportunity to have that hearing up front and that review up front, we tried to guesstimate what percentage that would be, and 25 percent of people requesting to have something occur before their name went on the registry, I don't know if that's a inaccurate statement or, you know, that to me seems fairly minimal. I think people will want to exercise their right of due process on the front end. [LB973]

SENATOR COUNCIL: Well, that, see, it's hard to compare because I don't know how...what the percentage is that request it on the back end? [LB973]

TODD RECKLING: And that's why I'm saying it's difficult because it's two different processes and I don't know that it would be a fair comparison. I will...am more than happy to provide this committee any data. Senator Ashford, at a prior request, I had provided data. Senator Coash has been great to work with and I've shared data with him. I will get the committee whatever data you would like to look at. I don't want to bicker or present opposition... [LB973]

SENATOR COUNCIL: Oh no, no, no problem. [LB973]

TODD RECKLING: ...to our fiscal note, but it was difficult to say, if we're doing process B, what is process A going to look like. And all I tried to do on that front end was look at what other states were experiencing. Unfortunately, we only have 3 other states; 42 other states do it the way Nebraska is doing it on the tail end. [LB973]

SENATOR LATHROP: Oh, I'll take it. Senator McGill. [LB973]

SENATOR MCGILL: I just have a comment and this may seem nitpicky to some people, but in the fiscal note, not numbers-wise but just as I read through it, you refer...or HHS refers to the people as the bill would allow perpetrators to request hearings. I'm just taking..."perpetrators" was probably not the best word to use, and it's not used in the statute itself. It's people who...the subject of the report of child abuse or neglect. [LB973]

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TODD RECKLING: I appreciate... [LB973]

SENATOR MCGILL: Because "perpetrators" assumes... [LB973]

SENATOR COUNCIL: Guilt. [LB973]

TODD RECKLING: I appreciate you pointing that out for us. [LB973]

SENATOR MCGILL: So I just wanted to point that out... [LB973]

TODD RECKLING: Thank you. [LB973]

SENATOR MCGILL: ...and so in the future, in communication, can get the other phrase in there. [LB973]

TODD RECKLING: Thank you. [LB973]

SENATOR MCGILL: All right? [LB973]

TODD RECKLING: Yes. [LB973]

SENATOR LATHROP: And, Todd, I do have a couple questions for you. [LB973]

TODD RECKLING: Yes, Senator. [LB973]

SENATOR LATHROP: And I was...I had to step out briefly and so maybe you covered this, but I'm looking at the fiscal note and it says that you...you're anticipating additional expenditures because you may have from 600 to 2,400 additional hearings. Is that right? [LB973]

TODD RECKLING: Yes. [LB973]

SENATOR LATHROP: And so the \$200,000 to \$800,000 in additional expense is expense related to having 600 to 2,400 more hearings. Is that right? [LB973]

TODD RECKLING: In that range, yes, and we would need staff to...like a program specialist to actually do that first part potentially. This bill doesn't say what type of hearing or what process that has to go, so we tried to say that some of these hearings won't actually need a hearing officer, we may need a program specialist to process those additional ones. We know that some of those, as Senator Council points out, will actually go to a administrative hearing officer to review, and so we may also need some additional attorneys based on that to help review those estimates. [LB973]

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SENATOR LATHROP: How long do these things take? [LB973]

TODD RECKLING: The hearing themselves? [LB973]

SENATOR LATHROP: Yeah. If you...600 hearings would cost the state \$200,000? I don't have a calculator to do the math right here but I'm wondering how efficient our state is if to have 600 to 2,400 more hearings we're going to spend \$200,000 to \$800,000 in additional expense. So can I figure out what it...in terms of the efficiency of government, can I figure out what it costs us for a hearing by dividing that 600 to 2,400 into the \$200,000 and \$800,000? Or is there some additional expense that we're... [LB973]

TODD RECKLING: I think we tried to... [LB973]

SENATOR LATHROP: ...that... [LB973]

TODD RECKLING: ...we tried to point out, based on us processing that, what we would need. For example, if it was the 600 hearings, you...our estimate would be one full-time FTE, an attorney, half an attorney for the hearing officer themselves. HH... [LB973]

SENATOR LATHROP: Okay, let me just stop you there. [LB973]

TODD RECKLING: Please. [LB973]

SENATOR LATHROP: If you have 600 hearings and it takes you a full-time person and half a lawyer, and that number comes to \$200,000? [LB973]

