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Judiciary Committee
February 09, 2012

[LB844 LB935 LB1086 LB1172]

The Committee on Judiciary met at 1:30 p.m. on Thursday, February 9, 2012, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB844, LB935, LB1172, and LB1086. 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 ASHFORD: Okay. This may not seem like a quorum inasmuch as I'm the only one here, but what we're going to do is...and Senator Lathrop is here, and my counsel and my clerk and Senator Burke Harr is here, so that's plenty to get started. We have...welcome to the Judiciary Committee. We have four bills today. I assume you've...hopefully you see the sheets. Those who haven't been here before, we have some sheets to sign, if you'd sign in on those and before you come up to testify. They're over in the corner. And if you don't wish to testify but you wish to register your support or your opposition to a bill, you can certainly note it on that sheet. We have...we're starting out with LB844. Senator Hadley, come on up, Galen. We do have a light system and we ask you to limit your testimony, except for the introducer, to three minutes and we'll give you an indication with the yellow light when we'd ask you to sum up and...but we won't kick you out of the chair but we just ask you to try to get to the...at least maybe Senator Harr will but I won't. But with that, we have LB844. Senator Hadley, welcome again.

SENATOR HADLEY: Senator Ashford, Senator Lathrop, Senator Harr, my name is Galen Hadley, that's G-a-l-e-n H-a-d-l-e-y. I represent the 37th District in Kearney, in Buffalo County, and I appreciate being here. I'm here today to talk about data centers. No, that was this morning, wasn't it? I got confused about which one I was talking about. [LB844]

SENATOR LATHROP: One-trick pony. [LB844]

SENATOR ASHFORD: Not everything...not everything... [LB844]

SENATOR HADLEY: One, yeah, one-trick pony, that's all I know. [LB844]

SENATOR ASHFORD: Not everything has to be about Kearney. We can talk about general issues. [LB844]

SENATOR HADLEY: Okay. Okay. Okay. Thank you. LB844 addresses known problems regarding the use of child support and the establishment of parenting time. With respect to the use of child support, LB844 does two things. First, it corrects an error that currently exists in Section 42-364 of the Parenting Act. Second, it makes it easier for the courts to prevent the diversion and misuse of child support. In the correction of the

error, it is a basic principle of child support law that child support belongs to the child and not the parent. It is for this reason that the parent receiving child support cannot waive it. It is also for this reason that current Nebraska law allows courts to order the receiving parent to account for the use of child support. However, Section 42-364 of the Parenting Act currently provides that child support paid to the party having custody of the minor child shall be the property of such party. This clause is inconsistent with the rest of the paragraph which authorizes the counties and it's also inconsistent with federal law, which probably makes it unconstitutional. LB844 would correct this error by stating that child support must be used for the benefit of the minor child, and the parent receiving child support shall be a fiduciary with respect to such funds. This new language is borrowed from statutes that have been in force in Delaware and North Carolina for more than ten years. In regard to child support accounting, LB844 would also make it easier for courts to prevent the diversion and misuse of child support. According to surveys, diversion and misuse of child support is one of the most common causes of postdivorce conflict. Nebraska law currently authorizes courts to order a parent who receives child support to account for how the child support was used but only if the other parent presents evidence of an abusive disregard of the use of child support. But where is one to get such evidence? How can one ever meet such a standard unless they have some documentation as to what was done with the money? LB844 provides an easy alternative to unsavory sleuthing. It can also be done much the same as conservatorship accountings are currently done. These accountings are not overly burdensome and are commonly done on an annual basis. The best evidence available suggests that child support accountings are extremely rare. According to the chief child support enforcement officer in Sarpy County, only one accounting has been granted in the last 20 years. Based on these statistics, it appears the current standard is too restrictive and does not adequately address the diversion and misuse of child support. The proposed language is based on statutes that have been in effect in Colorado and Utah for more than a decade. Some commentators have argued that liberalizing the Nebraska accounting standard may result in abuse of accounting requests. However, the experience in these other states show that abuse of accounting requests under the more liberal standards have not been a problem. LB844 would also provide that repeated misuse of child support establishes a rebuttable presumption of a material change of circumstances which could, I emphasize could, warrant a change in custody. This language codifies existing Nebraska practice and borrows from statutory language that had been in effect in Kansas for a number of years. Secondly, parenting time guidelines, need for such statewide guidelines: LB844 would direct the Supreme Court to establish statewide parenting time guidelines. Most judges approach parenting time from an initial starting point from which they make adjustments. Some judges start from a 50/50 position. Lancaster County judges generally start from a 10/4 position in accordance with their recently adopted local parenting time guidelines, and some judges start from an every-other-weekend position. This results in a lack of uniformity even within judicial districts, which raises equal protection issues. Several other states have adopted statewide parenting time guidelines, including Oklahoma and Indiana. In

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addition, our own Lancaster County District Court adopted local parenting time guidelines about two years ago. All these can serve as useful models for the Supreme Court. There was a similar concern years ago about the lack of uniformity in child support awards, which led to the adoption of the statewide child support guidelines. The language in LB844 that parenting time guidelines are presumed to be in the best interests of the child is borrowed from the existing Nebraska child support guidelines. Equal time directive: LB844 directs the Supreme Court to allocate parenting time equally in parenting time guidelines. This directive is based on the latest mental health research into how parenting affects outcomes among children of divorce. According to the November 2011 survey of recent research in the Journal of Divorce and Remarriage, children who live in a shared parenting environment fare as well or better than those in maternal residences, especially in terms of the quality and endurance of their relationships with their fathers. These studies show that parents do not have to be exceptionally cooperative, without conflict, wealthy, well educated, or mutually enthusiastic about sharing the residential parenting for the children to benefit. Moreover, young adults who live in these shared parenting environments say this arrangement was in their best interest, which is in sharp contrast to those who lived primarily with their mothers or their fathers after their parents' divorce. An increasing number of studies also conclude that the traditional, every-other-weekend standard, which is reflected in Nebraska by the 1982 Wilson v. Wilson, is not in a child's best interest and may actually be harmful to children. Among other things, LB844 would legislatively repeal this now obsolete standard. I would hope that you would take a long look at LB844 and see if there can't be some things done to help both the children and the parents in these situations. These are trying situations for both the parents and the children, and I think anything that we can do to make it more understanding, more in the best interests of especially the children would be greatly appreciated. Thank you very much for your time and attention. And I know there are people here, some attorneys, that are going to be testifying in favor of the bill, and I know there will be some from the bar that will be testifying opposed to the bill. I would be happy to answer...since I'm sitting here primarily with attorneys, well, three to two, and I'm not an attorney... [LB844]

SENATOR ASHFORD: Well, Stacey... [LB844]

SENATOR HADLEY: Oh, Stacey is too. [LB844]

SENATOR ASHFORD: Oliver, are you an attorney? Oliver isn't. [LB844]

SENATOR HADLEY: Okay. So we're outnumbered a little. But I would be happy to try to answer any questions to the best of my ability. [LB844]

SENATOR LATHROP: Maybe I can just express my skepticism, so the people that come behind you can answer it. The concern I have with the idea of making the custodial parent file an accounting or the one who gets more money is that it doesn't

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take into account the things that go along with having all...I mean the car, the car payment, the house payment. Those things all go into whether you got kids or not and I don't know how you do an accounting without spelling it out, what's a use or how we prorate a home, a car, kind of the overhead things. [LB844]

SENATOR HADLEY: Senator Lathrop, I would agree. You know, being an old accounting professor, any time you start trying to allocate, you know, it can be difficult. [LB844]

SENATOR LATHROP: Okay. Okay. [LB844]

SENATOR ASHFORD: Galen, I don't see any other comments or questions. Thank you. [LB844]

SENATOR HADLEY: Thank you. I will stay and listen for my own edification. Thank you. [LB844]

SENATOR ASHFORD: Okay. Good for you. Thank you. How many people are here on LB844 today? Oh, my! Okay, great. (Laughter) That says quite a bit about LB935, LB1172, and LB1086, I can tell you that. All right, let's, everybody, let's start with the proponents of the bill and make sure to sign in and come on up and we'll get started and we'll go through the group. So those who are for the bill, for Senator Hadley's bill, anybody? Nobody? Oh. My gracious, Senator Hadley, what have you done? [LB844]

CHRIS JOHNSON: (Exhibit 1) Thank you. Good afternoon, members of the committee, Senator Ashford. My name is Chris Johnson, C-h-r-i-s J-o-h-n-s-o-n. I'm an attorney, practicing family law issues in Hastings, Nebraska, where I've been for a number of years. Ninety-five percent of my practice or more deals with custody actions. Most of the time I represent fathers. I represent fathers across the state. The rules are very different with respect to where judges begin, depending on where you are, even under the same facts. I've been married for 32 years. I have...to my first wife. I'd like to say that. I have three kids, all of which are married. I have four grandkids. I say that not because I want you to like me because I'm a married guy. But I'm not appearing before you today because I'm some mad dad, some mad father, someone who has an axe to grind. That's not what I'm here for, not what I'm here for at all. I'm here for what I see as a glaring discrepancy we have when we're trying to work for the best interests of the children. I have not spoken to Senator Hadley. I'm here on my own. I'm here in support of LB844 because I think the bill is worthy of debate, and what I'm going to be asking you to do is let the bill come out onto the floor so we can have that debate. I'm here primarily for the language concerning the shared parenting. Under our current system, there is a strong incentive to fight. In many cases, you have no choice. Someone is going to win; someone is going to lose, and for the most part it's the kids who lose. Under our current system, war is declared from the start. Under our statutes, we have to

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put into a divorce complaint that a parenting plan has not been developed, custody is going to be an issue, parenting time is going to be an issue. Someone gets that in their mail or gets that handed to them by a sheriff and they know the battle is on. Temporary hearings on issues of child support, things of that matter, are held within the first three weeks, so right away you have an incentive because there's so much at stake. These parent temporary plans are put in place. Those are going to govern where these kids live for the next nine months, maybe up to two years. You can have an everyday parent who is now suddenly at risk at going to four days a month. You have to fight. You have to fight. My toughest cases in my practice are those cases where I have two good parents, where I have to find some either imaginary or some very small issue that I can blow up into something very large and hit the other parent over the head with it. I have to try to prove that my parent is better than the other parent, because there's a strong incentive not to get along but to declare war. And then we have to do mediation 60, 90 days later, which is a different day. It's been the law in Nebraska for over 20 years that sex is not to be considered. It's not supposed to matter. But I don't think that anyone can say with a straight face that males are on equal footing if you're going to have a contested custody fight. When we see people, as attorneys, we see people at their worst. They're angry, they're rejected, they're hurt, they're maybe scared. We see them at their worst, but it doesn't stay that way. Three years later it can be a totally different world. But yet we have to decide issues of custody, and we put issues of custody and how we're going to share the children in front of the judge, and we're going to assume that that plan is going to be adopted. It's going to stay that way until someone else wants to fight again. [LB844]

SENATOR ASHFORD: Chris, why don't you sum up for us. [LB844]

CHRIS JOHNSON: It doesn't make any sense. What I want to focus on, thank you, Senator Ashford, are the best interests of the children and what research and what evidence there is to support this type of bill and this type of time sharing. As Senator Hadley mentioned, there is a November of 2011 article published in the Journal of Divorce and Remarriage, and I will supply this to the committee at a later time. It is a review of 71 different articles, 71 different studies regarding shared parenting arrangements and the best interests of the children. It looks at the best interests of children from the children's perspective 5, 10, 20 years later, and there are four general conclusions from this study. It says first and foremost, most of these children fare as well or better than those in maternal residence, especially in terms of the quality and endurance of their relationships with their fathers. Second, parents do not have to be exceptionally cooperative, without conflict, wealthy or well-educated or even mutually enthusiastic about sharing the residential parenting for the children to benefit. Now a lot of people think that, jeez, if they can't get along or if they can get along to coparent, they would... [LB844]

SENATOR ASHFORD: Chris, Chris, let's go to questions. Does anybody have any

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questions of Chris? Did you have that? Are you giving that to us as an exhibit? [LB844]

CHRIS JOHNSON: I will mail this to the committee. [LB844]

SENATOR ASHFORD: Or we can make copies and get it back to you. [LB844]

CHRIS JOHNSON: All right, if you wish to do that. [LB844]

SENATOR ASHFORD: Why don't we do that? [LB844]

CHRIS JOHNSON: All right. [LB844]

SENATOR ASHFORD: And if anybody else has anything that they would like, reading material, they'd like us to look at, if you don't have copies we can make copies for you. We'll go from there. Any questions of Chris at this point? Seeing none, thanks, Chris. [LB844]

CHRIS JOHNSON: Thank you. [LB844]

SENATOR ASHFORD: Next proponent. [LB844]

JIM CREIGH: Morning, Senator Ashford, members of the committee. My name is Jim Creigh, which is spelled C-r-e-i-g-h. I'm an attorney in private practice in Omaha and a member of the State Bar's legislation committee. I'm also the founder and president of the Nebraska Family Law Association and I'm speaking here today on behalf of that organization. Others have testified on a need for greater accountability on the use of child support and the need for statewide parenting time guidelines. I'd like to share some information on what those parenting time guidelines should say. The benefits to children of having engaged fathers is so well-known it hardly needs repeating. Children with involved parents or children with involved fathers do better in life and have fewer negative outcomes, like truancy, teen pregnancy, and criminal behavior. While this is obviously good in its own right, this also results in fewer demands on a state budget for truancy protection...prevention, HHS, law enforcement, and other social programs. This is so well established, there are scores of private and governmental programs that encourage involved fathers. In light of this, it's really strange that while one part of the state tries to encourage involved fathers another part of the state tears them away from their children. Almost two dozen studies on children of divorce have looked at this issue. These studies show that children who lived in shared parenting environments after divorce are less depressed, have fewer health problems, have fewer stress-related illnesses, and were more satisfied with their living arrangements than those who do not. These studies also show that the number of days children live with their fathers each month is strongly correlated with the quality of the father-child relationship; stated differently, time matters. Several recent studies asked adult children of divorce about

