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Judiciary Committee
February 24, 2017

[LB188 LB300 LB367 LB411]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 24, 2017, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB411, LB188, LB300, and LB367. Senators present: Patty Pansing Brooks, Vice Chairperson; Roy Baker; Steve Halloran; Matt Hansen; Bob Krist; and Adam Morfeld. Senators absent: Laura Ebke, Chairperson; and Ernie Chambers.

SENATOR PANSING BROOKS: I think we'll just go ahead and get started. People will come in. Good afternoon and welcome to the Judiciary Committee. My name is Patty Pansing Brooks. I'm representing Legislative District 28 right here in Lincoln and I'm the Vice Chair of the Judiciary Committee. I'd like to start off by introducing the members of the committee. On my left, go ahead and introduce yourself, Senator Halloran.

SENATOR HALLORAN: Well, thank you. Senator Steve Halloran, District 33, which is Adams County, western and southern Hall County.

SENATOR PANSING BROOKS: And Senator Hansen will be joining us shortly. Go ahead, Senator Baker.

SENATOR BAKER: Senator Roy Baker, District 30.

SENATOR PANSING BROOKS: And I believe Senator Morfeld and Senator Krist and Senator Chambers will be joining us at some point. Assisting the committee today are Laurie Vollertsen, our committee clerk; Tim Hruza, one of our two legal counsels; and the committee pages are Kaylee Hartman and Toni Caudillo. On the table in front of you, you will find some yellow testifier sheets. If you're planning on testifying today, please fill one out and hand it to the page when you come up to testify. This helps us keep an accurate record of the hearing. There is also a white sheet on the table if you do not wish to testify but would like to add your name to the record for your position on a bill. We will begin testimony with the introducer's opening statement. And following the opening we will hear from proponents of the bill and then opponents, followed by those who will be speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We also ask that you begin your testimony by giving us your first name and last name and then spelling your names for the record. If you're going to testify, we ask that Senator Ebke has initiated an on-deck chair which is right in the front and we would like you to keep that filled so that we have an idea how many people are going to be speaking. If you have any handouts, please bring up at least 12 copies and give them to the page. And if you don't have enough copies, the page can make you more. We will begin by using a five-minute light rule. And so when you begin your testimony, the light on

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the table will turn green. The yellow light will be lit to indicate a one-minute warning. And when the red light comes up/on, we would ask that you wrap up your testimony and finish as soon as possible. As a matter of committee policy we'd like to remind you that cell phones and other electronic devices aren't...they're not allowed during the public hearings but senators use them periodically to either take notes or stay in contact with staff. So at this time I'd like you to look at your cell phones and make sure they are in the silent mode. And also, outbursts or applause are not tolerated and such behavior may be cause for you being asked to leave the hearing room. And also one more thing is that committee members will probably be coming and going, as is the case with Senator Ebke who is introducing a bill in another committee, so this has nothing to do with the importance of your bill or of the testimony being heard but we do have to introduce other bills and attend to meetings at various points. So with that, I'd like to have Senator Hansen introduce himself and where he's from.

SENATOR HANSEN: Senator Hansen, District 26 in northeast Lincoln.

SENATOR PANSING BROOKS: And Senator Morfeld?

SENATOR MORFELD: Senator Morfeld, Adam Morfeld, from District 46.

SENATOR PANSING BROOKS: Thank you. So with that, we'll begin today's hearing. Senator Bolz, LB411. Welcome.

SENATOR BOLZ: (Exhibit 7) Thank you. Good afternoon, members of the Judiciary Committee, and happy Friday. I am Senator Kate Bolz; that's K-a-t-e B-o-l-z, and I represent District 29 in south-central Lincoln. I'm here today to introduce LB411. The problem this bill seeks to address was brought to me by a constituent. My constituent is a foster parent and has been for a number of years. Last summer she contacted me to say that she was informed that their adopted daughter, who had been their foster child, had a newly born biological sibling. She was contacted as to whether or not they could take the newborn as a foster child. She agreed to do so but was later informed that, instead, the child would be placed with an uncle. Current law in Chapter 43-1311.02, says that reasonable efforts shall be made to place a child and the child's siblings in the same foster care placement or adoptive placement. The circumstances surrounding my constituents' adoptive daughter's sibling are contrary to the intent of this law. This bill clarifies that such placement should be made even if the children do not have a preexisting relationship. The bill also authorizes that children have standing to file a motion for their sibling to be placed with them and requires the Department of Health and Human Services to document their efforts to connect siblings with each other. This documentation is in line with existing state and federal statute and would simply document reasonable efforts to place siblings together. I want to pause for a moment and speak briefly to the fiscal note. You'll notice that the legislative

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fiscal note says that the fiscal impact of this bill cannot be determined at this time because it is unclear how many young people would use their right to have standing in court. I sat down with the Department of Health and Human Services prior to the legislative session, shared with them the draft legislative language, and so I'm a little bit surprised at the interpretation of the department's fiscal note which assumes that 50 percent of kids with siblings would pursue their rights in court to be placed with a sibling, that that would require a court case. And I guess I don't believe that either 50 percent would need to do that because if reasonable efforts are already being made to place siblings together that court case would not be necessary, and because I doubt that 50 percent of kids in these cases would be able to leverage the representation needed to pursue it in court. In fact, over the last ten years over...only 40 appellate cases have been pursued regarding placement, and there is an attorney from Nebraska Appleseed who will speak to that in a little bit more depth. The fiscal note also assumes that those court cases would result in out-of-home placement for a period of six months. I would question as to whether or not that is the accurate period of time that it would take to address such an issue in court. So, you know, I think since the information has only been brought to us at the hearing, I would be curious to hear the department's methodology for developing the fiscal cost related to this legislation. But regardless, I stand behind the policy that a child should be able to be placed with a relative, with a sibling whenever possible. We know that the research says that that is really good for children's long-term stability. And I'd be happy to answer any questions at this time. [LB411]

SENATOR PANSING BROOKS: Thank you, Senator Bolz. Any questions for Senator Bolz? Thank you. Are you going to stay for closing, do you think, or...? [LB411]

SENATOR BOLZ: I'll do my best, yeah. [LB411]

SENATOR PANSING BROOKS: Okay, first proponent, please. Welcome. [LB411]