TODD RECKLING: That's based on salary. You can see the breakout between federal and state, but we'd be happy to tell you what the annual salaries were of those staff. It's not provided in this fiscal note but I'd be happy to write that down for you. [LB973]

SENATOR LATHROP: I see this was prepared by Liz Hruska. The process generally is Liz will contact your office or somebody over at Health and they'll give them the estimate on if this passes this is what we think we'll have to do in addition, right? [LB973]

TODD RECKLING: Yes. [LB973]

SENATOR LATHROP: Okay. All right. [LB973]

SENATOR COUNCIL: Can I ask a follow-up question on that, Senator Lathrop? [LB973]

SENATOR LATHROP: Certainly, Senator Council. [LB973]

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SENATOR COUNCIL: And it's just following up and I'd like to direct the committee's attention to page 2 or 3 of the note, and it gets to the point that you were making, Senator Lathrop, about efficiency. At 1,200 hearings, it's projected that there would be 2 FTEs at the attorney II level, 1 FTE at the attorney III level, 1 FTE program specialist, .75 of an FTE legal staff support, and 1 full FTE. Now, but to add 600 more, to go from 1,200 to 1,800, you need 1.5 more times attorney II, and .5 more time attorney III, and I don't...why do we need 1.5 more time attorney to go from 1,200 to 1,800, but to go from 600 to 1,200 you only needed 1? [LB973]

SENATOR LATHROP: I think that's directed at you, not me. (Laughter) [LB973]

SENATOR COUNCIL: Yeah, I mean...you would think that when volume increases in handling basically the same type of case, that to go...and I can understand from...I can appreciate going from a current level of 600 to 1,200 you'd like...you'd have to double your staff. But I don't understand why it has to be 1.5 times to add 600 more. [LB973]

TODD RECKLING: Senator, maybe if I could clarify, maybe that was...and I need to look at this a little bit closer, but if you look under the .5, for example, where it has an attorney II at 2 FTEs... [LB973]

SENATOR COUNCIL: Uh-huh. [LB973]

TODD RECKLING: ...and then you have an attorney III which would actually be the sitting hearing officer at 1.0. When you increase that another 600 under the 800 scenario, we said 3.5 under the attorney II and 1.5,... [LB973]

SENATOR COUNCIL: Uh-huh. [LB973]

TODD RECKLING: ...maybe that should have correctly read 3 and 2, which would have been consistent with the findings. So... [LB973]

SENATOR COUNCIL: Okay. [LB973]

TODD RECKLING: ...we're happy to look at that. [LB973]

SENATOR COUNCIL: Okay. [LB973]

TODD RECKLING: I think that explains part of the difference that you're pointing out. [LB973]

SENATOR COUNCIL: Okay. [LB973]

SENATOR LATHROP: Okay. I do want to express my concern about these people and

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the idea that we are going to continue down a process that puts people on a list, when 68 percent of them get off of the list if they have a hearing. Sixty-eight percent would suggest that the thing ought to be flipped around and they ought to have a hearing to get put on it instead of a hearing to get taken off of it. I mean I remember taking this up before and I'm impressed with we're trying to get foster care parents, right? We're trying to get these people... [LB973]

TODD RECKLING: Absolutely. [LB973]

SENATOR LATHROP: ...involved in the process and then we set something up like this that just seems so unfair and so contrary to our system of justice in this country, which is we're going to throw you on the list and then you got to work your way off of it; in the meantime, you're losing jobs and stuff like that. And the answer is, well, we brought a fiscal note with us that makes it cost prohibitive this time around. And I got to tell you, I look at these fiscal notes and I'm thinking, well, maybe it's a measure of the efficiency of government right now, you know? If this is what it takes to fix a problem like this and people say I want you to go down to Lincoln to fix waste, I look at this and go is that really what it costs to get government going or to do things around here? Because we're already cutting 68 percent of these people loose and taking them off the list. And I don't know. I have a lot of concerns. I appreciate that Senator Coash brought this bill but we need a solution that doesn't involve leading with a fiscal note that makes resolving the problem cost prohibitive, because...I mean I don't know about any one of these people. Maybe they deserve to be on the list and should stay there even after a hearing. I'm not commenting on them, although I'm impressed that this is wrecking some people's lives. That's a lot of people and that, you know, it sits on the list and now they have the burden to get themselves off of it because...is it...do I understand it right, a caseworker rolls into the office and says essentially "put them on the list" and then they're there? And a preponderance of the evidence, that's more likely than not. I mean it's just that much and that's just somebody's hunch. And I really, really, really truly have a lot of concern about throwing people on a list where they can lose their job. Is this a list that the general public can find? If I wanted to see if Senator McGill is on the list, could I do that? [LB973]