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their experiences. In a survey of 400 college graduates, 93 percent of those who lived in shared parenting families said this was the best parenting plan for them compared to only 30 percent of the others. Nearly 70 percent of the sole-residence students felt it would have been in their best interests to have lived more with their father. Fifty-five percent said their fathers had wanted equal parenting time but their mothers opposed it. Those who spent two weekends every month with their fathers, which is the Nebraska Wilson v. Wilson standard, said this was not nearly enough time together. Another study found that three years after the parents' divorce, 80 percent of children in shared parenting families were spending as much time with their father postdivorce as pre and were more satisfied with their relationship with him, while more than half of the children in sole-residence families were spending far less time with their fathers and were unhappy about the loss. A number of their father relationships had simply ended altogether. These studies show that the parenting time ordered in many Nebraska cases is not only not in the best interests of children, it's actually harmful to them. So I'd ask you to ask yourself, why is the state acting at such cross-purposes? On the one hand, we spend enormous amounts of time and money to foster father-child relationships while on the other hand we tear those same relationships apart. If you really believe judges should base their decisions on the best interests of a child, which is the standard under the Parenting Act, then they should order shared parenting in most cases. Thank you. [LB844]

SENATOR ASHFORD: Thanks, Jim. Any comments or questions of Jim? Seeing none, thank you. [LB844]

JIM CREIGH: Great. Thank you. [LB844]

SENATOR ASHFORD: Next proponent. [LB844]

LES VESKRNA: Good afternoon, Senators. My name is Les Veskrna. My last name is spelled V-e-s-k-r-n-a. I am a family physician and I'm also executive director of the Children's Rights Council of Nebraska. I've been the executive director for about 11 years. I've been here several times in the past and I regularly communicate with noncustodial parents. I've got a pretty good idea what's happening within our child custody system, especially from the perspective of noncustodial parents. Opponents I know to this bill are going to say that presumptions are categorically foolish, but I want to call your attention to a clause in the Parenting Act which says this: The state presumes the critical importance of the parent-child relationship and that the relationship between each child and each parent should be equally considered unless it's contrary to the best interests of the child. Now I'm not an attorney, but the plain language of this sounds to me like a presumption and that parents should be treated equally. And it's already in the Parenting Act, and I think we need to perhaps rectify the fact that this is a statement in the current Parenting Act and why it shouldn't be included as a restatement in Senator Hadley's bill. Opponents to this bill will also say there's no

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science associated with shared parenting, with especially for kids when one parent opposes it. Well, yes, there is evidence. Parents don't have to be exceptionally friendly or absolutely free of conflict to make things work. Major decisions, now that the Parenting Act is mandatory, are usually decided up-front and most parents then engage in parallel parenting, and whoever has residential care of the child at the time makes the decisions and consultations with the other parent usually are not necessary. Mediation is a key feature of the Parenting Act, but there's one fundamental problem with it. What happens in mediation depends enormously on what parent...what both parents expect would happen in court. If one parent wants or expects to receive sole custody, they have little or no incentive to negotiate in mediation. And because our courts have traditionally favored sole maternal custody, this expectation is highly likely to be fulfilled. A precondition for mediation to really be of benefit is you have to treat mothers and fathers equally in the courtroom. Now it would be ideal for courts to take a case-by-case approach to applying a valid best interest standard to every child custody case. California does this, but California also has a specialized family court system with expertise, resources, and services available to implement the strategy. Without a family court system in Nebraska, I think it's a pipe dream to believe that this is going to happen consistently. And as an example, I recall a few years ago a family law attorney from Omaha gave two examples of Douglas County District Court judges who were polar opposites in how they applied the best interest standard. One judge consistently applied the best interest standard and only approved sole custody; and the other judge consistently favored shared parenting awards. So I...I'm done. [LB844]

SENATOR ASHFORD: Yeah, I think you're...I mean family courts, we proposed that in the '80s here I know at one time, and it was something we looked at seriously with I think Rhode Island at that time and maybe...well, Minnesota I think has family court system. Any questions of the doctor? Seeing none, thank you. Thanks for your comments. Next proponent. [LB844]

AUDREY GOSSARD: Hello. My name is Audrey Gossard and I am here today, along with my ex-husband and my daughter, to show support of LB844, a subject which we are very passionate about--joint custody or shared parenting. My ex-husband and I were divorced 17 years ago when our daughter was one year old and our son was two and a half. And although we no longer wanted to be married, we decided very early on that it was in the best interest of everyone, especially the children, if we shared custody. Considering our work schedules, we came up with an arrangement in which the kids would spend an equal amount of time with both of us each week, which worked perfectly during the several months prior to going to court to finalize the details of the divorce. And then much to our surprise, we pretty much had to convince the judge that this is what we both wanted and eventually, and with much hesitation, he granted it. To this day I feel like it was the best decision that we ever made, and now that our children are grown I know that they feel that way as well. They have told us many times how grateful they are that they were able to spend equal time with both of their parents and

that they didn't have to pack a bag and go visit their father twice a month like most of their friends. Our kids always felt like they were at home, whether they were at my house or at their dad's. I understand that the system has changed enough at this point that if both parents agree to a joint custody or shared parenting situation that a judge will not hesitate to grant it, but unfortunately it seems that there's still no way for a father to be granted equal time with his children unless the mother agrees to it. If the mother does not want to share custody then it will not happen. I'm completely baffled at the notion that the father is not considered to be just as much of a parent as the mother and why it is not presumed that he would have a right to share equal parenting time with his children. Instead, he has to simply hope that the person that he has recently separated from will be kind enough to allow him to see his own children more than a couple times per month. And since most women seem to be unable to put the best interests of their children before their hard feelings for their ex, they rarely agree to shared parenting. Kids love both parents equally, need their parents equally, and want to spend an equal amount of time with both of their parents, and I believe that it should be presumed to be in the best interests of the children to have both parents play an equal role in their lives unless one parent can show proof of a reason as to why this should not be allowed. Joint custody or shared parenting can work. Our family is living proof. We have been living it for 17 years. It was not without disagreement, but whether parents are either together or separate there's bound to be disagreements. And as to daily parental decisions, they are made by the parent who the children were spending time with that day. As to the major decisions as to where they were to attend school or church or whatever activities they participate in, these things easily fell into place based on a little cooperation, common sense, and obviously the best interests of the children. Thank you for your time. [LB844]

SENATOR ASHFORD: Thank you for your comments. Any questions of Audrey? I don't see any. Thanks. [LB844]

AUDREY GOSSARD: Okay. Thank you. [LB844]

SENATOR ASHFORD: Next proponent. [LB844]

RICHARD FRIIS: Senator Ashford, committee members, my name is Richard Friis, it's F-r-i-i-s. I'm from Bellevue, Nebraska. I kind of think I bring a little different perspective to this idea of LB844, which I certainly support. My field of expertise is I'm retired from the mental health system and I've had the opportunity to see and work with children of divorce. And I kind of see that reflected in so many mental health issues. I do see a lot of advancements in this bill. And I don't know how to do this but I'd like to ask Senator Hadley a couple of questions, if I could. [LB844]

SENATOR ASHFORD: Well, we love hearing from Senator Hadley but we really can't do that exactly. [LB844]

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RICHARD FRIIS: Okay. Can I...can I... [LB844]

SENATOR ASHFORD: All right. You can ask us, then we'll ask Senator Hadley. [LB844]

RICHARD FRIIS: Okay. Very good, long as there's a way to do it. On page 2, line 17, the lines reads, "undue delay or hardship to either parent, the mediation or," all right? I wonder if we put in there "or undue hardship for the children," seeing as how this bill is in regard...for the best interests of the children. [LB844]

SENATOR ASHFORD: Hmm, okay. [LB844]

RICHARD FRIIS: And then I would totally support the idea of joint physical and legal custody. My thinking comes from happy and content parents make happy and content kids. I don't think you can have one or the other. With that, I would like on page 3, line 20, parents on an equal joint custody and equal physical custody kind of brings the ball park to 50/50 as a starting point and then work from there out, because I think just joint custody could mean 99/1, you know? So if we have a starting point of 50/50, it seems more equal, and I think the bill would have a little bit more meaning to it. That's all I have. Thank you. Thank you, Ashford. [LB844]

SENATOR ASHFORD: Okay. Well, thanks for taking the time to give us some suggestions. Thank you. Any other proponents? [LB844]

GLORIA VOSLER: Good afternoon, Senator and committee. My name is Gloria Vosler. I'm from Morse Bluff. I'm here on behalf of my nephew, Chad Taylor, and my son, Ronnie Vosler. I, too, am divorced and a mother of four and had gone through this system, so for my nephew, Chad Taylor, who's from Cambridge, he would be here today on behalf of this bill but he's involved in the wildlife roundup of the Canadian longhorn (sic) sheep. So he only had two days' notice of this--he's a wildlife biologist--so he couldn't be here. But so I am to speak passionately for him because he is a wonderful father and only gets to see his children 2 times out of 12 days; 2 nights out of 12 days does he get to tuck his children in. He did not want the divorce, although he is not allowed to see his children but just a short time. Let me see my notes here so I don't misspeak for him. I'm just going to go down my notes so I don't take up too much of your time stammering. He is the father of four, three biological children and one stepson that, since he was 18 months old, he's been the father but since the divorce he's not allowed to see. The children want to live with him but they are not allowed to. Six hours out of 12 days he gets to spend time with his children. He wants...he asks, how am I supposed to teach them; how am I supposed to work with them; how am I supposed to have worship time, school; how is a father to be a father two nights out of two weeks? How am I supposed to start a project, he says, when two other need his time? He wants to be a father. My ex-husband did not want to be involved. My son and my nephew want

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to be fathers. I very seldom get to have my grandson because my father...or my son doesn't want to give up his time with them because his time is so limited. Chad wants to know how is he supposed to bond with his children when he only gets to have them for such a short amount of time. How do you redirect your children, he says, or how can you be a parent, how do you work projects with a seven-year-old when you only have three hours a night and 45 minutes of that is spent making supper? He asks for equal parenting time and to not punish the father because of that. Let me see here, let's see...oh, he states that his three-year-old daughter spends more time with the sitter than is allowed to be with him. That's really sad. And, you know, regardless of three different times the mother abandoned them and they weren't...they didn't even know where she was for a whole week at a time, in the court system was still awarded to have the children. And for my son, since his divorce, he has fought for custody, too, and with...and has been denied that. And even with several incidences in my son's case, which proves at the present time that the mother isn't a good mother, my son was awarded...or my grandson was a ward of the state because the father was smoking pot and in the kids' presence, now not my son but the stepfather, and yet he was a ward of the state. My son did nothing wrong. [LB844]

SENATOR ASHFORD: Gloria, let me stop you... [LB844]

GLORIA VOSLER: Uh-huh. [LB844]

SENATOR ASHFORD: ...and tell you we appreciate you giving us your son's story but... [LB844]

GLORIA VOSLER: Um-hum. Well, yes, I'm sorry. I just...I don't want to... [LB844]

SENATOR ASHFORD: ...and your story too. So... [LB844]

GLORIA VOSLER: Yeah. I don't want to go on and on. [LB844]

SENATOR ASHFORD: No, I know... [LB844]

GLORIA VOSLER: I'm just saying there has to be a change in the court system. [LB844]

SENATOR ASHFORD: I think you've made your point very well, so thank you. [LB844]

GLORIA VOSLER: Yes. [LB844]

SENATOR ASHFORD: Any questions of Gloria? Thank you, Gloria. [LB844]

GLORIA VOSLER: Yes, you're welcome. [LB844]

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SENATOR ASHFORD: Next supporter. [LB844]

TAMARA BITTINGER: Good afternoon, Senator Ashford and committee. My name is Tamara Bittinger and I'm here to support my brother Chad and LB844. About a year and a half ago, I was separated from my husband, and with a lack of knowledge I made the mistake of not allowing my children to see their father as much as he deserved. Today our marriage is very healthy and strong. In looking back, I see the pain that I caused my husband and our children, the emptiness and the hunger he had for his kids. I see that with my brother Chad now. He misses the little things, as tucking his kids into bed, helping them with their homework, taking them to school. I would just like to see this bill passed, you know, to have guidelines, the judges to have to look into the backgrounds of both parents. His kids are hurting and confused and they miss their daddy. So I'm just here to support my brother. That's all I have to say. [LB844]

SENATOR ASHFORD: Well, thank you, Tamara. Thank you for coming. Other proponents? Come on up. [LB844]

NADINE HAIN: (Exhibits 2-3) (Inaudible) and anything you need to make for yours...I would like them to see that one. Do you have the copy? Yeah. [LB844]

SENATOR ASHFORD: Okay. We'll make copies of that then. Thanks. [LB844]

NADINE HAIN: Senator Ashford and the Judiciary Committee, thank you for letting me speak. You probably recognize me, I have been up here before, but my statement is short. My name is Nadine Hain. I reside at 4151 Ridgeview Drive in Lincoln, Nebraska. My testimony for LB844 starts with a statement by my nine- to ten-year-old grandson. He is sitting at the table and there is no other conversation going on. All of a sudden he says, it is just not fair. I asked him, what is not fair? He replied, it is not fair that I can't have the same amount of time with Daddy as I have with Mama. I told him I didn't think it was fair either but that I couldn't do anything about it because the judge was the one that made the decision, even though Daddy asked for the same amount of time. When kids realize at this age that they are getting cheated from time with one parent, why can't highly schooled adults realize this? Other adults I have talked to do not think it's fair either and that it is in the best interest of the child, because it isn't. The judges continue to work against joint custody or shared parenting, and then they give custody to one parent and they are living in, quote, the old days. After that, huge amounts of child support are not spent on the children but to better themselves. They can be accountable for how the money...need to be accountable for how the money is spent. It is not theirs. It is supposed to be for the children. Child support should have to be accounted for, just as if we were caring for an elderly person or guardian for someone. People that have not experienced this situation do not know what a stress factor this is for the children and families of the father or mother that is noncustodial. I am not a highly paid attorney, just a loving grandmother who would like to see the children of

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Nebraska get their rights and be able to have equal time with their father and mother. The Parenting Act states that fathers and mothers should have equal time. These children are the results of two parents, not one. Please pass LB844 to General File. [LB844]

SENATOR ASHFORD: Thank you, Nadine. Good to see you again. [LB844]

NADINE HAIN: You're welcome. [LB844]

SENATOR COUNCIL: Can I have a question? [LB844]

SENATOR ASHFORD: Yes, Senator Council. [LB844]