ROBERT McEWEN: (Exhibit 8) Thank you, Senator Pansing Brooks. Members of the Judiciary Committee, my name is Robert McEwen, R-o-b-e-r-t M-c-E-w-e-n, and I'm the legal director at Nebraska Appleseed. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans and we support LB411 because it brings clarity and oversight to an area of law that has not been fully implemented for nearly a decade. In 2008, Congress unanimously passed the Fostering Connections Act and that law was signed into effect by President George W. Bush and that law represents best practices that are supported by substantial research in the child welfare field. One component of the bill requires that states make reasonable efforts to place siblings removed from their home in the same foster, adoptive, or guardianship placement unless it's contrary to their well-being or safety. If such placement can't be made, then the state must make reasonable efforts to facilitate frequent visitation unless

contrary to the well-being or safety of the children. This has been federal law since 2008. In May of 2011 this body passed LB177. This statute codified several key provisions of the federal Fostering Connections Act into state statute; it also clarified that the aforementioned sibling placement preference applied to a broad range of siblings. LB177 requires this for siblings, even those who were placed at separate times and even if the child has not resided with such siblings prior to the placement in foster care. In 2014, Congress passed the Strengthening Families Act which again clarified that siblings include individuals that would be siblings but for a termination of parental rights. That was codified into state law in 2015 by LB296, introduced by Senator Kolterman. And one would think after nine years and four separate pieces of legislation underscoring the importance of placing siblings together, that DHHS and juvenile court stakeholders would have come into full compliance with these statutory directives. Unfortunately, as this committee will hear today, there seems to be still cases where this requirement is not being met. It's our understanding that there are currently children in foster care and their siblings who are not placed together and who do not have frequent visitation and who have not been provided with any reason why placement or visitation is contrary to the well-being of themselves or their sibling as required by law. Moreover, it's our understanding that in many cases the juvenile court is not provided with an explanation, either, and the attorneys of parents, county attorneys, and guardians ad litem do not frequently raise this issue or very much at all in juvenile court. As such, we support LB411 because it provides additional clarifications to existing law, adds needed accountability to ensure the sibling placement and visitation statutes are meaningfully implemented, and will result in more siblings in our foster care system having an opportunity for a meaningful relationship with their sibling. Specifically, we support the provisions of the bill which will clarify that efforts must be made to facilitate placement or visitation regardless of a preexisting relationship with the siblings because we believe the current statute already mandates this, but additional clarity may be helpful for DHHS. We also support the provisions of LB411 that require DHHS to file a sibling placement report throughout the course of the juvenile case. Oftentimes, circumstances surrounding children in foster care are fluid which necessitates regular review of a child's situation throughout a case. And lastly, we support the provision of LB411 which allows the child's sibling to intervene in a juvenile court proceeding for the limited purpose of seeking joint sibling placement. Currently, the issue of sibling placement or visitation is not consistently raised by GALs, county attorneys, or DHHS. And as discussed by the Nebraska Supreme Court in December last year, our juvenile code does not permit siblings currently to intervene and seek placement or visitation with their siblings in juvenile court because our statute doesn't list them as a party. We believe that allowing siblings to intervene in these proceedings will help to ensure that the issue may be raised before the juvenile court when DHHS fails to discharge their statutory directives. We believe that this provision is narrowly tailored and will not result in unnecessary delays in a juvenile court proceeding for several reasons. First, a sibling that intervenes in a case can only raise a single issue, not a myriad of other issues that may come up in a juvenile court proceeding. This provision does not create a right for the siblings to weigh in on any of those issues and will not

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lead to protracted litigation in the form of appeals. As Senator Bolz mentioned, there have been 40 appellate cases on the issue of placement in the last ten years in Nebraska; seven of those cases, the appellate courts overturned the discretion of the juvenile court. This is a fact-based issue. The juvenile court is the fact finder and appealing those cases is difficult, so we share Senator Bolz's concerns about the methodology used by DHHS in their fiscal estimate to come up with the number that there would be 393 interventions a year. We believe that this number is extreme due to the financial constraints many families have when hiring counsel. Furthermore, there are substantial additional financial barriers to filing an appeal. So to estimate that all of those that would intervene would file an appeal leading to an average of a six-month delay in a case does not seem appropriate given the inherent challenges of challenging a factual finding made by the juvenile court. I see that my time is up. May I conclude my statement? [LB411]

SENATOR PANSING BROOKS: Just go ahead and finish quickly. I think...go ahead. [LB411]

ROBERT McEWEN: Okay. Through clarifying the responsibilities of child welfare stakeholders and strengthening our state law, Nebraska can realize the goals laid out in the original Fostering Connections Act. So we'd like to thank Senator Bolz and this committee for their work on this issue over the last nine years. We respectfully request that you vote to advance LB411. I'd be happy to answer any questions. [LB411]

SENATOR PANSING BROOKS: Thank you. Senator Baker. [LB411]

SENATOR BAKER: Thank you, Senator Pansing Brooks. Mr. McEwen, I'm on the third page of your handout, second paragraph. It says, "However, it is our understanding that currently there are children in foster care and their siblings who are not placed together and who do not have frequent visitation--and who have not been provided with any reason..." Could you help me understand who it is that's failing to provide the reason? [LB411]

ROBERT McEWEN: Yes. It is DHHS's statutory duty to make those reasonable efforts and to provide notification and reasons to those families. [LB411]

SENATOR BAKER: Thank you. [LB411]

SENATOR PANSING BROOKS: Yes, Senator Krist. [LB411]

SENATOR KRIST: Following Senator Baker's lead, when I read this bill a couple weeks ago, I was wondering why we had to do this because, having been here and following along with the pieces of legislation that you mentioned, I thought we were already doing it. Are you, because

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you are in the business you are in, are you absolutely sure that Senator Bolz's bill is going to be the wakeup call to make sure that this process actually works? [LB411]

ROBERT McEWEN: I believe so. If there are outside counsel that can raise this issue when it does come up, it certainly would incentivize me following the law. [LB411]

SENATOR KRIST: Okay, well, I'm all for allowing people to do their job. But if they're not doing it, then we need to make sure that they're doing it and if this is going to do it, that's great. And I'm sure you've heard the old "death by fiscal note" process, so I think we've seen another example of that. Thank you. Thank you very much. [LB411]

ROBERT McEWEN: Thank you, Senator Krist. [LB411]

SENATOR PANSING BROOKS: Thank you. Senator Morfeld. [LB411]

SENATOR MORFELD: Thank you, Senator Pansing Brooks. You touched on the fiscal note a little bit. Have you had the opportunity to really look at the fiscal note in depth or did it just come to...I don't want to ask you questions about the fiscal note that you may or may not know. [LB411]

ROBERT McEWEN: Yes. Please ask me any questions about it. [LB411]

SENATOR MORFELD: (Laugh) Okay. I mean you didn't have a ton of time to go through it. Is there any other things that you'd like to add in terms of analysis of the fiscal note, because you made the point that you highly doubt 50 percent of these folks are going to have the resources to even intervene in the first place or have access to legal counsel to intervene if they want. Any other thoughts on the fiscal note that you'd like to add? [LB411]

ROBERT McEWEN: Sure, thank you. So it became clear only in December of 2016 that sibling intervention was forbidden under our juvenile code. And over the last year and a half, there have been restrictions placed upon intervention because of the narrow framing of our juvenile code. But prior to that, intervention is a fairly common process that would happen with individuals like grandparents, potentially foster parents in a case. So there seems like there might be a wealth of evidence to draw from in using a methodology to analyze how many people are likely to intervene in any given case. I did not see that reasoning or methodology specified in the fiscal note and so I would agree with the Legislative Office's fiscal note that it would be difficult to calculate what that is based on what was given to them by DHHS. But again I would stress I'm highly skeptical that 393 of these families, adoptive families, some of whom you'll hear from

