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Judiciary Committee
February 09, 2011

[LB80 LB339 LB598 LB648 LB649]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 9, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB80, LB598, LB648, LB649, and LB339. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR MCGILL: All right, we'll go ahead and get started since more senators have shown up now. I'm Amanda McGill, the Vice Vice Chairman of the Judiciary Committee. (Laugh) Our Chairman and Vice Chair are in some important negotiations so they're running a little late, but we're going to go ahead and get started. If you could please turn off your cell phones or put them on vibrate so they don't disrupt the hearing. I'll introduce members of the committee: Senator Burke Harr is here on my far right; Senator Brenda Council here to my left from Omaha; Stacey Conroy is the committee counsel with us today; Oliver, I have not learned your last name yet, committee clerk, is here with us;...

SENATOR COUNCIL: VanDervoort.

SENATOR MCGILL: Thank you. Sorry about that. Senator Scott Lautenbaugh is here, and Senator Colby Coash. Before you come up to testify, make sure you fill out one of the sign-up sheets here at the front table. Oftentimes, if someone is up testifying, you can come and sit there and be prepared to go up next. And with that, we'll go ahead and get started. I have the first bill here so Senator Lautenbaugh will take the Chair.

SENATOR HARR: Wow.

SENATOR COASH: Uh-oh.

SENATOR LAUTENBAUGH: I'm Vice Vice Vice Chair, okay. (Laughter)

SENATOR HARR: In charge of (inaudible).

SENATOR MCGILL: A little weak on leadership today I guess, or maybe it's better with them gone. (Laugh)

SENATOR LAUTENBAUGH: We'll see how it goes.

SENATOR MCGILL: Members of the committee, I am Amanda McGill, the senator from District 26. That's M-c-G-i-l-l. I bring to you today LB80 for your consideration. This is the second of the bills that I brought this year dealing with ways that I feel we could

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make the child welfare process a little more smooth or a little more fair to families involved. It's not a revolutionary change but a procedural clarification and legal necessity, in my eyes, and the bill addresses an imbalance in our courts and provides a safeguard for children and families. If you look at the bill, believe it or not I'm actually just deleting language without adding any, so I'm making the statutes a little shorter. But right now, when HHS brings in a case plan, the judge gives that plan a presumption that it's the best plan for that child, and then family or otherwise have to prove otherwise, and we're the only state that does that. Every other state, when a plan is presented there's no presumption given to either side, and so both sides have to present their evidence and brings a little more balance to both sides of the debate in the child welfare issue and what is best for the child. I do have one amendment that's been passed around. It's a clarifying amendment. We accidentally struck the letter...the language that allows a judge to actually approve the case plan, so we need to put language back in there to do that. But otherwise, I think this is a sound decision to make, to make sure that both sides have an equal chance to debate what is best for a child. With that, I'll take any questions or I have several legal experts behind me. [LB80]

SENATOR LAUTENBAUGH: Any questions for Senator McGill? Senator Coash. [LB80]

SENATOR MCGILL: Yes. [LB80]

SENATOR COASH: Thank you. Thank you, Senator McGill. Can you...do you have an example how it plays out when...for a family when the case plan is presented and... [LB80]

SENATOR MCGILL: There are some judges here that might be able to give you a more concrete analysis of that. [LB80]

SENATOR COASH: Okay. [LB80]

SENATOR MCGILL: ...or be able to give you a better example than my hypothetical would be. [LB80]

SENATOR COASH: Okay, I'll defer to the judges then. Thank you. [LB80]

SENATOR LAUTENBAUGH: Senator Harr. [LB80]

SENATOR HARR: So who has the burden of proof then? [LB80]

SENATOR MCGILL: Huh? [LB80]

SENATOR HARR: Is it a neutral...I guess currently the parent has the burden of proof. Would this switch the burden of proof to HHS? [LB80]

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SENATOR MCGILL: Uh-huh. We're the only state that does it like this. [LB80]

SENATOR HARR: We're also the only Unicameral state too. [LB80]

SENATOR MCGILL: Yes. Yes, that's true but... [LB80]

SENATOR HARR: Okay. That's all I had. I just wanted to make...clarify that for the record. [LB80]

SENATOR MCGILL: But I feel with a lot of the confusion right now in the system in terms of who's presenting information in the courts and a lot of families are feeling like their best interests and the child's best interest isn't being taken into account, and there's a lot of distrust, to be quite honest, and I feel this is something that can address that distrust. [LB80]

SENATOR HARR: Thank you. [LB80]

SENATOR LAUTENBAUGH: I have to be honest, Senator. When I read this bill, I completely misunderstood what you were trying to do here. It looked like there was going to be fewer occasions for these other parties to question the proposed plan. So I'll discuss it further with some of the judges coming down. [LB80]

SENATOR MCGILL: Uh-huh. Yeah. And I've had some e-mails that have felt that same thing. What you're taking out, the language that says a family has a chance to come in and testify, but this was brought to us or worked with us from the Center for Children, Families and the Law. And, like I said, there will be some judges up here to talk about it some more. [LB80]

SENATOR LAUTENBAUGH: Thank you. [LB80]

SENATOR MCGILL: All right. [LB80]

SENATOR LAUTENBAUGH: First proponent. [LB80]

KENT TURNBULL: Good afternoon. My name is Kent Turnbull. I'm a judge in North Platte, Nebraska. Just by way of introduction, I've been involved in the criminal justice system for about 27 years. I was a county attorney, elected three times, past-president of the County Attorneys Association. Been a judge 11 years and active in the association as well, and I'm in favor of this bill. Yes. [LB80]

SENATOR LAUTENBAUGH: Your Honor, I'm sorry to interrupt you. Could you spell your last name for the record. [LB80]

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KENT TURNBULL: Yeah, T-u-r-n-b-u-l-l. [LB80]

SENATOR LAUTENBAUGH: Thank you. [LB80]

KENT TURNBULL: And by way of...I want to talk to you a little bit what it's like out west right now too, as well, with regard to this in relation to LB80. I am in favor of this bill to remove the language because, Senator, I don't think the burden will shift to Health and Human Services. I just don't think there will be a burden if you remove this language. Right now the burden is on the county attorney, guardians ad litem, and any proponent who's opposed to the case plan report. Also in this matter, I, Senator, address any specific concerns. I've actually brought some prime examples that occur to me weekly, in fact one last week, and three or four. But I just brought one where I see how this affects people and families every day. First of all, I want to talk about a conversation I've had with numerous judges, and that couldn't be here today, with regard that are in favor of this bill. Out of Omaha, Judge Johnson, who I talked to about this bill, is in favor of it as well. He believes, as well as most judges, including myself, that if you remove this language it now places back with the judiciary their responsibility, which is to be the fact finder and to find what's in the best interest of the juvenile, and not be presumed that the plan is in the best interests of the juvenile, no longer to be the rubber stamp, so to speak. The second thing I want to talk about is twofold and I think to have a preference just factually you have to have a certain level of competence and a certain of trust in the document and/or the person who you say there's a presumption. Well, let me talk to you about what's currently going on out in North Platte, Nebraska, and western Nebraska. And for...and I looked. I know that seven out of eight of you are from Omaha or Lincoln and I want you to imagine if this was occurring in your community. Lincoln County, North Platte, had over 50 beds available for emergency placements and/or group home placements. You know how many we have now since the Department of Health and Human Services attempted to privatize? Zero. I have nothing. It's like devastation. It's like somebody set a fire, a prairie grass fire and has destroyed everything. And I know that you're going to hear from the head of the Department of Health and Human Services here today, as well as Mr. Reckling. It's nothing against them as individuals, but I will tell you if this occurred in Omaha I think they'd get some action. But now that it's in North Platte, Nebraska, or western Nebraska, you can just see there's nothing, nothing, nothing. And why is this important with regard to LB80? And the reason why it's important is because now I don't have the ability to do certain things so I need to hear from other voices such as CASA, guardians ad litem, parents and so forth. Becomes even more critical this language be removed so the burden isn't on them and so they can present documents and evidence and things that I can consider, because now we're basically on our own as if as...it kind of reminds me actually of the 1980s when I was a county attorney when we used to have to chain juveniles to the radiators by law enforcement before we could find a placement. You know what? The closest place I can get is Columbus and Grand Island right now. I'm hoping that doesn't happen. But, you

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know, honestly, what do you want us to do? Okay. The second thing I want to talk to you about with regard to that is also not only do you have to have a certain level of competence, and I'm not going to speak to that directly, but you also have to have the ability to have the right best interest of the minor child. I'm not going to impugn the integrity of those that represent the Health and Human Services Department, but let me just give you an example what I see on a daily basis, and I actually brought the case plan report so if anybody thinks that it doesn't occur...and I didn't strike names or anything. I'm not going to give it to you, but it's an actual case plan. Now the case plan recommends that the child be placed on probation. Well, that's nice, but here's two things. One is the child is ten years old. Okay, probation for a ten-year-old. Well, here's the other thing, Senators, which we see constantly. The court had ordered or authorized a mental health evaluation of the minor child because of the behavioral issues that were occurring in school. That recommendation came in for me to follow by law before that evaluation was done. Before we even have the mental health evaluation completed, a recommendation comes out of the department that I place the kid on probation without having the evaluation. This is common. I can cite case. If you want to come out and see how it works, I can tell you how it works all the time. Now why would you do that? Maybe it's because by accident or maybe it's because then if I place the child on probation Health and Human Services doesn't have to pay for the evaluation. Or then I don't place them with Health and Human Services and don't have to pay for the evaluation. Now I'm not saying it's a money issue. I'll leave that to others to decide, but the real point of that is, is that in the best interest of a minor child? No, it's not. And by law I have to do that? No. I continued the case till we got the evaluation, okay? Now I can tell you about another case too. Another thing that...go ahead. [LB80]

SENATOR LAUTENBAUGH: Your Honor, I hate to cut you a little short but we're out of time. [LB80]

KENT TURNBULL: We got to quit, right? Okay. [LB80]

SENATOR LAUTENBAUGH: Can I get you to sum up? [LB80]

KENT TURNBULL: Oh, red light means stop. Senator, I want to apologize. Somebody needs to...I have not been here since I was a county attorney and I'm sorry for that. [LB80]

SENATOR LAUTENBAUGH: Quite all right. [LB80]

KENT TURNBULL: Thank you so much for your time. [LB80]

SENATOR LAUTENBAUGH: Does anyone have any questions for the judge? Senator Council? [LB80]

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SENATOR COUNCIL: You know, not really a question but I want to thank you, Judge Turnbull. And for the benefit of those who don't regularly practice in juvenile court or for those present, the point you're stressing when the 50 beds are no longer available is that the recommendations that you're getting is out-of-home placement or secure detention placement, where if you had more of an opportunity to consider other factors, other facts, other evidence, what was in the best interest of the child may have been maintaining their presence in the family home with some counseling, family therapy, maybe a GPS monitor and tracking. Is that...I mean essentially that's what you're saying. [LB80]

KENT TURNBULL: It goes that way and it goes the other way too. Part of the problem is, because we have no placements, we have dangerous kids going back home... [LB80]

SENATOR COUNCIL: Okay. [LB80]

KENT TURNBULL: ...and who fail. We set them up for failure then without...yeah. [LB80]

SENATOR COUNCIL: Because many of the beds are being occupied by youngsters who don't need to be there and then when...the people who need to be there, there are no beds available. [LB80]

KENT TURNBULL: Right, and also because--I don't know what's exactly happening and you'll have to ask other people--but I can't place people apparently in detention right now because of some conflict between Boys and Girls Home and Health and Human Services at the secured detention in Gering because no one is paying the bill and I don't know exactly if I got that correctly, to be honest, but I'm going, okay, fine, now what I do with that? [LB80]

SENATOR COUNCIL: Thank you. [LB80]

SENATOR LAUTENBAUGH: Anyone else have any questions for the judge? [LB80]

KENT TURNBULL: Okay. Thank you very much. [LB80]

SENATOR COASH: Thanks for coming all the way down here today. [LB80]

SENATOR LAUTENBAUGH: Thank you. [LB80]

KENT TURNBULL: And thank you. [LB80]

SENATOR LAUTENBAUGH: As I'd like the record to reflect that we've been joined by

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Senator Tyson Larson and Senator Lathrop and Senator Ashford. And so now that we have the Chair and the Vice Chair present, as Vice Vice Vice Chair, I will relinquish control to the Chair. [LB80]

SENATOR ASHFORD: Well, I've heard you've done a wonderful job, Senator Lautenbaugh. [LB80]

SENATOR LAUTENBAUGH: It's gone swimmingly. We're still on proponents, number two. [LB80]

SENATOR ASHFORD: Okay. May I ask if we're on the first bill, Senator McGill's, LB80, how many testifiers do we have for LB80 today? Okay. Good. We'll go from there. Hi. [LB80]

CHRISTINE COSTANTAKOS: Hi there. [LB80]

SENATOR ASHFORD: Good to see you again. [LB80]

CHRISTINE COSTANTAKOS: Good afternoon, Senators. Thank you. It's a pleasure to be here. By way of background, my name is Christine Costantakos. I'm an attorney in Omaha and I've been engaged in the practice of law for over 30 years. I'm the author of Juvenile Court Law and Practice, published by Thomson Reuters, which is a practice manual devoted specifically to Nebraska juvenile court law. It's now in its sixth year of publication. I'd like to thank Senator McGill for accepting my suggestion to amend the bill to include the phrase "approve the plan" as one of the options which the juvenile court may exercise. And I thought this was very important because, as you senators know, the juvenile court can exercise only such authority as the Legislature grants to it. And prior to the amendment the only authority the juvenile court could have exercised would be to modify the plan, order an alternative plan, or make up a new plan, and we want the judge to have the full array of power when the judge is making determinations on the HHS case plan. The reason I support LB80 is because the HHS reform is underway. Case planning for children involved in juvenile court proceedings is a whole new ball game, at least from the point of view of practitioners who represent children and parents in juvenile court, those who I've spoken to, and in my own experience. HHS has contracted away responsibility for hands-on case management in two-thirds of its cases, and once it finds a new contract provider that will be 100 percent of its cases. This means that in many cases what we used to know is gone; that the HHS case manager will not have direct working knowledge of the day-to-day needs, problems, and issues affecting state wards, and in some cases this means that the HHS case manager might not even lay eyes on the child who is committed to the care and custody of the department. I'm sure by now you senators have heard some of the problems with the reform. The major problem I see as a practitioner is the disconnect between the service coordinators and the HHS case managers, and the lack of familiarity by service

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coordinators with juvenile court law and procedure, and the rights of children with parents. You're going to hear later probably this is still a work in progress and this is all anecdotal. I want to give you one anecdote. I'm involved in a case right now where a young African-American girl who's 17 cannot get new underwear. She has outgrown her underwear two sizes ago. We had a meeting recently and the HHS case manager normally would have just cut her a voucher for that. HHS's hands are tied. The service coordinator's response was, we can't pay for that; we look to the parents to pay for that first, so we'll ask the mother, then we'll ask the father. Both parents are indigent and have court-appointed counsel. This girl sits there in underwear two sizes too small for her simply because of the paralysis. This is not an anecdote. This continues to happen. So with the new scenario, when HHS retains administrative case management what this means is that HHS will review case plans that are actually proposed and actually written by these service coordinators. In my opinion and experience, there's no rationale to continue this knee-jerk preference in favor of the department's case plan, especially given the fact that there are other parties involved who may have positions. I think if you remove this preference, which is what LB80 seeks to do, you really will make the judges work more, but they know how to do that, and more tightly scrutinize the plans. [LB80]

SENATOR ASHFORD: Okay. Thanks, Chris. Any questions of Chris? Thank you. Judge. [LB80]

LARRY GENDLER: (Exhibit 1) Good afternoon. For the record, Larry Gendler, G-e-n-d-l-e-r, here for myself and also the Bar Association. I just want to talk about the history behind how this became law, and I had sent a letter last week too. This is extra, something to doodle on if you don't want to listen. In 1989, Senator Coordsen tried to get together a committee because of concerns regarding child welfare. And if you recall--I've been around since the days of Governor Thone--after there was a mess with welfare, Governor Kerrey came in and merged all the county welfare systems in with the state welfare system. Used to be called the Department of Public Welfare. They changed it. Then Governor Orr inherited this and what happened was a lot of judges were ordering specific placements, specific issues to be addressed, and it was costing the state a great deal of money. But that's the way it used to be done because the judges were in their own counties and they would just have the county provide those services. So he got together our committee and we came up with a compromise solution, which was the three-judge review panel and this presumption. And recall at the time we didn't have OJS, we didn't have managed healthcare, we didn't have some of the things in place that we have now. So that was the reason why this particular clause was included in that legislation and I just don't think we need it anymore. In response to one of the questions regarding what will this change, if the case plan is all the evidence we receive in court, we're still going to adopt the case plan. All this really does is put the parties on an even footing. And again, it was...it goes way back to 1989 when the Court of Appeals didn't even exist, so we were trying to find a quick mechanism to review things the judges were doing. [LB80]

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SENATOR ASHFORD: I remember it very well. Any questions of Judge Gendler? Yes. [LB80]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming again today, Your Honor. [LB80]

LARRY GENDLER: Sure. [LB80]

SENATOR LAUTENBAUGH: So basically this is changing an evidentiary presumption that... [LB80]

LARRY GENDLER: Right. [LB80]

SENATOR LAUTENBAUGH: ...and little more than that. Is that correct? [LB80]

LARRY GENDLER: Right. Right. [LB80]

SENATOR LAUTENBAUGH: Thank you. [LB80]

LARRY GENDLER: People still have to put on evidence. (Laugh) [LB80]

SENATOR LAUTENBAUGH: Right. [LB80]

SENATOR ASHFORD: It was a vestige of the change, however, because there was uncertainty at the time as to how this would play out with the counties who no longer...it wasn't the judge ordering an agency down the street. [LB80]

LARRY GENDLER: That's right, it was a judge ordering a state agency. [LB80]

SENATOR ASHFORD: Ordering a state agency, and we grappled with that, you did, we all did during those days because I was there, grappled with that issue for a long time figuring out how that would work. [LB80]

LARRY GENDLER: Right. [LB80]

SENATOR ASHFORD: And that was the three-judge...I remember that. [LB80]

LARRY GENDLER: Right. [LB80]

SENATOR ASHFORD: That was the three-judge deal. [LB80]

LARRY GENDLER: Right. [LB80]

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SENATOR ASHFORD: And we no longer have that I think because of some of the reasons you've talked about today for the presumption. Okay. Thank you. [LB80]

LARRY GENDLER: Thank you. [LB80]

SENATOR ASHFORD: Any other proponents? Opponents? Todd, welcome. [LB80]

TODD RECKLING: (Exhibit 2) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Todd Reckling, R-e-c-k-l-i-n-g, and I'm the director for the Division of Children and Family Services within Health and Human Services. I'm here to testify in opposition to LB80 today. LB80 changes the Nebraska Juvenile Code by eliminating the presumption that the department's case plan is in the child's best interest. Current statutes states: If any party, including, but not limited to, the guardian ad litem, parents, county attorney or custodian, proves by a preponderance of the evidence that the department's plan is not in the juvenile's best interests, the court shall disapprove the department's plan. Once the case plan is received into evidence, the burden shifts to the other parties to present evidence that the plan is not in the child's best interest. This presumption is a recognition the department is impartial and uniquely qualified, due to its training, experience and knowledge of the case, to offer an opinion regarding the child's best interest and to make recommendations on how best to serve the child. The elimination of this presumption would likely result in protracted litigation and more frequent appeals, requiring additional services of county attorneys, courts, and the department, and possible delays in services to children and families. Section 43-285 already contains a provision that the department's plan may only be adopted by and with the assent of the court. This means that the court already has the discretion to modify the department's plan, order that an alternative plan be developed, or implement another plan based on the evidence adduced. In summary, LB80, resulting in eliminating the statutory deference to the department's training, experience and knowledge, by removing the presumption that the case plan is in the child's best interest. Even with the presumption the department's plan is in the child's best interest, the court still has discretion to adopt and assent to the plan. This presumption is a central principle of our current judicial process, without which the process could be more cumbersome and possibly less certain. Thank you for this opportunity to testify here today on behalf of LB80, and I'd be happy to answer any questions. [LB80]

SENATOR ASHFORD: Thanks, Todd. Yes, Senator Council. [LB80]

SENATOR COUNCIL: Yes, thank you, Chairman Ashford. Thank you, Mr. Reckling. I have a question with regard to the statement that the elimination of a presumption would likely result in protracted litigation. Am I to take from that statement that it's your belief that the department would appeal decisions that would deviate from the plan set forth or that...I mean that's the only way litigation would be protracted. [LB80]