SENATOR COUNCIL: Thank you. Thank you again, Nadine. I certainly appreciate and understand your position. [LB844]

NADINE HAIN: You're welcome. [LB844]

SENATOR COUNCIL: I just have a question for you. [LB844]

NADINE HAIN: Oh, I'm sorry. [LB844]

SENATOR COUNCIL: Yeah. LB844 addresses two rather separate but not necessarily distinct issues: one is the use of child support; the other is custody. And I'm talking about the use of child support and you, in your statement, you indicated that there needs to be something done to ensure that the child support is not being used to benefit the custodial parent. [LB844]

NADINE HAIN: Right. [LB844]

SENATOR COUNCIL: Okay. And I guess I'm going to kind of make it clear my concern about how do we do this then, because I'm going to ask you a question. [LB844]

NADINE HAIN: Well,... [LB844]

SENATOR COUNCIL: Now I'm going to ask you a question. [LB844]

NADINE HAIN: Okay. [LB844]

SENATOR COUNCIL: Let me ask you the question. [LB844]

NADINE HAIN: Okay. [LB844]

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SENATOR COUNCIL: The noncustodial parent is ordered to pay \$500 a month in child support. [LB844]

NADINE HAIN: Uh-huh. [LB844]

SENATOR COUNCIL: The custodial parent's rent is \$500 a month. Is that proper use of the child support? [LB844]

NADINE HAIN: Well, I would say not totally because the mother or father, whoever it is that's getting the support, has to pay rent anyhow. So basically if they're using that \$500 for the whole rent, it's not benefiting the child totally. It's benefiting them also. [LB844]

SENATOR COUNCIL: Okay. And your answer to the question is what presents the dilemma with what's being sought here. Because whether or not you'd have to pay rent anyway,... [LB844]

NADINE HAIN: Uh-huh. [LB844]

SENATOR COUNCIL: ...you certainly have to provide shelter for the child. [LB844]

NADINE HAIN: Right. Right. [LB844]

SENATOR COUNCIL: So...and that's where the difficulty and, at least in my mind, and no one has to share this opinion with me. But that's where the dilemma comes because if the custodial parent is using that money to pay rent every month and then providing for other needs of the child out of his or her own income, I just don't know how we get in and say that someone is misusing or not using the money for...because the standard is for the interests of the child. [LB844]

NADINE HAIN: Right. [LB844]

SENATOR COUNCIL: And shelter, I don't think anyone could dispute, serves the interest of the child. [LB844]

NADINE HAIN: Right. Right, I agree that, yeah, shelter is...the child has to have shelter, but at the same time you see a lot of this where they...all of a sudden, you know, they're more, what do I want to say, they seem like they've got more money that they're spending on themselves than they did before. You know, that's kind of where I see the part of them, you know, not using the child support right. [LB844]

SENATOR COUNCIL: All right. Thank you. [LB844]

SENATOR ASHFORD: Thanks, Nadine. [LB844]

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NADINE HAIN: You're welcome. [LB844]

SENATOR ASHFORD: Next supporter of Senator Hadley's bill. [LB844]

DUSTIN BECKER: My name is Dustin Becker, that's B-e-c-k-e-r. I was divorced and I was the victim of abuse during my marriage, and because the judge handling my case happened to be a proponent of mothers having full custody I lost custody, despite the abuse, because there was no proof. That was in 2008. I've been in nearly constant litigation since then because medical evidence has shown that my ex-wife is abusing my children. And despite medical evidence proving that and a long history, she still has custody. Our system is failing fathers and children, at least with that judge. Now I do a lot of volunteer work with fathers' and children's rights and I helped a lot of people and mothers, you know, but most of who I see is mothers...or fathers, I mean. And I know that there are good and fair judges out there who do apply the standards equally, because I've seen those cases with other judges. But somehow we have to rein in rogue judges or judges who favor one side or the other, and we have to create a standard where there's equal treatment of everyone statewide. I think that LB844 would address that issue. Addressing the fiduciary aspect of LB844, I think that we need...I, as a noncustodial father, still provide shelter, food, clothing for my children. I think that rent and house payments, that could be considered as taking a similar quality home with a one bedroom versus, if you have two kids, maybe a three bedroom and look at those differences in rent and that's going to have...you know, I think there's going to have to be more regulation on how we figure out what is abuse of those child support funds and how we determine how rent is divided up, you know, and some of those overhead issues, like transportation, cars and such. So I think there needs to be a little more details about that, but I certainly support the, you know, custody and equal parenting time aspect of LB844. Any questions? [LB844]

SENATOR ASHFORD: Any questions of...okay, thanks. [LB844]

DUSTIN BECKER: Thank you for your time. [LB844]

SENATOR ASHFORD: Next proponent. [LB844]

RAY KEISER: Senator Ashford, members of Judiciary Committee, thank you for taking time today. My name is Ray Keiser, K-e-i-s-e-r, and I'm out of Fordyce, Nebraska. I've had the opportunity over the last couple summers, while I've had my limited visitations with my children, to bring them down here and introduce them to the legislative process and introduce them to most of the people here on the board. You may remember Felicia (phonetic), Steve, and Megan (phonetic), and I'm here today in support of them. My story is known so I'm not going to get into the depths of that, but what everybody else has been saying here about the system being broke is true. We can go back to judges,

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we can go back anyplace we look, but the problem exists inside of our laws and LB844 is one way to clarify to help set up this is the parameter you need to be in, this is the standard we need to be looking at. So I am very much in favor of this bill. Part of the bill also has to do with the allocation and the accountability of the child support. And, Senator Council, if I may comment a little bit on what we were talking about before, if that's all right with you, the way that I look at that is if we have a \$500 rent and they've taken all \$500 of child support and applying it to rent, where's the rest of the support coming from? It's coming from that parent. So what's the difference if they take the money and apply it to that child or take that money and apply it back to the rent and use the child support for what it's for? That instance, to me, is something that is not a common instance where you get a \$500, you're looking at more \$1,000, \$1,500, \$2,000 a month. That's I think where the abuses are coming in at. So if that \$500 goes for the children first and then goes out, I think there's something that can be done, and I'd be more than happy to talk to anybody about some of the ideas, and I'm sure there's plenty other ideas that we have out here. Like I said, I just want to confirm what other people have...oh, I'm sorry. [LB844]

SENATOR ASHFORD: No, I was just telling... [LB844]

RAY KEISER: I just want to confirm what other people have said. I've been through the mediation process. One party wants it; it's worthless if the other party does not want it. The system is set up as we got one winner and the children are the biggest losers. So I just ask you to take consideration of this bill here and think of the children first, think of what can be done for the children. This isn't about mom, isn't about dad. Mom and dad made their choices; we have to live with our consequences. But our choices directly affect the children and that's what we're here for today. And I think the improvements with LB844 greatly enhances what we can do for children. Thank you very much for your time today. [LB844]

SENATOR ASHFORD: Thanks, Ray. Any questions? Seeing none, thanks. [LB844]

RAY KEISER: Thank you. [LB844]

SENATOR ASHFORD: Next proponent, supporter. [LB844]

MARK ROSE: Senator Ashford, committee, I don't have a prepared speech. I'm a parent. I've been on both sides of the law. I had three kids in the first marriage. My wife left. I raised my first three kids on \$50 a month from her until she quit. She went home, sat on the couch, and didn't pay anything till it came to \$3,000, then she paid it. [LB844]

SENATOR ASHFORD: Let me...let me get your name real quick so... [LB844]

MARK ROSE: Mark Rose, I'm sorry. [LB844]

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SENATOR ASHFORD: So good. [LB844]

MARK ROSE: I live in Coleridge, Nebraska. [LB844]

SENATOR ASHFORD: What was that again? [LB844]

MARK ROSE: Mark Rose, R-o-s-e. [LB844]

SENATOR ASHFORD: Rose, got it. Good. He has to take all that down so... [LB844]

MARK ROSE: My mistake. [LB844]

SENATOR ASHFORD: ...or we make him run laps if he doesn't. Okay. [LB844]

MARK ROSE: Now I'm on the other side. I'm the noncustodial parent. I pay more for child support right now than probably the median wage in the town I live in. And as far as the accountability, there's got to be something done. When my kids come to my house and tell me she can't afford...she tells them she doesn't have any money to buy her crayons or paper or this kind of stuff. There's got to be some accountability. They've got to know where that money is going. I need to know where that money is going. And I really, honestly believe for the dads that are paying child support, if they knew where the money was going they'd be more apt to pay it. They'd feel better about paying it. If they knew that what they're paying the mother, the custodial parent, is going where it's supposed to be going and you'd take care some of the deadbeat dad problem. Unfortunately, along with the system, the rate is so lopsided that, you know, a guy's got to make a choice between heating his house or paying his child support. I got hurt. I was off work. I was still responsible for child support, which is fine. I called the state. They told me, well, if you're still living together...right, if we were still living together she could have gone and got a job and I could have stayed home with the kids, but it didn't work that way. So I lost part of my income tax. Again, she got a big chunk of my income tax, no idea where it went. So I honestly feel that if you had some accountability and annual, I'm sorry, annual I think is too far out. I know my ex-wife, she's not that organized. But if you had some accountability it would help, it would save a lot of money, and again you'd have people that would be more apt to pay it, rent, car payment, car insurance, car, anything pertaining to the kids. I put my kids in swimming lessons; I paid for it because her comment was I got them into it, not because it was good for my kids, not because my kids were going to benefit from it, because I got them into it. And I only asked for \$37. She gets \$960 a month and she tells my kids she doesn't have any money. So the accountability part of it and using the money on my kids, the way it's supposed to be, is paramount. I take my kids on vacation. I take my kids places. She doesn't do any of that and she still has the money. [LB844]

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SENATOR LATHROP: Okay. We appreciate your comments, Mr. Rose. Let's see if anybody has any questions? [LB844]

MARK ROSE: Okay. [LB844]

SENATOR LATHROP: I see none. [LB844]

MARK ROSE: Okay. [LB844]

SENATOR LATHROP: We'll take everything you've said into consideration. [LB844]

MARK ROSE: All right. Thanks for your time. [LB844]

SENATOR LATHROP: Thank you very much for your testimony. Is anyone else here to testify in favor of this bill? [LB844]

JAMES BOCOTT: Good afternoon, Senator Lathrop, members. [LB844]

SENATOR LATHROP: Taking full advantage of your three minutes. Okay. Welcome. [LB844]

JAMES BOCOTT: Thank you. [LB844]

SENATOR LATHROP: Let's start with your name. [LB844]

JAMES BOCOTT: My name is James Bocott, the last name is spelled B-o-c-o-t-t. I'm an attorney in North Platte, Nebraska. First of all, I want to state how I've never appreciated the importance of what you folks do until preparing for this today and fully thinking it through. You have an amazing ability to positively impact so many lives, I'm in awe of that. Thank you for your time. I've been married for 16 years. I have three children. I've been practicing law in the state of Nebraska for 15 years. Over that time, I've handled approximate...have encountered 200 to 300 divorces. Many of those involved custody issues. I represent probably an equal amount of men and women in divorces and so I see it from both sides, and I'd say I probably represent more women. The standard, obviously, in the state of Nebraska for making a custody determination is the best interests of the children, and that sounds good. What else could it be besides the best interests of the children? But the reality is, in the 11th Judicial District, is that means that we're going to pick a winner and one parent, despite both parents being fit parents, is going to have custody of the children and the other parent is going to see their children every other weekend. And my challenge to the opponents of this bill is explain and provide the scientific data, the psychological data as to why that in fact is in the children's best interest, because that is the law in the 11th Judicial District today. There is law, of course, that allows for joint custody award if the parents agree or if the court

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thinks it's in the children's best interest, but it doesn't happen. Why doesn't it happen? Number one, because of Wilson v. Wilson, because it gives the law predictability, it's easy to implement, and because of inertia. The courts have been doing it for a long time. It's what they want to continue to do. One in two marriages fail. A million...there's a million divorces per year. Approximately 70 percent of those involve children. That's millions of children that are affected by divorce. What we've done is we've got case law that creates single-parent households, and I don't need to preach to this committee about the dangers of single-parent households. While single parents can be wonderful parents, if children have an active father in their lives, an active mother in their lives, their chances at success and staying out of the criminal justice system are greatly, greatly enhanced. I'm simply asking that this committee allow this bill to be argued and debated. I think it's critically important for the children of this state. Thank you. [LB844]

SENATOR ASHFORD: Thanks, Jim. Next proponent. Next proponent. How about opponents, those against the bill, do we have anybody opposed to the bill? Okay, hi. Welcome back. [LB844]

AMIE MARTINEZ: Thank you. [LB844]

SENATOR ASHFORD: Go ahead. [LB844]

AMIE MARTINEZ: Good afternoon, Senator Ashford, members of the Judiciary Committee. My name is Amie Martinez, M-a-r-t-i-n-e-z. I've been with my law firm, Anderson, Creager, and Wittstruck here in Lincoln for more than 20 years. I am, as most of you know, I'm a family law practitioner. I represent moms, dads, and children. I appear before you today representing the Nebraska State Bar Association. I am actually a former past chair of the family law section as well, and the Nebraska State Bar Association does oppose LB844. Just sort of historically, I want to tell you that after we received...the Bar Association received LB844, we began the very thorough vetting process that we do for all of the bills that we think affect the Bar Association, in fact all of them to see if they do affect anything with the administration of justice. This is a very multifaceted process that takes part in a number of levels with a series of discussions to open the debate by any interested bar member. In this case, the bill has been circulated to its entirety and to all of the lawyers on the Nebraska family law Listserv with the invitation for comment. Following that distribution, the family law section of the Bar Association convened its legislation subcommittee to discuss the bill and the feedback that was received on the Listserv. The family law section then makes its recommendation to the Bar Association's legislation committee. In turn, that committee makes its recommendation to the executive council, to the house of delegates, and the executive council then makes its recommendation to the house of delegates. [LB844]

SENATOR ASHFORD: My gracious! When did that start? [LB844]

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AMIE MARTINEZ: It's been in place for some time. [LB844]

SENATOR ASHFORD: Okay. No, I mean all those things. [LB844]

SENATOR LATHROP: And I think the explanation may not be necessary today. [LB844]

SENATOR ASHFORD: Okay. [LB844]