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today, have the resources to hire an attorney for the purposes of intervention, which may actually be only one court hearing, not a significant delay in a case. But furthermore, for anybody that practices law, you may know that appeals are expensive, especially when you're hiring private counsel to do so. So that is an even further financial burden which would restrict families from doing, from intervening and then appealing a decision of the juvenile court. And if it were me, it's...unless DHHS had done nothing in the case, this is a highly factual determination. If DHHS had made those reasonable efforts, it's going to be difficult to challenge that on appeal based on the data regarding appellate cases and placement that we've looked at. It might not be worth it for those families to do it. So I'm highly skeptical that 393 of those families are going to file appeals in the next year. [LB411]

SENATOR MORFELD: Well, and even if this fiscal was correct, if DHHS would have just followed the intent of the law in the first place, we wouldn't be here, would we? [LB411]

ROBERT McEWEN: Not in my opinion, we would not be here. [LB411]

SENATOR MORFELD: Thank you. [LB411]

SENATOR PANSING BROOKS: Any other questions? Thank you very much for coming today. [LB411]

ROBERT McEWEN: Thank you. [LB411]

SENATOR PANSING BROOKS: Next proponent. Welcome. [LB411]

MARALEE BRADLEY: (Exhibit 9) My name is Maralee Bradley, M-a-r-a-l-e-e B-r-a-d-l-e-y. My husband and I have adopted three kids from the foster care system in Nebraska. Each one of our children has been separated from siblings who entered foster care after our kids were adopted. The first time this happened to our family, we were grieved, but we didn't fight it because we were told we couldn't. But now, six years and two additional sibling separations later, we have come to see the systemic nature of this problem and the long-term impact it has had on our children and we cannot be silent. We are not advocating for our own desire to have more kids placed in our home, but want you to know the loss DHHS is causing my children and many others by ignoring or denying their right to grow up with their siblings. We are asking for your help to prevent this for other kids in state care. Our state's current statute does an excellent job of prioritizing sibling placements, but when we were put in a position to question a DHHS decision that did not line up with that statute, we were told by DHHS employees that the statute was meant to keep siblings together who already knew each other and didn't apply to our

children. This thinking doesn't reflect the perspectives of adoptees who desire and value sibling relationships and grieve when those can't be preserved. Although this last July DHHS did notify us of a sibling's birth, it did not have to notify the judge that we were willing to take placement and explain why they were not following our state statute. We were also told that while we were a safe and suitable placement option, they were not willing to place this child with us and if we didn't like it, we could hire a lawyer and take them to court. They said this with the full knowledge that according to our current law, our children have no legal standing to ask for a relationship with their siblings and cannot have any voice in court. Practically speaking, if DHHS does not follow our current statute, there is no ability for these children to ask for accountability or for their sibling rights to be acknowledged. This has to change. We are asking you to use this bill to clarify that sibling relationships matter lifelong, even for siblings who have yet to be given the gift of developing that relationship. This bill would have given my children the right to be heard in court if DHHS didn't honor their sibling rights and would have provided some level of accountability. I wish the clarifications to our current statute were not necessary, but our experiences over the last eight years and our conversations with many other foster and adoptive families who have experienced a similar grief tells us this absolutely is necessary. We need to be sure we're providing clear and specific guidelines about our priorities in placement decisions so that we can ensure the rights of these siblings are supported and not just left to individual caseworkers to determine. My hope is that by having these accountability measures in place, those responsible for placement decisions will honor sibling relationships and we won't need to worry about if our children have a voice in court. We want DHHS to make placement decisions that are consistent with our state law and affirm the importance of siblings from the start so moves and court questions aren't ever necessary. From July to November of this past year, we were in regular contact with the Department (sic--Division) of Children and Family Services on all levels, advocating for our daughter's right to grow up with a baby brother who entered foster care. Our hope and our expectation was that once someone was made aware of our state statute regarding the priority of sibling placements, they would be willing to look into our situation. What we were surprised to find was a continual disregard for sibling rights and a defense of their ability to make whatever placement decisions they wanted without outside interference. And the more foster and adoptive parents I talked to, the more I became aware of how often this happens and how little any of us can do to protect our kids. Without the accountability provided by the clarifications in LB411, I can only imagine that we will continue to see biological siblings who will grow up only knowing each other through occasional arranged sibling visits, and that's only if you're lucky enough to have adults involved who are willing to make those visits happen. In a meeting with two DHHS employees about the sibling separation inflicted on our daughter, we were told to be thankful that DHHS had now connected us with a relative who would be raising this child. They painted a very idyllic picture of what a relationship with these siblings could have, while being raised in two different homes. We explained to them that they could not promise us that outcome, all they could promise us was that our daughter and her brother would not be able to grow up as brother and sister. A

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government system that separated our daughter from her biological family was causing that pain to her again. We are hopeful that with the clarifications in LB411, that pain will not be so callously inflicted on more children in the state's care. Thank you. [LB411]

SENATOR PANSING BROOKS: Thank you, Ms. Bradley. Any questions? Yes, Senator Halloran. [LB411]

SENATOR HALLORAN: Thank you, Senator Pansing Brooks. Thank you so much for your testimony. You know, this isn't going to...what I'm going to say isn't going to be comforting to you but...and this is kind of unrelated but it's similar because we're dealing with DHHS. Going door to door campaigning, came across some grandparents who were then trying to get foster care of their grandchildren. And this had taken...it had gone on two years and nothing had happened and the grandfather asked the individual caseworker why is this taking so long. The caseworker looked him in the eye and said, well, if it took any less time I wouldn't have a job. I thought that was an isolated case; I was hoping it was an isolated case. But a lot of your testimony, which I appreciate, suggests that it's not an isolated case. I mean it's...you know, this is a great bill and it's, you know, it should fix problems that apparently four bills didn't fix in the past, to your point, Senator Krist. And, you know, it's often been said you can't legislate morality. But you apparently, or we, apparently, can't legislate competency. And that's what saddens me and I don't know where...you know, hopefully this is a bill that remedies some of that but I'm...you know, I wish I had more confidence that would be the case. I'm sorry that's not more comforting but thank you for your testimony. [LB411]

SENATOR PANSING BROOKS: Any other questions? Yes, Senator Morfeld. [LB411]

SENATOR MORFELD: I was trying to follow along a little bit and look at some things while you were talking, so if I missed it, I apologize. First off, thank you for coming today. Those were just...those were conversations that you had with the caseworker. Correct? There's nothing documented of that nature. [LB411]

MARALEE BRADLEY: There might be a little documented. [LB411]

SENATOR MORFELD: Okay. It would be great if you'd supply that to the committee if you feel comfortable. [LB411]