TODD RECKLING: No, Senator. [LB973]

SENATOR LATHROP: Who has access to the list, Mr. Reckling. [LB973]

TODD RECKLING: Uhh...agency. [LB973]

SENATOR LATHROP: Just the agency? [LB973]

TODD RECKLING: Yes. [LB973]

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SENATOR LATHROP: And what things is that going...if I'm on the list, if someone put me on the list or a person on the list, what do they...do they lose their ability to work for HHS or be a contract...? [LB973]

TODD RECKLING: Having your name on the central registry, certainly dependent on how the employers practice their employment practices, it certainly and does have an effect, yes, so... [LB973]

SENATOR LATHROP: Okay. So I'm just going to pick a hypothetical person. They get on the list and now they've lost their job because of whatever incident got them on the list and they want to go work at a day care. Does somebody check the list before they go to the day care? [LB973]

TODD RECKLING: We run about...you know, we do almost 100,000 employment checks per year so, yes, they would check that. [LB973]

SENATOR LATHROP: Okay. And while I asked if I can just go look, who gets to look or who can make the request for a peek at that list? [LB973]

TODD RECKLING: The person, as part of their employment application, will fill out a signed release of information that that employer then submits to us, and then we give back a report to the employer, whether the person is on or not on the registry. [LB973]

SENATOR LATHROP: Do they have to be...do they have to be trying to get a job with the state or somebody who has a contract with the state, or can anybody do it? [LB973]

TODD RECKLING: We do check...it's whatever employer does those type of checks for... [LB973]

SENATOR LATHROP: What if PayPal wants to do that? They don't have anything to do with children. They just...they're doing financial transactions. Can they get the person to sign a release and ask you if... [LB973]

TODD RECKLING: I don't tell them what they have to do with the findings. It's up to them. I don't tell them what they have to do with the findings as the employer. It's up to their employment practices what they do. Whether... [LB973]

SENATOR LATHROP: No, my question...I think you misunderstood me. [LB973]

TODD RECKLING: Okay. [LB973]

SENATOR LATHROP: My question was if somebody in the banking industry, okay, completely away from children... [LB973]

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TODD RECKLING: Sure. [LB973]

SENATOR LATHROP: ...in the banking industry, if they wanted to look on this registry, if they have a release, will you give them the information? [LB973]

TODD RECKLING: If the release is from the person and they're doing it as part... [LB973]

SENATOR LATHROP: Yeah, right. [LB973]

TODD RECKLING: ...as part of their employment checks, then we would run those checks. [LB973]

SENATOR LATHROP: Okay. So anybody can look at the list as long as the person authorizes it. [LB973]

TODD RECKLING: The persons that were being checked against on the list... [LB973]

SENATOR LATHROP: Yeah. [LB973]

TODD RECKLING: ...has to authorize in writing. And again, we don't...we either tell that employer, yes, they're on the list or...the central registry list or, no, they're not. [LB973]

SENATOR LATHROP: The process that you described, I'm trying to understand it and I want to walk through it because maybe it's a little more fair than I think it is. Somebody comes in, a caseworker rolls into the office and says this person ought to be on the list. Does a letter go out to the person who is potentially going to be put on the list and are they then told, hey, look, we're going to put your name on the list unless you tell us you want to have a hearing? [LB973]

TODD RECKLING: The process would be that we either get a law enforcement report or our workers are out or it's a joint investigation. Based on the investigation, then, our workers go out and gather evidence. It may be medical evidence, talking to witnesses, trying to, what you described, find out whether the scale is tipped or not. [LB973]

SENATOR LATHROP: Right. [LB973]

TODD RECKLING: Based on that information, that's then reviewed with the supervisor, one of our DHHS supervisors, and a determination is made whether or not there is that preponderance of evidence and whether that... [LB973]

SENATOR LATHROP: Let's assume that there is. Somebody has made that judgment.