AMIE MARTINEZ: And I think it's important for you to understand that this is something that's not just three people sitting in a room discussing it; it actually is widespread and given a lot of thorough thought. With all of that, at all levels LB844 was opposed. The house of delegates when they voted, I think there was very little opposition at the house of delegates, LB844 was opposed. Specifically, there are a number of problems with LB844 and some of them have been alluded to, particularly by Senator Lathrop. But the child support provision of the bill does create a fiduciary duty between the parent and the child, which may ultimately then create a separate cause of action for a violation of that fiduciary duty, and it pits child against parent, which may not be in a child's best interest as well. Upon the request of the party paying the child support or the cash medical support, there is going to be this requirement that there's this submitted annual report, and we may have people saying, I spent \$2 on a cheeseburger or I spent \$1,500 for the kids to go play hockey. It just...there's just a wide variation of what those things may mean. It also creates an invitation for harassment, specifically, and maybe everyone else's experience is different, but some of my clients don't get along when they decide they don't want to be married anymore or they don't want to parent their child together anymore, and it does open an opportunity for one parent, who is upset with other parent, to require them to come in for this additional accounting. And I see I'm out of time. May I have an additional 60 seconds? [LB844]

SENATOR ASHFORD: Well, let me ask you a question and maybe you can do it that way. The presumption, turning to the presumption language very briefly, I guess two questions. One is, are you aware of any other state that has that sort of language in its statute? Did you happen to take a look at other... [LB844]

AMIE MARTINEZ: There are other states that have similar language. [LB844]

SENATOR ASHFORD: That have the presumption language that's in here? [LB844]

AMIE MARTINEZ: Yes. Well, I don't know if it's exactly this but there are... [LB844]

SENATOR ASHFORD: Or similar presumption language? [LB844]

AMIE MARTINEZ: Yes, a presumption of shared custody. [LB844]

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SENATOR ASHFORD: What is the...it has logic and I...to me anyway, and I'm just...what would be your...what would be your argument against that presumption language? [LB844]

AMIE MARTINEZ: Well, first of all, and I would be remiss if I didn't say that I think there's a real separation of powers issue with regard to the Legislature advising the courts what they are or are not to do. [LB844]

SENATOR ASHFORD: We set standards though and, in fact, yesterday we dealt with res ipsa loquitur and cows jumping over fences and getting on to interstates. [LB844]

AMIE MARTINEZ: Sounds like a storybook. [LB844]

SENATOR ASHFORD: So I mean we do...but go ahead and answer. I didn't mean to interrupt you but... [LB844]

AMIE MARTINEZ: I think if you start with the premise that all parents are created equal and they spend equal time with their children, that would be fantastic. Unfortunately, that's not real life. Parents may love their children equally, but it does not mean that they spent equal time with their children. And I think there is a sense that if a parent does not spend equal time with their children somehow they are considered to be a lesser parent. From a child's perspective, and one of the proponents commented that if a child spends as much time as they did, I think it was, with their father before, after a divorce that made them happy. What it didn't say was that they spend 50 percent of their time with that parent. What they may spend is 10 percent of their time with that parent, and they adore that parent and they love the time that they spend with them, but it doesn't mean that they should spend week on, week off with that parent. So when you talk about this presumption, it creates a difference when you approach mediation. And I know someone spoke about that, but when there is a presumption of any kind created before you walk into mediation, it dramatically changes the relationship of that mediator's role, as well as how the parties approach that. They walk in thinking, I'm already guaranteed halftime, why would they compromise? I'll tell you, with regard to mediation, personally I was opposed to that and I am fully wrong about that. Over the last two years mediation has proven to be incredibly successful. And we have a number of shared custody situations. I say the word "shared" as opposed to "joint" because I think "joint" makes people think 50/50. It's not, frequently it's not. What the psychologists tell us is that for it to be 50/50 you have to have parents that can make that seamless. They have to be...those parents have to communicate all the time, and many parents can't. But we can have a shared custody arrangement where one parent has, because we think of it usually in 14-day blocks, one parent has 8 days, one parent has 6 days; one parent has 9 days, one parent has 5 days. It just depends on how old the children are, what's happening in their lives, what the parents' roles are. It's just...it's very different. So this presumption is very troubling. And I'm disappointed to hear that there are judges who

apparently don't believe in shared custody. I will tell you that the judges that I run into when presented with a shared custody situation will rule for a shared custody arrangement whether parents agree to it or not. So the presumption is the real problem because, as someone said, it can be a game changer and it changes the game for the children and not always in the best way. Maybe for all of the folks here speaking that would have been the right answer, but it's not always the right answer. [LB844]

SENATOR ASHFORD: Okay. Senator Lathrop. [LB844]

SENATOR LATHROP: Just...I'm with you. I understand completely the whole accounting thing. Is it the bar's position that creating a presumption is a bad thing? [LB844]

AMIE MARTINEZ: Creating a presumption of shared custody, you mean? [LB844]

SENATOR LATHROP: Yes. [LB844]

AMIE MARTINEZ: Yes. [LB844]

SENATOR LATHROP: Would their position be different if it required something less than clear and convincing evidence to overcome the presumption, in other words, if we make the policy decision that divorces are going to start out, mom and dad start out equally but that can be overcome with whatever the evidence is, the greater weight of the evidence? Because right now I'm hearing these guys say, and I appreciate it because I did divorce work for probably five years or eight years or...they were long years. [LB844]

AMIE MARTINEZ: Seems like 20? [LB844]

SENATOR LATHROP: And lean years, too, I might add. But it seems to me that right now we start out with a presumption that's sort of judges who do not recognize that times have changed since my dad's time, you know, where the mom stayed home and the dads went to work and the divorce happened. Dads saw the kids rarely and mom stayed home with them so she got them for the greater share of the time. And that seems to be a tradition that follows the divorce process or a place where we start in the divorce process as it relates to the amount of time the parents get. And I'm wondering what's wrong with starting out with 50/50 but make...and make the presumption and not require clear and convincing evidence to overcome but basically say as a policy statement both parents have an equal time until somebody tells me it should be different, rather than whatever it is, 70/30, 80/20, whatever the numbers turn out to be typically. [LB844]

AMIE MARTINEZ: Again, I think that goes back to an equal interest in parenting doesn't

equate to equal time, and for children who love their parents equally, it doesn't mean that they need equal time. And so the problem with the presumption is that it awards equal time. When you walk into the courts now, and it may be that over time we've got judges who have been working mothers and judges who have working wives and so they've seen the change so it's not the world your father saw, but when you bring those children into a presumption of 50/50, it does change how mediation works. It does promote parents requiring them to go to prove their case, as you said, whether it's clear and convincing, preponderance of the evidence. Whatever it is, it would require litigation to argue that. [LB844]

SENATOR LATHROP: But the fact that it changes the dynamic, doesn't that suggest the dynamic works against dads right now? [LB844]

AMIE MARTINEZ: I don't think the dynamic works against dads right now. I think that what happens when parents walk in, and I don't know how many times I've said this, hundreds if not thousands, parents walk in on equal footing, all right? A dad and a mom walk in on equal footing. That's it. Then you check your sex, your gender at the door, and what it comes to is, who has been the primary parent? Show us by actions, not by your gender, not because you're labeled husband or wife, but show us who has been primarily responsible for raising these children. And for many parents it is lopsided and that worked when they were married and everyone thought it was smooth and successful, and now it's changed when they divorce because...or separate, because the parent who maybe only spent 25 percent of the time with the kids and was okay with that now says I want 50 percent of the time because that's what's fair to me. It's not what's fair to you; it's what the children know and what should be allowed to continue for them. [LB844]

SENATOR LATHROP: Okay. [LB844]

AMIE MARTINEZ: So just the presumption on a gender issue I just don't think should equate to time. Thank you for the question. I'm out of time. [LB844]

SENATOR ASHFORD: Senator Coash. [LB844]

AMIE MARTINEZ: Any other questions? [LB844]

SENATOR COASH: Right here. [LB844]

AMIE MARTINEZ: Yes, Senator Coash. [LB844]

SENATOR COASH: Thank you, Ms. Martinez, for being here. In my nonlegal head, I see we've got parenting time, and that's kind of its own, goes down its own track; custody is its own track; child support takes its own track. Is it your opinion that all three

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of these things are coming together in the court system and working well as it stands within the court system? [LB844]

AMIE MARTINEZ: I'm not sure that I understand the question, but let me, with your premise that... [LB844]

SENATOR COASH: Let me just ask you... [LB844]

AMIE MARTINEZ: Okay. [LB844]

SENATOR COASH: ...do you...you know, we've got the parenting time, the custody arrangements, and the child support. All those things intersect at the courts. Is it your opinion that it's going well with those three things? [LB844]

AMIE MARTINEZ: I think you have to deal with all three of them at the same time because they impact each other. And for parents who are concerned about how they're going to make it financially, it does depend on how much support they're paying or how much support they're receiving. But also when you talk about custody and parenting time, those go together because we have the presumption that if you spend 40 percent of time with the children and you count it on an overnight basis, you get the joint custody support. [LB844]

SENATOR COASH: Is the system working, in your opinion? Is it designed, when we put guidelines around the court system here, is it your opinion that the system is working in the best interests of kids? [LB844]

AMIE MARTINEZ: I will tell you that personally, in my jurisdiction, it is. [LB844]

SENATOR COASH: Okay. [LB844]

AMIE MARTINEZ: It doesn't mean that there aren't flaws in the system or errors that happen. [LB844]

SENATOR COASH: Okay. Because for four years I've been meeting with these parents about...and all I hear is the system isn't working, and I guess I don't see a problem with equal time and I would like the bar, instead of coming in and fighting these every time, to come back and say, we've listened and we now have a solution for this. Because right now this is four years of parents wanting to do the right thing for their kids, the stories you've heard, and the bar coming in and saying, no, it works. But it's not working if these bills, these parents keep coming. And I would just challenge the bar to go back to the family law and say if you don't like these approaches bring us one so that we can hear that as well. Thank you. [LB844]

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AMIE MARTINEZ: And I appreciate that. Thank you very much. [LB844]

SENATOR ASHFORD: Senator Lautenbaugh. [LB844]

SENATOR LAUTENBAUGH: Thank you, Senator Ashford. So I understand, you are here representing the bar today. [LB844]

AMIE MARTINEZ: I am. [LB844]

SENATOR LAUTENBAUGH: Do you know what steps the bar undertook to determine whether or not this would be a proper topic for them to weigh in on? [LB844]

SENATOR COUNCIL: You missed it. [LB844]

SENATOR ASHFORD: You missed it. [LB844]

SENATOR COUNCIL: And we're not listening to it again. (Laugh) No, I'm kidding. (Laughter) [LB844]

SENATOR ASHFORD: You may rehash those again. No, not to be...not to be flip, there were myriad steps that they went through, but go ahead. [LB844]

SENATOR LAUTENBAUGH: Not so much the committee process but I mean was there an attempt made to determine whether or not this deals with the, somehow, access to the courts or licensing of attorneys or something in that regard? [LB844]

AMIE MARTINEZ: With regard to our legislative policy, is that what you're talking about? Does it fit within the confines of the bills that we take positions on? [LB844]

SENATOR LAUTENBAUGH: Yes. [LB844]

AMIE MARTINEZ: Yes, that was addressed at every level actually, I should say with the exception of the family law Listserv. When it was initially sent out to them that issue was not addressed specifically but folks were encouraged to share their comments and then to appear personally if they...and many of my colleagues did so. So they were invited to do that, but at every other level it was questioned. It was addressed as to whether this is an appropriate bill for us to take a position on. [LB844]

SENATOR LAUTENBAUGH: And while it was addressed, was there any sort of language from the Keller decision or anything else compared to this particular bill to see if it was actually proper for the bar to be involved in this? [LB844]

AMIE MARTINEZ: Well, as I recall on the Keller decision, Senator, it had to do with

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portions of dues as to what portions of dues, if any, were going to be used for lobbying. And as I'm sure you know, the Bar Association does a checkoff that if someone does not want their money, a portion of their dues, to go to the lobbying, they're allowed to check that off. And I do think that in Keller they actually said you can break that down to percentages. So if we take a position on ten bills and you want to opt out of nine then they take nine-tenths. And the Bar Association simply says if you don't want us to lobby on your behalf, then your portion of dues allocated to that will not go to that. [LB844]

SENATOR LAUTENBAUGH: So does that result in a reduction in the lobbying activity in any way, do you know? [LB844]

AMIE MARTINEZ: I don't know the answer to that. I would imagine that I think our lobbyists are paid for their time and so I would imagine that if they are paid less, they spend less time. But I don't know the answer to that. I would presume so. [LB844]

SENATOR LAUTENBAUGH: I guess what I'm getting at here is this is not the first time we've had this discussion and, I don't know, do you do any civil rights law,... [LB844]

AMIE MARTINEZ: I do not. [LB844]

SENATOR LAUTENBAUGH: ...anything like that? I mean there's an area in there where if the person who's violating it has been put on notice repeatedly in various ways, there can be a provision for attorney's fees to be awarded when the litigation comes. But you don't do that kind of work? [LB844]

AMIE MARTINEZ: I do not. [LB844]

SENATOR LAUTENBAUGH: Okay. Thank you. [LB844]

AMIE MARTINEZ: I'm sorry. [LB844]

SENATOR LAUTENBAUGH: That's okay. Someone will. [LB844]

SENATOR LATHROP: I see no other questions. Thanks for coming down. We always appreciate hearing from you. [LB844]

AMIE MARTINEZ: Thank you very much. [LB844]

SENATOR LATHROP: Next opponent. [LB844]

SARAH FORREST: (Exhibit 4) Good afternoon, Senator Lathrop and members of the committee. My name is Sarah Forrest, S-a-r-a-h F-o-r-r-e-s-t. I'm a policy coordinator at Voices for Children in Nebraska. Today we've heard a lot of testimony on both sides,