SENATOR PANSING BROOKS: Thank you. And thank you for coming. Was your family featured on a news show last night? Yeah. You have an amazing family. [LB411]

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MARALEE BRADLEY: I do. [LB411]

SENATOR PANSING BROOKS: I see the little girl that I saw, the movie star, this last night. And I think that there's another brother that is really good at Rubik's cubes. Is that correct? [LB411]

MARALEE BRADLEY: Oh, yes. Yeah, absolutely. [LB411]

SENATOR PANSING BROOKS: I wish everybody had seen it because he would take a Rubik's cube and slam it down. I mean he must have done five of them during this little tiny, brief period. [LB411]

MARALEE BRADLEY: That's my whole life. That is...I hear that sound in my sleep. [LB411]

SENATOR PANSING BROOKS: You've got some amazing kids, and thank you for your work on behalf of our state... [LB411]

MARALEE BRADLEY: Thank you. [LB411]

SENATOR PANSING BROOKS: ...because this is important work that you do. [LB411]

MARALEE BRADLEY: Thank you. [LB411]

SENATOR PANSING BROOKS: It's a gift of love as well though. [LB411]

MARALEE BRADLEY: Yeah. It's hard. [LB411]

SENATOR PANSING BROOKS: Thank you. Okay, next proponent. Welcome. [LB411]

BRIDGET CHRISTENSEN: Hi. I'm Bridget Christensen, B-r-i-d-g-e-t, Christensen, C-h-r-i-s-t-e-n-s-e-n, and I am...we are in your district. [LB411]

DAVID LATHROP: I am Bridget's spouse. My name is David Lathrop, D-a-v-i-d L-a-t-h-r-o-p. [LB411]

SENATOR PANSING BROOKS: Go ahead. [LB411]

BRIDGET CHRISTENSEN: (Exhibit 10) Okay. Senator Ebke and members of the Judiciary Committee, my name is Bridget Christensen, and sitting beside me is my husband David Lathrop. We are foster adoptive parents and are here today to testify in support of LB411 that ensures siblings being placed together and allowing for visitation or interaction of siblings, regardless if they have preexisting relationships. My husband and I adopted our son Jamar when he was three years old from the foster care system in November of 2011. He had been our foster child for over a year and a half, and in the foster care system since he was two months old. Shortly before the finalization of the termination of his biological mother's parental rights, she gave birth to his brother Derrick. Derrick came to our home as a foster child from the hospital, the summer before Jamar was adopted. When the boy's biological mother began to reside in Omaha and no longer wanted to come to Lincoln for visitations, Derrick was moved out of our foster care when he was four months old, shortly before Jamar was adopted, and placed into a foster home in Omaha. Though Jamar's biological mother's termination of parental rights was imminent, reunification with Derrick unlikely given that she had not made reasonable efforts to reunify with Jamar and Derrick had tested eight out of ten on the addiction withdraw scale after his birth, no consideration was given to Jamar and his sibling relationship with his brother when this move was made. David and I voiced our desire to do whatever the state wanted us to do to try to maintain the boys being placed together, going so far as to offer renting an apartment in Omaha, while the brother's biological mother tried to reunify with Derrick; this was to no avail. Derrick was at last adopted just last November 2016, at five years old, along with his third maternal biological sibling, who is now four years old, by the foster family they had been originally placed with in Omaha. In five years, Jamar--I'm sorry, I didn't think I'd be this emotional, sorry-- had two visits with his brother Derrick, when he was one years old, and he never had a visit with his brother Andrew. We sent birthday cards and gifts, Christmas, Valentine, Easter cards and gifts for those five years, hoping that the foster family would be open to facilitating a visit of our relationship with Jamar, with no success. It was only after the two brothers were adopted last fall by the Omaha family, that we got a call from them saying that for all these years they had wanted to contact us, after all, but were told by KVC there was a court order in place that prevented them from contacting us. They were told by KVC that if they did, they would risk losing Derrick and Andrew's placement in their home. Just last month of this year, January 2017, we were happy to say that Jamar was finally able to visit his brother Derrick and meet his second brother Andrew for the first time. In retrospect, we suspect that KVC, during this time when the state had privatized foster care, and the biological mother...along with the biological mother had retaliated against us for contacting our state senators for help when we were told that Derrick was being moved to a foster home in Omaha with an already established sibling relationship in his foster placement with us. We suspect that this might also explain what transpired at our son's seventh birthday, in 2015. David and I have helped form an adoption support group, social and support group, of families who attend Prescott Elementary School and/or live in the surrounding neighborhood in Lincoln. We had invited these families to our son's birthday party and one of the couples invited who lives a block from our home were foster parents and brought

an infant boy with them to the party who had been placed in their home a month prior to the party. As friends began to talk about the family situation, the foster child, and the probability of adoption, I began to suspect, due to the similarity of their situations to our own, that this might be the child our son...of our son's biological mother. I volunteered her name and asked if this was the mother of the newborn and they confirmed that, yes, she was indeed the mother. They informed us that they were told by their social worker that the infant had a brother in Lincoln, which is our son Jamar, and the agency had contacted David and I and stated that we had turned down the child for placement. None of this was true. We received no information about any of Jamar's siblings since the summer, July, of 2012. Jamar's youngest sibling Ezekial was adopted by this family through the foster care system in August of 2016. Only through serendipity has a relationship with our son and him been made available: the fact that they belong to our adoption group. We, along with the other two adoptive families of Jamar's brothers, are committed to maintaining and facilitating the relationship from this point forward, but this does not ease the negative impact these described events have had on our son Jamar for the last four years. He's only eight right now. For nearly two years after Derrick was placed in the home in Omaha, Jamar asked where his brother was, when could he see him, and why didn't he live with us anymore? For Christmas he asked Santa Claus at the mall if he'd bring back his baby brother home because he really missed him. When we brought into our home his now-adopted sister as a foster child, he tried to make sense of the situation by explaining that his baby brother left and now returned and he now is a baby girl. In his own little mind, that's how he tried to explain the situation. While these stories are sweet and endearing, they show how important Jamar's relationship was with his brother from his perspective. This demonstrates the impact the loss and trauma our son experienced the first years of his life through his own words. For our son, his brother's removal was the third major loss he experienced by the time he was three years old. He had already lost his biological parents and the foster family who lovingly cared for him between the ages of 2 and 18 months but were unable to adopt him due to already having adopted six foster children. It's hard to articulate how heartbreaking this was to witness as parents. I also have some insight from a sociological perspective with a master's in sociology and my experience teaching and researching at the college level. Children who have complex trauma histories, like our son, have trouble trusting others, often experiencing developmental delays and, according to most experts including the National Child Traumatic Stress Network, are more vulnerable to stress, have more trouble controlling behaviors and expressing emotions. Through relationships with parents and siblings, children learn to trust others, regulate their emotions, and interact with the world. They develop a sense of the world as safe or unsafe and come to understand their own values as individuals. This is why the passage of LB411 is so incredibly important. No other child should have to go through what our son has gone through in regards to his relationship with his siblings. Children in the foster care system have already experienced trauma, having had to be taken out of their homes for their own safety, and should not have to also endure the trauma associated with the loss of their sibling relationships. Furthermore, when siblings cannot be placed together, they should be really given the chance for visitation or should be at least notified that they have