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What's the process after that? [LB973]

TODD RECKLING: That person's name would be entered into our computer system, the central registry process. We're required... [LB973]

SENATOR LATHROP: Immediately. [LB973]

TODD RECKLING: At the conclusion of our investigation and at the time that we believe that the preponderance exists, we would make that entry. [LB973]

SENATOR LATHROP: Okay. [LB973]

TODD RECKLING: That person is then, by state law, required for us to submit and send them, by certified mail, a finding that their name is going to be entered or not entered on to the central registry and what their appeal rights are through the expungement process and how to make that contact. At that point, after they get the letter, it's up to them if they would like to request an expungement hearing. And then, as we described earlier, that process kicks in. [LB973]

SENATOR LATHROP: Okay. Let me just ask a couple more questions and then I got a thought. [LB973]

TODD RECKLING: Okay. [LB973]

SENATOR LATHROP: At the point that somebody at HHS makes the determination that a preponderance exists, their name goes on the list, at that point can a prospective employer, assuming they have the proper release, find out if they're on there, from day one, from the first day? You don't wait, you don't wait to make that information available until after the person has failed to elect to have a hearing, right? It's on there day one. [LB973]

TODD RECKLING: The way the law currently reads is that at the conclusion of our finding and us sending out the letter, that's when the person's name can be entered on the central registry. What Senator Coash's bill does is, what I think you're describing, is causes a time delay before we can enter that person's name on the registry. [LB973]

SENATOR LATHROP: Okay. At least...and maybe I'm advocating for Senator Coash's bill, which doesn't surprise me (laughter), the...at least at that point, they've had a...we've afforded them an opportunity to say, well, that's nonsense, I didn't do anything, I want to have a hearing, and their name doesn't go on the list until after they've had a hearing or they've not asked for one. But to put them on there at day one seems unfair. Here's another thought I have and something that we're not talking about here. I got a problem with a system that, once there is a review, 68 percent of the people are having

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an expungement and that makes me...that makes me wonder, as I listen to this. It's one thing to have a system where...and I understand the importance of being careful, believe me. We don't want somebody being a foster parent who's going to beat kids up or has a history of doing that. I understand what you're trying to accomplish. But I was looking at these...Senator McGill wrote these numbers down, the appeals, 61 percent were expunged in '04, 55, 60, and 68 through 2007. It suggests to me that we're putting the wrong...too many people on the list or we need to calibrate the standard for who goes on the list, and that shouldn't cost us anything. There should be no fiscal note associated with what's our standard for putting somebody on the list if more than half of those people end up getting off of it. Do you follow me? [LB973]

TODD RECKLING: I do, Senator, and I appreciate it. I think you heard me open up and you'll hear me close that the intent behind this bill I absolutely support. Part of what you're describing is currently in statute. The word in evidence is preponderance, so if this body or somebody else wants to review that statute and change that, we are following statute which is preponderance. The other... [LB973]

SENATOR LATHROP: I am not kicking you around. [LB973]

TODD RECKLING: No, no, I'm just... [LB973]

SENATOR LATHROP: I am not kicking you around. [LB973]

TODD RECKLING: But I want you to know the other piece... [LB973]

SENATOR LATHROP: Because I appreciate you coming down here and you're always very candid with this committee and... [LB973]

TODD RECKLING: And the other piece that I think is important, and I don't disagree with your statement about would that bar change the amount of people going on the registry. I concur. But I hope I leave this committee with at least part of what you're describing, is it does not mean that 68 percent of people were erroneously put on the registry. There was good cause findings where somebody has actually gone successfully and completed whatever they needed in order to get their name off the registry. So... [LB973]

SENATOR LATHROP: It would help if those numbers were broken out. [LB973]

SENATOR MCGILL: Yeah. [LB973]

TODD RECKLING: I don't disagree and I think that's what the committee is asking. [LB973]

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SENATOR LATHROP: So the next question I have for you is if we made the...are you trained as a lawyer? [LB973]

TODD RECKLING: Absolutely not. [LB973]

SENATOR LATHROP: Okay. (Laughter) You don't have to be proud of that fact. [LB973]

TODD RECKLING: You noticed how quick I responded to that question. [LB973]

SENATOR COUNCIL: Not everyone can be so blessed. [LB973]

SENATOR LATHROP: Well, I didn't want to start in on this without...I didn't...I wanted to understand what your background was. If we change the standard to clear and convincing, which is somewhere between preponderance and beyond a reasonable doubt, in the middle is clear and convincing, do you think we'll get all the people we need to and fewer of the people that we shouldn't? [LB973]