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TODD RECKLING: I'm not sure necessarily that we would assume that it would be appealed. I think part of it is that if we did have a difference of opinion of the best interest or if another party challenged it or presented it, it would take additional time to resolve maybe the issues and the difference of opinion of what is in the child's best interest, not necessarily that it would have to go to appeal. But the protraction would be just that delay that could be while the parties continue to discuss what...and come to some consensus related to what really was in the child's best interest. [LB80]

SENATOR COUNCIL: But if the presumption is with the department's plan and the biological parent doesn't agree that that's in the best interests, even with the presumption there's the likelihood of protracted litigation, isn't there? [LB80]

TODD RECKLING: That's true. It could happen currently, yes. [LB80]

SENATOR COUNCIL: Okay. Thank you. [LB80]

SENATOR ASHFORD: Thanks, Todd. Yes, Senator Coash. [LB80]

SENATOR COUNCIL: Thank you, Chairman Ashford. Thanks for coming down, Todd. Good, better, indifferent, the department often gets placed in a position where they're to blame for things not going well or poor communication and all those things. Are you concerned that with the change proposed in LB80 that people might start...other parties might start to say, no, the department's plan is no good, just to...just for the sole purpose of trying to keep these cases moving forward or kind of poke the department in the eye just...? [LB80]

TODD RECKLING: No, that's not it, Senator. I certainly think that we all want to work in the best interests and for the kids and have what needs to happen for the kids, so I don't think there would be anything intentional. I think our concern with this is that right now we have...the department has historically, and then now through our lead contractors, will have had the most kind of hands-on experience with the child and family. So that presumption is based on our knowledge, expertise and training that our workers, our staff, and now the lead contractors will have had based on the most contact with that kid and family. So we assume that the plan, based on our knowledge and experience with interacting with the family, assessing what's needed and providing a plan of where to take services and supports, that we're in the best position to make that plan. And currently it exists now, as I said in testimony. The law says any of those parties can object now so I'm not concerned necessarily that it would be intentional to delay it. We just think that we're in the best position, based on our experience, to put forth a plan based on our interactions with the family. [LB80]

SENATOR COASH: Okay. I understand. One thing that Senator McGill said in her

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opening that was surprising to me, and I don't know if you...if you can comment on it, I'd like to hear your thoughts: Every other state does it differently. And I don't know, do you have any thoughts on how other states are moving forward with the protracted litigation or if they have similar problems that you may anticipate, or can you speak to that at all? [LB80]

TODD RECKLING: I've heard, obviously, Senator McGill make those statements. I don't know and certainly don't question the fact if Nebraska is the only one. I just don't know that for certain. I can tell you that states in general, the department is the one that again puts together the contractors and, when the services are in the private sector, put together the case plan and court report. And again, there's not a concern about other parties chiming in. Quite frankly, I think that a multiviewpoint of what happens is best. I just don't know that the laws or the way the judiciary operates in other states is necessary to answer your question. [LB80]

SENATOR COASH: Fair enough. Thank you. [LB80]

SENATOR ASHFORD: Thanks, Todd. [LB80]

TODD RECKLING: Thank you. [LB80]

SENATOR ASHFORD: Any other opponents? Neutral? Opponent? Oh. [LB80]

LINDA COX: My apologies. I'm slightly out of order here. I am actually a proponent but I have this ear thing and I didn't hear you... [LB80]

SENATOR ASHFORD: Well, we have this rule, we can't change it. No, I'm kidding. Welcome back and...(laughter) I'm pretending I'm Judge Gendler. (Laughter) [LB80]

LINDA COX: (Exhibit 3) Well, thank you. My name is Linda Cox, C-o-x. I am the data coordinator with the Foster Care Review Board and I've been asked to read this letter by the board into the record. It's very short. The Foster Care Review Board supports LB80 which removes a section of statute requiring another party to object to the department's case plan and prove it is not in the best interest for the courts to disapprove the plan. In light of the number of changes in DHHS staff and/or lead agency staff assigned to children's cases, the presumption granted to DHHS regarding plans does not appear to be reasonable. As of February 7, 2011, there were 4,221 children in out-of-home care in Nebraska with 1,774, which is 42 percent, having four or more HHS caseworkers while in out-of-home care and 384, which is 9 percent, having four or more lead agency service coordinators while in out-of-home care. In addition to these changes, there are significant documentation gaps as the Foster Care Review Board has previously reported. As a result of these factors, the Foster Care Review Board has observed judges working very hard to try to piece together the information and the

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issues. The Nebraska juvenile and family...and county courts should be given the discretion to determine if the child's plan, as presented by the department, is in the child's best interests and modify as necessary. HHS maintains significant leverage without this. Please do not hesitate to contact us if you have any further questions. [LB80]

SENATOR ASHFORD: Okay. [LB80]

LINDA COX: Thank you. [LB80]

SENATOR ASHFORD: Any comments or questions? Seeing none, thank you. Opponents? Neutral? [LB80]

VICKI WEISZ: (Exhibit 4) Good afternoon, Senators. My name is Vicky Weisz, W-e-i-s-z. I'm the director of the Nebraska Court Improvement Project, which is a federally funded project through our Supreme Court that addresses the court's work with abused and neglected children and children in foster care. Many of you have heard about the Through the Eyes of the Child Initiative, which is a part of our program. I am also a research professor of psychology at the UNL Center on Children, Families and the Law, and I would like to provide two pieces of background information regarding LB80. In 2009, the Court Improvement Project contracted with the National Council of Juvenile and Family Court Judges to assess the Lancaster County Separate Juvenile Court. They also reviewed Nebraska statutory and case law, and I just wanted to read a paragraph from their findings that relates to this. Nebraska law also provides that the HHS case plan is presumed to be in the child's best interest. The assessment team questioned why the burden would be placed on parties to rebut this presumption rather than being placed on the government to show that its plan is in the best interest of the child. A presumption that favors the government in cases with broad authority to significantly intervene in the lives of families is troubling. This is particularly important to be revisited as the HHS moves forward with privatization of the casework and the HHS caseworker's role changes to true case management rather than case plan development. And I would add that that was the first change that happened and we are now on the second change. And the second thing I just wanted to say is that the National Council experts told us that they were not aware of any other states that had this presumption. So last December, Kelli Hauptman, my colleague, and I contacted court improvement directors in every state in the Union to find out about that, and there's one state that we couldn't contact and so Kelli did a detailed review of the statutory and case law for that state. And no other state has such a presumption in their statute or case law. Thank you. [LB80]

SENATOR ASHFORD: Thanks. Any questions? Seeing none, thanks. [LB80]

VICKY WEISZ: Thank you. [LB80]

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SENATOR ASHFORD: Senator McGill. Is there...no other neutral, I don't think. Oh, one other neutral. Sorry. Presumption that there wasn't anybody else. [LB80]

HEATHER QUITMEYER: Well, I'm not sure if I'm neutral or proponent. [LB80]

SENATOR ASHFORD: Man, this is confusing for me up here. [LB80]

HEATHER QUITMEYER: Yeah. (Laugh) I guess I might be considered a proponent. My name... [LB80]

SENATOR ASHFORD: You're a proponent or opponent? [LB80]

HEATHER QUITMEYER: Huh? Proponent. Proponent. [LB80]

SENATOR ASHFORD: Proponent, okay. [LB80]

HEATHER QUITMEYER: My name is Heather Quitmeyer. Thank you for giving me the opportunity to speak today. I am in support of LB80. I am a guardian ad litem in the Lancaster County juvenile courts. I've been a practicing attorney for only two years now but I've been a guardian ad litem for one year and guardian ad litem work is all that I do. In light of the current structure between KVC and DHHS, I feel that it is appropriate to remove the language of Section 43-285 that gives DHHS court report the presumption of being in the best interests of children. When we're dealing with the court report, a lot of times it's dealing with placement of children and not just services that could be provided to them. I feel that it's appropriate for DHHS to have the burden of showing that these services or removal or placement is appropriate. Parents are offered attorneys if they're indigent, but they might decline those attorneys. And I've received a lot of compliments for just doing my job, which says to me that maybe some guardians ad litem are up to par in what they should be doing, in which case you might hypothetically have a situation where DHHS presents their court report and they don't have to produce any additional evidence, the guardian ad litem might not be paying as close attention as they should be, and the parents don't have an attorney, in which case their interests are just never seen. Another problem that I see is that the DHHS workers are no longer in contact with the children and the families involved. They did have a lot of experience and had a lot of hands-on opportunity to see the kids and see the parents and make good recommendations, but now that has been delineated to KVC. So what we come into a problem is accountability. KVC gets the benefit of having DHHS presumption without...I guess without statute. [LB80]

SENATOR ASHFORD: No, I think we get it. Good. Thank you. [LB80]

SENATOR COUNCIL: Can I have a question? [LB80]

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SENATOR ASHFORD: Senator Council. [LB80]

SENATOR COUNCIL: Yeah. Thank you, Chairman Ashford. And thank you, Ms. Quitmeyer, for...one of the issues is the report itself and when it's received. I mean, in your experience, I just want to know if your experience is anything similar to mine which is many times, although the statute says you're to receive the report so many days in advance of the hearing, I would often have it faxed over the morning of the hearing. So in terms of the presumption, you don't even really have an opportunity to develop evidence to counter that presumption. Has that been your experience? [LB80]

HEATHER QUITMEYER: I just recently had a case where we were coming up on a review hearing, and I received the DHHS court report Friday evening and the hearing was Tuesday morning, and I'm supposed to look at that report and make my suggestions and, you know, say whether or not I agree. And I had other obligations over the weekend so it was very difficult for me to give the court my report in plenty of time for the court to see what my perception is of things. I also run into the difficulty sometimes of DHHS or KVC not getting back to me as quickly as they should, in which case it just makes it very difficult. [LB80]

SENATOR COUNCIL: And the point is it, particularly if the DHHS report is based upon reports from others, like the family therapist or the child psychologist, and you get that, even if you get it five days in advance of the hearing, that really doesn't provide you with an opportunity to go attempt to interview those people to get enough information to be in a position to rebut the presumption. I just wanted to know if that's your experience. [LB80]

HEATHER QUITMEYER: It is very much my experience. [LB80]

SENATOR COUNCIL: Thank you. That's all, Senator Ashford. [LB80]

HEATHER QUITMEYER: Thank you. [LB80]

SENATOR ASHFORD: Any other questions? I see none. Thank you. [LB80]

HEATHER QUITMEYER: Thank you. [LB80]

SENATOR ASHFORD: Let me see, do we have any other proponents, opponents, or neutral testifiers? (Laughter) Senator McGill, would you like to close? (See also Exhibit 5) [LB80]

SENATOR MCGILL: Any of any sort? (Laugh) Colleagues, I feel this legislation is incredibly important. Earlier this week we advanced LR37 off of General File because

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we know that there is a severe problem with our child welfare reform and its transparency and knowing what's on the ground happening now, besides just anecdotal evidence, because all of us who have been involved last fall just get story after story after story. And you know, God bless the people at KVC and HHS who are trying to pull off this transition, but people don't have the knowledge and experience that Todd Reckling says that they do, especially when there is so much training that takes place. And KVC never used to have anything to do with the court system in what they were previously doing and in other states. There is a tremendous lack of trust. You've heard from the judges firsthand about the issues they're seeing in the courts because of this transition and hopefully at some point everything smooths out and we end up having a good transition into privatization. But in the here and now, there are a lot of problems, and this is something that we can do now that could have an impact right away in terms of bringing some faith back into that process. [LB80]

SENATOR ASHFORD: Thank you, Senator McGill. Thank you. [LB80]

SENATOR MCGILL: All right. Thank you. [LB80]

SENATOR ASHFORD: All right, let's go to LB598. Senator Fulton. [LB598]

SENATOR LATHROP: Senator Fulton, welcome to the Judiciary Committee. [LB598]

SENATOR FULTON: Thank you, Mr. Vice 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 in the Legislature. I bring to you LB598. The primary goal of any foster care system is to satisfy the best interests of the child who has become a ward of the state. The best interest of a child in our foster care system is most basically stated as maintaining the status of state ward for as short a time as possible. Permanency must be our focus. Permanency considerations and planning ought to begin concurrently with a child's entry into the system, and proper permanency outcomes ought to occur with the least disruption to a child's development and well-being. Presently, when procedures are properly followed, a permanency plan is developed by the department soon after a child is removed from his or her home and placed into foster care. This plan should set forth with reasonable specificity the objectives required of the family for reunification and the date for permanent placement for the child either by reunification or permanent placement with foster parents. A permanency hearing is held by the district court or separate juvenile court to evaluate the permanency plan and the progress of the family and child in achieving its goals. Such a hearing is to occur no later than one year from the child's entry into out-of-home placement. Once the court evaluates and adopts the permanency plan, it's up to the department to implement the plan. This basic structure is inconsistently accomplished and too often untimely. The result of this failure in our system is the significant occurrence of multiple placements, prolonged foster care, and a failure to achieve permanency for children. Failure to achieve permanency results in

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increased incidents of attachment disorders of varying severity, poor academic and social development, increased propensities toward truancy, and a host of other negative outcomes that in some cases could be worse than had the child not faced removal in the first place. The crucial development and attachment that occurs in a child's first years underscores the need to achieve stable, permanent placement, and it is for this reason that LB598 has been introduced. The bill's aim is to expedite permanency for children, ages 6 and under, for the reasons I've already mentioned. This is not to say that older children are not in need of healthy permanent placement as well. However, we must recognize the long-lasting ramifications of a failure to achieve permanency when a child faces the unfortunate circumstance of entering a courthouse before he or she enters the schoolhouse. LB598 is based on existing statute in Colorado that has been fully implemented in that state for seven years and which requires a permanency hearing within six months of entry into foster care. I've handed you an amendment which more closely parallels that of Colorado's and also to give this committee some latitude, some choices to work with. According to state reports compiled in Colorado: At the point of full implementation of expedited permanency, timely permanency hearings occurred in 85 percent of cases, and permanency within one year of removal was achieved in 81 percent of cases. This presents a significant difference in the percentage of timely permanency hearings in our state. According to the Foster Care Review Board's latest annual report, less than half of the children reviewed had a permanency hearing within one year. It was 45.2 percent actually, and this includes all ages. As amended, I would hope that the committee sees fit that a need to expedite permanency hearings for the youngest of children exists, and that a public policy of expedited permanency is indeed in the best interests of the children who find themselves in the care of the state. Thank you. [LB598]

SENATOR LATHROP: Thank you, Senator Fulton. Senator McGill has a question for you. [LB598]

SENATOR MCGILL: No, actually I just want to thank you for bringing this. I know it was something that came up in our town hall meeting that we had in the fall. And you know, we, of course, have to balance the desires or the abilities of the birth parent, you know, to reform or meet their needs. But as I've been involved and attended Foster Care Review Board meetings, there are a lot of parents that just show no interest, and yet the foster parents still have to wait a full year before they can get one of these hearings. So I think in the cases, particularly where the biological mother or father are just gone and show no interest in following a plan, that those cases should be able to be sped up. So thank you. [LB598]

SENATOR FULTON: Thanks, Senator. [LB598]

SENATOR LATHROP: Senator Council, you're recognized. [LB598]

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SENATOR COUNCIL: Yes. Thank you, Senator Lathrop. And Senator Fulton, I don't think anyone disagrees with the objective of placing children, particularly those under age 6, in more stable relationships sooner and on a permanent basis. But I just have a couple of questions. Well, first of all, I appreciate the recognition that three months is literally an impossibility in this state, but my question is, is this based on Colorado? And you...Colorado certainly has impressive, you know, statistics. Do we have any comparisons on how many cases are handled through the Colorado separate juvenile court or their district court, so that we're comparing apples to apples? I mean if their caseloads don't look anything like Nebraska's caseloads, then that certainly skews those percentages. So do we have any idea how they compare in terms of cases handled? [LB598]

SENATOR FULTON: Yeah. We do. I don't have them with me. I guess my aim in the introduction was just...you know, I have an objective in mind. I understand there are differing ways to achieve that objective. But, yeah, I'm just reporting the objectives. So I do have...we can find those numbers for you and I'll provide them. [LB598]

SENATOR COUNCIL: Okay, because I mean that's very important. [LB598]

SENATOR FULTON: It's pertinent. I understand. [LB598]

SENATOR COUNCIL: And the law, as it stands now, says within a year. I mean it doesn't say after a year; it's within a year. So the question is, are there other ways to expedite the permanency arrangements? And I'm concerned because I get a lot of calls in my office from biological parents who are attempting to satisfy what DHHS or KVC or whomever has laid out as the necessary steps for reunification, and if there's, you know, difficulty...well, first of all, they'll get to be...one of the concerns is DHHS will recommend that a parent or both parents undergo some mental health evaluation and treatment. And we're talking about indigent parents, biological parents, and then there's no provision for payment for the services, you know. In fact, I've had people tell me they went to Region 6, and "Well, you know, we don't handle that; you need to have someone else take care of it." And that's my concern that if reunification is the primary goal in these cases...and that is reunification, you know, unless it's clear that reunification is not possible. And I'm concerned that the kind of signal that's being sent here is that reunification isn't the goal; it's, you know, permanent placement outside the home as quickly as possible. And I...those are inconsistent to me. [LB598]

SENATOR FULTON: Yeah. The...I understand where one can glean that as the policy being communicated by the Legislature in the event that we push this forward. There is another aspect to the policy that I'm proposing here that I just ask you to look at, and that is that having some policy specific to the age of the child. I just...this came to me as an idea actually from...we heard from the mother, the lady at a town hall meeting, but she had also e-mailed and called and set up a meeting with me. And just

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really--hopefully she's here to testify, because she was excellent--and just myself having young children running the age gamut, it is so important when we're talking before 6 years. And so that, while I understand that by way of structure we'd be putting some pressure perhaps on the system, and I understand that, but there's also something being communicated here that there is a greater sense of urgency for those children under the age of 6. So much formation occurs before the age of 6. And I've just had so many people contact my office, and I don't know what to do other than put forward an idea for a structure which we've, all of us, have been working on and now we're in the midst of. This was an idea that was brought to me by a foster parent, with sound philosophical grounds. So that's the other side of this, is that we ought to have some urgency for these kids under the age of 6 because of what's at stake in those first few years. That's the only other thing I'd add. [LB598]

SENATOR COUNCIL: I understand. [LB598]

SENATOR LATHROP: I'm sorry. I didn't hear you. [LB598]

SENATOR COUNCIL: I think I said I understand. [LB598]

SENATOR LATHROP: That's all you have. Okay. Senator Harr. [LB598]

SENATOR HARR: And to follow up on Senator Council's comments, I had the same concern. Mine came more from if a parent goes and gets treatment, and so I did ask around about that, And what I found is that even if you had the hearing within six months, that hearing could be continued to a later date to allow a parent who is taking the proper steps. So that would help address that situation. My concern with this bill is...has to do with the fiscal note. You know, we're faced... [LB598]

SENATOR FULTON: Details, Senator. Details. (Laugh) [LB598]

SENATOR MCGILL: (Laugh) [LB598]

SENATOR HARR: What's that? [LB598]

SENATOR FULTON: I'm joking. [LB598]

SENATOR HARR: All right. [LB598]

SENATOR FULTON: Being facetious. Sorry. [LB598]

SENATOR HARR: Oh. Well, you know, we're...we're upstairs having some pretty interesting and fun debates up there about where to cut. And, you know, we're deciding who and what we want to be, and we're not really having policy arguments as far as I'm

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concerned with a grand picture of where we want government to be and what we want it to do. And maybe this is something where we want to grow government. I don't know. I guess my question is, do you have an area where you have discovered to cut \$61,000 the first year, \$54,000 the next year? Or how do you plan to address this additional fiscal responsibility put upon...? And, let's be honest, not just upon the state; but we're also using federal funds and we're seeing on a federal level that funding is being cut there too. So the amount of this bill is pretty substantial, so I guess can you just address the fiscal note? [LB598]

SENATOR FULTON: Yes. Thank you, Senator, for asking. I am on the Appropriations Committee and if indeed we found...if I found that the committee is willing to move forward with this bill as a means of policy, first of all, the change from three months to six months will have some impact on this fiscal note. So that's the first thing. Secondly, this will have to do...finding an offset with NDHHS of this magnitude, it can be done via the appropriations process. But I think it's also that it can't...it's also something that...how shall I say this? We are not necessarily asking for an increase in PSL nor are we asking for an increase in FTEs. This is something that is representative of an increased work load. I would counter by saying that if we are able to put forward a streamlined process, which is the aim of child welfare reform put forward by the department, then this would be a means by which we are streamlining that very budget. [LB598]

SENATOR HARR: Okay. [LB598]

SENATOR FULTON: So if we need to...if we want to go at this by way of...if we want to go forward...if the committee wants to go forward, then you have the right senator to deal with when it comes to finding money. That's what we do on Appropriations. But if we want to have this by way of a broader debate and child welfare reform, then I'm saying that there's a way that we can do that also. [LB598]