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siblings and the potentiality of potentially having those visitation in the future. Thank you for your time and consideration of this testimony. [LB411]

SENATOR PANSING BROOKS: Thank you, Ms. Christensen and Mr. Lathrop. Any questions? Thank you for coming to tell your story. [LB411]

SENATOR MORFELD: Actually, Senator Pansing Brooks,... [LB411]

SENATOR PANSING BROOKS: Oh, sorry, Senator Morfeld. [LB411]

SENATOR MORFELD: I'm sorry, one question. Thank you for coming today. In terms of the retaliation, is that with one of the caseworkers provided by KVC in your opinion? [LB411]

BRIDGET CHRISTENSEN: Yes. [LB411]

SENATOR MORFELD: Do you have documentation of that or is that more... [LB411]

BRIDGET CHRISTENSEN: We kept documentation... [LB411]

SENATOR MORFELD: I'm not doubting you, I'm just...yeah. [LB411]

BRIDGET CHRISTENSEN: Yeah...of what our experiences were. That's our speculation because we couldn't understand why they wouldn't, if it was the law, to somehow facilitate sibling relationships. [LB411]

SENATOR MORFELD: Yeah. [LB411]

BRIDGET CHRISTENSEN: Yeah. [LB411]

SENATOR MORFELD: But you contacted your state senator which is Senator Pansing Brooks. [LB411]

BRIDGET CHRISTENSEN: It wasn't Pansing Brooks. It was... [LB411]

SENATOR MORFELD: Okay. [LB411]

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BRIDGET CHRISTENSEN: Who served before you? [LB411]

SENATOR PANSING BROOKS: Before me? Avery, Senator Avery. [LB411]

SENATOR MORFELD: Senator Bill Avery. [LB411]

BRIDGET CHRISTENSEN: Yeah, Senator Avery. [LB411]

SENATOR MORFELD: Then he made inquiries, I'm assuming? [LB411]

BRIDGET CHRISTENSEN: Yes, yeah. [LB411]

SENATOR MORFELD: And then after...okay. [LB411]

BRIDGET CHRISTENSEN: Yeah. [LB411]

SENATOR MORFELD: Okay, thank you. [LB411]

BRIDGET CHRISTENSEN: Thank you. [LB411]

SENATOR PANSING BROOKS: Any other questions? Thank you both for coming. Welcome. [LB411]

KIM HAWEKOTTE: (Exhibit 11) Good afternoon on this wonderful Friday afternoon. Chairman Ebke and members of the Judiciary Committee, my name is Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e, and I'm the executive director of the Foster Care Review Office and we are here in strong support of LB411. In my written testimony I do have some national research quoted as to how important sibling contact is. And I think when you talk to the Bridge to Independence youth, those that have aged out of foster care, that's the first thing they will say is that I was not allowed contact with my sibling, I don't know where my siblings are. We know how important this is. As each of you know, the Foster Care Review Office, we review about 4,000 individual case file reviews in a given year and we have seen this issue come up over and over and over again. And it kind of comes up in three different types of situations, as I've outlined in my testimony. One is what you've just heard about. An infant may come into care and be placed into a foster home before case managers have determined that that infant has siblings already in foster care or in an adoptive home. And then we're talking about disrupting placements. So if we did our work up-front as a system that wouldn't happen. Second, foster

parents may adopt only the sibling placed with them which then places a case manager in the untenable position of choosing the lesser of two evils. Do you allow one child to be adopted with siblings being placed somewhere else and being adopted somewhere else? How do you do it? How do you ensure that visitation occurs? And the third is the type where a sibling group placement has all been done with one foster parent but then one of the children in that foster home disrupts or is removed from that foster home, so now you have siblings in different foster homes and are you facilitating really that visitation? If you look on page 2 of the testimony, we know that 93 percent of our children currently in out-of-home care are placed in a foster home in a family-like setting. So what we did is we broke it down for you how many of those children come from how many in the family, so you'll notice that out of the families currently in out-of-home care, there's 1,096 families that have only one child. But if you go down the list, there's 2 up to 11 children from one family. So we know as a system the majority of our cases have about 1.8 children per case when it comes out, so we are dealing with many siblings within this system. There is kind of five questions that when I was preparing or thinking about this we looked at some data about. First, are siblings being placed together when they are removed at the same time from the parental home, because that's kind of the first question: If you're removing four siblings from that home today, are those four going to be placed together? And we'd like to say, yes, that happens even in that situation. But we found through the data of looking at it that only happens in about two-thirds of the cases. So that means in the other third of the cases they are being placed in separate homes at the time of removal. So the next thing we looked at is, okay, if siblings weren't placed together, was proper notification given to the court and all legal parties as required by the statute? And currently there's no way that we could find to effectively collect this information. This information might be put somewhere in an HHS case plan, but it always isn't. And what we have found in working on these cases in the past six months more and more in court is that the court and legal parties aren't even being made aware of the issue or the problem. In fact, I was amazed that I had a guardian ad litem say on a case that I didn't even know this was a law, this statute. So part of the reason of LB411 is to require notification to the judge and the legal parties so that all of this information is available from the beginning when a child is removed from a home, and not six or nine months later. Let's do it up-front and put it on the table. Kind of third question is, what is a priority regarding placement considerations when children are removed? Nebraska Statutes, in our opinion, and DHHS policy are very clear. That doesn't mean it's being followed; it's very clear though. First you should always look at the noncustodial parent. If there's a viable noncustodial parent, they should always go to the noncustodial. Second, under statute and under policy, is the next priority of placement is with all parents, including adoptive parents. This is the one that we found is not happening. Instead, they're going to the third one which is relative or kin. So we have to start prioritizing. And the reason for LB411 to me should not be necessary: if we were all doing what needed to be done under our current statute. Last question, to just quickly get to Senator Baker, you had asked regarding sibling contact. If you'll look on the bottom of page 3 to 4, that is one of the data sets that we collect regarding sibling contact and you will see that sibling contact is only occurring in

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about 41 percent of the cases, which is unacceptable in our opinion. And then we also have it broken down as to if attempts were made or not made and that type of information. So we are in strong support and I will gladly answer any questions. [LB411]

SENATOR PANSING BROOKS: Thank you, Ms. Hawekotte. Yes, Senator Krist. [LB411]

SENATOR KRIST: Thanks for coming. I think I know the answer to the question but I want to make sure we're clear. How many times can you report to us per year? [LB411]

KIM HAWEKOTTE: Four times: We report three quarterly reports and one annual report. [LB411]