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frankly, about the best interests of children, and that's precisely why the Parenting Act was first established in 1993, recently revised in 2007, and Voices for Children has always been a part of this work because we realize that there are lots of children each year who are subject to divorce proceedings. It's about between 6,000 and 7,000 each year in Nebraska, and divorce is traumatic for children. The best interests of children is also why there is currently a research study on the Parenting Act being designed with the help of a national expert and administered through the office of the courts because we want to make sure that the systems that serve our children work the way they're supposed to and that their best interests are protected. Basically, our history with the Parenting Act has always been to soften the blow of divorce for children, to make sure that proceedings minimize conflict and ensure stability for them, and the three provisions of the bill we think will actually increase conflict and have the potential to harm children. Obviously, the annual accounting of child support payment, we think that that could really increase conflict, could be used against one parent, children can get caught up in the middle, insertion of financial and child support provisions into the parenting plan which right now is really reserved for other things, like where is time spent, things like that. And finally, the requirement for that shared time, basically with the use of mediation, court-created plans are used in more contentious cases and so this brings up concerns dealing with domestic violence and abuse, in addition to just these are the kind of cases where it maybe really hard to work on a presumption of joint time. So we would just urge you to really consider the best interests of children, to be aware that there are other efforts going on to research this and to work on ways to continually improve the system for families and kids. You know, divorce is never a happy thing but there are ways, as policymakers, that we can really work on making sure that children's interests are protected. And we appreciate the interest of the committee. [LB844]

SENATOR LATHROP: Very good. Thanks, Sarah. [LB844]

SARAH FORREST: Thanks. [LB844]

SENATOR LATHROP: Any questions? I see none. [LB844]

SARAH FORREST: Thanks. [LB844]

SENATOR LATHROP: Thank you. Next testifier. [LB844]

LAURA McCORMICK: I don't have written comments so I'm just going to have to read what I typed while I waited. My name is Laura McCormick. I'm currently involved in a divorce. [LB844]

SENATOR LATHROP: Laura, can you spell your last name? [LB844]

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LAURA McCORMICK: Oh, sure, L-a-u-r-a M-c-C-o-r-m-i-c-k, and I'm currently involved in a divorce in Douglas County. The divorce process, the GAL process, and the mediation process are broken in Nebraska. How do I know? Because in February 2010 my husband filed for divorce, walked out the door and never came back, not even to tell our children about the enormous changes coming for our family. I found my family thrust into the divorce process in Douglas County and I naively assumed that my children and I would be protected by the legal process. Let me clarify, my husband departed the family home in February 2009. In my case, temporary orders were considered before the judge in April, more than two months after my husband filed for divorce. These temporary orders were not signed until the end of June, four months after he filed for divorce. What does that mean? No enforceable order regarding child support, alimony, or parenting time. How does that impact a child? Very negatively. Sex does matter in divorce proceedings, particularly as it pertains to caring for male teenagers. Fathers have a hands down advantage in such cases, particularly when the completely subjective standard of best interests of the child is trotted out. Exactly what does the best interests of the child mean? If we were to poll the members of the Legislature regarding best interests and what it means, we would come up with a plethora of perspectives, some polar opposites. My divorce case is still slowly making its way through Douglas County Court, two years after my husband filed for divorce, and I am still not divorced. The ambiguities of the GAL system only further complicate the divorce process. The Legislature is well-versed in the serious deficiencies in the GAL system. To date, absolutely nothing has been done to rectify this problem. Bear with me. Finally, prior to Judge Dougherty taking over our divorce case, I had not seen my son for more than 40 hours in one year. I was a stay-at-home mother. I raised my three children with very little assistance from dad. Dad is ambitious and devoted to work and has been for the entirety of the marriage. My son was removed from my care by a GAL who never met me, who never interacted with me and my son, and never bothered to follow up when I immediately informed her that my husband was violating the parenting time schedule. Said schedule was contained in a signed court order. This same GAL informed me that it was not in the best interests of the child to have overnight visits with me. Huh? I asked and asked for objective data to back up such an outrageous statement. I am still waiting for an explanation. On the day my husband was awarded physical possession of my son, I sat on a bench in the hallway of the Douglas County Courthouse. The judge never spoke to me and there is no record at all as to what transpired that day. The GAL involvement has led to no improvement in my children's situation. Are you ready for this one? Costs to date for the GAL services which have produced zero tangible results for my children, \$40 grand and the register is still ticking. To introduce the idea that we are going to regulate the use of child support, how will that work? What will that process be? What burden are we placing on a custodial parent? What if the custodial parent is someone like me who devoted their entire life to providing loving care for children of a marriage, forfeited their own opportunities for a professional career and was married to an individual who decided one day never to return to the family home? I am misusing child support if I use a portion of the funds to provide

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shelter? Seriously? [LB844]

SENATOR ASHFORD: Laura, I'm going to ask you... [LB844]

LAURA McCORMICK: Can I just have 30 more seconds? [LB844]

SENATOR ASHFORD: You can have 30 more seconds. [LB844]

LAURA McCORMICK: Thank you. To this day my husband refuses to follow the standard for holiday time, Wilson v. Wilson, because our parenting plan has yet to be considered by the judge. The result--my three children have been virtually deprived of all sibling interaction. Our three children spent every single day together from birth with a stay-at-home parent. Because one parent is uncooperative, family time no longer exists. I believe the state of Nebraska needs a unified family court. I believe something more objective than the best interests of the child should be utilized when evaluating these situations. I believe the GAL system needs a complete and total overhaul. And finally, I believe the default holiday schedule should be Wilson v. Wilson unless both parents agree to something else. It is a slippery slope to mandate financial reports which would be prepared for someone like myself. Thank you. [LB844]

SENATOR ASHFORD: Thanks, Laura. Senator Council. [LB844]

SENATOR COUNCIL: Yes, Ms. McCormick, quick question, just my way of better understanding. At the time your husband filed for divorce, you had three minor children? [LB844]

LAURA McCORMICK: I do, yes. At the time he left the family home I was a parent to a 16-year-old, a 14-year-old, and a 12-year-old. [LB844]

SENATOR COUNCIL: Gender? [LB844]

LAURA McCORMICK: My 16-year-old is a female child, my 12-year-old is a female child, and my middle child is a son. [LB844]

SENATOR COUNCIL: And it's the middle child that, the son, that the father was awarded... [LB844]

LAURA McCORMICK: Physical possession, yes. I still...just today I visited the local public school, attempting to be included in educational decisions for my child, and I was informed that even though I retain legal custody I am not to be included unless dad will permit me to do so. [LB844]

SENATOR COUNCIL: Thank you. [LB844]

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LAURA McCORMICK: I'm not a lawyer but that doesn't make much sense to me. [LB844]

SENATOR COUNCIL: Thank you. [LB844]

SENATOR ASHFORD: Thank you, Senator Council. Thank you. Next opponent. Do we have a neutral, anybody neutral? Senator Hadley, do you wish to close? [LB844]

SENATOR HADLEY: Thank you, Senator Ashford. I appreciate the committee's time and I think there were some questions raised and I would like to maybe, if I could, try to respond to some of the questions. First of all, I guess I was taken a little aback when the bar came up to testify. And I believe I got this, I wrote it down right away. They got information on how this bill affects the bar. And I guess I would have thought or hoped that they said how does this bill affect the children that are involved with the divorce, not how it affects the bar. How it affects the attorneys that are involved? So I don't know whether they looked at the information, other than asking attorneys how this impacts them, as far as the impact of divorce. I think the article you got is a great article that summarizes many, many, many research studies. Secondly, Senator Lathrop, I would entirely agree with you that we have to start somewhere. You know, there's got to be a starting place. And I think right now it's the Wilson v. Wilson. Did I say that right? I'm not an attorney, Wilson v. Wilson. [LB844]

SENATOR ASHFORD: That's right, Wilson v. Wilson. [LB844]

SENATOR HADLEY: That's the starting place. And I think what the argument here is that maybe there's a different starting place, and I say that because times have changed. I think the family has changed over the last 40 or 50 years, the way things are done as a family. So maybe it's time we look at how we treat this as a family. Thirdly, if you truly believe that the child support belongs to the child, not to the spouse, I think there is a fiduciary relationship. And we can argue on how hard it is to do the accounting. I'm an accountant. I understand allocations. But I was thinking back that I was the guardian and conservator for an aunt and uncle and I had to do a yearly accounting. If they'd had been living in my home, could I have said to the lawyer that was handling it, I'm sorry, they're living in my home so I can't do one because I don't know how to allocate the costs of my home? Would that be something that the court would have accepted from me as the conservator and guardian for my aunt and uncle? They didn't happen to live...they were living in a nursing home, but I just wondered if I was the guardian and conservator for someone who was living in my home, would the court expect me to give some kind of proof of how I was spending their money for their support during the year? I would suggest they probably would. And lastly, I am concerned, and I have heard this, that it varies a lot by where you are in the state. I heard last year we had a similar bill. Lancaster County has come up with some

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guidelines in their judicial district and we heard last year how that wouldn't work around the state. Well, I'm not sure that just saying it won't work is the way to do it. I hope this committee does look at this because I think it is...you heard some pretty raw emotions and it is a tough time. From someone who went through a divorce with children, I...it's never fun. It isn't fun. But let's not lose sight of our goal to do as well as we can for the children. I'd be happy to answer any questions. [LB844]

SENATOR ASHFORD: Senator Council. [LB844]

SENATOR COUNCIL: And not really a question, Senator Hadley, but comments. And we talk a lot about the Wilson v. Wilson standard and the Wilson v. Wilson is a judicially imposed standard. There's no statutory Wilson v. Wilson standard. So in terms of changing times, just as the court arrived at the decision in Wilson v. Wilson, it could arrive at a different decision as to what would be the judicial standard. Secondly, I found it curious that you drew the analogy to a conservator having the ward in their home. Just by way of information, if you chose to the court could authorize a certain percentage to be paid to you monthly to accommodate the shelter for that ward. Many times they do, when the ward is staying with the conservator, issue an order allocating how much can be spent from the ward's money. So I mean it can happen in those situations but, you know, the concern is and what I heard the basis for this being, and that's what problematic for me, is...well, you heard a couple of things. And it's disturbing when a parent who's receiving child support tells the child I can't...you can't have something that the child needs because I don't have the money when child support is coming in. That standing alone sounds really bad. So does the court in a situation like that take into consideration all of the circumstances surrounding? Because as a part of that custodial arrangement, if for some reason the custodial parent has suffered a serious illness that prevents them from doing a lot of things that they used to do or they incurred a lot of costs, and so just to be present there are other costs involved. I, like I said as I made my statement earlier, I may be the only one who sees the difficulty and the dilemma, but I also heard one of the reasons for this is somebody believes that the custodial parent is spending too much money on themselves and not necessarily information or evidence that the custodial parent is not spending money for the benefit of the child. I think you create as much of a problem for the court as I think people are legitimately trying to address on the custody side, because it's going to be...that same court is going to be the trier of fact of whether or not expenditure A or expenditure B is something that you could argue is for the benefit of the child. I mean I think you'll be creating more problems than you solve. As someone stated, people talk about amicable divorces. I've handled a few in my career. I haven't met one yet. So, you know, these...they're never, quote, totally amicable. So I mean there are issues and unfortunately children get caught in the cross hairs. And Ms. McCormick, for example, I mean if she was a stay-at-home mom and continues to be a stay-at-home mom and all of the child support is used to take care of her to continue to be a stay-at-home mom, so if she used it for personal hygiene matters someone could argue that's not for the benefit of the children. But she was a

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stay-at-home mom. [LB844]

SENATOR HADLEY: Sure. [LB844]

SENATOR COUNCIL: Okay? So those are the problems. I just wanted to point some of the... [LB844]

SENATOR HADLEY: Okay. Sure. And you know, thank you, Senator Council, because I guess the only thing I would say, I think there might be a continuum. And when you only have one, I think, yes, only one accounting has been granted in 20 years in Sarpy County, so is the system so restrictive now that when there is even egregious problems you can't do anything about it? I don't know. I'd be willing to work with the committee to look at that, but it seems to me that if in a county like Sarpy there's only been one accounting ordered in 20 years, I'm trying to figure out what... [LB844]

SENATOR COUNCIL: Well, all I can say to that, Senator Hadley, is somebody had to file an application and the application had to be supported by something, possibly an affidavit, and the court determined that the affidavit wasn't enough to establish that there had been abuse warranting an accounting. I can't explain that. But to say there's only been one granted, the question needs to be how many were applied for? [LB844]

SENATOR HADLEY: And I think...I guess the concern I tried to raise is that if you don't have access to records, how can you say that there's been an abuse? I don't know. Maybe it's a chicken and the egg. [LB844]

SENATOR COUNCIL: But that's, like I said, that's what I'm saying. I don't know how many applications for an accounting... [LB844]

SENATOR HADLEY: Sure. [LB844]

SENATOR COUNCIL: ...have been filed in Sarpy. [LB844]

SENATOR HADLEY: Yeah. [LB844]

SENATOR COUNCIL: It may be that's the only accounting... [LB844]

SENATOR HADLEY: Only one and they did it. [LB844]

SENATOR COUNCIL: ...is the one that was filed. I don't know. [LB844]

SENATOR HADLEY: Okay. [LB844]

SENATOR COUNCIL: At least from my experience in Douglas County, I know of none

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that have been filed,... [LB844]

SENATOR HADLEY: Okay. [LB844]

SENATOR COUNCIL: ...but that's just my experience and I'm only one of thousands of lawyers practicing in Douglas County. That's all. [LB844]

SENATOR HADLEY: Anything else? [LB844]

SENATOR ASHFORD: Galen, and if you would, I'm interested in getting a very concise summary of the other states that have adopted this presumption language. I am interested in that. [LB844]

SENATOR HADLEY: Okay. [LB844]

SENATOR ASHFORD: And I'd like to get that in a very concise... [LB844]

SENATOR HADLEY: We will do that. [LB844]

SENATOR ASHFORD: ...not a long, drawn out thing but... [LB844]

SENATOR HADLEY: Yeah, I'm not a lawyer, an accountant. We'll get that very...we'll get it as concise as possible. [LB844]

SENATOR ASHFORD: Well, I am but I still want it in a concise... [LB844]

SENATOR HADLEY: Okay. I'd be happy to do that. [LB844]

SENATOR ASHFORD: Okay. And you certainly, I'll say this, you don't bring us matters that are not weighty. I will tell you that. [LB844]

SENATOR HADLEY: Well, thank you. Should I take that personally or... [LB844]

SENATOR ASHFORD: Any way you like, Senator Hadley. [LB844]

SENATOR HADLEY: Okay. I appreciate the time you took to hear it. It is an important issue and I think a dialogue needs to continue. Thank you, Senator Ashford. [LB844]

SENATOR ASHFORD: Thank you. I appreciate it. Actually, I've been...that concludes the hearing on this bill. We have...I have been offered a suggestion. Oh, wait just a second. There are two bills, I'm not even sure if Senator Lautenbaugh that offered this or maybe it was Senator Coash, and he's always got...he has good ideas and I think I'm going to take him up on it. We have two bills, LB935 and LB1086, and because Senator

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Lautenbaugh is here and Senator Smith is here, I think what we'll do is we're going to do something we do once in a while and that's going to take both bills together, because they both deal with grandparents' rights. So what we'll do is I'll ask Senator Smith to introduce LB935 and then Senator Lautenbaugh will introduce LB1086, and then after that we will take testimony on both bills. So if you're here to testify on LB935, for example, and LB1086, you can voice your...you can be for...tell us whether you're for or against both bills or one of the bills. Or if you just want to testify on one of the bills, come up afterwards as well and tell us how you feel about the one bill you're concerned about. But we're going to take both bills together, so hopefully that was clear. Senator Smith, would you go ahead and introduce your bill. And then we'll go to...then Senator Lautenbaugh will introduce his bill, and then we'll go to testimony.