SENATOR HARR: And that sounds great in the abstract and I appreciate that. It's just when things get on the floor, things get a little heated. And when we start playing favorites, I think you have to come in with specificity of, okay, I'm going to find \$61,000. I think you need to come in and just say I have not...I will find it. But I think there needs to be, so that...you know, I want to make sure if I vote this out of committee and you find the \$61,000, and now you take it out of a pet project of mine, I'm going to be pretty upset. So I want to know, with specificity, where this money is coming from before I vote it out of committee. And I think that's...given the current financial situations and we're fighting over nickels and dimes--and we are fighting over nickels and dimes--it's very important that this committee, and myself included, be given as much information as possible where you see cuts being needed. [LB598]

SENATOR FULTON: Right. [LB598]

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SENATOR HARR: Because I can tell you, we all would love to see more, HHS help our pet project more. [LB598]

SENATOR FULTON: Right. [LB598]

SENATOR HARR: And just because you're on Appropriations, I don't think that gets you to the front of the line over someone on Judiciary. [LB598]

SENATOR FULTON: Understood. But I'm saying that if the committee communicates that this is something they want to go forward with, then there's two ways by which we can justify the fiscal note. Either we find the money to replace the PSL that would be requested, which if that's the way that we're going to go forward and the department communicates it's going to require an increase in PSL, then yes, we'd have to find it. And I'd be willing to...I can do that. But I'm saying: look at the fiscal note. There's not an increase of request for PSL or FTE. They're requesting...this is a communication that there will be an increase in work load. And I'm saying that by streamlining the overall child welfare process, perhaps this increase in work load actually makes for less work load within DHHS, long term. And so I mean those are the two options that I'm proposing to you and I...we could get into specifics if indeed that's required, but I need to know if the committee is willing to move forward with it,... [LB598]

SENATOR HARR: And I appreciate that. [LB598]

SENATOR FULTON: ...because that's what I'll have to...that's what we'll do in the budget. We'll try to make room. If this goes forward and it requires an A bill, which it doesn't, then this would be something it be incumbent upon me...incumbent upon the Appropriations Committee to justify the expenditure. I'm saying there are two ways by which we can do that. [LB598]

SENATOR HARR: And I...and to further that, I guess, you know, we've been pitted, it's HHS or education. And so, you know, you're not just fighting a fight within HHS but you're also facing everyone in education, because every additional nickel we spend on HHS is less money to be spent on education, which is the future of our state. [LB598]

SENATOR FULTON: Right. [LB598]

SENATOR HARR: And that's been the...that's the frame...I didn't frame the argument that way. It's been framed by others that way. [LB598]

SENATOR FULTON: Yeah. Understood. [LB598]

SENATOR HARR: And so I think you need to be cognizant of that as well. [LB598]

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SENATOR FULTON: Senator, just to be clear, I'm saying that this may not cost money. This is a fiscal note that's attached by one of our analysts. There's... [LB598]

SENATOR HARR: And I understand... [LB598]

SENATOR FULTON: ...no request for a PSL or FTE. [LB598]

SENATOR HARR: But that's all we can go off are our fiscal notes, unless something contrary is presented. And I appreciate what you're saying and I think there's some validity to it. But as we sit here in committee, we're somewhat...this is all we can go off of is what's presented to us. So I appreciate what you're saying. I think there probably is something to that, but this is what we can go after. [LB598]

SENATOR FULTON: Okay. Fair enough. Thank you. [LB598]

SENATOR MCGILL: And I can appreciate rogue fiscal notes, so. [LB598]

SENATOR FULTON: What's that? [LB598]

SENATOR MCGILL: And I can appreciate rogue fiscal notes. They seem to happen to everybody once in a while. [LB598]

SENATOR FULTON: Yeah. And I'm not even saying this would be in that category. It's different. It's a little bit different when FTE and PSL are not specified versus increased work load. But I appreciate and acknowledge your concern, Senator. [LB598]

SENATOR HARR: Thank you. [LB598]

SENATOR COUNCIL: Could I just ask a question, Senator? [LB598]

SENATOR ASHFORD: Yes, Senator Council. [LB598]

SENATOR COUNCIL: Under privatization though, how does DHHS identify FTEs? I mean you're talking about an increase in work load. It's not going to be a...it's going to be an increase in work load of the contractors. [LB598]

SENATOR FULTON: Say...I'm sorry, Senator? [LB598]

SENATOR COUNCIL: I said it's going to be an increase in the work load of the contractors, not DHHS. I mean those are the...it's the coordinators that would have to be doing this work. So, I mean, I suspect that there is some reality to the cost, and it may not be reflected as an FTE because DHHS is not doing the case work; they're doing the

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case management. You've got the service providers who are doing the...so it would be curious to know where the \$61,000 figure...yeah, because clearly they wouldn't have to identify an FTE because they tend to increase it. I mean (inaudible) say, and somebody's work load is increasing and somebody is going to be expected to be paid for that, so I just...just for you to do some follow-up on that... [LB598]

SENATOR FULTON: Yeah. It's a good question. I'm not...it's not clear from the fiscal note whether...and, frankly, I don't know that it can...the fiscal note is not...this is not an issue, I think where our analyst goes to, you know, KVC or whomever, and asks what their opinion is, we don't see that reflected here. But if indeed this is a matter of KVC is going to require more money? Maybe, maybe not. This is what...this is our Fiscal Analyst's analysis as it relates to the department, which I'm pointing out that this is not specific PSL nor FTE. And so the question you raise is actually the question that I will raise: Is this indeed going to cost more money, or does this policy actually allow KVC to accomplish their ends more expeditiously? And I don't know from this note, so. [LB598]

SENATOR COUNCIL: Thank you. [LB598]

SENATOR ASHFORD: Yes, Senator Coash. [LB598]

SENATOR COASH: Thank you, Senator Ashford. I don't want to beat the fiscal note piece to death here, Senator Fulton. But as I understand the intent of your bill, if permanency hearings are held sooner, permanency could be achieved sooner. For example, adoption could be achieved sooner or permanent...whether it's an adoptive parent or the foster parent adopting them. And if permanency is achieved sooner, then all of a sudden that child is no longer a ward of the state and no longer on the state's dime for their support because they now have a permanent home. So that's...I think that's what you're getting at, right? [LB598]

SENATOR FULTON: Yeah. That's another way to say it. Pragmatically, that's right. [LB598]

SENATOR COASH: Right. Okay. All right, now my... [LB598]

SENATOR FULTON: (Laugh) A better way to say it, Senator. [LB598]

SENATOR COASH: My question...did you see the letter from the ACLU? [LB598]

SENATOR FULTON: I have not. [LB598]

SENATOR COASH: Okay. Basically, the ACLU is saying that your bill is unconstitutional. And I think they have some valid points here, but I think it's in reference to your three months and that the three months may violate the sanctity of a

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parent and child. So my question...I was just going to ask if you knew if the amendment they proposed, of the six, takes care of their concerns with that, or not? [LB598]

SENATOR FULTON: Yeah. Okay, I'm aware that there was some concern with three months. And frankly, this is one of those issues where we made a decision to put three months in. And, you know, after some debate among the committee and some input from other...from outside folks, then we can make a decision. But that is...I don't know if it's that letter specifically, but I know that there was some heartburn with three months. And so that's why we've offered this amendment to put it at six months. [LB598]

SENATOR COASH: Okay. You might want to... [LB598]

SENATOR FULTON: And for what it's worth, Colorado is at six months. [LB598]

SENATOR COASH: Very good. [LB598]

SENATOR ASHFORD: Thank you, Tony. Do you wish to stick around? Are you going to get back to Appropriations or...? [LB598]

SENATOR FULTON: No, I'll stick around if that's all right. [LB598]

SENATOR ASHFORD: Okay. [LB598]

SENATOR FULTON: Thank you. [LB598]

SENATOR ASHFORD: How many testifiers do we have today on this bill? Proponent first. Proponents. And I don't know if there's any room in the front, but if those who are next can come up and sign the...hello, again. [LB598]

LINDA COX: (Exhibit 6) Hello. Again for the record, my name is Linda Cox, C-o-x, and I am the special projects and data coordinator for the Foster Care Review Board. I am here as a proponent for LB598. It is critical that children, especially young children, achieve permanency in a timely manner. This bill is looking at decreasing the time to a permanency hearing for children age birth through 6. The Foster Care Review Board has worked to focus the system on this vulnerable population. The number of children in this age group may be surprising. As of Monday of this week, there were 1,394 Nebraska children ages birth through 6 in out-of-home care. Noted researchers Dr. T. Berry Brazelton and Stanley Greenspan have identified seven needs that young children have as fundamental building blocks to develop higher emotional, social, and actual abilities. These include ongoing nurturing relationships. But what we find is that 568, which is 41 percent of the children in this age group, have been in out-of-home care for one year or longer; 270, which is 19 percent of the children in this age group, have been moved to four or more different placements while they have been in foster

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care, which we know negatively impacts brain development. Research such as that by the Academy of Pediatrics shows that multiple moves are detrimental to children's growth and development. The longer children are in out-of-home care, the more likely they are to experience multiple moves. Children also need physical protection, safety, and regulation. The children in foster care have experienced a number of changes in the persons that are in charge of their cases. Whether that person is a DHHS caseworker or a lead agency service coordinator, these persons are in charge of documenting parental compliance, ensuring children are safe, supporting and overseeing the placements, and ensuring that children receive needed services. Here are some case statistics: 451, which is 32 percent of the children, have had four or more caseworkers. We have also had a lot of changes in DHHS in service coordinators as well, and I'd like to highlight that 73 children from Douglas and Lancaster County have had both four or more caseworker changes and four or more service coordinator changes. As I see that the yellow light is on, I will skip over some of the testimony that I have written out and prepared for you. I would like to state though that we also had some concerns with the three-month proposal in this bill and think that six months sounds more reasonable, especially given some of the serious issues that bring children into care. Over half of the children come into care because of parental substance abuse, who have some severe mental health issues, domestic violence, some of these more entrenched issues, and it sometimes takes some time to see where the parental compliance is going with these cases. [LB598]

SENATOR ASHFORD: Thank you, Linda. Any questions? Yes, Senator Harr. [LB598]

SENATOR HARR: Quick question. The current is one year, is that correct? [LB598]

LINDA COX: Yes. [LB598]

SENATOR HARR: And do you know, are there continuations on that if it appears that a parent is doing what they're supposed to do? [LB598]

LINDA COX: There can be. [LB598]

SENATOR HARR: Okay. It does occur though? [LB598]

LINDA COX: Yes. [LB598]

SENATOR HARR: Okay. So there wouldn't be anything that would prevent it for the six months...to have a continuation, if a parent is in treatment, has (inaudible)... [LB598]

LINDA COX: Not that I see within this. I would think that that would be something that would be a reasonable finding for a judge to make. [LB598]

SENATOR HARR: I just wanted to confirm that for the record. Okay, thank you very much. [LB598]

SENATOR ASHFORD: Any other questions for Linda? Seeing none, thank you. Next proponent. [LB598]

MARALEE BRADLEY: Hi. My name is Maralee Bradley and I am the town hall lady, so I am so thankful to be here today as a foster and adoptive parent to support this bill. There is much research, as Linda alluded to, about the vital importance of permanency to a child's ability to form attachments. And I am not an expert on that, but I want to tell you about my experience with foster care and the story of the son that we adopted. In January of 2009, he was born five weeks premature and spent 12 days in the NICU recovering from a traumatic birth and a hazardous prenatal environment. He was the sixth child of his mother, but she did not have custody of any of them. When we became his foster parents, four days after his birth, his mother had six hours of weekly visitation until her attendance became sporadic and then she disappeared when he was just 4 months old. As weeks passed with no contact, we began to hope he would be adoptable. We assumed that when six months passed and the requirements for termination were met, the paperwork would be filed. Those six months came and went. Almost a full year after this baby had last seen his mother, the case plan remained "reunification," although she had not complied with her case goals and literally could not be found. It wasn't until termination was filed when he was 15 months old that his mother reappeared to relinquish. We were thrilled at his adoption, but we looked back and saw the progression of his case in a new light. Why did he have to wait? How did it benefit him to leave the door open for his mother's return so long after she had clearly given up on that goal? Why was there no urgency to help him have a permanent home? We continue to foster because we believe in the system and love the people involved. While those involved in our son's case worked for what they thought was best for him, none of them were caring for him day after day. We were the ones with him in the hospital for a brain ultrasound and EEG when he developed full body tremors. We were the ones taking him for physical therapy evaluations when he wasn't developing on schedule and doing the exercises with him at home. We were the ones up in the night with him, rocking him, singing to him, kissing his cheeks. But we were not his parents. It's hard to explain the sadness of being unable to tell your crying child, "Mommy is here and I'll never leave you," because you can't make that promise. I remember singing to him to sleep in the rocking chair and modifying the words to "You Are My Sunshine," when I felt so wrong and sad singing "please don't take my sunshine away." Until those adoption papers were signed, he did not belong to us; he was not our son, although in every way he had been, almost since birth. He knew no other parents and our 3-year-old was his big brother. So everyone involved worked with his best interests, but they did not have the legal tools to act with the urgency we felt that he deserved. We know our story is not the saddest or longest. Many foster parents see their kids wait for permanency even when the circumstances make the eventual outcome obvious. This

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bill asks those involved in child welfare to do what the advocates for these kids have long been asking: to change the question. Instead of asking, "How long will it take for a parent to accomplish these goals?", we need to ask, "How long is it okay for a child to live in transition?" In the best interests of the child, how long should they not know where their home is or who their parents may be from day to day, since many children face multiple placement changes during the years they are in care, which has a negative effect on their ability to bond lifelong. With a permanency hearing at six months, children who have parents that are clearly not complying with the goals in a timely manner will be given a chance at a permanent home, before lasting damage is done, by providing a time line to biological families that will have a more clearly defined idea about the changes they need to make. [LB598]

SENATOR ASHFORD: Any questions? It's a lot of information in a short time. [LB598]

MARALEE BRADLEY: I'm a fast talker. (Laugh) Thank you so much. I really appreciate it. [LB598]

SENATOR ASHFORD: Next proponent. [LB598]

LEIGH ESAU: (Exhibit 7) Good afternoon, Senators. My name is Leigh, L-e-i-g-h, Esau, E-s-a-u, and I'm a parent of two biological young men, three adopted children, and one foster child. I'm here to ask you to please accept the revision in the bill before you. I'm going to ask you to take a journey with me. I want you to take just a moment to think back to when you were 5. So many firsts happen about this age. Maybe it was you lost your first tooth, maybe the first time to spend the night at a friend's house, and for most of us it was our first day of school. As you think back to those firsts, who did you share them with? Was it your mom, your dad, your siblings? Do you remember being so proud to bring home your first work of art to have hung on the refrigerator door? Do you remember that being proudly on display? How about your first parent/teacher conference? Were you just a little scared of what the teacher may tell your parents? Did your chest swell with pride that your parents were there to support you? For most of us, that's exactly what age 5 felt like: full of optimism and wonder. However, all across the state of Nebraska, there are many children who have to wait for so many firsts, like the first time you don't have to have a roomful of well-meaning strangers deciding your future, the first time you can spend the night with a friend and not have to have a background check done on the entire family, the first time you can go to school with the same last name as the family that has been caring for you for years, the first time the person you've been calling Mom for years can now be a true representative for you at parent/teacher conferences and at the doctor's office. For some of you who have walked down memory lane with me this afternoon, strong emotions have come to the surface. As you reflect on just how precious those memories are, I'm asking that you give the hundreds of Nebraska's children who are ages 6 and under, and are waiting for those firsts to come to their lives, the same opportunity you were blessed with. I'm

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asking...no, I'm begging you not to let these young lives linger in a system that is cold and callused. Please, dear Senators, the bill before you is not a piece of paper with some important words on it. It is a name and a face. It is KB. It is Rhianna. It is Lexi and hundreds of others waiting for you to do the right thing. Pass this bill. [LB598]

SENATOR LATHROP: I've got a question. [LB598]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB598]

SENATOR LATHROP: You may or may not know this, but I'm a lawyer and I have done a little bit of work in juvenile court when I was really young, which has been a long time ago. And so I've got questions, and maybe I should have asked Senator Fulton. But when we say a child in foster care under the supervision of the state shall have a permanency hearing by the court, are we talking about...and let me just walk through an example with you and so that I understand this bill and what it does and what it's trying to do and what the consequences are to other people. If a child gets picked up, let's say that Mom has a baby and the baby is 3, and now she's hooked on meth. Right? And a juvenile court judge says, "I'm taking the child out of the house because Mom is whacked on drugs and she's not taking care of the kids." They then place the child in foster care, right? The child shows up at your house at that point in time. And at the same time as the child is in your home, the juvenile court is trying to rehabilitate Mom, right? And say, "Mom..." [LB598]

LEIGH ESAU: That's the goal. [LB598]

SENATOR LATHROP: Yeah..."You need to go through...you need to go through, you know, inpatient treatment, and then after that you need to be in AA and then you need to find a job and you need to do this and you need to do that." And I understand that sometimes that can go on and on and on and on. Is this bill essentially saying that once the child is taken out of the house, that we give the mom three months or even six months to get their act together, or the child termination happens and then you can adopt the child? [LB598]

LEIGH ESAU: First of all, let me... [LB598]

SENATOR LATHROP: Or am I missing something? [LB598]

LEIGH ESAU: No, I think the intent of the bill is for us to use common sense with cases. I think one of the things that's been missing for a long time is for us to make commonsense decisions. And what I mean by that is two of my children, one of them came to me at birth. Mom never visited her--never. It took two years of her staying in the foster care system as a ward of the state before we were able to adopt her. She was fortunate that we didn't...we chose to keep her. She was not moved around... [LB598]

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SENATOR LATHROP: I get that, but here's... [LB598]

LEIGH ESAU: ...and she was able to be in a stable environment. [LB598]

SENATOR LATHROP: Here's my question. Maybe let me be clearer about my question, because...and I don't mean this...I'm really trying to better understand the bill. But if we did this, if we passed this, even with Fulton's, Senator Fulton's amendment that would make it six months rather than three, are we essentially setting a deadline for Mom to get her act together? [LB598]

LEIGH ESAU: I think what we're doing is we're putting in a sense of urgency that's been lacking for bio parents to pull themselves together, instead of allowing for such a long period to pass, and bio parent shows up at the eleventh hour and then we start the clock from there. We have kids...these are lives. These aren't... [LB598]

SENATOR LATHROP: I appreciate that. I appreciate that. I'm...I understand why you want it to happen. I'm not even arguing about that. I'm just trying to understand the bill. [LB598]

LEIGH ESAU: Sure. [LB598]

SENATOR LATHROP: And once I understand it, I may or may not agree with you. [LB598]

LEIGH ESAU: Sure. [LB598]

SENATOR LATHROP: But my point is, if the child is taken from the home because Mom is a crack or a meth head, would this bill say you have six months, and after six months if you're not ready to take the child back, then termination happens and the child is available for a permanent placement? [LB598]

LEIGH ESAU: No, that's not my understanding. My understanding is... [LB598]

SENATOR LATHROP: Okay. Okay. Then I'll... [LB598]

LEIGH ESAU: ...you would have six months to continue to evaluate that case. If at the end of six months there has been no progress made, then I believe... [LB598]

SENATOR LATHROP: Okay. [LB598]

LEIGH ESAU: ...that we can put a permanency plan in place that allows for either termination, adoption. Or if progress is being made...because the flip side is also true.