TODD RECKLING: And responding as a lawyer would, I think it would be speculation for me to answer that because I don't know. [LB973]

SENATOR LATHROP: Lawyers do not always answer that way. Well, I guess I can visit with Senator Coash about it. That might be part of it, Todd, because... [LB973]

TODD RECKLING: And if you look there... [LB973]

SENATOR LATHROP: ...if we just picked...if we had a standard or a process for getting to who meets the preponderance of the evidence and gets on the list in the first place, and if we set the bar just a bit higher, a big higher,... [LB973]

TODD RECKLING: I don't disagree. [LB973]

SENATOR LATHROP: ...as I think it should be if we're taking away somebody's livelihood... [LB973]

TODD RECKLING: And part of what we're trying to do the last couple years, part of my background is I started as a child abuse and neglect investigator so the central registry is very important to me because I do know the ramifications that it has. And so what that means to me is that it's a good time to look at it, and part of what I've done over the last couple years is we've tried to and we have put in place an additional...a more holistic part of our assessment up front. When our workers are going out and doing an assessment, we've tried to take a more holistic approach to determine safe versus unsafe and really look at the issue around are we putting the right people on the

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registry, are we doing holistic investigations. And so again, I don't disagree with what you're saying at all. [LB973]

SENATOR LATHROP: Yeah. [LB973]

SENATOR COUNCIL: Senator Lathrop. [LB973]

SENATOR LATHROP: Okay. [LB973]

SENATOR COUNCIL: Just a point... [LB973]

SENATOR LATHROP: Senator Council. [LB973]

SENATOR COUNCIL: ...just a point of information that whether it's clear and convincing, preponderance, beyond a reasonable doubt, the issue is that determination is made by an administrative person in Health and Human Services and, more often than not, it's the caseworker. So there's no... [LB973]

SENATOR LATHROP: Well, my only thought was, is if we made it clear and convincing, maybe you'd have less...you put fewer people on the registry and then among the fewer people you'd have the same number of appeals, right, and make this thing fiscal impact neutral. [LB973]

SENATOR COUNCIL: It's still the caseworker who says... [LB973]

SENATOR LATHROP: But... [LB973]

SENATOR COUNCIL: ...whether it's clear and convincing. [LB973]

SENATOR LATHROP: ...anyway, that's...any other questions? [LB973]

SENATOR COUNCIL: No, sir. [LB973]

SENATOR LATHROP: Thoughts? I really do appreciate, you do come down here and you answer the questions and sometimes they're pointed and sometimes they're friendly softballs, but today we appreciate your coming down here. [LB973]

TODD RECKLING: I appreciate that. I have one more hearing so I'll look forward to coming back. (Laughter) [LB973]

SENATOR LATHROP: This year or today? [LB973]

TODD RECKLING: Today. Thank you, Senator. [LB973]

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SENATOR MCGILL: Today. [LB973]

SENATOR LATHROP: Okay. Great. [LB973]

SENATOR MCGILL: He's got Stuthman's. [LB973]

SENATOR LATHROP: All right. Thanks, Todd. Anyone else here in a neutral capacity or in opposition? Senator Coash, you're free to close. [LB973]

SENATOR COASH: Thank you, Judiciary Committee. Want to see Todd up here. (Laughter) Director Reckling has been great to work with and if anybody in the department understands this process it would be him and that's why I've engaged him from the beginning on this process. And I think he tried to illustrate some things and I'm just going to repeat a couple things that he did because I know these things to be true. Investigations do happen. And Senator Christensen, I think, was a little worried. They happen. People don't end up on this registry without an investigation happening. The problem is, Senator Council, the person who ends up on the registry doesn't have a lot of say, if any, in how that investigation goes. I'll get back to that in a minute. The second thing is that when we talk about those expungement numbers, and they are more than half of the people on there end up becoming expunged, it's important, and Director Reckling said this, that just because you're expunged doesn't mean you didn't do something bad at the beginning, okay? What happens frequently is people who end up on the registry at some point in their life come back years later and say, you know what, I'm a different person now, I've done these things and I am no longer a danger to children and I don't deserve to be on this registry. And at that point the department grants the expungement. What we do need, and I think Director Reckling got this, is we need to break those numbers down as to who is being expunged way later versus when...at the beginning. What we have to do here, we need this registry and what we're trying to do with this bill is balance two very important elements, in my mind, which is protecting children and protecting the due process of people who can have their lives turned upside down. We need to put the accused in this process so maybe what we need to do is work with the department, I'll be glad to take this on, and in finding a way to make sure the investigative process includes those folks so that that input is up front. I think that might be a way to go. I'll continue to work with the department to find that data and will be back. Thank you. [LB973]