SENATOR SMITH: All right. Well, thank you and good afternoon, Senator Ashford and members of the Judiciary Committee. For the record, my name is Jim Smith, J-i-m S-m-i-t-h, and I represent the 14th Legislative District in Papillion. I am here today to introduce LB935. LB935 would make changes to the laws governing child visitation. I did introduce this bill after being contacted by a constituent. And though I was not able to help this person's individual case, their situation none the less brought to my attention a provision in law that I think should be examined. I want to give you a little background first and I will do so without divulging any confidential information. My constituent is a great-grandparent. For nearly a year and a half, this person's grandchild and great-grandchildren lived in their home. Due to certain circumstances, the state began the process of terminating parental rights and eventually the children were moved into a foster home. My constituent has not seen the great-grandchildren, with whom they had developed a strong relationship, now for almost nine months. Again, I did not get involved in this person's case as I know there are several sides to these situations. But it did occur to me that this individual had absolutely no avenue to even begin to seek visitation, and the child and the children had no opportunity to continue contact with the person that was an anchor in their turbulent lives. Our law allows only grandparents, not great-grandparents, to petition a court for visitation rights. With our ever-changing family structure, I think it is prudent to consider changing this law to reflect different possible scenarios and to recognize that there could be other individuals that are positive influences in a child's life, once again an anchor for the child, if you would. LB935 would allow a person with a legitimate interest to petition the court for such visitation. Person with legitimate interest means, but is not limited to, grandparent, great-grandparent, stepparent, former stepparent, family member, and guardian. Please keep in mind this only gives a person the ability to petition the court, not a guarantee of visitation rights. It is ultimately up to the court to determine if a significant beneficial relationship exists and if it is in the best interest of the child to continue that relationship. With so many concerns about child welfare today, this is a positive step for the child to provide them an anchor during a very difficult time in their life. LB935 also expands the situations in which a person with a legitimate interest may petition for visitation. Under current law, the petition may be filed in the following circumstances: the parents are deceased, the

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marriage of the child's parents has been dissolved or a petition has been filed, or the parents of the child have never been married but paternity has been established. LB935 adds the situation of when the legal custody or parental responsibilities have been allocated to a party other than the child's parents or the child has been placed outside the home. This does not expand to when a child has been legally adopted. However, this language would cover those cases when a child has been placed in foster care or may be in a residential treatment center. Perhaps a child is in foster care and the parents are working toward reunification. These children are already experiencing disruption and I think it would be beneficial in working to keep a family intact by having the consistency of a positive relationship. The changes I am seeking aren't without precedence. All 50 states have some sort of visitation law and there are some that do allow people other than just grandparents to seek visitation. In addition, there are states that take into consideration the situation where a child is not in the custody of his or her biological parents. With that, I will conclude my testimony and will happily answer any questions you have. [LB935]

SENATOR ASHFORD: Well, thank you, Senator Smith. Any questions? Any questions of Senator Smith on this matter? Senator Council. [LB935]

SENATOR COUNCIL: Thank you, Senator Smith. Did your research include in those cases, in those states, and in those situations where a child, for example, is a ward of the state? This is my understanding, and somebody can correct me if I'm wrong, but that the juvenile courts already have a process for seeking visitation by someone other than the biological parent when the child is a ward of the state. Does anybody...am I correct in my...so... [LB935]

SENATOR SMITH: Well, beyond grandparents, I think there are perhaps 16 states that consider visitation by something beyond a grandparent, and while the other testimony is going on I will look into that a little bit further for you and try to answer that in closing. [LB935]

SENATOR COUNCIL: Yeah, okay, because our current...the current statute really doesn't speak to wards. It speaks to children of deceased parents, children whose parents were never married but paternity has been established, and children whose parents have divorced or are in the process of being divorced, and that's the grandparent visitation. But if the child is a ward, it's my understanding of the juvenile court system that the juvenile courts have a process for granting visitation when a child has been placed outside of the home of the biological parent. But if that's something...if you could look into that. [LB935]

SENATOR SMITH: Yeah. Certainly. [LB935]

SENATOR COUNCIL: And maybe if there's some testimony from members of the legal

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community,... [LB935]

SENATOR SMITH: There could be someone that... [LB935]

SENATOR COUNCIL: ...I'll ask them as well. [LB935]

SENATOR SMITH: Absolutely. If someone that follows me is not able to answer that, I will certainly have...try to have an answer for you in closing. [LB935]

SENATOR COUNCIL: Okay. [LB935]

SENATOR ASHFORD: Thanks. Thanks, Jim, very much. [LB935]

SENATOR SMITH: Thank you. [LB935]

SENATOR ASHFORD: How many testifiers do we have? Well, let's go...let's go to...well, let's not. Senator Lautenbaugh has...

SENATOR LATHROP: Oh, there he is.

SENATOR ASHFORD: There he is. He's popped through the door. He's going to come out here soon. We'll give him a second here. We'll give him...

SENATOR COASH: Here he is.

SENATOR ASHFORD: There he is. All right. Senator Lautenbaugh is next with LB1086. [LB1086]

SENATOR LAUTENBAUGH: Thank you, Mr. Chairman and members of the committee. LB1086 simply provides that another grounds on which...by which a grandparent may seek visitation and adds if the grandparent has made prior reasonable efforts to have visitation with the minor child but the child's parents have refused such visitation. This is a...well, it's a policy change for us, plain and simple. There's no other way to describe it. This was brought to me by an attorney who practices in this area. He will be testifying very soon on this, I believe, as are some other parties who have been involved in similar situations. I would be happy to answer any questions you might have but I'd prefer to do it in closing if I could, but I will be here for that. [LB1086]

SENATOR COUNCIL: Okay. You promise to be here for that? (Laugh) [LB1086]

SENATOR ASHFORD: We'll give you that. [LB1086]

SENATOR LAUTENBAUGH: I promise to be here for that. [LB1086]

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SENATOR ASHFORD: Senator Lautenbaugh has promised. Okay, with that, why don't we do this, let's...anybody here...how many here would like to talk about the first bill, LB935? Okay, Amie is here for that. And then how about LB1086? Okay, so not so many. Amie, why don't you come on up and then we'll...and while you're up here you can also talk about LB1086. Tell us if you're for/against either bill or both, and then go ahead and give us your testimony. [LB935 LB1086]

SENATOR COUNCIL: And, Mr. Chairman, point of procedural clarification: If she's discussing both bills, does she get six minutes? [LB935 LB1086]

SENATOR ASHFORD: Sure. [LB935 LB1086]

AMIE MARTINEZ: I don't need six minutes. [LB935 LB1086]

SENATOR ASHFORD: Sure. [LB935 LB1086]

AMIE MARTINEZ: Thank you so much. [LB935 LB1086]

SENATOR ASHFORD: You could have six minutes. [LB935 LB1086]

AMIE MARTINEZ: Thank you so much. [LB935 LB1086]

SENATOR ASHFORD: Senator Council is good at getting these details right, so I'm glad she's here. Go ahead, Amie. [LB935 LB1086]

AMIE MARTINEZ: I like it. I like it. Good afternoon again. My name is Amie Martinez, M-a-r-t-i-n-e-z, already having made introductions, I'll skip that, here on behalf of the Nebraska State Bar Association. The Bar Association does oppose LB935 and LB1086. Both of these bills have gone through the very same process that I mentioned to you earlier, and I'll save three minutes of my time by not repeating that now. With regard to LB935, I would first like to say, having taken Senator Coash's remarks to heart but already having been willing to say this before, we're certainly willing to work with Senator Smith to address the issues that have arisen in regard to his constituent's situation and to maybe come up with some language that might be suitable. But right now, as the proposed statute is worded, it does widen this to any party with a legitimate interest and it doesn't include necessarily a requirement that the party be related to the individual. I would refer the committee to the case of Troxel v. Granville, which is a 2000 United States Supreme Court case where in the Supreme Court held that a statute which was somewhat similar in Washington violated the parents' Fourth Amendment right to basically raise their children and it violated, as the court said, the liberty interest, which is the interest of parents to control their care, custody and control of their children which is, according to the court, the oldest of the fundamental liberty interest recognized

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by the court. And interestingly, that was the court citing the case of Meyer v. Nebraska. So it is a longstanding tradition in Nebraska that when we look at parents who are raising their children, that they should be afforded an opportunity to decide what is in a child's best interest. If I could, unless there are questions about this particular bill, staying true to my word I will be very brief. [LB935 LB1086]

SENATOR ASHFORD: Well, the only point I'd make is I think Senator Smith has brought us a case that's worthy of further review in the bar and...because one can't disregard that kind of situation. [LB935 LB1086]

AMIE MARTINEZ: Sure. [LB935 LB1086]

SENATOR ASHFORD: Yeah. [LB935 LB1086]

AMIE MARTINEZ: And I wholeheartedly agree and I appreciate you saying that because I do agree with Senator Council that in this instance where this particular individual is standing as a great-grandparent, it's actually more unique because the child is under the jurisdiction of the state of Nebraska as a ward. And that does create a whole separate proceeding in a juvenile court, and as part of that process any interested party can come in and petition the court for visitation rights. It would be addressed through what we call the court report and case plan, which is reviewed periodically by the court, depending on how often that is. You can request the hearing at any time. Typically those are held on a 90- to 60-day basis. So I do think that in this instance, regardless of what happens with this, there may be an avenue for that constituent, and it may be something that we can better address in a different...again, with some different wording. LB1086, this broadens the situation, as I think Senator Smith indicated, to three times when a grandparent can bring an action. That's when a parent is deceased, it's when parents have divorced or are divorcing, or when there's been a paternity case that's established. But also it requires that there has been an existing relationship with the minor children beforehand as well as a requirement that it be in their best interest for that relationship to continue. As I read...as we read LB1086, it does not require that there has been an existing relationship; rather, it says "a potential relationship...or a relationship that may exist in the future." So it really, really broadens the net, if you will, or makes a wider net. There are obviously the same concerns with this bill as there were with LB935 as it relates to the Troxel v. Granville holding and the liberty interests. [LB935 LB1086]

SENATOR ASHFORD: Seeing no questions, thanks, Amie. [LB935 LB1086]

AMIE MARTINEZ: Thank you very much. [LB935 LB1086]

SENATOR ASHFORD: Who would like to come up next and testify on either of these two bills or both? Okay. Welcome back. [LB935 LB1086]

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DENNIS LEE: (Exhibits 6-7) Thank you, Senator. [LB935 LB1086]

SENATOR ASHFORD: Different topic but... [LB935 LB1086]

DENNIS LEE: Different topic, different industry. Senator Ashford, members of the committee, my name is Dennis Lee. I'm an attorney in Omaha. I've been before this committee before but this is on a different issue. As Senator Lautenbaugh indicated. I've been practicing law in Omaha for 31 years and part of my practice also involves family law and family issues. And there have been several issues over the course of my years where grandparents have come to me seeking grandparent visitation and right now our statute is limited to just three issues, and Senator Smith covered those fairly well. And I've asked the page to hand out to you, I've prepared a memorandum addressing this issue. But more to the point is what LB1086 does is it would expand the...and add an additional criteria to the current three in the statute, which is the grandparent has made prior reasonable efforts to have visitation with the minor child but the child's parents have refused such visitation. Amie mentioned the Troxel decision and it's a good point to discuss, and I'll be very brief here because I've outlined it more particularly. But Justice O'Connor, in her 2000 decision, kind of brought this to the forefront of what we're here for today. She wrote that the state's nonparental visitation statutes are further supported by a recognition that children should have the opportunity to benefit from relationships with statutorily specified persons, for example, their grandparents. I've outlined other issues of her Opinion in my memorandum. But as I sit around here today, many of you are in my same age group and I know that when I was a youth in the '60s and early '70s, I'm the person I am today because of the involvement I had with my grandparents, and I suspect that many people in this room probably can reflect now back on some of their involvement with some of their grandparents. Due to some changes "intrafamily," societal relationships, there seems to be several reasons. And one of the things you have also is a letter of support from Kathleen Schmidt, who's an attorney in Omaha and I believe also a member of the family law committee of the bar, and Kathleen has cited several instances in her report as where LB1086 would apply. The issue that's before us today is that ultimately we have 93 counties in Nebraska and district judges in each of those counties. If this body were to pass this bill, does that mandate that the court has to give visitation to a grandparent? Absolutely not. It's different from Troxel because Troxel was any person anytime. LB1086 just says a grandparent may petition the court for visitation if there's a reasonable basis to do so and attempts have been made with the parent to obtain such visitation. That is way far outside of the restrictions of the Troxel decision. In LB1086, what this body would address would be the fact that there are instances, based upon our inner family dynamics that have developed not just in Nebraska but all over where grandparents have made reasonable efforts with their children to see their grandchildren; those efforts have been denied. Are some of those reasons good? Yeah, probably, but there's also instances where they're bad. Ultimately, it's up to the judge to determine, as the statute