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We have bio parents that have worked their tails off to get their kids back home. [LB598]

SENATOR LATHROP: I appreciate that. And what I don't want to do in our...I can tell this is all about balancing interests, right? [LB598]

LEIGH ESAU: Absolutely. [LB598]

SENATOR LATHROP: And I legitimately and genuinely appreciate that a child shouldn't have to wait forever for Mom to get her act together. I just want to make sure that the window for Mom to get her act together is big enough so that she can accomplish that. [LB598]

LEIGH ESAU: And I think that's part of where that common sense comes in. [LB598]

SENATOR LATHROP: So when we use the term "permanency hearing," is that where is the child going to spend the rest of her life? [LB598]

LEIGH ESAU: I believe that to be true. [LB598]

SENATOR LATHROP: Okay. Thanks. [LB598]

SENATOR ASHFORD: Thanks, Leigh. [LB598]

SENATOR COUNCIL: But that's a contradiction. That's (inaudible). [LB598]

SENATOR LATHROP: Somebody (inaudible). [LB598]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you for coming today. I'm kind of following up on what Senator Lathrop was getting at, in a way. Is it safe to say, though, that under this bill things are supposed to happen more expeditiously for younger kids? [LB598]

LEIGH ESAU: I would believe that to be true. [LB598]

SENATOR LAUTENBAUGH: And that might also apply to the parent who is trying to get his or her act together. They would have to move along more quickly. [LB598]

LEIGH ESAU: I would believe that would be a natural consequence. [LB598]

SENATOR LAUTENBAUGH: And maybe that's proper when you're dealing with the damage that's done with children of this young, young age. But that is a practical result of this, is that correct? [LB598]

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LEIGH ESAU: I would believe that to be true. [LB598]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB598]

SENATOR ASHFORD: Thanks, Leigh. [LB598]

LEIGH ESAU: Thank you. [LB598]

SENATOR ASHFORD: Next proponent. [LB598]

DAVE BYDALEK: (Exhibit 8) Senator Ashford, members of the committee, my name is Dave Bydalek. For the record it's B-y-d-a-l-e-k. I'm the executive director of Family First and I'm here today to register our support for LB598. During our work on the issue of adoption awareness, we have come into contact with numerous families involved in providing foster care. And in speaking with these couples, an overarching theme was frustration with the amount of time it took to achieve permanency in the foster care process. Many of these families had foster children under the age of 6. And in doing some research on this matter, we found out that there is a substantial body of evidence which indicates that children undergo a critical bonding and attachment process prior to the time they reach 6 years of age. These studies disclose that a child who is not bonded with a primary adult during this critical state can suffer significant emotional damage which can lead to considerable psychological and social problems when the child reaches adolescence and adulthood. This issue actually hit close to home when a coworker of mine took in four kids in the foster care system under the age of 5. We also learned that several people from our church community had been experiencing similar problems, and you've heard from one of those folks today. One of these other folks might have been here today but they are celebrating the finalization of their adoption, actually this very day. And while there is a happy ending in this case, it was not without a high degree of frustration. Their initial intake of their son occurred about 18 months ago. The biological father was not in the picture and it was soon apparent that the biological mom was not going to make an effort toward reunification. In early July, last year, the mom relinquished her parental rights. Today, over seven months after relinquishment, the adoption was finalized. There is much more to this story, but it was a shame in our opinion that the permanency was not accomplished until 18 months...seven months after relinquishment. And while we agree that protection of parental rights is very important, a defense of parent rights can't be the sole consideration. The system must also give deference to the real substantial needs of the children trapped in the system, especially those children under age 6. We believe that the expedited permanency provisions contained in LB598 provide a good blueprint for helping some of the most vulnerable children in society, and therefore, we would ask you to advance this bill to General File for consideration by the entire body. Thank you. [LB598]

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SENATOR ASHFORD: Thank you, Dave. Yes, Senator Harr. [LB598]

SENATOR HARR: And this is a continuation of earlier lines of questioning by, first Senator Council, and Senator Lathrop and myself. If there is a child who is put in foster care and the mother does nothing for five and a half months, she all of sudden realizes there is a permanency hearing and she checks herself into rehab--we're back to the meth head scenario--what would happen in that situation? [LB598]

DAVE BYDALEK: I believe right now there would be a discontinuation of the proceedings. That's what most likely is happening right now. I think one of the good things about the bill is, is as has been said by some of the previous folks, is that it gives a kind of a time certain for the parents to get their act together. Now it doesn't necessarily mean that they have to have, I think, everything together within six months, but I think they need to be making adequate progress. And I think given the situation with the critical bonding that occurs for children 6 and under, I think that's appropriate under the circumstances. And by the way, one of the things that I did give to the clerk for the committee's perusal, not like you guys have enough stuff to read already, but it is the final report from Colorado. It's a 36-page report on how their expedited permanency plan is working in Colorado. And there's some really interesting information in there and, if you get time to take a look at that, I think it's a very good read. [LB598]

SENATOR HARR: To your knowledge has the Colorado plan been challenged as unconstitutional? And the reason I bring it up, the ACLU has an issue with the constitutionality of this bill. Do you know, has it been challenged? [LB598]

DAVE BYDALEK: I do not know whether there's been a challenge or not, but I do know that the Colorado system is still in place. [LB598]

SENATOR HARR: Do you know how long ago it was put in place? [LB598]

DAVE BYDALEK: Well, they started it, I think they started working towards this, and I think in 1996, and that was fully implemented I think in 2003 or 2004. And that would be information that's provided in the handout I gave you. [LB598]

SENATOR HARR: December 15. Thank you. [LB598]

SENATOR COUNCIL: Can I ask a question? [LB598]

SENATOR ASHFORD: Yes, Senator Council. [LB598]

SENATOR COUNCIL: Yes, and thank you for appearing today, Mr. Bydalek. But I think there's another step that's missing in here. I mean the assumption is like the county attorney files the complaint. There is that initial hearing and the decision is made

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whether the child is put in out-of-home placement during the pendency of the proceeding or whether they stay in the home. And there is ordinarily a review scheduled to see how the child is faring, what actions are being taken by the biological parent, and then the permanency hearing is scheduled. I mean maybe my experience is different than others, but I haven't gone in and, you know, as soon as the child is taken out of the home there is a permanency hearing scheduled. There is always...at least my experience, there's been a review 60, 90 days to see how things are progressing, and then if things aren't progressing like they should or if they are progressing like they should, that's when the permanency hearing is scheduled. And it would appear to me that if you wanted to expedite something, it would be the reviews, so that there's an assessment of what the likelihood is that the biological parent is going to be able to carry out whatever the recommended plan for reunification is, as opposed to saying that the permanency hearing has to be held within a six-month period of time. [LB598]

DAVE BYDALEK: And Senator Council, I mean what you're saying, I think that's a good question to ask. I would probably be the wrong one to answer that question. I admit I'm an attorney, but I'm a recovering attorney. (Laugh) [LB598]

SENATOR COUNCIL: Been there, done that. [LB598]

DAVE BYDALEK: I was in the prosecutorial area for about nine years. But the... [LB598]

SENATOR COUNCIL: Okay. I'll ask some of the practitioners that. [LB598]

DAVE BYDALEK: All right. Thank you, Senator. [LB598]

SENATOR COUNCIL: And the silent judge. I'm going to go talk to the silent judge. [LB598]

SENATOR ASHFORD: Thanks, Dave. Other proponents? [LB598]

KAREN RAATZ: (Exhibit 9) Hi. My name is Karen Raatz. Last name is R-a-a-t-z, and I was invited by Senator Mike Flood to come and speak regarding our situation. Thank you for the opportunity for letting me speak. Our situation is a little bit different. We are not involved in the HHS situation. We are actually in family court, and a lot of our concerns are the same as in the HHS system. We've been battling for custody for our granddaughter for seven years now. The parents have shown absolutely no interest whatsoever in coming back and reuniting with her. In fact, they've seen her five times in the seven years that we've had her. In regard to some of the things that Senator Fulton has talked about, she will battle consistently with the feeling of abandonment. Regardless of the fact that she is only 7 years old, she has nightmares about people coming and taking her; she has nightmares if she can't see us. And as one of the other gals testified, for me to be able to look at her or hold her in my arms when she has

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those nightmares, and say "I will do everything I can to protect you and to keep you safe," I can't say that to her. I would be lying to her if I did. What I'm asking you to do is pass this bill for several reasons. Some of them are the fact that she needs to have some permanency here. She will be 8 years old in May, and for her that needs to be a permanent situation simply because the parents have no interest. They do not have the ability to take care of her. In fact, when we asked HHS to step in due to the fact that their second child was being abused and neglected, their third child was run over and killed by them, and yet HHS has yet to step in. However, the judge's hands are tied because she has nothing in writing, no law that protects Angelica. So I have a dead granddaughter, a granddaughter that is being abused, and no one to protect this granddaughter. And they could, at any time, walk into my house or walk into a courtroom and, because of the fact that they gave birth to her, have the right to take her away. That is not fair. That is not fair to her, it is not fair to us, and it's not fair to any of the other children out there that are in similar situations. So I agree with Senator Fulton in that aspect. I also agree that from a financial standpoint I believe it would be cost-effective to expedite some of these things. We spent over \$20,000 trying to battle for her. The birth parents did not show for the final courts, did not show for visitation hearings, did not attend counseling, did not do anything the courts asked them to do, but because of the fact that they are birth parents, are given every right to that child. Again, that is not fair. Their rights are more important than the child's rights, and she's the one that is affected. Two things I'd like to see you do is (1) protect the child, please. Give that child, regardless of what her age is or his age is, the ability to have someone that loves him stand up and be able to protect them. Don't leave them in the court system and pretend that they're not a name and they're not a fact. They are. The second thing I'd like you to do is include family court in with the HHS system so that the people that are not choosing to have the state pay for their legal bills, pay for their care, and pay for the custodianship of these children, have rights as well. Give the judges the opportunity to make those decisions. They already know in their minds whether these parents are fit or not fit. Please give them the opportunity to make those decisions based on that... [LB598]

SENATOR ASHFORD: Kim (sic--Karen), I'm going to ask you to sum up because of the three. [LB598]

KAREN RAATZ: Okay. [LB598]

SENATOR ASHFORD: And we have your comments as well, so. [LB598]

KAREN RAATZ: Sure. Those are the two things that I'd like to see you do. Number one is just include family court in that, and please give the judges the ability to make those correct decisions. [LB598]

SENATOR ASHFORD: Okay, Kim (sic--Karen). Any questions of Kim (sic--Karen)?

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Seeing none, thank you. And we do have...for the record, we have your entire comments here. Okay, next proponent. [LB598]

JOAN KINSEY: (Exhibit 10) Senators, thank you for the work that you do and the opportunity to speak to you today. My name is Joan Kinsey, K-i-n-s-e-y. I am a biological parent, a foster adoptive parent, and a legal guardian of children. My husband and I have been foster parents for 20 years. I am here today on behalf of the Nebraska Foster and Adoptive Parent Association. The Nebraska Foster and Adoptive Parent Association is in support of LB598. The American Psychological Association includes the following criteria for reactive attachment disorder: a disturbed and developmentally inappropriate social relatedness beginning prior to age 5 years. Early permanency is imperative for children in order to promote healthy individuals. Attachment occurs early in the first years of life. Research shows that family permanency can substantially improve the chance for future success of all children who come into contact with the child welfare system. It can improve testing scores, graduation rates, and develop the ability to handle stress in later life. Children with a history of secure care come to expect their worlds to be controllable and predictable. A loving, consistent relationship can offset even the most stressful situation. Without it, growth can be stunted, both mentally and physically. Foster children with attachment disorders are often misdiagnosed with attention deficit/hyperactivity disorder, depression, conduct disorder, or oppositional defiant disorder. Misdiagnosis can result in ineffective treatment and medications, lack of understanding, frustration, and burnout of the caregiver, resulting in the child being transferred from home to home. This inconsistent parenting and poor mental healthcare directly affects attachment. Problematic behaviors of children with attachment disorders include impulsive behavior, aggressive behavior, lying, abnormal eating habits, mood swings, lack of eye contact, inability to maintain friendships, sleep disturbances, lack of conscience, sensory integration problems, and hyper vigilance. Research points to experiences from the prenatal period through the third year of life, having direct results in the production of criminal and antisocietal people. Children need consistency, continuity, and permanence in their lives to grow into healthy teens and adults. Three months or six months in a young child's life is a period of rapid development, growth, and learning. Languishing in a system of uncertainty and constant change prohibits healthy growth in our children,... [LB598]

SENATOR ASHFORD: Joan, I'm going to ask you to summarize. Thanks. [LB598]

JOAN KINSEY: I'm sorry. Okay. [LB598]

SENATOR ASHFORD: You're doing a great job. It's just we have to move along. [LB598]

JOAN KINSEY: Alrighty. This adds societal and financial costs to education and our mental and behavioral health, as well as the judicial system. This LB598 is a beginning

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of addressing the permanency needs of our children. Okay? [LB598]

SENATOR ASHFORD: I appreciate it. Appreciate your testimony. Any questions of Joan? Seeing none. [LB598]

JOAN KINSEY: Do you have a comment? [LB598]

SENATOR ASHFORD: Do you have a comment? [LB598]

JOAN KINSEY: I do have a comment. Is that okay? [LB598]

SENATOR ASHFORD: I have to ask. Do you have a comment? [LB598]

JOAN KINSEY: Yes. [LB598]

SENATOR ASHFORD: Go ahead. [LB598]

JOAN KINSEY: Okay. Somebody brought up the termination of parental rights. The Safe Families Act implemented the concurrent planning. So it's my understanding when a child has a plan, is out-of-home care, there are two plans running concurrently. Traditionally or typically it's reunification with the family, and the other plan would be guardianship, adoption, or placement with a kinship family. So I don't know if that addresses the issue or the question that we had earlier, but there is something. [LB598]

SENATOR ASHFORD: Well, let's see. Maybe it will elicit some questions. Does that help? Okay, thanks very much, Joan. [LB598]

JOAN KINSEY: Okay. Thank you. [LB598]

SENATOR ASHFORD: Next proponent. How about opponents? Todd. Todd is usually a proponent, but today we've had... [LB598]

TODD RECKLING: (Exhibit 11) Good afternoon again, Senator Ashford and members of the Judiciary Committee. My name is Todd Reckling, R-e-c-k-l-i-n-g, and I'm the director for the Division of Children and Family Services. Let me just first say that I've not yet seen Senator Fulton's amendment, so I look forward to seeing that. Current Nebraska statute requires courts to hold hearings every six months for all children adjudicated as abused, neglected, or dependent. Current state law and federal law also require that the first permanency hearing be held no more than 12 months after the child of any age is removed from the home. I would like to also mention that a court may hold more frequent hearings at any time if the court so desires. LB598 would shorten the time frame for the permanency hearing to no more than three months if the child is 6 years of age or younger. A court order resulting from a permanency hearing is required

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to determine the appropriateness of the permanency plan for that child. This includes whether or not, and if applicable, when the child will be returned to the parent, be referred for guardianship, or in cases where the department has documented to the court a compelling reason that it would not be in the child's best interest to return home, be referred for termination of parental rights, placed for adoption, or with a guardian. The department definitely believes that all children need permanency, and that if they cannot be returned to a parent, an alternative form of permanency, such as guardianship or adoption, must be determined as quickly as is reasonable. We also believe that it is not in the best interest of children to make decisions hastily and without adequate information when those decisions could result in permanent separation from their parents. DHHS policy, as well as federal statute, currently allow a maximum of 60 days to provide adequate time for assessment and development of the case plan. If the requirement for the first permanency hearing is changed to three months, assessments of the child and the family will have to be narrowed and case plans will have to be developed within a few weeks following a determination that a child is unsafe in order to provide adequate time for the parents to avail themselves of services that could result in the child's return home. Our concern is that decisions affecting the rest of the child's life will be based on far less information. I would also like to note that it can take up to 90 days for a case to be adjudicated and the court then has 60 days after adjudication to determine disposition. In summary, we believe that the three-month time frame required by LB598 would not be in the best interest of children. We believe that all children need and deserve timely permanency, but three months is not adequate time for the planning to be developed for a child and the family. Thank you, and I'd be happy to answer any questions. [LB598]

SENATOR ASHFORD: Any questions of Todd? Thank you, Todd. [LB598]

TODD RECKLING: Thank you. [LB598]

SENATOR ASHFORD: Any other opponents? Opponents? Okay. [LB598]

HEATHER QUITMEYER: Hi. Heather Quitmeyer. Last name is spelled Q-u-i-t-m-e-y-e-r. I also have not seen the amendment, but speaking from the front lines as a guardian ad litem, three months is just simply not enough time. I recently was involved in a case where it took two and a half months to receive the home study whether or not an aunt would be approved for temporary placement. In light of those aspects of things, permanent placement, I definitely couldn't offer an opinion within three months. I understand that permanency is extremely important, especially in the bonding and attachment of children, but I can see that this could potentially be to the detriment to the children. Even at a six-month hearing, if Mom is doing what she's supposed to be doing but she's still kind of in a gray area as to whether she could...whether reunification is possible, the hearing could get continued. But I foresee that we would have several cases like that, particularly if it was at the three-month time

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period as well. Going to Senator Harr's concerns as far as financials, I am an independent contractor and a lot of the...legal aid is involved in a lot of the parents' attorneys' side of things, and we would be billing for those. I can see that in cases, for example, where parents have abandoned their children, a six-month review hearing might be appropriate in those cases and might end up saving costs, but. Let's see. Oh, also with the mental health issues, going back to the example of a meth addict: I've seen a lot of mental health issues also in these processes, and I could imagine a case where a biological mother just gives birth to a baby, has postpartum depression, and it takes awhile for KVC or DHHS to get her involved with medication. Medication is going to take at least three weeks to see if that particular medication is working for her. She might have to switch medications. Three months is definitely too short a time period to be able to say for issues such as that, and even six months might be cutting it a little bit close. [LB598]

SENATOR ASHFORD: Yes. Senator McGill. [LB598]

SENATOR MCGILL: Just a quick question on something that you said that piqued my interest. You said it took two and a half months to get a report on whether that aunt would be...where was the child in the meantime? In a regular foster home? [LB598]

HEATHER QUITMEYER: Foster home, yes. [LB598]

SENATOR MCGILL: So taken away from bio mom, then with a foster home, then maybe to the aunt. Why does it... [LB598]

HEATHER QUITMEYER: In this case not. But yes. [LB598]

SENATOR MCGILL: Okay. Well, that's good. (Laugh) Well, why does it take so long for a report like that? [LB598]

HEATHER QUITMEYER: I wish I knew. I am the counsel for a mom. We're, on a weekly basis, calling. And KVC was constantly telling us that DHHS had it and DHHS was constantly telling us that KVC had it. [LB598]

SENATOR MCGILL: (Laugh) Well, that's not good. [LB598]

HEATHER QUITMEYER: And I'm not really sure why it took that long, but. [LB598]

SENATOR MCGILL: Because you would think something like that should be more quickly available. And it was just passing the buck back and forth? [LB598]

HEATHER QUITMEYER: Until at their most recent review hearing, I requested that the judge order a copy of the home study be sent to me and counsel, and within a week we

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were able to get it, so. (Laugh) [LB598]

SENATOR MCGILL: Then you had it, suddenly. Okay. Thank you. [LB598]

SENATOR COUNCIL: Just a quick question. [LB598]

SENATOR ASHFORD: Yes, Senator Council. [LB598]

SENATOR COUNCIL: And just to refresh my recollection, Heather, on a relative placement, do they have to undergo the criminal background check as well? [LB598]

HEATHER QUITMEYER: Yes. [LB598]

SENATOR COUNCIL: So I mean when you're talking...the time frame. They have to have the home study conducted. They have to undergo the fingerprinting and the background check and then whatever else that may be involved. So the people know what the time frames are. And even unless you're a currently recognized foster parent, anyone who has not already gone through that process to be considered for temporary placement has to go through that home study and criminal background check, correct? [LB598]

HEATHER QUITMEYER: Right. [LB598]

SENATOR COUNCIL: Okay. Thank you. [LB598]

SENATOR ASHFORD: I think that's it. [LB598]

HEATHER QUITMEYER: Thank you. [LB598]

SENATOR ASHFORD: Any other testifiers on this bill? [LB598]

SENATOR LATHROP: You've got some neutral. [LB598]

SENATOR ASHFORD: Chris, are you neutral? Come on up. Do we have any other opponents? Okay, let's go to Chris then. She'll testify in a neutral position. [LB598]

CHRISTINE COSTANTAKOS: Thank you, Senator Ashford, members. Christine Costantakos, C-o-s-t-a-n-t-a-k-o-s. And you have the other stuff from earlier. Four points. I think the people who testified in support are sincere and I respect them for that. But there are some pieces in the Juvenile Code that are helpful here. It's either under 43-1315, 14, thereabouts. When does the court have hands-on, on these cases, to review them? Every six months by statute they must have a review hearing, and then once every 12 months a permanency planning hearing. As a practical matter, and I'm

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sure Judge Gendler will speak more to his county, I think the counties are doing it more frequently. I know Douglas County, for sure, does it at least two times a year. Very often in cases I'm seeing reviews at three or four months. So there are already hands-on opportunities for the judges to review these cases either in the form of a review hearing or a permanency planning hearing. At 15 months, by statute, the county attorney must file a TPR, termination of parental rights, unless the statutory exceptions are met. Point two: A parent of a child who the parent has a meth problem, the child is 6 years of age or younger, that parent has less time to rehabilitate than the parent of a child, same parent with the same problem, of a child who is 7 years of age. You're going to have an equal protection challenge here that parents, based on simply nothing more than chronological age, parents of younger kids get less time to cure their problems than parents of older children. Point three: What do you do if you have a sibling strip (phonetic) involving children who are ages 5, 7, and 10? Point four: I think a better way to get at it might be...and I think it's Section 43-292.02, makes the county attorney or requires the county attorney to file a motion to terminate parental rights when the child has been in out-of-home placement for 15 or more months. Maybe something could be added or tweaked in there that if after six months there is absolutely no demonstrated progress whatsoever with the case plan, that the county attorney must review that case with the propriety...of looking at the propriety of filing a termination. [LB598]