SENATOR KRIST: Okay. And during...this is familiar, I think. This was included in a quarterly report or was this in your annual report? [LB411]

KIM HAWEKOTTE: This was in our annual report because it is data that we report out annually or could do more often also. [LB411]

SENATOR KRIST: Okay. So point for us, I guess: We should have seen this data and known that some of those statutes, some of the laws were not being followed based upon the stats that we're seeing. Is it because--shift gears, new question--is it because maybe a placement is made and a caseworker or the department is afraid of multiple...of making the right decision after a wrong decision? They're afraid of moving the children? Is there a reluctance there to do what needs to be done? Is that driving some of these decisions? Is that a clear question or am I... [LB411]

KIM HAWEKOTTE: Sure, Senator, and I think it's a very fair question and it's something even internally we struggle with because once you place a child, as you know because I've testified many times before all of you, how harmful it can be to continuously move that child and each and every move of a child in placement is another traumatic experience. So once you place that child, you'd like to try to keep that child there. [LB411]

SENATOR KRIST: So the foot-stomper for me, from everything that you've said, is what this is going to do, along with reminding us that we do have regulations and policies and statutes that should be followed, is that the first step is to make sure that we're connecting the dots with the sibs before we ever start placing. [LB411]

KIM HAWEKOTTE: Correct. [LB411]

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SENATOR KRIST: Exactly. [LB411]

KIM HAWEKOTTE: Correct. What we found concerning in cases, Senator, were the fact that the department would be contacting these adoptive parents looking for placement and then they didn't do it. So if you're going to go through and notify them and you know that there's a priority under statute, why wasn't placement made? Even if it's two or three different adoptive parents that could potentially be out there, at least do something about that instead of placing with a relative. [LB411]

SENATOR KRIST: Thank you. Thanks for what you do. [LB411]

KIM HAWEKOTTE: Thanks. [LB411]

SENATOR PANSING BROOKS: Thank you. Any other questions? [LB411]

KIM HAWEKOTTE: Thank you. [LB411]

SENATOR PANSING BROOKS: Thank you for coming. Any additional proponents? Proponents? Okay, opponents? Welcome. [LB411]

DOUG WEINBERG: (Exhibit 12) Good afternoon. [LB411]

SENATOR PANSING BROOKS: Good afternoon. Go ahead. [LB411]

DOUG WEINBERG: Good afternoon, Senator Pansing Brooks and members of the Judiciary Committee. My name is Doug Weinberg, D-o-u-g W-e-i-n-b-e-r-g. I am the director of the Division of Children and Family Services in the Department of Health and Human Services. I am here to testify in opposition to LB411 which will require additional work for DHHS CFS specialists to file with the court a written sibling placement report and notify the siblings in addition to interested parties of all placement changes. The bill would allow siblings to intervene as a party to the case for the purpose of sibling placements, visitation and ongoing interaction, and gives the sibling the ability to appeal the court's determination. LB411 would allow a sibling, including any previously unknown siblings, to intervene as a party to the case for the purpose of sibling placement and visitation and appeal the court's determination regarding placement. Our agency anticipates additional hearings, continuances, and possible appeals, which will delay a child's permanency. If a child has more than one sibling, each sibling could intervene and appeal a court's placement or visitation ruling, even if the child has been placed with a sibling. This will have a direct impact on the child's permanency as the child cannot achieve permanency until the

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appeal is finalized, which could take six months to a year or longer. The bill will change provisions relating to joint-sibling placement; provides additional duties for the DHHS employees; and changes provisions relating to appeals. Section 43-1311.02 already requires sibling placements and DHHS to advise the court with the reasons why a joint sibling placement would be contrary to the safety or well-being of any siblings. To require DHHS to submit a specific report on this information would create additional work for CFS specialists. LB411 also requires DHHS to give notice to all siblings of any placement change. Even if the parent has declined interest in placement and made it clear they do not wish to have further contact, this bill would require DHHS to continue to pursue them about placement in the event of an additional placement change, without regard to their request. I must make note of the fiscal impact of the bill. I respectfully differ from the view of your Fiscal Office that the costs of this bill could be absorbed. My agency estimates a new \$2.8 million General Fund cost in 2017-18, and nearly \$3 million in General Fund costs in fiscal year 2018-19. The department is not in a fiscal position to absorb such an increase or impact. I will work closely with your Fiscal Analyst to reconcile the large disparity in our views of the bill. Placing siblings together is a critical component of DHHS's practice model and aligns with federal and state policy and regulations. Since June of 2013, DHHS has increased the percentage of state wards placed with at least one sibling from 77 percent to over 83 percent, and increased the percentage of state wards placed with all their siblings from 56 percent to over 65 percent. I'm happy to answer any questions you may have. [LB411]

SENATOR PANSING BROOKS: Thank you, Mr. Weinberg. Any questions? Yes, Senator Morfeld. [LB411]

SENATOR MORFELD: Thank you for coming in today, Director Weinberg. So I guess the problem that I have with your fiscal note is that you're already supposed to be doing this, so why is the fiscal note so large? [LB411]

DOUG WEINBERG: Well, our fiscal note is really limited to the possible of intervening parties, any additional... [LB411]

SENATOR MORFELD: But there wouldn't need to be a possibility of intervening parties if you're already complying with the existing statute. [LB411]

DOUG WEINBERG: Well, you know, we do comply with existing statute. You know, when I said... [LB411]

SENATOR MORFELD: Clearly you don't--that's why we have an additional potential statute here today. [LB411]

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DOUG WEINBERG: Right. Again, it is core to our practice model that we do search for siblings and, when in the best interest of the child, place with siblings. As Ms. Hawekotte pointed out, our first priority is bio parents; our second priority are sibling placements. [LB411]

SENATOR MORFELD: Okay, thank you. And then do you comply with our existing caseload requirements that we have in statute? [LB411]

DOUG WEINBERG: We are working as hard as possible to achieve those caseload standards. [LB411]

SENATOR MORFELD: And how far off are you from achieving those? [LB411]

DOUG WEINBERG: It varies. It varies from week to week. The percentage that are over caseload standard can be 20, 30 percent at a given point in time. [LB411]

SENATOR MORFELD: And why haven't you been able to comply with that yet? What are some of the barriers? [LB411]

DOUG WEINBERG: We are addressing employee retention and turnover. We are also working very hard through internal restructuring to free up resources that we can dedicate to more direct support for caseworkers or even repurpose positions into caseworker positions. [LB411]

SENATOR MORFELD: And did the Department of Health and Human Services ask for a cut this year in their budget or an increase? [LB411]

DOUG WEINBERG: We asked for a cut but not in terms of caseworkers or staff. [LB411]

SENATOR MORFELD: Okay, thank you, Director. [LB411]

SENATOR PANSING BROOKS: Yes, Senator Krist. [LB411]

SENATOR KRIST: So along the same line of questioning, you're aware, or I assume that Children and Family Services are aware, of the efforts that have been made in the past nine years and the four bills that have been passed. [LB411]