SENATOR LATHROP: Terrific. Thanks, Colby. Next up, Senator Stuthman and LB939. Senator Stuthman, welcome. [LB973]

SENATOR STUTHMAN: Thank you, Vice Chair, Senator Lathrop and members of the Judiciary Committee, for the record, my name is Arnie Stuthman, A-r-n-i-e S-t-u-t-h-m-a-n, and I represent the 22nd Legislative District. And I am here today to

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introduce LB939. LB939 changes child support enforcement provisions relating to the collection of other monetary judgments, mandatory reporting of account balances, reviewing court orders of support and the requirement to report independent contractors under the New Hire Reporting Act. This bill changes provisions for the collection of other monetary judgments, i.e., genetic testing, that a child support obligor owes to the federal government or the state governmental unit when services are being provided under the Title IV-D of the federal Social Security Act and the judgments are related to the child support payments. The collection would be done through the existing income withholding process and would be for such judgments as court ordered genetic testing. The state of Nebraska would receive reimbursement from the obligor for funds the state has already paid out for genetic testing. This bill changes provisions related to the mandatory reporting of account balances. Especially LB939 adds a requirement that the financial institution also remit the delinquent obligor's account balance to the department. Currently, the status requires that a financial institution include the obligor's name, address, Social Security number and the names of all account owners when providing account information to the department. Gaining access to the account balance will greatly increase the amount of collection from providing account information. This bill changes provisions related to reviews of child support orders when there is a substantial change in circumstances. Especially LB939 changes 43-512.12 to come into compliance with federal requirements under...which mandate the program will be able to review court orders within the three-year period outlined in statute when there is a substantial change of circumstances which have lasted three months and are expected to last at least six months. There are department people that have expertise and will be better informed to answer the questions. But I would also like to make a comment that the fiscal note is a positive fiscal note. So I bring forth a bill that could bring in \$23,000 to the state of Nebraska. With that, I will attempt to answer any questions, but I would appreciate deferring the questions to individuals of the department. [LB939]

SENATOR LATHROP: All right. Thanks, Senator Stuthman. [LB939]

SENATOR STUTHMAN: Thank you. [LB939]

SENATOR LATHROP: Proponents of LB939. Welcome, Mr. Reckling. [LB939]

TODD RECKLING: (Exhibit 15) Thank you very much, Senator Lathrop. Good afternoon. My name is Todd Reckling, R-e-c-k-l-i-n-g, and I'm here to support LB939 and appreciate Senator Stuthman bringing this to the committee. I'm going to keep my comments shorter and focused on three main points. And I'm going to start, if you're following along in my testimony, on page 3 actually. Senator Stuthman talked about the genetic testing and some of the mandatory reporting. But I want to focus on the primary push behind this bill and that's on the review and modifications. Nebraska Revised Statute 43-512.12 provides for the responsibilities of DHHS as it relates to reviewing court orders for child and medical support. The Nebraska Legislature amended that

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statute in 1997 to include a provision that would allow for a review of court orders outside of the normal three-year cycle when there is a substantial change in the party's fiscal situation. The current statute describes the criteria as to when a support order can be modified. Orders can be reviewed by the department upon its own initiative or by a request of the custodial or noncustodial party. The statutory language pertaining to reviews when there is a substantial change in circumstances, however, is confusing and may inhibit some parties from seeking modification when it is appropriate. Until recently, the department accepted and processed requests for reviews when the order or last modification was less than three years old when there was a substantial change in circumstances. The change in circumstances may include but not be limited to the loss of a job or a significant reduction of income. Some members of the private bar and county or authorized attorneys did not believe that the statute allowed for an order to be reviewed in a period of less than three from when the order was entered or modified. Nebraska Supreme Court memorandum opinion and judgment on appeal just recently, number S-08-1341, Andersen v. Andersen, June 17, '09, dealt with the issue as to when a review of an order can occur. The court said in its conclusion that "43-512.12 prevents Title IV-D review by DHHS of a child or medical support order that is less than three years old." The federal Regional Office of Child Support Enforcement advised the department, on August 20 of 2009, that in light of the Supreme Court opinion, Nebraska was out of compliance with the requirements of state plan, page 2.12-10. The state must have laws which provide legal authority to review and modify cases within the three-year period from the onset of the court order to satisfy the requirements of 466(a)(10) of the Social Security Act. When a state is out of compliance with the state plan, the potential risk is loss of all federal IV-D funding. In order to be in compliance with the federal law, Nebraska needs to modify Section 2 of 43-512.12 to clarify that the department may review an order for support at any time if there is a substantial change in the party's circumstances. I'd be happy to answer any questions. [LB939]