SENATOR ASHFORD: That's a fairly heavy burden: absolutely no possible chance. [LB598]

CHRISTINE COSTANTAKOS: Well, and I think that's what the testimony has been, Senator. [LB598]

SENATOR ASHFORD: I mean I've just never seen that burden. [LB598]

SENATOR LATHROP: But that's the abandonment situation. [LB598]

SENATOR COUNCIL: That's abandonment. We get them. [LB598]

SENATOR ASHFORD: Does it say absolutely no chance in the abandonment...? [LB598]

CHRISTINE COSTANTAKOS: No. It's talking about in 15 of the 22 months the county attorney must file unless certain exceptions have been met. [LB598]

SENATOR ASHFORD: Okay. [LB598]

CHRISTINE COSTANTAKOS: And one of those is that the parent has not had a reasonable or adequate opportunity to avail himself or herself of services under the case plan, or that the case manager documents are... [LB598]

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SENATOR ASHFORD: That's the definition of what that means essentially. [LB598]

CHRISTINE COSTANTAKOS: Yeah. You could add on to that and say, if there's no demonstrated progress whatsoever. And I think the proponent testimony here has been that's the problem--if six months go by. [LB598]

SENATOR ASHFORD: Okay. All right, I get your point. I got it. [LB598]

CHRISTINE COSTANTAKOS: Okay. [LB598]

SENATOR ASHFORD: And yeah, Judge, are you going to talk about this a bit? Come on up. [LB598]

CHRISTINE COSTANTAKOS: Thank you. [LB598]

SENATOR ASHFORD: Thanks, Chris. [LB598]

SENATOR COUNCIL: Thank you, Judge. [LB598]

LARRY GENDLER: Larry Gendler. For the record, G-e-n-d-l-e-r, juvenile judge in Sarpy. Before I begin, I'd just...I have to thank these foster parents because they really do incredible work. It's unbelievable what they do and what little notoriety they get for their efforts. I want to highlight some of the things that we're doing as judges. I chair a statewide initiative called Through the Eyes of the Child. We have a Web site, throughtheeyes.org, and I just suggest all of you take a look at it. We have 25 judge-led teams throughout the state. Those teams meet regularly. We have four regional conferences regularly. Last year our conferences were in Hastings, Scottsbluff, Lincoln, and Norfolk. And the purpose of this initiative is to get kids to permanency sooner, and that's critically important. And I think we're making the effort and I think it is showing. Are we where we should be? No. And that's why this initiative continues. But there's a lot of things going on with these judges across the state. I can highlight the Panhandle region for you, for example. Terrific work out there. They're just doing a terrific job with limited resources and trying to meet the expectations that we think the system ought to have. So I just suggest you take a look at that Web site. But I'd be happy to answer any questions you might have. [LB598]

SENATOR ASHFORD: Yes. Senator Lathrop. [LB598]

SENATOR LATHROP: Maybe you could enlighten me, because as I read this--and I haven't...as you know, I haven't been in a juvenile court in a long time--but when we talk about a permanency placement, does that necessarily suggest that there's been a termination of parental rights? [LB598]

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LARRY GENDLER: No. The purpose of that hearing is to discuss, by evidence, what the permanency plan should be. But until somebody does something, parental rights aren't terminated. I've had permanency plan reviews where I have made a finding that an exception no longer exists, which is a signal that perhaps we ought to seek to terminate parental rights. But something still may not get filed. Does that answer your question? [LB598]

SENATOR ASHFORD: That's an important point, isn't it. Yeah. [LB598]

SENATOR LATHROP: So I'm trying to figure out how this permanency...so let's go back to my example. We pick the child up out of a home...and let me say I appreciate what these people do. And we're sort of asking them, develop an attachment to this child; please keep them in your home; get close to them. But at the same time, we're still giving Mom or Dad more and more chances, and at some point that has to stop. I get that. And I agree that they do wonderful things and I'm not questioning one thing any of the foster parents have said. I'm just trying to understand, when we talk about permanency hearing, does that necessarily mean we're working towards permanently placing them with that foster parent? [LB598]

LARRY GENDLER: It could be. [LB598]

SENATOR LATHROP: And does that necessarily require that we first have a pretty good idea of whether we're going to terminate the parental rights? [LB598]

LARRY GENDLER: We should have a pretty good idea of what is likely to occur based upon the past performance of a parent. [LB598]

SENATOR LATHROP: And do you think that's enough time? This bill is all about putting a time limit in there. [LB598]

LARRY GENDLER: Right. [LB598]

SENATOR LATHROP: Is it too short? [LB598]

LARRY GENDLER: Sometimes. Everything has to be... [LB598]

SENATOR LATHROP: Well. And that really is the problem though, isn't it? [LB598]

LARRY GENDLER: Yeah. Everything has to be case specific. This is just my perspective. [LB598]

SENATOR LATHROP: And that's why we've got you here. [LB598]

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LARRY GENDLER: Every case is individualized. Every situation is individualized. What works for one...what's appropriate for one certainly may not be appropriate for another. So that flexibility... [LB598]

SENATOR LATHROP: Okay. Does... [LB598]

LARRY GENDLER: ...I think can be very valuable. But having said that, I think it's important to recognize that we need to achieve permanence as soon as we know it's time. [LB598]

SENATOR LATHROP: Well, Chris suggested that we tweak a different statute that says if in the first six months the parent has demonstrated that they're not making any effort whatsoever--not making an effort and doing a poor job of it, or going into treatment and falling off the wagon and struggling with it, but making no effort whatsoever, no seeing the kid, nothing--that makes sense to me. But it strikes me that probably the best day you have is when you see some mom who gets off the meth and, you know, gets her GED, and the kids go back home. Right? [LB598]

LARRY GENDLER: Right. [LB598]

SENATOR LATHROP: And that's not going to happen in six months, is it? [LB598]

LARRY GENDLER: No. No. [LB598]

SENATOR LATHROP: So is this deadline in here a good idea or a bad idea? [LB598]

LARRY GENDLER: Again, in some circumstances it may be good, in others it may be bad. [LB598]

SENATOR ASHFORD: Which makes it kind of bad. [LB598]

LARRY GENDLER: And let me... [LB598]

SENATOR LATHROP: Okay. Then let me ask you, is it good policy to put it in statute or is it... [LB598]

LARRY GENDLER: That's why you're here. (Laughter) I am more comfortable with the current policy because it gives us more flexibility. But people...after three months, maybe it's time to seek termination of...maybe when the case first gets filed it ought to be sought to terminate parental rights because of the parents' prior history with other children. [LB598]

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SENATOR COUNCIL: It depends. [LB598]

LARRY GENDLER: I'm not suggesting that... [LB598]

SENATOR LATHROP: So are we amending the wrong statute? [LB598]

LARRY GENDLER: Well, I don't know if we need to amend anything. We just need to make sure that people are trained and understand what the issues are, which is the purpose of this Supreme Court initiative to try and bring about permanence when it becomes necessary. And it... [LB598]

SENATOR LATHROP: Okay. Eventually we've got to exec on this bill and decide if we're going to move it. And the question maybe is--and this happens a lot in my experience down here in the Legislature, which is people are frustrated with the system and so they bring in a new bill. Is this a situation where we need to train people better and the process just needs to function better, or do we need a new law or a change in the law? [LB598]

LARRY GENDLER: Well, I don't know if a law is going to change anything, to be honest with you. Because we may make the finding in three months or six months, if the permanency plan is reunification, and find out three months later that we need to do something else, which is why concurrent planning is so important. I don't know if that answers your question or not. [LB598]

SENATOR LATHROP: No. I'm looking for something a little clearer than that, and maybe you can't. And I always appreciate it when you come down here and enlighten us. [LB598]

LARRY GENDLER: Well, thank you. I... [LB598]

SENATOR LATHROP: But I'm just trying to figure out good idea or a bad idea. [LB598]

LARRY GENDLER: I think flexibility is important. [LB598]

SENATOR LATHROP: And this takes away your flexibility. [LB598]

LARRY GENDLER: It does take away some flexibility. [LB598]

SENATOR LATHROP: Okay. Thanks. [LB598]

SENATOR ASHFORD: Thank you, Judge. Any other questions of Judge Gendler? Seeing none, thanks. Yes, actually... [LB598]

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SENATOR LAUTENBAUGH: I actually wanted to thank you again for coming, Your Honor. And I realize that...I think we all realize that as a judge you're not...you are a little bit constrained about what you can and can't testify to. So you're here in a neutral capacity. I understand that and I think we hear what he's saying I hope, I think. Thank you. [LB598]

LARRY GENDLER: All right. Thanks a lot. Appreciate it. [LB598]

SENATOR MCGILL: Thank you. [LB598]

SENATOR ASHFORD: Constrained is, though, not necessarily a word I would use to describe Judge Gendler with. [LB598]

SENATOR MCGILL: (Laugh) [LB598]

SENATOR ASHFORD: But I understand Senator Lautenbaugh's point. Any conclusion? Any other neutral? Okay, Senator Fulton. Yes. [LB598]

SENATOR FULTON: Thank you, Mr. Chairman. I will withhold...I had a response specific to Senator...I'll...Senator Harr's concern about the fiscal note, and I'll just withhold that in the interest of time. Senator Council had a question and we might be able to find better numbers, but the quick and dirty that I found for the apples-to-apples comparison. This might be more apples-to-pears comparison, but it gets us closer anyway. A 2004 study from Colorado said 1,149 cases where the child is under the age of 6. Nebraska: We have, from 2009, the Foster Care Review Board's Annual Report. We saw 1,138 under the age of 6, and those are of reviewed cases from the Foster Care Review Board. So again this might be apples to pears, but we're close anyway. Senator Lathrop, as you were asking your question, my aide pointed out something from the Foster Care Review Board. And I don't know if you guys get a copy of this or not, but this is the "2009 Annual Report Recommendations for the Legal System." There are two sentences that Judge Ross Stoffer from Madison County wrote that really elucidated this for me. "When a child has been out of the parental home for approximately 12 months," which is reflective of existing law, "a permanency hearing takes place. The purpose of the permanency hearing is to examine the progress that has been made during the preceding 12 months and decide whether sufficient improvement has occurred or will soon occur to permit the child to return home in the near future, and, if not, to determine an alternative permanent placement." So, for me anyway, that turned on a light and gives us a little bit better...gives me a little bit better idea of what's going on in these permanency hearings. Perhaps you too. The only other thing that I would add to this is that we already have a time line in statute. And the question I'm posing to you is whether that time line should decrease to six months...amendatory the language, six months. I ask you to consider whether indeed we could increase it to 18 months, for indeed that would provide more flexibility to the

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courts. But we are charged with the responsibility of making a judgment. And I've just heard this so many times, that this was something that struck me as making sense. It's worked in Colorado, and so I'd ask you to consider that. We have something in place, whether it should be six months or 12. [LB598]

SENATOR ASHFORD: Yeah, and my only comment. I think you make a good point, Senator Fulton, at the end there. You know, if it's constitutionally infirm at six, is it constitutionally infirm at 12 months too? I mean I... [LB598]

SENATOR COUNCIL: But that's federal law. [LB598]

SENATOR ASHFORD: Well, but I...no, the constitutional question. [LB598]

SENATOR FULTON: The 12 months is. [LB598]

SENATOR COUNCIL: No, but our 12 months is by federal law. [LB598]

SENATOR FULTON: Correct. [LB598]

SENATOR ASHFORD: Right. But the question... [LB598]

SENATOR COUNCIL: Is consistent with federal law. [LB598]

SENATOR ASHFORD: It was the other question was the constitutional question. [LB598]

SENATOR COUNCIL: Yeah, but constitutional...the fact that the federal law dictates the 12 months is...it removes the constitutional issue. [LB598]

SENATOR ASHFORD: Does it? [LB598]

SENATOR COUNCIL: I mean I don't know how they can say (inaudible)...it's the...the other...the issue is the equal... [LB598]

SENATOR ASHFORD: Is the equal protection argument. [LB598]

SENATOR COUNCIL: It's the equal protection one that's the challenge. [LB598]

SENATOR ASHFORD: Well, that's what I was getting at. [LB598]

SENATOR COUNCIL: Oh. Okay. [LB598]

SENATOR ASHFORD: I don't know where the line...I mean I understand the federal

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statute but I don't know if... [LB598]

SENATOR FULTON: Well, I would point out that there is some...this is not new ground. There is some precedent for the six-month time frame; actually it's three months, Colorado in one place I read. But whether we're treating children any differently, 6 years and under, 6 years or over? Again we can look at Colorado. I mean there's some precedent here. [LB598]

SENATOR ASHFORD: Okay. [LB598]

SENATOR FULTON: And I'm not an attorney but many of you are, so we have something we can look at. So thank you. [LB598]

SENATOR ASHFORD: (See also Exhibits 12 and 13) Thanks, Senator Fulton--thanks, Tony. [LB598]

SENATOR LATHROP: Thanks, Tony. [LB598]

SENATOR ASHFORD: Senator Christensen is next. Where's our bill number? What bill number is this? What's the bill number? LB648? Is that next? LB648. Sorry, Mark; I lost my place here. LB648. [LB648]

SENATOR CHRISTENSEN: Are you ready? You ready? [LB648]

SENATOR ASHFORD: Yes, sir. [LB648]

SENATOR CHRISTENSEN: Okay. Thank you, Mr. Chairman, members of the Judiciary Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n; I represent the 44th Legislative District, here to introduce LB648. LB648 would amend Section 43-1314 by establishing certain notification requirements for court reviews and hearings pertaining to a child in foster care placement. This bill would require that courts have a specific phone number to call the Department of Health and Human Services or contract agencies for up-to-date contact information to comply with notification requirements in this section. Any changes in contact information would be required to be updated within 72 hours of change. An additional change in notification requirements in LB648 was taken from some language in the rules of practice and procedures in the Separate Juvenile Court of Douglas County. This requires notification five full days prior to a review or hearing if the party is not represented by counsel. The bill would also put in statute standing for foster parents as necessary parties in the context of a hearing regarding removal of a foster child from a foster parent's home. This standing was recognized in a 1996 Nebraska Supreme Court decision. With this standing, foster parents would be able to call and cross-examine witnesses and appeal an adverse decision. Finally, LB648 would require that the court shall inquire into the well-being of

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the foster child from any willing foster parent, preadoptive parent, or relative providing care for the child if they are present at the hearing. Currently the court may inquire into the well-being of the foster child from a foster parent, preadoptive parent, or relative providing care for the child. My intent in LB648 was to present some practical suggestions for improving notification and due process to all relevant parties involved with the foster child. I do not know if these are the answers to the problems that many people have experienced, but I hope that LB648 would start a good discussion that will develop into some solid, practical reforms. In the spirit of full disclosure, most of you on the committee know that I have had some negative experiences with the Nebraska foster care system through my daughter Erica and her husband, who were foster parents who have recently given up their foster parent's license. LB648 and LB649, which will also be heard today, are two of the four bills I've introduced this session as suggestions for your committee and the Health and Human Services Committee to consider. My daughter will also be testifying after me. Thank you for consideration of LB648, and I urge you to advance it to General File. [LB648]

SENATOR ASHFORD: Thank you, Senator Christensen. And it's nice to have you back, always. [LB648]

SENATOR CHRISTENSEN: Thank you. [LB648]

SENATOR ASHFORD: Any questions of Mark on this bill? Okay. Thanks, Mark. Testifiers on LB648. How many do we have here today? Couple. Okay. Three? Welcome. [LB648]

ERICA FISH: Hi. Most of you personally know my situation. My name is Erica Fish, last name F-i-s-h. I'm also Senator Christensen's stepdaughter. And many of you have gone through the drama experienced with me over the last year. Many of you have seen two wonderful children running down the halls of this Legislature. And you'll have to excuse me a little bit. I'm pregnant, too; so I'm combating two separate emotions. But when you guys get sued, you're served notice. In the state of Nebraska when we as foster parents are told that we're bad or something is wrong, nobody has to serve us notice. And DHHS can say they did, when they didn't. And it is not required by guardians ad litem. And do I think all guardians ad litem are terrible? Absolutely not. I have experience with several children. Absolutely wonderful guardians ad litem that put their heart and soul, far above the call of duty, into children. However, I've also experienced some really horrific ones that just do whatever DHHS says. And many of you have heard throughout the day foster parents complaining about problems. And I've researched this for over a year, and I have...at some points over the last year I was triaging 25 to 50 phone calls a week from foster parents that were going through what now I've gone through. And no bill that we can bring forward can answer every problem, because there's so many problems. And I will point-blank say corruption within the foster care system that you will find that any director will deny. But until you've experienced it and until you've been a

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foster parent and until--as Senator Christensen has experienced, dropping a kid off, an experience when they cry and they beg for help--until you have personally experienced it, I want you to consider every bill that comes through here and take it with heart, because none of you would want to see your children go through pain and hurt. And we all as foster parents have experienced that. And very seldom do guardians ad litem take us personally and talk to us and treat us like professionals. And like my husband has numerously told people, that if he was ever treated this way in his professional business or if he ever treated a client this way, his business would no longer exist. And guardians ad litem don't always treat us with dignity and respect that I feel we deserve. Because we put everything personally out there, and any worker can access any personal information on us at any given time, without any sort of restraint. And some of this with these different bills...I've kind of gone through in between the two, but providing with the guardian ad litem to serve notice--I truly feel that this is one step in the right direction. And it's not perfect. But, like you said, it'll bring discussion so that you guys can all figure out what is the perfect solution. Thank you for your time. [LB648]

SENATOR ASHFORD: Thank you, Erica, for sharing your story with us. Yes. [LB648]

SENATOR LATHROP: Yeah, you know--if I may. [LB648]

SENATOR ASHFORD: Yes. Senator Harr, then... [LB648]

SENATOR LATHROP: I think I'd just like to... [LB648]

SENATOR ASHFORD: ...Senator Lathrop, then Senator Harr. [LB648]

SENATOR LATHROP: I'd just like to acknowledge that sometimes our hearings have themes, and today seems to be the foster care theme. And it is...I am so impressed with what people do when they agree to take a little child into their home and to care for him, and they bond with him and develop a relationship with him. And so much of it's dependent upon somebody who is doing such a poor job of parenting that the child has been taken out of the home and your life and your relationship with this person is on hold. I get it; I really do. And I want to say to you and everybody else here that's done the foster parent--undertaken that responsibility, that I appreciate, I genuinely appreciate what you do, and you have my gratitude for what you do. And if we can...my experiences just listening to these stories for five years--and I don't mean this in a condescending way at all: boy, is it complicated. [LB648]

ERICA FISH: Absolutely. [LB648]

SENATOR LATHROP: And it's not a place that's really a good place for black-and-white rules... [LB648]

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ERICA FISH: No way. [LB648]

SENATOR LATHROP: ...and black-and-white lines. Because we have a great foster parent here, and the next one is in it for the money or not doing a good job or not meeting the needs of the children. [LB648]

ERICA FISH: Which, I might say, I have no idea how that's possible. My husband and I went way over his income. (Laugh) [LB648]

SENATOR LATHROP: They're...well, they may be in it for the wrong reasons, whatever they might be; or they're just not good at it, or they've overcommitted themselves. And I just...it's a very difficult place to come up with black-and-white rules, as I think Judge Gendler's testimony... [LB648]

ERICA FISH: Absolutely. [LB648]

SENATOR LATHROP: ...was sort of an admonition. Got to have some flexibility, because it's kind of a case-by-case basis. [LB648]

ERICA FISH: Totally. [LB648]

SENATOR LATHROP: But thank you for what you do. [LB648]

SENATOR ASHFORD: Senator Harr. [LB648]

SENATOR HARR: My question is a lot easier, and it actually is a...where do you live? [LB648]

ERICA FISH: I live in Douglas County, and we were licensed for six children. And we did...after they removed the kids from our home, we did six weeks, I believe, for them to terminate our license, because Senator Kathy Campbell was in there. My request to Kerry Winterer and Kathy Campbell was that if they remove my children for neglect, then they needed to remove my foster care license, because, to me, no two children are different. If I'm unacceptable for one, then I'm unacceptable for all. Never once has there even been a call in to the hot line regarding me. Never once. However, I relinquished my license, and I was licensed for six kids. And I've had tons of kids through my house. But never once...I just felt so demoralized through this process that we can't handle it as a family anymore. [LB648]

SENATOR HARR: And was this pretty much--and I hate to use the term--but this was pretty much your full-time job? I know you didn't do it for the money, but this is... [LB648]

ERICA FISH: I was a stay...I stayed at home with them. [LB648]

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SENATOR HARR: Stay...yeah. Okay. And how long did you do it, from beginning to when you relinquished it? [LB648]