DOUG WEINBERG: Yes. [LB411]

SENATOR KRIST: So you know that your stated policy is an order of preference that would put kids with family first and on down the line. We've already heard from testimony from Ms. Hawekotte that you don't always comply with that because we have data that shows, in her annual report, that shows that you're not doing what you're supposed to be doing now. It's one thing to understand the statute, the direction, and the law, and it's another thing to have statistics and metrics that prove that you're doing what you're doing. And I would suggest to you that even though that you're sitting in the chair telling me that you understand the law, you are not complying with the law. And the strongest part of this bill is the fact that we start out with a, as Ms. Hawekotte and I discussed, a stronger awareness that we need to find out if there's any siblings before we do that first placement. I heard your testimony and what I heard is more work, more work, more work, more work. I didn't hear you mention the kids once in that description. So my suggestion would be that you relook at what you're doing right now, take the testimony of the people who are giving you feedback, and realize that your...you may be hitting the dart board someplace, but you're not hitting the bullseye. And I realize you've got a tough job. I've seen it; I don't want it. But you're falling short of the goal. [LB411]

DOUG WEINBERG: We have work to do. [LB411]

SENATOR KRIST: Yeah, a lot of work to do, and that's why I think that this bill, although you'll tell us it costs more money, if it hits the floor with this fiscal note, you know what will happen: yeah, death by fiscal note. So I'm going to suggest that you reanalyze what you just told us was important to you, talk to Senator Bolz, and get the fiscal note down to a point where she can take it to the floor, because this is an important part of what we do. [LB411]

DOUG WEINBERG: Absolutely. [LB411]

SENATOR KRIST: Thank you. [LB411]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Senator Baker. [LB411]

SENATOR BAKER: Thank you, Senator Pansing Brooks. Mr. Weinberg, you're the messenger here today, I understand that. But I'm going to focus more in on the visitation and that and the placement. All right, so, you know, why are...why is that contact so difficult as illustrated in this chart? And maybe you didn't see it but regular contact is being facilitated with the siblings only 41.6 percent. See that's happening? Why is that so difficult or expensive or anything? [LB411]

DOUG WEINBERG: You know, there are...every case obviously is unique and different. There are a variety of reasons why either sibling placements don't take place or more frequent

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visitation. You may have a situation where you have an adoptive parent relocates where the goal is reunification for a new child entering the system. Sometimes it's very difficult to facilitate either placement with that sibling or frequent visitation because we want to work with that parent and child to get that child back home. So again, there are a variety of reasons why visitation isn't happening as much, as frequently as we would like or why we don't always place with siblings. But we...do we...we do make it our best effort to do that whenever it's in everyone's best interest, in the child's best interest. [LB411]

SENATOR BAKER: Thank you. [LB411]

SENATOR PANSING BROOKS: Okay, Senator Morfeld, do you have something? [LB411]

SENATOR MORFELD: Thank you, Senator Pansing Brooks. I take a little bit different view than my colleague Senator Baker. I don't think you are just the messenger. I think you're the director of the department that oversees this and the buck stops there. In terms of the statistics that you listed on the last part of your... [LB411]

DOUG WEINBERG: Um-hum. [LB411]

SENATOR MORFELD: ...document or your testimony here, does that include adoption placements as well, or is that just foster? [LB411]

DOUG WEINBERG: That would be children in foster care that are placed with siblings whether they are also in foster care or in a permanent adoption situation (inaudible). [LB411]

SENATOR MORFELD: Okay. Thank you for clarifying that. And then in terms of some of the caseworkers you have, you guys are working on retention. What's your current turnover rate at this time? [LB411]

DOUG WEINBERG: It has been running close to 20 percent. [LB411]

SENATOR MORFELD: And what's the salary range for those? [LB411]

DOUG WEINBERG: New caseworkers start around \$32,000 and after they complete in-service training and begin carrying a full caseload, I believe they get a bump to about \$35,000 or \$36,000. [LB411]

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SENATOR MORFELD: And then what's the top end of that salary? [LB411]

DOUG WEINBERG: I don't know that offhand. [LB411]

SENATOR MORFELD: Okay. And then you said that you're holding steady on your budget for your appropriation or your budget line for the caseworkers, correct,... [LB411]

DOUG WEINBERG: For staff, correct. [LB411]

SENATOR MORFELD: ...for the staff. Are you looking at any increases and making the position more competitive so that you increase retention or not? [LB411]

DOUG WEINBERG: At this point not that I'm aware of. [LB411]

SENATOR MORFELD: Okay, thank you. [LB411]

SENATOR PANSING BROOKS: Thank you, Senator Morfeld. Anybody else have a question? Okay, thank you, Director Weinberg. [LB411]

DOUG WEINBERG: Yep. [LB411]

SENATOR PANSING BROOKS: (Exhibits 1-6) Next opponent. Opponent? Okay, anybody in the neutral? Do we have anybody in the neutral? Do we have any letters? Okay. Okay, we have some letters in support: Peg Harriot from Children and Family Coalition of Nebraska; Juliet Summers from Voices for Children of (sic--in) Nebraska; Stephanie Clark from the National Association of Social Workers-Nebraska Chapter; Stephanie Clark also from the Nebraska Families Collaborative. We have one more in support: Alana Pearson from Nebraska Children and Families. And then we have...those were all letters of support. We have one letter in the...one neutral letter by Nathan Leach. Senator Bolz, closing. [LB411]

SENATOR BOLZ: Thank you, Senator Pansing Brooks. I do appreciate the opportunity for a few closing comments. The first is that I think one of the things we have in front of us is an opportunity to have a two-generation analysis. Kids are coming from complex and difficult family structures and they have an opportunity here to build strong family relationships. And remember, the language of the legislation requires that the safety and well-being of any sibling is put primary and then the relationship can occur after we've established that. I think what gets measured and documented gets changed, and so the reporting and documentation requirements

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here are part of the real way that we hold caseworkers and the Department of Health and Human Services accountable to the goal of ensuring that kids can make, establish relationships with their family members, with their siblings. I think if that is done well, court will be necessary only in circumstances that are extreme or circumstances that are out of the usual. I appreciate the director's concern that something like this could delay permanency, but I go back to that definition of permanency. If that is the way that the child will live his or her life for the rest of his or her life, shouldn't we make every possible effort to do it as best as possible? I can appreciate that these families come from complex situations and families, and so if you'll forgive me, I just have two more comments about that. That is: We have opportunities in our budget, in our state budget as a moral document, to together make investments in our families across the state, and in spite of difficult budget circumstances I think we have to prioritize those. There are two important things in front of the committee. One is a recruitment and retention effort that Senator Howard is bringing and the other is drug treatment that will relate to children and families in the child welfare system, medication-assisted treatment. And so I couldn't resist the opportunity to articulate that we have to think about our budget as a whole, our budget as a moral document, and how everything that we invest in eventually comes back either in terms of expenditures or in terms of issues in front of your committee. And so I appreciate your consideration both of the system as a whole and of this piece of legislation in particular. [LB411]