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now says, with clear and convincing evidence what's in the best interests of the child. What was really interesting for me, as I did the research for this memorandum that you have now, is that there are 30 states across the country that have expanded their...every state, as Senator Smith indicated, has a grandparent visitation right. I found it particularly interesting in the table prepared by the Family Law Quarterly of the ABA, they count Puerto Rico as a state. So I miscounted. I originally counted 31. In actuality it's 30 and you'll see that on Exhibit A. But 30 other states have considered and adopted grandparents visitation extensions that would address just what LB1086 does. In addition, my last count there are four other states, including Nebraska, that are now considering expanding grandparent visitation to instances where parents have denied visitation with the grandparent and reasonable efforts have been made by the grandparent to do this. What's the test? The test here is the district judge. We have to have confidence in the judiciary and the district judge has to see, by clear and convincing evidence, that it's in the best interests of the grandchild to have the grandparent two hours a month, two hours a week, whatever. You can't have a standard but it's up to the individual judges to so determine that. In this instance, grandparents, unless one of those three instances are in place where the parent is deceased, the marriage is in the process of being dissolved or is dissolved, or the parents have never been married but paternity is established, if you don't think in those three the grandparents don't have any visitation rights. I see my light is up so... [LB935 LB1086]

SENATOR ASHFORD: Dennis, I just, as a comment, and thanks, this is actually very well written, not that... [LB935 LB1086]

DENNIS LEE: Thank you, Senator. [LB935 LB1086]

SENATOR ASHFORD: ...I didn't expect it wouldn't be, but it's... (Laughter) But to be honest, honestly, we sit in here every week and for many years now and what struck me about today is, you know, whatever the right policy is, we'll have to sort through all this. But it is clear to me that because we've had such a breakdown of the family unit, since we were kids probably quite a bit, and that... [LB935 LB1086]

DENNIS LEE: Um-hum. [LB935 LB1086]

SENATOR ASHFORD: ...and these kids are...many more children are at risk. And you know, they're not getting to school or they're getting into behavioral issues and it crosses all socioeconomic lines. [LB935 LB1086]

DENNIS LEE: Oh, it does. [LB935 LB1086]

SENATOR ASHFORD: And it's rural and it's urban and it's people who think it's somehow...it only applies to somebody over there, it just isn't accurate. And you know the best line of defense is the family and if...I don't know what the answer is exactly but I

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think what's been proposed today, these are good...all good, solid suggestions, and we do need to, to some extent, and it's not a criticism of the bar, but I think we need...we over lawyer sometimes to the point where we don't see the forest for the trees. And the overreaching problem is the breakdown of the family and these children are losing their way. It's just so darn tragic. And then the outside influence of drugs and all that sort of thing which applies, as I was saying the other day, my 9th grader at Westside High School tells me he can get drugs any time he wants. [LB935 LB1086]

DENNIS LEE: Um-hum. [LB935 LB1086]

SENATOR ASHFORD: He doesn't get them and he doesn't want to get them hopefully. But to be able to think about a way of bringing every family resource possible into that child's life is more important today maybe than ever. And so I think these are all thoughtful, caring people that are here expressing their caring nature. So I don't know what the answer is, but I sure think this is something worthy...all these measures are worthy of great...yes, Senator Council. Excuse me for that little speech but I... [LB935 LB1086]

SENATOR COUNCIL: It's quite all right, Chairman Ashford. Thank you, Denny. I reviewed the bill, I reviewed your memo, and thank you very much for the memo, but I'm going to be very candid with you. I have a problem with the bill and the problem I have is that looking at the three longstanding existing grounds for grandparent visitation, under the longstanding existing grounds there had to be evidence concerning the beneficial nature of the relationship and that a significant beneficial relationship exists or has existed in the past. Okay? That's been it in the case where the parents are deceased, where the parents are divorced or divorcing, in the case where they were never married but paternity was established. Even under those three standards that's been in existence forever, there had to have been some relationship between the grandparent and the child in order to fall under here. Now with this, what's being proposed is not only a grandparent who, for whatever reason, and I'm going to tell you, can't get along with an obviously married child. Because the parents aren't deceased, they're not divorced or divorcing, it's not a situation where the parents were never married, so the only other situation I can think of is where the parents are still married and there hasn't been a relationship between the grandparent and the child. And I just...I mean I just...I have a problem with saying that...and despite the fact that I know how family structures have changed, I have a problem with saying that a grandparent's right supersedes that married couple's right to decide what's in the best interest of their child, particularly if it is a situation where a beneficial relationship may exist in the future and there's a potential, but there hasn't been one in the past. You follow where...? [LB935 LB1086]

DENNIS LEE: I do, Senator. And with regards to that, I agree with your concerns. And when we look at 43-1802, that was adopted in 1986, so we're 24 years out from '86 and

we haven't changed it since then. Supreme Court upstairs has had a chance to review it ten times and at not one point has it been declared unconstitutional. I think the bar's position on it, in opposition to it, is based on Troxel. I can share your concern with regards to a potential relationship because you could have, I could see conceivably, an instance where a grandchild is born today, parents and grandparents are on the outs, child grows up, gets to one, two, starts to toddle, then starts to walk, and the grandparents say, hey, when are we going to see Johnny or Sally, and mom and dad say, sorry, not happening. I think in the present status of LB1086, with regards to "potential relationship...or may exist in the future," I think that would be, in conjunction with section (d), I think that would be a home run. But from a practical standpoint, from what I see in my practice, what I believe Kathleen sees in her practice, and other attorneys that I've talked to in different areas of the state, is that the biggest concern in the "intrafamily" dynamics in this area of grandparent visitation is section (d). I understand, Senator, your concern about "potential relationship" because that's a totally difficult standard. I mean it may vary from one county to the next. Heck, we've had testimony today about different judges doing a different thing on custody issues. But I think when you...even if you were to take this bill, pass it, General File, Select File, Final Reading, Governor signs it and it becomes effective, it still requires that the district court make a finding based upon clear and convincing evidence of what's in the best interest. In doing so, as the Senator well knows, is I would present evidence to the district court in favor of my clients if I represent the grandparents saying, this is what the issues are, this is why we fit into this criteria. The attorney that would be representing the parents or the parents on their own matter could say, no, we object from a parental right issue for these reasons. And I think it's not necessarily the best choice, to address Senator Ashford's thoughts about the changes in family dynamics since this bill was adopted in '86, for us to take an all-inclusive approach that we're going to take the grandparents and we're going to put them over here except in those three instances. If they meet one of those three criteria then we'll be glad to give them visitation. And those three criteria, as Nebraska and each every other state took the step in the grandparent visitation back, us in '84, things have changed. And now 30 other states said, you know, things have changed; the dynamics have changed. We need to expand it to just what we're proposing in LB1086. So I concur, Senator, with your concerns about where it relates into parental rights and with regards to potential relationship, because that's kind of a standard that's going to be up to each judge, but with regard to section (d) and leaving the balance of section (2) the way it is, I think, as I noted in my memo, I think that would be a fair and common-sense and very well-thought-out approach to bring Nebraska's grandparents' visitation act, as proposed in LB1086, up to what the other 30 states have done. [LB935 LB1086]

SENATOR COUNCIL: Okay. And...but so I'll be clear, my problem runs as deeply to (d) as it does to section (2) because... [LB935 LB1086]

DENNIS LEE: I understand, from a parental right issue. [LB935 LB1086]

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SENATOR COUNCIL: Yeah, from a parental right issue. [LB935 LB1086]

DENNIS LEE: I understand. [LB935 LB1086]

SENATOR ASHFORD: But is there a way to do that? I mean is there way to balance that? [LB935 LB1086]

SENATOR COUNCIL: Well, I mean but the...in fact it's even more grave in the (d) area, okay? In (a) one or more of the children's parents are deceased, so you can understand. In (b) the parents have divorced or are divorcing. In (c) the parents never married. But in (d) what's going to fit in there is you've got a married couple who is saying... [LB935 LB1086]

DENNIS LEE: If I...and I'll address... [LB935 LB1086]

SENATOR COUNCIL: ...I mean I can't think of any other example that would fit in (d). [LB935 LB1086]

DENNIS LEE: Let me give you this example on (c). You still have the parents are not married but paternity has been established so you still have a family unit, albeit without a marriage. So you have a mother, you have a father, you have minor children. In (c) you could have a situation where if you're looking at the violation of...potential violation of parental rights is same thing in (c) that you would have in (d). You already have (c) because if you have a conflict between mother and...father and mother, father or mother of the child with one of the grandparents, then that's a situation where those grandparents, by virtue of the fact that the children are not married, can petition the district court on (c). The same issue, I believe, would be addressed in what's been proposed in (d) and ultimately the safeguard for the courts and the safeguard for this body is the court going to (2) as it is written now, not proposed, but as (2) that says clear and convincing evidence with regard to the best interests of the child. So really, Senator, you could have the same scenario in (d) that you currently have in (c). [LB935 LB1086]

SENATOR COUNCIL: Okay. And I'm going to respectfully beg to differ with you and this is why,... [LB935 LB1086]

DENNIS LEE: Okay. [LB935 LB1086]

SENATOR COUNCIL: ...because in (c) you don't have a married couple. [LB935 LB1086]

DENNIS LEE: Correct. You still have a family unit though. [LB935 LB1086]

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SENATOR COUNCIL: But you don't have a married couple. [LB935 LB1086]

DENNIS LEE: I agree. [LB935 LB1086]

SENATOR COUNCIL: And I mean I think, and maybe it's just me, but I think there's quite a distinction when you have a married couple. And I think probably in more instances than not (c) comes into play where the parents never married and they're not together. I think that's probably the more common situation. The child was born outside of marriage, dad admitted paternity, they don't cohabit, and dad's parents want to see the child. I mean at least that's been the one...the instances I've seen the most of. It's not...I'm not saying that it doesn't happen,... [LB935 LB1086]

DENNIS LEE: Uh-huh. [LB935 LB1086]

SENATOR COUNCIL: ...but more likely than not (c) comes into play in those situations where you have the mother who's telling the dad's parents you can't see the kids, but dad admitted to paternity but they never married. And like I said, I hope somebody can give me an example of what would fall into (d) other than a married couple saying you can't see the kids. [LB935 LB1086]

DENNIS LEE: Well, and I think I can address that because...and I understand, Senator, where you're coming from because my experience is the same. From a practical standpoint in (c), you have a determination of paternity and dad is gone. And so you have mother with custody of the kids and maybe dad's parents, in this case the grandparents,... [LB935 LB1086]

SENATOR COUNCIL: Exactly. [LB935 LB1086]

DENNIS LEE: ...want to get involved. And you're absolutely right. But nowhere with regards to (c), (d), or (a) will you find the M word of "marriage." You're only going to see it in (b). And while you and I are of the same generation in terms of marriage is marriage and cohabitating is cohabitating, the actual reality of it is the only place you're going to find in the current statute of 43-1802 of marriage is going to be in section (b)... [LB935 LB1086]

SENATOR COUNCIL: B. [LB935 LB1086]

DENNIS LEE: ...only as it relates to dissolution or pending dissolution. So (a), (c), and what's been proposed as (d) would address either a marriage situation or a situation where a child is born from people that are cohabitating. So that would be my answer to your question in terms of marriage as it relates to the family relationship of a nonmarried unit. [LB935 LB1086]

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SENATOR ASHFORD: Okay. Good discussion. (Laugh) [LB935 LB1086]

DENNIS LEE: I would like to tell the committee that Kathleen Schmidt was planning on being here today. She had a schedule conflict. She asked me, I haven't elevated myself to state senate, even though in the last sentence of her letter you'll see to me it says thank you for your consideration of this legislation. So she's not thanking me; she's thanking you. [LB935 LB1086]

SENATOR ASHFORD: Well, maybe it's one of those age things or... [LB935 LB1086]

DENNIS LEE: Could be. Yeah, it could be because... [LB935 LB1086]

SENATOR ASHFORD: Yeah. But, Denny, thanks very much and... [LB935 LB1086]

DENNIS LEE: Thank you, Senators. And I appreciate you considering this legislation. [LB935 LB1086]

SENATOR ASHFORD: Thank you. Do we have another...someone else who'd like to talk on these two bills or one of them? Yes, sir. Welcome. [LB935 LB1086]

HAROLD WHEELER: (Exhibit 8) Thank you. I'm Harold Wheeler, H-a-r-o-l-d W-h-e-e-l-e-r. I reside in Tamora, Nebraska, and I appreciate Senator Ashford and the rest of the committee's opportunity to speak to you today. I represent AARP and we support LB1086. Grandparents can play an important role in the development of their grandchild, but in some circumstances grandparents become estranged from their adult children and, as a consequence, they do not have the opportunity to have a positive influence on their grandchild's life. AARP has conducted a survey research of grandparents and we find that there are special roles that grandparents see that they have in their grandchild's life. It's not surprising that you will find that spoiling of grandchildren is most often that special role. However, there are other roles, including teaching a grandchild family history and facilitating participation in cultural events, listening to the problems that the child is encountering, and teaching values in which grandparents saw that they have a role in raising in a grandchild in partnership with the parent. LB1086 would broaden the circumstances under which a grandparent could petition the court to obtain visitation rights to include the beneficial nature of a potential relationship with the grandchild. We believe the proposed language of LB1086 is reasonable and provides courts with the necessary latitude as they consider whether established visitation rights is in the best interest of their child. You will find attached an e-mail communication that was provided by...to AARP Nebraska by a member from Gering in support of LB1086. On behalf of AARP, I encourage you to advance LB1086. Any questions? [LB935 LB1086]

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SENATOR ASHFORD: Any questions of Harold? Thank you, sir. [LB935 LB1086]

HAROLD WHEELER: Thank you. [LB935 LB1086]

SENATOR ASHFORD: Thanks for your testimony. Next testifier on either of these bills? (See also Exhibit 5) Okay, Senator Smith, would you like to close? [LB935 LB1086]