ERICA FISH: We had them for 15 months. And then when we officially got the letter that they had finished closing our account: last week. [LB648]

SENATOR HARR: Okay. [LB648]

ERICA FISH: And I had numerous kids in over the days. And I had one case where the case manager and I hit heads big time, and the guardian ad litem and I hit heads big time. And that case was horrific, nasty, the most personal, vindictive experience in my life. And then I had another kid, who was the hardest kid in the universe--major, major, major issues. I mean, he was ready for an inpatient bed. And I remember crying in the car one day because I'm, like: Mom, I don't know what to do. You know. And you love that kid so much, but at some point some of these kids, their needs are so beyond anything you could ever imagine. And then, yet, you know, I disagreed with his guardian ad litem on a lot of things, but, you know--like holding him back from school. And so she said: You know what? You present all your reasons to me and the pros and the cons, and we'll have a meeting about it. And she gave me dignity and respect because I sat there with him day in and day out. I'm the one who had to restrain him when he tried to jump out of a window; I'm the one who had to try to keep him from killing animals or anything else. And, you know, she gave it through, and she ended up supporting me on that issue; we disagreed on other issues. But, you know, it's not just that you can't disagree to disagree. My husband and I don't agree on everything. Mark and I don't agree on everything. (Laugh) [LB648]

SENATOR ASHFORD: Oh, come on. (Laugh) [LB648]

ERICA FISH: And... [LB648]

SENATOR LARSON: Yeah, seriously? (Laugh) [LB648]

SENATOR LATHROP: That's two of us. (Laughter) [LB648]

ERICA FISH: There you go. But, you know, I'd like you... [LB648]

SENATOR ASHFORD: That almost deserves applause. [LB648]

ERICA FISH: I'd like you to take the time, because I truly--if I've done my research right, we're the only connection that has a direct relationship with foster care, where we've experienced...he's had to drive them to visits. He kept my kids while I was on vacation, and he physically drove them--Mark did--from western Nebraska, six hours away, and

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drove them up for a visit once a week and experienced what it was like taking a kid to see bio Mom and back and to deal with all the workers on the case. And until you've experienced that personally...and I know some of you have kids my age that could very well participate in this endeavor and experience it firsthand. But I challenge you to take it firsthand; don't believe what they say. And something has got to be done; there is so much urgency here. [LB648]

SENATOR HARR: Thank you; I appreciate that. [LB648]

ERICA FISH: Thank you. [LB648]

SENATOR ASHFORD: Erica, thank you for your incredible commitment. I don't know what else to tell you. [LB648]

ERICA FISH: I'm done with foster care... [LB648]

SENATOR ASHFORD: Senator Council. [LB648]

ERICA FISH: ...we're on to advocacy. [LB648]

SENATOR COUNCIL: So excuse me. [LB648]

ERICA FISH: Yes. [LB648]

SENATOR COUNCIL: Good afternoon, Erica. Refresh my recollection. Weren't you here in the chambers last year with your... [LB648]

ERICA FISH: Pardon me. [LB648]

SENATOR COUNCIL: Weren't you here in the chambers... [LB648]

ERICA FISH: Yeah. [LB648]

SENATOR COUNCIL: ...last year with your foster children? [LB648]

ERICA FISH: All five of them, because we wanted to adopt all five siblings. [LB648]

SENATOR ASHFORD: I remember that... [LB648]

SENATOR COUNCIL: Thank you. [LB648]

SENATOR ASHFORD: ...when they were here. [LB648]

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ERICA FISH: They were amazing children. And you know the worst part about it was, was that when Mark would pass out campaign materials, because it was reelection year, and the kids would sit there and cry because they felt rejected because they couldn't be on it, because they weren't adopted. So you can't have their picture on fliers to go out to people. And they'd sit there and cry and cry and cry every time they saw a billboard or an ad or something with our family picture, because they just wanted that permanency. [LB648]

SENATOR COUNCIL: Thank you. [LB648]

SENATOR ASHFORD: It's an incredible story. Thank you, Erica. [LB648]

ERICA FISH: Thanks. [LB648]

SENATOR ASHFORD: Next testifier. [LB648]

SAM HABERMAN: Good afternoon. My name is Sam Haberman. I'm Erica's husband and Mark's son-in-law and, also for you--those who remember, Rex Haberman's grandson. [LB648]

SENATOR ASHFORD: You're Rex Haberman's grandson. [LB648]

SAM HABERMAN: Yes. So last name H-a-b-e-r-m-a-n. You heard my wife's story and my story from the very personal side of it. Just to try to stay factual and whatnot, there's current rights and responsibilities out there for foster parents, which, you know, state that--I believe it's six months--but after foster kids have been in placement for a certain amount of time--I think it's six months--that the foster parents have a right to be notified of change in placement within seven days of the kids moving. Foster parents are also supposed to be notified of, you know, the hearings and change in placement and whatnot. So I'm not sure, but I'm pretty positive you'll hear that what is being introduced is already in effect. The problem is, though, that when the two children in our care were removed, we were given less than three hours of notice. We found out that the hearing was the day before, because they had been in our care long enough to where there has to be a court hearing. We weren't notified of the court hearing. It happened; we weren't there to testify to be able to even argue against the allegations. You know, whether they were true or not, it didn't matter, because we weren't there to be able to hear what was being said. Through the process there was never any direct conversations with anyone other than our agency about any concerns there might be. And so we tried to object. We hired a personal attorney, waited a month, and in the process were told that because it was after the fact, being foster parents, we're a party of interest, but because we're not actually on the docket we can't make motions (inaudible) is how I kind of got it, not being an attorney and whatnot. So in general, I just think that there's things that do need to, you know, be looked at, things...there needs to be more enforcement and if we can

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make it such that foster parents have to be notified of court hearings, of change in placement, just as if, you know, you were served for a civil suit or whatnot. I think, you know, I think it needs to happen. So that's all I have. [LB648]

SENATOR ASHFORD: Any questions? Well, your grandfather was a great guy... [LB648]

SAM HABERMAN: Thank you. [LB648]

SENATOR ASHFORD: ...and he was very good to me, so... [LB648]

SAM HABERMAN: Thank you. [LB648]

SENATOR ASHFORD: Something I did not know. Thank you for your comments. [LB648]

PAMELA ALLEN: (Exhibit 14) Thank you, Senators. I am Pamela Allen. I'm the executive director of the Nebraska Foster and Adoptive Parent Association. My husband and I have been fostering for 13 years. We've had about 80 children through our homes. We have six biological children, three adopted children, and two guardianship children; and I love birth families. And I have to tell you that I had the privilege this week of taking two little boys back to their mom, that I've had for eight months. The Nebraska Foster and Adoptive Parent Association supports LB648. The federal Adoptions and Safe Families Act of 1997 requires states to give foster and kinship parents notice of an opportunity to be heard in any review or hearing concerning the child in their care. After all, who knows more about the day-to-day life of a child than the person the child is living with? In addition, the Safe and Timely Placement of Foster Children Act of 2006 mandates that foster, kinship, and preadoptive parents have the right to participate in any proceeding about the child in their home. In response, NFAPA assisted the Nebraska Supreme Court Commission on Children in the Courts in the development of the caregiver's information form. This form provides the court with the following information: length of time the child has been in the caregiver's care; the child's medical, emotional, and educational status or needs; the child's social skills and peer relationships; responses to visitation with the parents; whether the child is receiving all the necessary ordered services; the known contact the child has had with the caseworker and/or guardian ad litem; and the current wishes of the caregiver to offer a permanent placement for the child. In order for resource parents to be in court for review hearings, it is necessary they receive notice of such hearings. NFAPA also believes that resource parents should be given a voice when children who have been in their home are being removed. Resource parents should have the opportunity, especially with a young child, to appeal the removal of such child. NFAPA believes that children should be with their birth families. However, when a young child has been with a family for a year or longer and then a relative that child has never met comes to the

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forefront, it is important to look at the child's age and the bonding and attachment to that resource parent and to be able to weigh the outcomes for that child. I'd be glad to answer any questions. [LB648]

SENATOR ASHFORD: Thank you for your comments, Pamela. Yes, Senator Council. [LB648]

SENATOR COUNCIL: Yes. And thank you, Ms. Allen, for appearing. And I guess that gets to the concern I have. The notice, the opportunity to be heard...I guess I don't have any real concern, but the bill goes further and says foster parents shall be "necessary parties," which makes them a party to the action, giving them appeal rights. And we've had earlier bills talking about expediting this process, and this bill actually has elements that could prolong the process, in the event that there's some disagreement about the continuation of the placement. And I guess that's where the whole issue of DHHS comes into play, because the concerns that the foster parents have about the continued placement of a child in their home ought to be the points that DHHS caseworkers are advocating when they do the court report. I mean, I guess, I'm trying to figure out, you know, what's occurring. Are there disagreements with DHHS? And is the proper course some procedure under DHHS? My concern is adding another party to this court proceeding, where the purpose of the court proceeding is focused on the child, and now we have multiple parties involved. Do you understand the concern? [LB648]

PAMELA ALLEN: Well--and I'm not an attorney, so I don't...I do... [LB648]

SENATOR COUNCIL: Okay. What do you think--let me ask you this way, what do you think the bill does? [LB648]

PAMELA ALLEN: Well, I think it gives foster parents the right, when a child is being removed, to be heard. [LB648]

SENATOR COUNCIL: Okay. [LB648]

PAMELA ALLEN: To have a voice. [LB648]

SENATOR COUNCIL: Okay. [LB648]

PAMELA ALLEN: And I think... [LB648]

SENATOR COUNCIL: So what if the removal is upheld? What do you think the bill does then? [LB648]

PAMELA ALLEN: I think, well, I think, in my--if it's upheld, I think that the child would then go where the Health and Human Services or the, you know... [LB648]

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SENATOR COUNCIL: Okay. [LB648]

PAMELA ALLEN: ...the department says. [LB648]

SENATOR COUNCIL: Okay. [LB648]

PAMELA ALLEN: But I just--I've seen cases where children have been in care for four years with a family and been sent off to someone in Colorado that they'd never met. And, you know, that's...I think then we have to look at the bonding and attachment and what's really, truly in the best interest of that child. [LB648]

SENATOR COUNCIL: Oh, absolutely. And just from a personal experience as a guardian ad litem, I've advocated against something like that. And that's what I'm saying, with the pieces in place--if the guardian ad litem is doing his or her job, if DHHS is doing their job--in that kind of situation, that should never occur. [LB648]

PAMELA ALLEN: Well, in the next bill we talk about guardians ad litem. (Laugh)
[LB648]

SENATOR COUNCIL: Well, I mean, I'm just saying, that should--that...I mean, I had a situation where a child had been placed with a foster family, had been in that foster family's care for almost two years, when Grandma, of the dad...Mom's parental rights had been terminated; they were trying to work with Dad to see if he could parent. Two years--his mother had never seen the child, found out that the foster parents were about to adopt, wanted to come in and overturn the situation. And as guardian ad litem, I advocated against that. I mean, that's what...the guardian ad litem is supposed to be looking out for what's in the best interest of the child. [LB648]

PAMELA ALLEN: And in that case, I think Grandma could have been Grandma. [LB648]

SENATOR COUNCIL: Absolutely. Thank you. [LB648]

SENATOR ASHFORD: Thank you, Pam. [LB648]

PAMELA ALLEN: Thank you. [LB648]

SENATOR ASHFORD: Do we have other proponents? Other opponents? Or are there opponents to this bill? [LB648]

CHRISTINE COSTANTAKOS: Neutral. [LB648]

SENATOR ASHFORD: Chris is neutral again. Come on up. Actually, Chris, I'm very

pleased you are here, because you do have lots of information, and it's helpful. [LB648]

CHRISTINE COSTANTAKOS: Thank you. Hope I'm not boring everyone. Senator Ashford, members of the Judiciary Committee, my name is Christine Costantakos, C-o-s-t-a-n-t-a-k-o-s. I want you to think about there's two cases out there that are important, and there's something we're doing today that bears on this. In LB80, if LB80 passes, then--that's the bill I testified in support of--that would delete, quote, if any party proves by a preponderance of the evidence that the department's plan is not in the child's best interest, the court shall disapprove the plan. That's an important phrase. And I still agree--my position on LB80 is the same. But under this--the case of In re Interest of Jorius G., the Department of Health and Human Services removed a foster child from the care of foster parents. And the foster parents got an attorney, got involved, tried to oppose the change of placement. And the juvenile court, I think, said: You don't have standing. It went up on appeal, and they reversed and said: Foster parents are interested parties for the purpose of challenging the propriety of the department's plan, and that allows them to participate by calling witnesses, confronting, cross-examining. Later there was a case--it's a little more recent--where foster parents then appealed an adverse decision regarding placement. And somebody said: Oh, you can't appeal. And they extended the Jorius holding to say if you have standing as an interested party to oppose the department's plan, under 43-285(2), that carries through to an appeal. Here's the problem. There's a newer case called In re Interest of Destiny S.; it's about a 2000 case. In that, they addressed--the court addressed a claim for intervention by a great-grandmother, I believe, and they said foster parents do have the statutory right to notice and an opportunity to be heard, and then they defined "opportunity to be heard." And it's not real clear language, but it's more or less saying that foster parents' opportunity to be heard includes the right to adduce evidence as to their own fitness and qualifications and to conduct discovery as to their own fitness and qualifications. I'm going to tell you, this is a nightmare for judges, because they look at Jorius over here that let these foster parents participate fully as interested parties, not necessary parties, and over here they look at Destiny and say: Well, all you can do is talk about your fitness and qualifications, but you can't give us the whole picture of evidence that you might have about how bad somebody else might be or the current placement. I don't have a strong position on this, but I see what the problem is. And my suggestion would be--if you keep this language about their participation, which I think is somewhat implied--to change that language from "necessary party" to "interested party." And they also...another consideration I would throw out for you, Senators, is it would be different--I think there is a difference between a foster parent who's had a child for two years as opposed to one for two weeks. So do you want to factor in a calculation of time, of how much time, if you pass this bill, must a child have been placed before the foster parents acquire that right of interested party? Because it would be a mess if somebody who's had the child for a few days can come in and then file an appeal. [LB648]

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SENATOR ASHFORD: I don't think that's the case here. Do we have any questions of Chris? I mean, am I just oversimplifying this? The hearing occurred in this case prior to notice. [LB648]

CHRISTINE COSTANTAKOS: I wasn't speaking about this particular case. [LB648]

SENATOR ASHFORD: No, but I'm asking. [LB648]

CHRISTINE COSTANTAKOS: Yes. [LB648]

SENATOR ASHFORD: You're a neutral testifier. [LB648]

CHRISTINE COSTANTAKOS: My knowledge of this... [LB648]

SENATOR ASHFORD: You're an expert. I guarantee you, you're an expert. [LB648]

CHRISTINE COSTANTAKOS: She was--the foster parents were simply completely omitted; no notice whatsoever was given to them. And I think that--my opinion... [LB648]

SENATOR ASHFORD: What is your opinion on that? [LB648]

CHRISTINE COSTANTAKOS: That's a violation of our existing statute right now. Now, where do you go with that? [LB648]

SENATOR ASHFORD: I don't know. [LB648]

CHRISTINE COSTANTAKOS: I think the recommendation was to get an attorney, try and get back in and be heard by the judge. And I believe that never happened, or that was stopped. [LB648]

SENATOR ASHFORD: I think there was an attempt to do that, but... [LB648]

CHRISTINE COSTANTAKOS: Yes. [LB648]

SENATOR ASHFORD: ...and it didn't happen. Then a considerable amount of time goes by--weeks, months, whatever. [LB648]

CHRISTINE COSTANTAKOS: Um-hum. [LB648]

SENATOR ASHFORD: How does that impact...? I mean, by that time there hasn't been a hearing where they've had an opportunity to attend. [LB648]

CHRISTINE COSTANTAKOS: No. [LB648]

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SENATOR ASHFORD: There has been a hearing but not one where they had notice. Then time elapses. They're significantly prejudiced at that point, are they not? [LB648]

CHRISTINE COSTANTAKOS: That's correct. And I really... [LB648]

SENATOR ASHFORD: So how...? [LB648]

CHRISTINE COSTANTAKOS: I think there needs to... [LB648]

SENATOR ASHFORD: Where's the redress? [LB648]

CHRISTINE COSTANTAKOS: I don't know. But I think there needs to be clarification of the foster parents' right of participation. And maybe "interested party" is a softer way to achieve that than "necessary party," which sort of constitutes a fuller array of rights. [LB648]

SENATOR ASHFORD: Right. And I think, to me, there's another harm here, it seems to me, that impacts state interest. And that is that you have foster care parents--in this case or other cases, if it happens in other places--where they're no longer foster parents. I mean, so the decision impacted their future, in this case or maybe others, impacted their status as foster parents in some way... [LB648]

CHRISTINE COSTANTAKOS: Yes. [LB648]

SENATOR ASHFORD: ...whether it was elective by the state. [LB648]

SENATOR COUNCIL: But, Senator Ashford, that's the issue. It wasn't the juvenile court so much as DHHS. [LB648]

SENATOR ASHFORD: No, I'm trying to get there. [LB648]

SENATOR COUNCIL: Yeah. [LB648]

SENATOR ASHFORD: I understand, Senator Council. But go ahead. Maybe you can help me. [LB648]

SENATOR COUNCIL: I mean, and that's what I'm saying. I mean, in terms of process, I mean, is the appeal really to the juvenile court? [LB648]

SENATOR ASHFORD: I don't know. That's what I'm... [LB648]

SENATOR COUNCIL: Or is the appeal some... [LB648]

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SENATOR ASHFORD: Place else? [LB648]

SENATOR COUNCIL: ...some administrative...? For example, DHHS regulates childcare providers. If they terminate their license, there is a procedure--an administrative hearing and then an appeal to the district court. Why couldn't the same kind of process be available for foster parents whose licenses have been terminated? [LB648]

SENATOR ASHFORD: Right. As long as it could be expedited. It just seems--this is goofy, to me. Great point. We're talking about the license, I guess... [LB648]

CHRISTINE COSTANTAKOS: Yeah. [LB648]

SENATOR ASHFORD: ...but we're also talking, in the short term, about the children. [LB648]

SENATOR COUNCIL: About the children, right. [LB648]

CHRISTINE COSTANTAKOS: Well, could... [LB648]

SENATOR ASHFORD: There are two different interests there. [LB648]

CHRISTINE COSTANTAKOS: Could something be added that says: In the event that notice has not been provided, the foster parents shall have x days within which to, you know, file? [LB648]

SENATOR ASHFORD: File what, though? [LB648]

CHRISTINE COSTANTAKOS: Well, file a motion with the court. [LB648]

SENATOR ASHFORD: To do what? [LB648]

CHRISTINE COSTANTAKOS: That's what they tried to do, I believe, in this case. [LB648]

SENATOR ASHFORD: I know that's what they tried to do. [LB648]

CHRISTINE COSTANTAKOS: Yeah. So...but there is a need to clarify it, Senator. [LB648]

SENATOR ASHFORD: And your recommendation...I'm sorry--Chris, you really do know what you're talking about. So it helps when you tell us. What would your

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recommendation be? [LB648]

CHRISTINE COSTANTAKOS: Looking at that language--I'm not talking about the notice part, just the participation part--I would change it to "the foster parent shall have standing as interested parties." And if you base it on the Jorius case, they would have a right to appeal, although that was taken right off of that other language that may or may not be eliminated, depending...but I do think that there probably needs to be a qualifier of how long do you have to have been a foster parent before you can do this. [LB648]

SENATOR ASHFORD: Right. And I understand the difference that you explained earlier. [LB648]

CHRISTINE COSTANTAKOS: Yeah. [LB648]

SENATOR ASHFORD: But...okay. Thanks very much. [LB648]

CHRISTINE COSTANTAKOS: Thank you. [LB648]

SENATOR ASHFORD: And thanks, Senator Council. That was a good point I maybe did not catch. Are there any other neutral testifiers? Senator Christensen, do you want to close and then open on the next bill, if you would? [LB648]

SENATOR CHRISTENSEN: First of all, I just want to say thank you for everybody for your time and consideration of what I call a very important step that I think we need to figure out a process here. And I appreciate the last witness very much for speaking. And that would be all I'd have here. [LB648]

SENATOR ASHFORD: So we'll go on to LB649, Mark? Is...? [LB649]

SENATOR CHRISTENSEN: Thank you, Chairman Ashford and members of the Judiciary Committee. I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n; represent District 44, here to introduce LB649. LB649 would require the Judiciary Committee to examine the report and recommendations of the 2009 Guardian Ad Litem Systems Study by the National Association of Counsel for Children, entitled "Evaluation of the Guardian Ad Litem System in Nebraska." This study was commissioned by the Legislature and seemed like the right tool to continue studying the issue and discussion. The Judiciary Committee would also be required to develop a legislative recommendation for improving the Nebraska guardian ad litem system by October 1, 2011. It is the intent of the bill that the recommendations in the NACC report are looked at by the Judiciary Committee as a starting place for continued discussion for the development of proposals to improve the Nebraska guardian ad litem system, not a requirement to endorse or develop all the recommendations by this report. I know that the report is considered by some, controversial, and regarding the methods and