SENATOR LATHROP: Is this bill put in at your request? [LB939]

TODD RECKLING: Yes. [LB939]

SENATOR LATHROP: And we need to do it to comply with federal law? [LB939]

TODD RECKLING: Yes. [LB939]

SENATOR LATHROP: Okay. Senator Council. [LB939]

SENATOR COUNCIL: Yes, thank you, Director Reckling. And that is if the department, to exercise this authority, someone has to come to the department in less than three years, wouldn't they, and assert that changed circumstances or is this something that the department does a periodic... [LB939]

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TODD RECKLING: We wouldn't self-initiate, no. [LB939]

SENATOR COUNCIL: Pardon? [LB939]

TODD RECKLING: We wouldn't self-initiate. [LB939]

SENATOR COUNCIL: Right. So it's generally the custodial or...generally the noncustodial parent that comes and says, you know, I've changed jobs and I don't make as much money as I used to and I don't expect to make money. And the department then could initiate a review? [LB939]

TODD RECKLING: That is correct. We also have actually more cases where we have incomes actually going up. [LB939]

SENATOR COUNCIL: All right, up, okay. And in those cases would it be the department that would initiate the action to accomplish the change or would it still be the burden and the responsibility of the parties seeking the change? [LB939]

TODD RECKLING: The latter, somebody seeking the change. [LB939]

SENATOR COUNCIL: Okay, okay. And then on the bank account issue, correct me if I'm wrong, the understanding is that the department is going to look...they're looking for assets and they're looking to see what's available in a bank account. And under the statute as it exists now all you get back is information that there's an account. And then you have to take the next step to try to obtain the funds from the account. And when you take that next step you may find out there's nothing in the account. [LB939]

TODD RECKLING: That is correct. And some of the financial institutions are doing that now and some aren't. This would add clarity around the fact that they can do it. And we believe that that would be no additional burden to the financial institutions. [LB939]

SENATOR COUNCIL: Right, and it would help the department in that you wouldn't...when you make the initial inquiry, it comes back and says that there's \$2.62 in the account. You probably wouldn't go the next step. [LB939]

TODD RECKLING: Because we want to be as efficient as we can, yes. [LB939]

SENATOR COUNCIL: Exactly. Okay, thank you. [LB939]

SENATOR LATHROP: I think that's it. [LB939]

TODD RECKLING: Thank you, Senator. [LB939]

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SENATOR LATHROP: Thanks. You're excused for the week. (Laughter) Thanks for coming. [LB939]

TODD RECKLING: I'll take you up on that, thank you. [LB939]

SENATOR LATHROP: Any other proponents? Any opponents to LB939? Anyone here in a neutral capacity? Senator Stuthman, it looks pretty good for you. You can close if you want. [LB939]

SENATOR STUTHMAN: Thank you, Senator Lathrop. Just in closing, you know, this bill is needed this year. We need to pass it because it has a positive impact. And I will inform the committee that I have put this bill in as a Speaker priority, Speaker priority bill. But I need a commitment from this committee that it will be advanced out of committee. [LB939]

SENATOR ROBERT: Looks like it will be a consent calendar if he doesn't take it, I mean, yeah. [LB939]

SENATOR STUTHMAN: Is there a consent calendar? [LB939]

SENATOR MCGILL: We don't know if there is. [LB939]

SENATOR LATHROP: We're not sure, but we appreciate your remarks. I'll pass it along to the Chair and we'll be in touch. [LB939]

SENATOR STUTHMAN: Thank you, have a nice weekend. [LB939]

SENATOR LATHROP: (Exhibit 16) Have a good weekend. That will close our hearings for today. No Exec, go home, have a good weekend. [LB939]