SENATOR SMITH: Yes, please. While I was sitting and just jotting down a few notes for my closing and I'm certain it will not do justice to this very, very important issue for children. And, Senator Ashford, I appreciate your remarks. I think you're right on the mark with this and this is a very emotional issue, but with our foster care system in such terrible shape, this is an opportunity where we can take care of the children that need that anchor in their lives. So I do appreciate the Bar Association and others bringing their concerns forward and for having the courtesy of letting me know about those concerns regarding LB935. As I mentioned, what I am proposing does exist in other states, and it is my understanding that in Troxel v. Granville, the law that was in question was a Washington law that was very broad. It allowed anybody to petition at any time and interfered with a parent's rights. Our current law and what I am proposing gives the rights to petition in specific limited circumstances. I'm not a lawyer but I believe that the issues raised in Troxel, visitation statutes must give deference to a parent's due process rights to deny visitation and the burden of proof that visitation is warranted falls on the person seeking visitation. Nebraska Statute 43-1802 states that the court can grant reasonable visitation rights if it determines, by clear and convincing evidence, that there is or has been a significant beneficial relationship and that such visitation will not adversely interfere with the parent-child relationship. If the committee does have any concerns regarding the constitutionality of LB935 and if we need to add language that makes it clear that our intent is not to interfere with a parent's constitutional rights, I would be more than happy to work with you and to clarify that. Thank you very much. [LB935]

SENATOR ASHFORD: Thank you. Thanks, Jim. Thanks for your comments. Senator Lautenbaugh, do you wish to sum up? [LB935]

SENATOR LAUTENBAUGH: Please. Thank you, Mr. Chairman and members of the committee. Sorry, I had to step out for a moment there in the middle. I do think this bill is important and I thought Mr. Lee raised some very good points. I won't belabor them again but I will, in listening to Senator Council's questioning of Mr. Lee, it struck me that what we're doing here and what we're actually saying, we're talking about what we think the practice is. But if you look at existing law in the proposed section (d), if in section (c) we're saying that the parents of the minor child have never been married but paternity has been legally established then a grandparent can petition for rights. Without adding section (d), we're basically favoring the rights of the grandparents of children of parents who aren't married. In other words, we're giving greater rights to terminate or avoid

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grandparent visitation to married couples rather than couples that just happen to be living together and have a kid. Now I know it's said that that's not the common practice and that's there's a different common practice and that usually one of the parents is out of the picture if they're not married, I understand that's what we're saying is the common practice. But I'm just reading what's here in statute. And, as Mr. Lee very correctly pointed out, there is still a safety valve on this when we're talking about the best interests of the child and relying upon the discretion of the district court, which we do for very important things, and this would just be one of those. I am the last person to come here and say we should denigrate parental rights or in any way diminish parental rights, but I think our current scheme actually gives greater rights to married couples rather than couples who may be living together but aren't married, which I don't think would be proper in this circumstance. I hope you look favorably upon this. I would like to work with the committee to address any concerns perhaps regarding the relationship that it would be future rather than already existing with the grandparent. I understand those concerns as well. But I think this is important and I don't think it's something that we should dismiss lightly. And I'd be happy to take any questions, as promised, because you were good enough not to ask them to me on the front end. [LB1086]

SENATOR ASHFORD: Thank you, Senator Lautenbaugh. Oh, Senator Council has... [LB1086]

SENATOR COUNCIL: Thank you, Chairman Ashford. [LB1086]

SENATOR LAUTENBAUGH: (Laugh) I'm shocked by this development. [LB1086]

SENATOR COUNCIL: You're shocked by this development. [LB1086]

SENATOR LAUTENBAUGH: Yeah. (Laugh) [LB1086]

SENATOR COUNCIL: No, but I appreciate the argument, Senator Lautenbaugh, about (c) because if the parents are cohabiting...well, if they're cohabiting, under existing law for the grandparent to seek visitation they would have had to have established that there's been a relationship. [LB1086]

SENATOR LAUTENBAUGH: Yes. [LB1086]

SENATOR COUNCIL: And so under LB1086 in its entirety, it does grant more rights to a grandparent of a married couple who's had no involvement with the child than the grandparent of an unmarried couple who's had a relationship with the child. Because under existing law you have to show that a beneficial relationship has...is now existing or has existed, even in the cohabitation situation. [LB1086]

SENATOR LAUTENBAUGH: That's true. [LB1086]

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SENATOR COUNCIL: Under the bill, if the couple is married, with (d), with the additional language in (d), the grandparent in that situation may have never had any contact with the grandchild. So we are elevating the married couple, the grandparents of a married couple above the grandparents, under existing law, of a couple that's just cohabitating. [LB1086]

SENATOR LAUTENBAUGH: I would say it's a tie, if this law passed as written, because we would also then be...the same potential relationship would apply to the children of unmarried parents. That, you know, future relationship would come into play on all, you know, (a), (b), (c), and (d), all four of them. So I mean it would certainly be a policy change and it would deal with a circumstance where, you know, we're talking about an infant, a very young child who has been...and the grandparents have been prevented from having any relationship, so they can't argue there's an existing relationship for that very reason. So this would be a policy change that I think would be important. It's something we should consider. It's different from what we're doing. I don't know how you could argue it is necessary or reasonably related to the purpose of regulating the legal profession or improving the quality of legal services available to those in the state because I think it's a policy completely unrelated to that, but I think it's a policy worth considering and changing. Thank you. [LB1086]

SENATOR COUNCIL: Okay. Well, that went further...that went beyond my question, Senator Lautenbaugh, but... [LB1086]

SENATOR LATHROP: Really? [LB1086]

SENATOR LAUTENBAUGH: (Laugh) I know that you'd never do that to me, Senator Council. [LB1086]

SENATOR COUNCIL: Yeah, no, absolutely not. And I will fundamentally, I mean bottom line, even with the existing law, you know, I...and I need it to be clear, my grandparents were extremely important to me. If my parents had done anything to try to keep me away from my grandparents, I'd be upset. And I'm also concerned about the flip side of that where you have a situation where there's such animosity between the parents and the grandparents and I don't even know how you can conclude that it's going to be in the best interests of the child to allow visitation, but... [LB1086]

SENATOR LAUTENBAUGH: Well, then presumably the judge would not so conclude under existing law or this. [LB1086]

SENATOR COUNCIL: Thanks. [LB1086]

SENATOR ASHFORD: Thanks, Scott. Any other comments? Thank you. Okay, let's go

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to Senator Pirsch, LB1172. Thank you, Senator Pirsch, for accommodating. We took two bills and put them into one. [LB1086]

SENATOR PIRSCH: Oh, no, I certainly understand.

SENATOR ASHFORD: LB1172, Senator Pirsch. Okay. [LB1172]

SENATOR PIRSCH: Yeah, thank you, Chairman Ashford and members of the Judiciary Committee. My name is...I'm State Senator Pete Pirsch, P-e-t-e P-i-r-s-c-h for the record. I am the sponsor of LB1172. And I am at this point in time going to have some amendments passed out here, I'm coming in to the committee with amendments. As a preliminary matter, the green copy of LB1172 was designed to serve as a placeholder of sorts. I do have an amendment. Many...if there's proponents or opponents who may...I think at this point they're aware of the fact and may change or may not change their positions overall based on the amendment. The overarching concept expressed in both the green copy of LB1172 as well as the amendment, which by the way contains the green copy proposal, the one proposal there, but also adds two more proposals, the overarching theme of all three and the amendment is the same, and that is that common theme is finding ways to eliminate unnecessary delays in child welfare cases. So the first proposal expressed only roughly in the green copy of LB1172 and even requiring perhaps more revision than is even reflected in the amended amendment, AM1957, is this. For a child up to five years old, if the child has been involved in foster care for continuously, consecutively over a year with a placement, excluding the home of the parent, that fact alone would allow a county attorney to petition to terminate the parental rights for such a child. Moving on, the second proposal, which is new via the white copy amendment, carries again that common theme of eliminating unnecessary delays, and it does so by creating a revolving loan fund named the Family Permanency Loan Cash Fund, and the revolving loan fund would hopefully eliminate the citing of financial resource limitations as a barrier, whether real or used as an excuse by a parent, to timely enrollment and completion of court-ordered services in furtherance of reunification. It happens not rarely that individuals ordered to obtain services by a court and who do not achieve those services for...after the court has a review and permanency planning hearing months and months and months after that initial order. Even though the parent has had the benefit of sliding scale for accommodation of their financial resources, the parents return to court several months later and cite that financial hardship as an obstacle they just could not overcome, couldn't pay for the services so they haven't begun the services. And essentially we're back in the starting point, at the very same starting point that you were months and months earlier. So this would hopefully eliminate that, the citing of that hardship as a barrier, preventing those services. It will allow for immediate access to a loan to be used exclusively for paying a service provider's fee, a court-ordered service provider's fee. In this manner, unnecessary delays on the front end will be eliminated. We'll take care of worry about squaring on the back end of cases after you're on the road, the path to recovery and

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reunification. The third proposal, which is also new via the amendment, carries again the common theme of eliminating unnecessary delays in child welfare cases. It's a simple concept which requires the department to collect information that may not be collected uniformly currently. The third proposal would require the department to document the data upon which the department makes a referral for services. And so in this manner we can tell in a way that we can't necessarily now that the department is following...is making a timely referral and that the...you know, oftentimes after months and months have passed there is some looking backwards with respect to why did the delay occur. There is disagreement as to the date of the referral and we don't currently have a good method, a uniform method of collecting that data so that you can patently observe when that referral was made. So I think that requiring the documentation of this date would be helpful in the state analyzing where the delays are coming from. So if the referrals are being timely made and yet there is a delay in the time that the services are actually being...that the services are being availed upon by the parents, then that would give a better...it would give us a better understanding if it was potentially parents who just aren't availing themselves of services which are accessible or whether it is we have to build out a category of services in the state that doesn't currently exist. So in closing, these concepts here are admittedly not quite ready for prime time and not refined to the level that they should be in terms of reaching the floor. But I welcome the opportunity of working with this committee and key stakeholders, many of whom I suspect will be testifying here today. Really, the imperative of finding ways to take away unnecessary delays in the current child welfare system is I think pretty clear. The length of these cases in the whole are just too long and they cannot be, because of their length, serving the best interest of the child. So my goal is to kind of get the conversation going with respect to this overarching theme, needing to examine different steps that we could possibly take to get rid of this...to get rid of all unnecessary delays in the system. That being said, I would avail myself of any questions you may have at this time. [LB1172]

SENATOR ASHFORD: Thanks. And, Senator Pirsch, just so we all know here, this is a big new proposal and... [LB1172]

SENATOR PIRSCH: Yes. [LB1172]

SENATOR ASHFORD: ...and it's not something that you're advocating that we debate this year, but it does have some ideas on time lines that will help us. [LB1172]

SENATOR PIRSCH: These are themes that...and there's a number of other bills that are circulating through... [LB1172]

SENATOR ASHFORD: Right, HHS. [LB1172]

SENATOR PIRSCH: ...Health and Human Services Committee. And so I think that the sooner that we can put concepts out there on the table and... [LB1172]

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SENATOR ASHFORD: Right. [LB1172]

SENATOR PIRSCH: ...get awareness of those in the community, different approaches, and talk about the merits and weaknesses of those, I think it's in everybody's advantage. [LB1172]

SENATOR ASHFORD: Thanks, Senator Pirsch. [LB1172]

SENATOR PIRSCH: Sure. [LB1172]

SENATOR ASHFORD: All right. How many...do we have testifiers on this bill here today? Would you like to come on up and...proponents? Are you for it? Anybody for it? How about opponents? [LB1172]

SENATOR PIRSCH: And, Senator Ashford, I do have two Revenue Committee bills that I am introducing... [LB1172]

SENATOR ASHFORD: Oh. [LB1172]

SENATOR PIRSCH: ...and so with your permission, I may be back. If I'm not then I'll just waive my closing. [LB1172]

SENATOR ASHFORD: Okay. If we're not here when you get back, we've left. Okay. You know, we like to state the obvious here. Okay, I'm sorry for the levity. Opponents? [LB1172]

ROBERT McEWEN: (Exhibit 12) I'd like to thank...oh, let me start with my name is Robert McEwen, R-o-b-e-r-t M-c-E-w-e-n. I'm a staff attorney at Nebraska Appleseed. Chairman Ashford and members of the Judiciary Committee, on behalf of Nebraska Appleseed Center for Law in the Public Interest, I am here to testify in opposition to LB1172. We've not really had a chance to review the amendments that Senator Pirsch offered thoroughly, so my testimony will only be in regards to how the original bill could have been improved. We share the goal of finding permanency for foster children and understand that's the intent of this bill. But we do not believe that the approach of the former bill, LB1172, is the best manner in which to ensure permanency for younger children for several reasons. First, in many cases reunification is not possible with a 12-month time period because it may take longer for a parent to rehabilitate him or herself, especially in cases where the parents are suffering from mental illness or substance abuse. It's my understanding that some of the amendments to the bill could address these. Again, we haven't reviewed those so we would like to work with Senator Pirsch on some of those issues. According to DHHS data, there are 65.2 percent of foster children that were able to reunify within a 12-month period in December of 2011.

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There was also a 24.9 percent mark of children in the foster care system who were able to reunify after 12 months, in between 12 months and 24 months. LB1172 could potentially prevent these children under the age of five, who otherwise would be able to reunify with their parents, from safely reunifying in a period after 12 months. While there are several exceptions, let me speed this up, the only way to truly improve permanency for children in the foster care system is to focus on improving the child welfare system as a whole. There are several ways to do this, one of which is to reduce caseloads so caseworkers can put more individual attention into accessing services and identifying problems within the family. Another solution, as Senator Pirsch alluded to in his amendment, would be improving access and immediateness of services and treatment for the families and children. Nebraska Appleseed recently reached out to our Listserv of nearly 300 juvenile court attorneys and asked them to share some of their feedback on LB1172. They identified several problems with the bill as it stood, one of which being that the bill could potentially raise substantive due process and equal protection issues. Another issue was whether the bill was actually necessary because the county attorney currently could file a petition at 15 months and the existing framework within Nebraska allows the county attorney to file sooner in necessary cases. In conclusion, we strongly agree that a timely pathway to permanency is essential for younger children in the child welfare system, and we look forward to working with Senator Pirsch on some of the amendments that he had offered. And we'd like to thank the committee for their commitment to increased permanency for younger children. But as the bill stands, we would request that the committee does not advance LB1172. [LB1172]

SENATOR MCGILL: All right. Thank you for your testimony. Any questions from the committee? No, I don't see any. Thank you very much. [LB1172]

ROBERT McEWEN: Thank you. [LB1172]

SENATOR MCGILL: Is there anyone else here to testify in opposition? (See also Exhibits 9-11 and 13) Anyone here neutral? Well, that ends my reign as Vice-Vice Chair for the afternoon and the hearing. [LB1172]