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sampling used in the report, and hence, creating some questions regarding the report's conclusions and recommendations. However, I believe as part of the legislative body that commissioned the study, we can continue the discussion, which in my opinion needs to continue, and determine whether the conclusions and recommendations in the report are valid or whether other recommendations would be more feasible and effective. I admit I do not know all the in's and out's of the guardian ad litem system, but I attest to my experience and what others have told me about their experiences with the guardians ad litem assigned to the foster care cases. I want to stress this is not an attack on the guardians ad litem in Nebraska. There are obviously many good guardians ad litem. Saying that, though, when a child gets a not so good guardian ad litem, that does put in the necessary time to investigate reports and make sure his or her opinions and information presented to the courts are really accurate and in the best interest of the child, the child loses, and in some cases loses big. I believe that improvements can be made and should be made when specific areas of identified for improvement. Again, I hope that this bill will lead to constructive and effective improvements in areas of the child welfare system. Thank you. [LB649]

SENATOR ASHFORD: Thank you, Senator Christensen. Questions of Mark? Thanks, Mark. Do we have any proponents for this bill? Erica, you're always welcome. [LB649]

ERICA FISH: Erica Fish, F-i-s-h. I just wanted to say that, you know, we're bringing sort of...asking you guys to examine and be responsible for some of it. But there's only two major groups in this legislative body that can examine and try to do something about this mess, and that's Health and Human Services and you guys. And so we're going to both committees, and saying do something. We're losing foster parents at staggering numbers, and there's many reasons. Case managers if your number one reason, because they're uneducated. However, we also have had some really bad experiences with guardians ad litem. But if you continue to see homes that drop, like ours did, from being able to take six kids to no kids, and on the average weekend we had at least six kids for respite. And when you start seeing these numbers, I know this is just one small way for you guys to make a footprint as far as in foster care, but please, please do it, because this needs all the help you can before we as foster parents show up on the lawn with all these kids and say: Figure it out now. So please, use every avenue. This one may seem minor, but every avenue can help take a step towards the betterment of foster care, because there's nothing more valuable than a life. And we've talked about in earlier bills with money and taking money from the education system. Well, having had a kid that took two teachers for a whole day? You're going to pay for it one way or the other. And whether we need to get more judges or, you know, more, better equipped guardians ad litem, wherever we have to spend the money to do the right thing, we've got to do. Because we're going to pay for it one way or the other. Or the kids...you know, study after study shows that if a kid doesn't get permanency in a certain time frame, and statistically I don't know it off the top of my head, but they're likely to be incarcerated. And we're going to pay for it, one way or the other. So please look at

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every avenue, including guardians ad litem, because they are key players, and please take it into consideration. [LB649]

SENATOR ASHFORD: Thank you, Erica. I would comment on one...yes,...I'm sorry. One thing you said I think it's very important, and that is that as we discuss all of the CASA workers or guardians ad litem, whomever they are that deal with these children, I think it really is a resource issue in many respects. I think you're right, there are many good guardians ad litem and good CASA workers,... [LB649]

ERICA FISH: Amazing CASA workers. [LB649]

SENATOR ASHFORD: ...good juvenile judges, and all these people. We don't have the resources in place to...in fact, I know there's always been an issue of caseload on guardians ad litem. One of the big problems there is resources. It's not the people that perform the tasks so much as it is the resources to allow for additional numbers of qualified guardians ad litem to be involved. You are absolutely right. And we struggle with this all the time: How do we get the...what is the most effective thing to do, with the resources we have, to identify these children as early as possible and get them help? It is a constant struggle. And you're right, we as a Legislature do have an obligation to address it somehow, some way. And we try in many different ways. We have studied the guardians ad litem issue and there may be some things there. But I do think it's resource driven. That's my conclusion. I mean you're always going to be...you're going to find a not-up-to-standard guardian ad litem or not-up-to-standard defense attorney or whatever. That can happen. But if we had more resources we could maybe address some of it. But you are absolutely right. We have these children that are, if they showed up one day outside, it would make quite a photo opportunity. [LB649]

ERICA FISH: It's been debated, so (inaudible) take it seriously. [LB649]

SENATOR ASHFORD: I'm sure it has. Well, you are an excellent spokesperson for your issue. So thank you. Any other questions of Erica? Seeing none, thank you very much. [LB649]

ERICA FISH: And I will say about your thing with the guardian ad litem, what do guardians ad litem get? Sixty dollars an hour? What of you and attorneys would do private practice for \$60 an hour? [LB649]

SENATOR ASHFORD: I think it's an issue...I think you really...I think you have really... [LB649]

ERICA FISH: I mean you have to give them credit. We're not coming against them. [LB649]

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SENATOR ASHFORD: No, you do. And I think this is a great point and I think that maybe that is the point. I mean instead of debating about whether guardians have too many cases or whether we have good ones or not so good ones or mediocre ones, or whatever it is, the real issue is if we invest more resources in that area now, if the state does...a lot of that is county expense. But maybe the state does have a bigger role. I think you're making a great point. And then the change that is needed in that regard...and it's not necessarily a state office of guardians ad litem. I know that's what has been tried in other states. I'm not sure that's the answer either. But these counties don't have the resources in place. And so you do the best you can. And you are so right; you are so right. We either pay now or we pay an awful lot more later. And you got it. You're spot-on, so thank you. [LB649]

ERICA FISH: It's like that one kiddo I had. Had he been adopted when he was legally free for adoption, I don't think that Douglas County, Omaha Public Schools, would have had to pay for two teachers for a special BB classroom. [LB649]

SENATOR ASHFORD: Well, and I mean...our committee, they've been very patient with me as I've worked a lot on the truancy issue. But clearly, so many of the kids that are chronically absent are children that have had so many issues and are in foster care and they are moved around. [LB649]

ERICA FISH: But how many foster parents do you have that stay at home with their kids? I spent three hours a day up at the school and taking his teachers supper so that they would keep happy and not kick him out of school. And how many foster parents do you have that want to spend three hours up at the school every single day? [LB649]

SENATOR ASHFORD: Well, you're amazing. And thank...and we... [LB649]

ERICA FISH: There's lots of amazing foster parents out there. [LB649]

SENATOR ASHFORD: Well, you're the only one here in this chair, and I think you're amazing, so. Thank you, Erica. [LB649]

ERICA FISH: Thanks. [LB649]

SENATOR ASHFORD: Do we have other proponents? [LB649]

PAMELA ALLEN: (Exhibit 15) Thank you again. I am Pamela Allen, A-I-I-e-n, executive director of the Nebraska Foster and Adoptive Parent Association. Guardians ad litem are one of the most important people in the life of a child who is in the foster care system. The GAL is the person who is charged with the task of looking out for a child's best interests in court. Unfortunately, too often, the guardian ad litem is the person who knows the least about the child. Too often the only time the guardians ad litem see the

child is in court, and, if it's a young child, the GAL may not even see the child at that time. And NFAPA believes that all guardians ad litem should be required to follow the guidelines of training, such as visiting the child in the home of the caregiver within two weeks after appointment and at least every six months after that, including talking with others involved in the case: resource parents, caseworkers, school people, therapists. As a resource parent, I have had both very good guardians ad litem and one that didn't even know what the child looked like when we walked into court. It's been my personal experience that when the guardian ad litem takes an interest in the child and what is happening in the case, the children achieve permanency much sooner. As an example, we were placed with a baby right from the hospital. She has older siblings whose rights already had been terminated and were with an adoptive family. Our guardian ad litem never met the baby; never spoke with us; often did not show up for court reviews. Our little girl was almost 4 years old when TPR was filed. When we asked our guardian ad litem why she didn't take more of an interest in our case, she said she was just too busy. Guardians ad litem need to have a workable caseload. The lives of children are too important to leave in the hands of someone who is too busy to care. In summary, in order to advocate for what is in the best interest of a child, the guardian ad litem must have a workable caseload, know the child and his or her needs. We also believe there should be oversight of the guardians ad litem services to ensure that guardians ad litem are fulfilling their obligations to the child and not just filling a spot in the courtroom. [LB649]

SENATOR ASHFORD: Thanks, Pamela. Any questions of Pamela? Yes, Senator Lautenbaugh. [LB649]

SENATOR LAUTENBAUGH: Thank you for coming today. Do you feel in some way that the practice of guardians ad litem is different from other areas of practice in law, and if so, how? [LB649]

PAMELA ALLEN: I don't think the guardians ad litem...I don't think that they're taking enough interest. And I think if...attorneys that are working cases and getting paid a lot of money do a lot better job with what they're doing than the guardians ad litem who are not getting paid as much. [LB649]

SENATOR LAUTENBAUGH: Do you have any feel for what you feel the caseload should be? [LB649]

PAMELA ALLEN: I don't have. [LB649]

SENATOR LAUTENBAUGH: Okay. Do you think it's important that people specialize in this area? [LB649]

PAMELA ALLEN: I do. [LB649]

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SENATOR LAUTENBAUGH: Thank you. [LB649]

SENATOR ASHFORD: I do too. Thank you, Pamela. Next proponent. [LB649]

SARAH FORREST: (Exhibit 16) Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t, and I'm a policy and research associate of Voices for Children in Nebraska. It's on their behalf that I'm here today in support of LB649. LB649 provides us with some tools and a starting point for an ongoing discussion and dialogue, as well as a plan of action on how to address and improve the guardian ad litem system in Nebraska. As our state looks at comprehensive child welfare reform, guardians ad litem, the representatives of those abused and neglected children in courts, we owe it to ourselves as a state to look at what's going right and what's going wrong and how we can make these improvements. So I'll keep it short and sweet. We think that this bill provides just such a vehicle and we urge you to advance it. And I'm happy to answer any questions. [LB649]

SENATOR ASHFORD: Yes. Senator Lautenbaugh. [LB649]

SENATOR LAUTENBAUGH: And there's no wrong answer to this, but are you an attorney? [LB649]

SARAH FORREST: I am not. [LB649]

SENATOR LAUTENBAUGH: Do you have any opinion about what the right caseload size should be? [LB649]

SARAH FORREST: I don't. I mean I think that's something that needs to be looked into and that's part of the reason we're supporting this bill. You have studies that have been done in the past. You have experts here all across Nebraska. You have people who have been looking into this issue and debating it, and it's time that the Legislature tap into that expertise--for example, the Supreme Court Commission on Children and Families--and try to use those to move our practice forward. [LB649]

SENATOR ASHFORD: But I think there lies one of the problems. You want us to tie into what now? [LB649]

SARAH FORREST: Oh, I was just mentioning that, you know, there's been ongoing debate and discussion in other avenues like the Supreme Court Commission on Children and Families (inaudible). [LB649]

SENATOR ASHFORD: I mean there's a lot of discussion, and I...but my sense is that...well, the caseload number that's tossed around, and I think Stacey mentioned that

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there's a recommendation that 60 cases be...juveniles be the caseload for guardians ad litem, which may or may not be good. I don't know. I've not...I don't work in the area. But it would seem to me that at the very...at the very basic level, our guardians ought to be experienced in being guardians or trained to be guardians. I know we have guidelines but we don't have any court requirement that judges appoint, that I know of, that they appoint qualified guardians. [LB649]

SARAH FORREST: Right. [LB649]

SENATOR ASHFORD: Right? [LB649]

SARAH FORREST: Well, I think, you know, there are some very... [LB649]

SENATOR ASHFORD: I mean couldn't we do that, or... [LB649]

SARAH FORREST: ...basic training requirements that exist but... [LB649]

SENATOR ASHFORD: Well, I think there's some training guidelines but they're not requirements. [LB649]

SARAH FORREST: Well, I think six hours is mandated currently. But I think there's always room for improvement and I think that's why this bill is especially pertinent, because as a Legislature you'll be examining these issues and looking towards actions and bills that can improve the system. So it won't just be another debate of concerned parties but it will be people who have the power to write this into law. [LB649]

SENATOR ASHFORD: Yeah, but here...and I'm not...I'm not just picking on you and I know the hour is getting late... [LB649]

SARAH FORREST: Not a problem. [LB649]

SENATOR ASHFORD: ...and you always do a good job when you come in here. It seems to me we have to raise up, really, those practitioners who are practicing in this area on a...and then maybe it's not 100 percent, but 70 percent or some number of their practice is in acting as guardians ad litem or dealing in this area. I mean I am...and in the rural areas I know it's a little bit more of a challenge. I understand that, and so if we can address that somehow. We had the same discussion about CASA workers. But I don't think it's being...it has been helpful. At least since I've been back and in this committee it's been helpful to have a "gotcha" kind of discussion about who's at fault and who isn't, because we're going to find some...in the case we've heard today, it may very well be that there is a sub...you know, sub par guardian here. Obviously I didn't hear the case so I don't know exactly the facts. But it's very possible. And you know, the real question is, how do we proceed? I agree we have to do something. There is no

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firm...we want to promote people to be guardians that want to be guardians and are willing to do this work and, as you suggest, in many cases at a lower fee...or as Erica suggests. I agree that something has to be done but not in a way to, say, point fingers so much, as help this along. This is really a big issue in my mind. [LB649]

SARAH FORREST: No, I agree with you. I mean there are...as we've heard today, it's a very complicated system that deserves some effort and improvement. I'm not pointing fingers at anyone. I'm merely saying... [LB649]

SENATOR ASHFORD: No, no, you're not. But I think sometimes these debates that go on for long numbers of years. As Senator Lautenbaugh has pointed out, and I think rightly so, the guardian ad litem study is somebody comes in from...we spend \$300,000. Someone comes in from outside the state, drops a bomb--boom--we don't have a good guardian ad litem system. And everybody is just stymied. Well, I don't think that's accurate. I think what we have is a big need for guardians ad litem and we have numbers of people that can do a good job. So how do we raise them up and get them, you know, in there somehow? And the same way with CASA, because a study comes out that...it just is just very negative and about guardians. And people get defensive, they get into camps, and then nothing happens. The better approach, I think, is to do some very positive rules or statutory guidelines or whatever it is to say, promote the best people we possibly can, realizing that in rural parts of the state that may be very, very difficult to do, to get the kind of experience that you get in Douglas or Sarpy County or Lancaster County, for example. [LB649]

SARAH FORREST: Well, that will be up to all of you, I think, and this bill would provide the tools for that discussion and those... [LB649]

SENATOR ASHFORD: Well, I understand it's up to me--us--but I just...I think it's time to stop fighting about it and get something done...but anyway. [LB649]

SARAH FORREST: I agree with you. [LB649]

SENATOR ASHFORD: Yeah. All right, thanks. [LB649]

SARAH FORREST: Anything else? [LB649]

SENATOR ASHFORD: Thank you. [LB649]

SARAH FORREST: Thank you. [LB649]

SENATOR ASHFORD: You just happened to be there. Thank you. [LB649]

SARAH FORREST: Okay. (Laugh) [LB649]

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SENATOR ASHFORD: Any other...where are we? On the proponent side? Any other proponents? Any opponents? Neutral? Chris, are you...? What do you think? Are you...(laugh)...I think you're getting ready to come up anyway. [LB649]

HEATHER QUITMEYER: My name is Heather Quitmeyer, last name is spelled Q-u-i-t-m-e-y-e-r. I'm a guardian ad litem and I've been practicing for two years as an attorney and one year as a guardian ad litem. I think...I'd like to say, first, that I do not feel attacked in any way by this bill or by anything that's been said here today. I agree that something needs to be done. I think that there needs to be some oversight. I'm not sure how it might be structured, but. Some of the things that I've heard that are of concern is whether or not the caseload is unmanageable. I spoke with Theresa Emmert when I originally was put on the appointment list, and I wanted to say that she said that the average guardian ad litem cases that any guardian ad litem has is approximately 17 cases. [LB649]

SENATOR ASHFORD: Is that in Lancaster County or...? [LB649]

HEATHER QUITMEYER: Yes, I'm sorry. Lancaster County Juvenile Court. I personally have had nine cases. I have eight that are currently running. I backed off on my appointments because I applied to a federal job and I didn't want to potentially leave some of these kids, and I wanted less kids that would be...you know, felt abandoned again by somebody else in their life. I feel that that's a very easily manageable caseload. I'm only working part time and I can manage that very easily. [LB649]

SENATOR ASHFORD: Could you manage 30 or 40 cases if you were working full time? [LB649]

HEATHER QUITMEYER: Oh, easily. [LB649]

SENATOR ASHFORD: Okay. [LB649]

HEATHER QUITMEYER: Easily 30 or 40. Some of the cases are more time-consuming than other cases, so. There is an appointment list and you do have to be up-to-date on your CLEs as an attorney and then also as some guardian ad litem training, which does not have any cost to it as long as you don't want the CLEs associated with that particular training, if that makes any sense. [LB649]

SENATOR ASHFORD: The training you have, it's a guideline. [LB649]

HEATHER QUITMEYER: It's not just a guideline. You cannot be on the appointment list if you're not current on your guardian ad litem training. [LB649]

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SENATOR ASHFORD: That's the court in Lancaster County? [LB649]

HEATHER QUITMEYER: Um-hum. [LB649]

SENATOR ASHFORD: Okay. [LB649]

HEATHER QUITMEYER: It might be state. [LB649]

SENATOR ASHFORD: Okay. [LB649]

HEATHER QUITMEYER: I personally made the choice to specialize in guardian ad litem cases. I was doing a little bit of corporate law and a little bit of family law, but I just really like guardian ad litem cases. [LB649]

SENATOR ASHFORD: That's obvious. [LB649]

HEATHER QUITMEYER: And so...yeah. (Laugh) One of the things about this bill that I think maybe needs to be changed is some of the language in the bill is a little bit confusing. I think in the bill it talks something about child-focused versus adult-focused. And that language can be used in other situations, and it's very confusing as far as what is expected of the guardian ad litem. Also in the bill it talks about guardian ad litem versus child attorney, and those are two separate roles, so it's important not to confuse those two terms. In the bill it talks about cost and not doing contracts but paying by the hour. I think there's some benefits to that but there's also some potential disadvantages. And if you put that in the statute, I think that that will really not allow for some flexibility that you might want. And I think that's about it unless... [LB649]

SENATOR ASHFORD: Very helpful information. Thank you. Yes, Senator Lautenbaugh. [LB649]

SENATOR LAUTENBAUGH: Thank you again for testifying. We talked about the caseload that you have as a guardian ad litem, and you've heard talk of capping caseloads. Now we're talking 60 in the proposal--60 children, not 60 cases. [LB649]

HEATHER QUITMEYER: Right. [LB649]

SENATOR LAUTENBAUGH: Now wouldn't you agree that there's no point in capping your guardian ad litem cases if you can have an active bond practice in your office, as well, or something else that you do that takes up 90 percent of your time? [LB649]

HEATHER QUITMEYER: I think sometimes it becomes a conflict. I have heard talk that when Lancaster County did do contracts, that that was part of the problem is that the guardians ad litem were automatically getting that certain amount of money. And so

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instead of spending the time on the guardian ad litem cases that they should have been spending more time on, they spent more time on the hourly cases that they took in doing other kind of legal work. Since I haven't been practicing guardian ad litem cases that long, I hesitate to...especially to speak for most of the community. But I know that I would be willing to sign a contract that says that I will only take on, you know, no more than 10 percent of regular cases and do 90 percent of my time spent on guardian ad litem cases. I think it's important to specify the amount of time that you're spending on each thing. And I know Kristina Guerrero-Sisneroz is also a guardian ad litem for Lancaster County and she's a very good guardian ad litem. She too has expressed to me that she would be willing to sign some sort of contract like that or specialize just in guardian ad litem work. [LB649]

SENATOR LAUTENBAUGH: I think you see what I'm getting at, though. It does no good to cap the number of guardian ad litem cases a person has if they're devoting 90 percent of their time to something else. [LB649]

HEATHER QUITMEYER: Right. [LB649]

SENATOR LAUTENBAUGH: You have to look at everything they're doing... [LB649]

HEATHER QUITMEYER: Right. [LB649]

SENATOR LAUTENBAUGH: ...to make it reasonable. And this is an area that people specialize in, do they not? [LB649]

HEATHER QUITMEYER: The guardian ad litem work? [LB649]

SENATOR LAUTENBAUGH: Yes. [LB649]

HEATHER QUITMEYER: I think you have a lot of people that primarily do guardian ad litem work but also do some legal work outside of that. I'm not sure. I only take on guardian ad litem cases but I don't think that that's by any means the norm. [LB649]

SENATOR LAUTENBAUGH: But I guess what I'm getting at is one way we could guarantee that people with court appointments are devoting their time to their guardian ad litem cases is just say: that's all you can do. [LB649]

HEATHER QUITMEYER: Yes. [LB649]

SENATOR LAUTENBAUGH: So you could have x number of guardian ad litem cases and you just can't do anything else. So then your focus would be fairly focused, if you will. [LB649]

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HEATHER QUITMEYER: Right. [LB649]

SENATOR LAUTENBAUGH: Thank you. Okay. [LB649]

SENATOR ASHFORD: I mean I think that's a good point. Thank you again for coming. [LB649]

HEATHER QUITMEYER: Thank you. [LB649]

SENATOR ASHFORD: Are we on neutral? Okay. How many neutral testifiers do we have? [LB649]

ELAINE MENZEL: I'm neutral. I don't know whether... [LB649]

SENATOR ASHFORD: Oh, I think Chris is the last one. [LB649]

ELAINE MENZEL: Chairman Ashford and members of the committee, for the record my name is Elaine Menzel, M-e-n-z-e-l. And I just would like to, first off, express your recognition that counties have concerns about funding issues, as I'm sure you're well aware of based on this morning's debate. But given that this is just a study, would like to...or recommendations for a study, would just like to express our appreciation for...or towards the merits of improving the guardian ad litem system, and we would like to be a part of it. A couple of the concerns: I'm not sure what the impact would be for changing the, on page 2, the reimbursement for the attorneys on an hourly basis versus a flat fee. I just am not familiar with that. And then there was the provision that courts should be renovated to make them more kid friendly, and again that concerns us. Appreciate if we would be part of the process. And if you have any questions, I'd try to respond to them. [LB649]

SENATOR ASHFORD: Thanks. There is not a person in the room that would not like courts to be more kid friendly. Yes. [LB649]

SENATOR LAUTENBAUGH: I don't know how I feel about that part. [LB649]

SENATOR ASHFORD: Well, except for Senator Lautenbaugh. Certainly he might have another view, but. [LB649]

SENATOR LAUTENBAUGH: I'm sorry. Who are you with again? [LB649]

ELAINE MENZEL: Nebraska Association of County Officials. I think I failed to mention that. [LB649]

SENATOR LAUTENBAUGH: I'm sorry, and I should know that because you are a

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frequent flier here as well. But you think going into a full hourly system as part of the language of this bill might increase your cost in some way over flat fees? [LB649]

ELAINE MENZEL: I don't know, but I just thought there was some reference in the report that there potentially is... [LB649]

SENATOR ASHFORD: Well, I think the study talked about it. [LB649]

ELAINE MENZEL: Yeah. [LB649]

SENATOR ASHFORD: So, okay. [LB649]

ELAINE MENZEL: In terms of the impact overall, I'm not sure what that would be. [LB649]

SENATOR ASHFORD: Thanks, Elaine. Chris, and then...Chris will be the last testifier on this bill and then Mark can conclude. [LB649]

CHRISTINE COSTANTAKOS: Christine Costantakos, C-o-s-t-a-n-t-a-k-o-s; attorney, Omaha, Nebraska. Just a couple points. I am a member of the Supreme Court Commission on Children in the Courts. I am not here in a representative capacity representing the commission and I would like to make that clear for the record. But I also sit on as a member of the guardian ad litem subcommittee of the Supreme Court Commission on Children in the Courts. In 2005, the subcommittee ultimately developed guardian ad litem guidelines that were subsequently adopted by the Nebraska Supreme Court in 2007. Those are in force and in effect today. As a result of the commission's work, the Supreme Court also adopted a court rule imposing mandatory annual initial and annual training on guardians ad litem, and that's in force and in effect. There has just been an explosion of training experiences. We have someone here today from the Center on Children, Families, and the Law, Dr. Weisz, who also has been instrumental in structuring training opportunities. I think the picture is looking better. The guardian ad litem subcommittee was reconvened in December 2010 for one purpose, and that is to study the NACC report that you senators commissioned. We are going through it slowly, deliberatively, heading by heading, topic by topic. I'm not here to say you shouldn't do that to...I just want you to be aware that the Supreme Court Commission guardian ad litem subcommittee is in the process of doing that. [LB649]

SENATOR ASHFORD: Chris, and as always you do a great job and you're a tremendous resource. We need to do something in this particular situation, in my view, and that is this: I think we have to encourage guardians ad litem to practice, be experienced, get training, and hopefully practice in that area. And the more they practice, the better they're going to be at it, like Senator Lautenbaugh and Senator Lathrop are both excellent trial attorneys because they do it every day when they're not

here. So I think that's key. I'd like...I want to do something about what Erica talked about. If you're in a situation where you have a guardian ad litem that...just like if you have an attorney that you're disappointed in and you have someone to call, we need to have somebody to call. There needs to be a...because for the good of the order, really, those people who serve as guardians ad litem and do a great job and who focus...there's...we cannot leave this session...I can't...this is the third year now or fourth year we've discussed this, and now we have a case like we've heard today in Mark's family. That's just wrong. And it may not be the guardian ad litem's...I'm not condemning the guardian ad litem here at all, but there's got to be...we've got to be able to establish, by law, some place where that family can find immediate redress. It's just...it's as important to me as a hot line...not maybe as, but I mean it's like the hot line in the...you know, in the...that we worked out a couple years ago in the safe haven cases. So many of those cases involve foster care children and so forth and so on, involve guardians. These are very, very difficult cases. And I think we should encourage and promote good guardians like yourself. There's got to be...we've got to be able to say somewhere in statute that if a family has a problem with a guardian, something has arisen and they can't...the court doesn't seem to give them any redress. There's got to be some place to go, it seems to me, whether it's the Supreme Court has some sort of hot line or whatever it is. But these children's lives are too important. And I don't know. What do you think about some kind of a hot line so there can be some intervention in real time? [LB649]

CHRISTINE COSTANTAKOS: Well, I think it would depend upon what the hot line consisted of, for example. I mean one option is what every lawyer faces, which is the Nebraska State Bar Association. Complaints can be filed against guardians ad litem, but that's a slower-moving process. [LB649]

SENATOR ASHFORD: No, but I'm worried about the immediate...the issue that's raised today... [LB649]

CHRISTINE COSTANTAKOS: Such as with the removal of a... [LB649]

SENATOR ASHFORD: ...with Mark's family. To me that's an issue. And I think we should... [LB649]

CHRISTINE COSTANTAKOS: I mean referring to the safe haven, the ultimate resolution to the safe haven where there was an advisory committee or body I think set up that you can go to that...maybe some kind of a body could be composed to give foster parents and others ideas of immediate steps that they could take. But I don't think it's a one-size-fits-all, Senator, I mean. [LB649]

SENATOR ASHFORD: No, but it has to...you can't...this can't go on. [LB649]

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CHRISTINE COSTANTAKOS: No. [LB649]

SENATOR ASHFORD: No, I mean not you, because you're...(laugh). You're exemplary at this. But we can't...this can't...we can't step back and have this continue to go on. Anyway, yes, Senator Lautenbaugh. [LB649]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman. Thank you again for coming. Do you have a feel for what the guardian ad litem caseload should be? [LB649]

CHRISTINE COSTANTAKOS: We are currently discussing that as one of many of the topics that was raised in the NACC report, and there were recommendations in that. At this point, it's a work in progress and we have not reached a resolution on that. [LB649]

SENATOR LAUTENBAUGH: I think the report recommended 100 kids, did it not? One hundred child clients? [LB649]

CHRISTINE COSTANTAKOS: I believe that it was 100 cases, was it not? [LB649]

SENATOR LAUTENBAUGH: Either way. Well, one is different...there are two different numbers (inaudible). [LB649]

CHRISTINE COSTANTAKOS: We are...in fact, that's kind of where we left off after our last meeting, and we're supposed to meet again, so we're still out on that, but that's...we're kind of kicking that around from the point of view of cases versus children and other caseloads. And I think we're all very clear that you can't regulate an attorney's other caseload. [LB649]

SENATOR LAUTENBAUGH: Well, we could require them just to do guardian ad litem work if they're going to take court appointments, wouldn't you agree? [LB649]

CHRISTINE COSTANTAKOS: We could require attorneys just to do guardian ad litem if they take...? I don't think you want to see that, Senator, for a host of reasons. I have respect for people who specialize in that area of practice. I also have run into too many (audible) guardians ad litem who do nothing but come right out of law school right into guardian ad litem work and do not have experience in the defense side, in the apparent side, or even the prosecution side. I think you want the broadest base you can get for your guardian ad litem, of experience, so I would not recommend that universally; no. [LB649]

SENATOR LAUTENBAUGH: Well, I guess I am just struggling with the issue, if we are trying to regulate caseloads and we are trying to mandate some level of focus so that they don't let the rest of their cases consume all their time, it seems to me we could say: You cannot have court appointments if you don't practice solely in this area. [LB649]

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CHRISTINE COSTANTAKOS: With all due respect, I don't think the reason that we have bad guardians ad litem is because they are so busy with other cases. I think we have personnel problems with initiative, laziness, people who won't get off their duffs to go out and visit kids, and I don't think that has anything to do necessarily with their other cases. [LB649]

SENATOR ASHFORD: If they aren't getting off their duff--and that happens even...well, that happens...there should be some sort of immediate place that a family can go and can help us. We've got citizens of our state that are...need help. They're crying out for help. We've got to help them somehow. And I don't know the answer but I...any other points? [LB649]

SENATOR LAUTENBAUGH: Just following up on that a bit though. A judge has some role certainly, and if a guardian ad litem isn't doing his job, the judge gets to say something about it. [LB649]

CHRISTINE COSTANTAKOS: Right within the guardian ad litem guidelines it's very clear that a guardian ad litem who is either biased or incompetent can be removed. Anyone can file a motion requesting that the guardian ad litem be taken off the case. In the case at hand here, perhaps something like that should have been done or something could have been filed, although there was a standing problem. [LB649]

SENATOR ASHFORD: It's too late though. [LB649]

CHRISTINE COSTANTAKOS: Well, there was a standing problem, as well, by that time, you know, in terms...if they were no longer the foster parents, can they come in after the fact? [LB649]

SENATOR LAUTENBAUGH: But what good would we do regulating case counts or child counts, if we don't regulate the other areas in which the attorney practices? [LB649]

CHRISTINE COSTANTAKOS: I don't see the relationship necessarily between the two. [LB649]

SENATOR LAUTENBAUGH: Well, if we're saying that time is finite and you can only handle so many guardian ad litem cases... [LB649]

CHRISTINE COSTANTAKOS: Right. [LB649]

SENATOR LAUTENBAUGH: ...doesn't it matter what else you're doing with your time? [LB649]

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CHRISTINE COSTANTAKOS: I think we don't have the...as we are discussing this, we don't have the authority to regulate the attorney's other area of practice. And so if a number is chosen or some sort of (inaudible) figure is resolved in terms of how many juveniles or how many cases a guardian ad litem can take, the presumption is that you can take up to that many and that you're responsible enough to handle the others, whatever those may be. [LB649]

SENATOR LAUTENBAUGH: I agree you don't have the ability to regulate the other caseload... [LB649]

CHRISTINE COSTANTAKOS: Right. [LB649]

SENATOR LAUTENBAUGH: ...but isn't it kind of relevant to what you're talking about, the caseload for a guardian ad litem? [LB649]

CHRISTINE COSTANTAKOS: I don't see the relevance and for the same reasons that I indicated before. Many guardians ad litem do a good job and have other caseloads. I don't...I think, Senator, you're trying to narrow the problem down to the reason guardians ad litem don't do a good job is because they're overextended in the commercial world with their other business practice. And that's not what I see as the problem. [LB649]

SENATOR LAUTENBAUGH: Well, are some overextended in the guardian ad litem world and that's why we're having the case caps? [LB649]

CHRISTINE COSTANTAKOS: Well, I'm not prepared to speak to that. I mean I don't think I am and I know...you know, I've heard of other attorneys who felt that they've had too many cases. [LB649]

SENATOR LAUTENBAUGH: I only ask because I've seen a proposed rule circulating around that talks about 60 kids, which would be about 40 cases as I do the math. So I'm concerned where these numbers are coming from, if they have any basis in reality, and if they would be remotely effective if we have no idea what the guardian ad litem is actually doing with his time otherwise. [LB649]

CHRISTINE COSTANTAKOS: I don't know that we can know what the guardian ad litem is doing with his time. Otherwise, I want the guardian ad litem...I want to know what the guardian ad litem is doing with his or her time on that child's case. [LB649]

SENATOR LAUTENBAUGH: That's absolutely reasonable. [LB649]

SENATOR ASHFORD: You're very good at this, Chris. Thank you. [LB649]

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CHRISTINE COSTANTAKOS: Thank you. [LB649]

SENATOR ASHFORD: Any other...? I guess we're finished. [LB649]

CHRISTINE COSTANTAKOS: Thank you, Senators. [LB649]

SENATOR ASHFORD: Senator Christensen. [LB649]

SENATOR CHRISTENSEN: Unless there's questions for me, I'm done. [LB649]

SENATOR ASHFORD: Okay. Thank you, Mark. Any questions of Mark? Do you have questions, Senator Lautenbaugh? [LB649]

SENATOR LAUTENBAUGH: Thank you for coming here today, Senator. Now it's not your desire that we just implement the findings of this study? [LB649]

SENATOR CHRISTENSEN: No, absolutely not. [LB649]

SENATOR LAUTENBAUGH: As a matter of fact, you were on this committee when we got the report of the study. And if you remember, I had some issues with the study. [LB649]

SENATOR CHRISTENSEN: I remember that. [LB649]

SENATOR LAUTENBAUGH: Almost issues with my blood pressure because of issues with the study, you'll recall that. [LB649]

SENATOR CHRISTENSEN: Yes. [LB649]

SENATOR LAUTENBAUGH: So you're just putting this in here as a guideline, something we could look at but not anything that you're saying we need to adopt. [LB649]

SENATOR CHRISTENSEN: Correct. And just like the discussion has went here, I got to thinking back there about Senator Ashford's thought about a call hot line. Because if we had that and you could call in, identify yourself because it's not going to be public so it's known, you might find out who the bad actors are. Because if the same person has called in continuously, then it would be...the opportunity to investigate that one and maybe remove them from the list, and that might take care of the whole problem. [LB649]

SENATOR LAUTENBAUGH: And I guess and what I think I'm getting at is, I mean we

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have people who have come here today to talk about the findings of that study because they're listed in the bill. [LB649]

SENATOR CHRISTENSEN: Right. [LB649]

SENATOR LAUTENBAUGH: So it looks like we're actually giving them some (inaudible) credence. Would you be supportive of an amendment that strikes all reference to that disastrous study and just asks us to look at this? [LB649]

SENATOR CHRISTENSEN: Sure. Yeah, I listed it because I didn't know what to do. You know, I could have just put in here I'd like to have it studied. That would have covered what I wanted, and...but I wanted to get the discussion started, so if there is something, whether it is a hot line or whether something else that you may have, Senator, that we could look at it. I by no means am trying to dictate this. I knew it was heartburn but I didn't know what to do, honestly. [LB649]

SENATOR ASHFORD: It sounds to me like you're a concerned parent, Mark. [LB649]

SENATOR CHRISTENSEN: Yes. [LB649]

SENATOR ASHFORD: (See also Exhibit 17) And there...I don't know of anything wrong with that, that I can think of, but I think we ought to have a hot line. And if anybody else has some other ideas, we'll think about them, but I think we've got to have one. We've got to put it in place. I'm tired of this. I'm tired of spending four years listening to this, and I appreciate you bringing this up. And I know you had to hear it too and I'm tired of...it's not about the study we got. There are assumptions made in the study, and Senator Lautenbaugh is absolutely right, and we got bogged down in that. And, I tell you, I feel responsible myself for not moving this forward quicker. And you know, only when we got truancy numbers did we realize that there are 23,000 children that were truant or over 20 days absent, and we never really knew that. I mean, heavens to Betsy, we have to address this problem. I appreciate you bringing it to us. Thanks. [LB649]

SENATOR CHRISTENSEN: Thank you. [LB649]

SENATOR ASHFORD: Next bill. Stacey is actually going to introduce. She's practicing. How many testifiers are there on this bill, this next bill? Todd is here. We'll get through this real quickly, and then...a testifier. And then we'll move on to Exec Session real quickly. So go ahead, Stacey. [LB339]

STACEY CONROY: My name is Stacey Conroy. I'm here to introduce...and that's C-o-n-r-o-y. I'm here to introduce LB339 for Senator Ashford on behalf of the Department of Health and Human Services. This bill relates to preadjudication evaluations, and it was brought by HHS to repeal some language that is unworkable.

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The courts, under current statute, can...just order the child to a state institution for a preadjudication evaluation. There are no state institutions that do this. HHS can't put them in a state institution, so...for this purpose. So this would fix that. And it would also clarify the funding for children through this evaluation period between the county and the state. So if you have any questions, I'd try to answer them. Todd Reckling is here to... [LB339]

SENATOR LATHROP: Oh, I think I've got one. [LB339]

SENATOR ASHFORD: Senator Lathrop. [LB339]

SENATOR LATHROP: You said that the problem is that we have state institutions in statute but that we don't have any state institutions that will do it. [LB339]

STACEY CONROY: Well, that do the evaluation. Yeah. They used to do them in Geneva... [LB339]

SENATOR LATHROP: What's the harm in leaving it in the statute then? [LB339]

STACEY CONROY: That they don't feel they can comply with it. They've been complying with it by sending a state evaluator, a psychologist, or someone from HHS to evaluate the child where they are. [LB339]

SENATOR LATHROP: So is it hurting anything to leave it in the statute? [LB339]

STACEY CONROY: They feel they can't comply with it fully. They used to do these at Geneva but they don't do that anymore at Geneva. [LB339]

SENATOR LATHROP: Okay. Well, they can't do it, is the... [LB339]

STACEY CONROY: They can't do it. [LB339]

SENATOR LATHROP: They can't do it, but...so it doesn't mean anything, does it? [LB339]

STACEY CONROY: I think it...to clarify what's happening in practice. [LB339]

SENATOR LATHROP: Okay. I'll leave it at that. [LB339]

SENATOR ASHFORD: Thanks, Stacey. [LB339]

STACEY CONROY: Todd Reckling is here to testify about it. [LB339]

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SENATOR ASHFORD: Thank you, Stacey. Todd. [LB339]

TODD RECKLING: (Exhibit 18) Good afternoon again, Senator Ashford and members of the Judiciary Committee. My name is Todd Reckling, R-e-c-k-l-i-n-g, and I'm the director for the Division of Children and Family Services. LB339 would amend Nebraska Revised Statute Section 43-258, which currently provides in part that pending the adjudication of any case under the Nebraska Juvenile Code the court may place the juvenile in one of the facilities or institutions of the state of Nebraska for such an evaluation. However, the juvenile may not be placed in an adult correctional facility, the secure youth confinement facility operated by the Department of Correctional Services, or a youth rehabilitation and treatment center for said evaluation. The placement for the evaluation may be made on a residential or nonresidential basis. All costs incurred during the period of the evaluation at a state facility or program funded by the Office of Juvenile Services are the responsibility of the state unless otherwise ordered pursuant to Section 43-290. The county in which the case is pending is responsible for the costs of transporting the juvenile to the facility and back to the court after the evaluation. Because there are currently no state-run facilities in which a preadjudication evaluation may be conducted, DHHS is not presently able to strictly comply with orders entered under this statute. LB339 would authorize the court to make a general placement of the juvenile with DHHS rather than a specific placement in a state facility. DHHS would then determine whether the evaluation would be performed in a residential or nonresidential setting, and would make arrangements for such evaluation. The placement for the evaluation would be for a period not to exceed 30 days; however, the court could authorize an additional 30 days. The allocation of costs under this bill mirrors the allocation of costs for postadjudication Office of Juvenile Services evaluations found in Nebraska Revised Statute 43-413. I want to be clear that if LB339 is adopted, the department will continue to conduct evaluations as required by court orders. This bill simply updates the law to recognize that there is no state facility to perform the evaluation and gives the department the flexibility to conduct the evaluation where services are available. Also, in order to address concerns of the Bar Association, we would support an amendment that would strike some language. It's found on page 3, lines 1 and 2, and I quote, including any authorized area of inquiry requested by the court. End of quote. We'd ask that you support LB339 and forward it out of committee. I would certainly be happy to answer any questions. [LB339]

SENATOR ASHFORD: Any questions of Todd? Thank you, Todd. [LB339]

SENATOR LAUTENBAUGH: You are here at the right time. [LB339]

SENATOR ASHFORD: I think he was here all day actually, weren't you? Or all afternoon? [LB339]

SENATOR LAUTENBAUGH: Touche. [LB339]

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SENATOR ASHFORD: Any other testifiers? Seeing none, that will close the hearing. I will waive closing. [LB339]