SENATOR PANSING BROOKS: Thank you, Senator Bolz. And that closes... [LB411]

SENATOR KRIST: Question. [LB411]

SENATOR PANSING BROOKS: Oh, sorry. Question, Senator Krist. [LB411]

SENATOR KRIST: First a comment: I appreciate your comments just now and yesterday with respect to juvenile justice-related issues as in juvenile judges. It's a mosaic and if we don't take care of the entire realm, then something falls off. But I have a question for the record, besides a compliment for you. What is the only fiscal note that we are really held to? You remember the Appropriations Committee. Which one really are we legally bound by? [LB411]

SENATOR BOLZ: The fiscal note that I always refer to as home base, the fiscal note that we reference, the fiscal note that we reference, the fiscal note that we use in our budget crafting, is the legislative fiscal note, Senator Krist. [LB411]

SENATOR KRIST: Thank you. Thank you. And I think that's even more of an impetus for the department to come back and talk to you about their concerns. If they are legitimate, then I'm sure our fiscal analyst will bring them to our attention when they come to the floor. Thank you, Senator. [LB411]

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SENATOR BOLZ: Thank you. [LB411]

SENATOR PANSING BROOKS: Thank you, Senator Krist. All right, thank you. And that now closes LB411. Next bill: LB188, Senator Howard. Welcome, Senator Howard. [LB411]

SENATOR HOWARD: (Exhibits 6-8) Thank you, Senator Pansing Brooks. All right, good afternoon. Senator Pansing Brooks and members of the Judiciary Committee, my name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I bring you LB188, a bill to ensure victims of sexual assault have a pathway to protect their parental rights and the best interests of a child when he or she is conceived because of that crime. The Legislature last tackled this particular subject in 2009 with a bill, LB517 introduced by Senator Tom Hansen and cosigned by the lovely Senator Gwen Howard. That legislation stemmed from a situation where a couple was trying to adopt a child that had been conceived during a sexual assault. The young woman who was the victim, she was 13 at the time and the perpetrator was the 35-year-old boyfriend of her mother. She eventually had the child and when she was 16 years old she had some substance abuse issues and subsequently lost custody of that child. And so when the foster parents wanted to proceed with an adoption they had to look at...she terminated her own rights and then bio dad decided not to. And he was in prison at the time and he would not voluntarily relinquish those rights. After his denial, the state of Nebraska, because biological parents have sort of priority obviously over siblings, the state of Nebraska began reunified efforts with the perpetrator. Recognizing this being a situation where reunification would not be in the best interest of the child, the Legislature intervened and adopted LB517. What this didn't address was what happens when the perpetrator and the victim are both adults and a child is conceived. So we've already addressed it when the perpetrator is an adult, the child is a victim, and a child is conceived. And so LB188 really looks at how do we handle parental rights when both the perpetrator and the victim in a sexual assault case are adults. So I first learned of this issue when I was contacted by a young woman last summer. Her name is Noemi. She wasn't able to be here today, so at the end of my opening I'd like to read her letter to you. She'd been the victim of a sexual assault and had given birth to a daughter Isabelle (phonetic) as a result. And when her perpetrator was charged, he was charged with first degree sexual assault and he pled down to third degree and he was allowed to do so. When Noemi applied for Medicaid benefits, the state of Nebraska contacted her perpetrator and asked him about making child support payments because that would have impacted her Medicaid eligibility. Once contacted, he requested visitation with her daughter even though she had been conceived as a result of the rape that he was convicted for. And because he is her biological father, there were no protections in the law and the court ordered Noemi to allow her daughter to visit this man and that visitation continues today. Even today he has visitation rights and I believe the court is considering whether or not overnight stays will be allowed. She has continued to...she's forced by the state of Nebraska to coparent her child with the man who raped her. LB188 provides that if a person is convicted of a sexual assault, the victim may ask, may ask, the court to terminate the parental rights of the

perpetrator if it is in the best interest of the child. The bill also sets forth that if a person is convicted of any of the above-mentioned crimes, they are not considered part of the family for purposes of reunification and they will not be granted custody or visitation without the consent of a custodian or a guardian. Thirty-four states and the District of Columbia have enacted legislation regarding the parental rights of perpetrators, 22 of those states actually allow for termination of parental rights, and another 14 restrict or prohibit custody if the child was conceived as a result of rape. LB188 would put Nebraska into the first category. I've shared with you an amendment that takes care of a number of concerns that have been brought to me by individuals who had technical issues with the bill as it was introduced. First, the green copy of the bill did not include first degree sexual assault. When I took on this issue I thought we already had a termination statute for first degree sexual assault and so I only included second and third. As we looked at the history of this type of legislation, really we only have coverage for an instance where a child is raped by an adult and a child was conceived therein. On page six, we strike the word "mother" and replace it with the word "parent" to eliminate any concerns about gender bias. There have been instances where women have sexually assaulted an individual and conceived a child because of that assault. An example is very recently there was a case in York where a female staff member was convicted of having inappropriate sexual relations with a young man who resided in Epworth Village and she later gave birth to a child as a result of that sexual assault. On page 6 of the bill we strike language regarding a burden of proof, and on page 8 we provide references to the definitions for the term of "guardian" in response to concerns brought to us by the Department of Health and Human Services. There was an issue about references to the Indian Child Welfare Act. So we wanted to make sure that there was deference shown to ICWA and that was brought to me by the State Bar Association. And those are incorporated. Most importantly, I invited Noemi to come today and they called when they were about 45 minutes out of Norfolk and said it was whiteout conditions and we told them to turn around and go home. And so I'd like to just take a quick moment and thank Senator Brasch. She introduced a bill earlier this year that was very similar to mine and withdrew hers so that we would only have one vehicle for this issue. And if I may, I'd just like to read Noemi's letter for all of you because I do think it's very important. And here, you can pass that out. Thank you, Kaylee. So if Noemi had been here she would have said: Hello Senators, my name is Noemi Martinez, the last few years I have come to testify in support of bills similarly and honestly will plan on being here until something gets done. I come in support LB188 as an advocate for all raped victims, as a victim, but most importantly, as a mother to a rape-conceived child. My daughter deserves a normal life and being able to decide if she wants a relationship with the man who raped her mother. My daughter needs to be able to do this when she is old enough to fully understand who he is. Right now my daughter is at risk of being in a dangerous situation because he was able to plead down, and there is no law to protect her. You, lawmakers, have the power to do something to help us citizens to be able to feel safe, which is our right in the first place in the United States. I was raped by a coworker when I had just turned 18. In my case he admitted to investigators that he did not have my consent. He was charged with first degree sexual assault,

but the system allowed him to plead down to third degree sexual assault, therefore, leaving my daughter at risk, because now he was allowed to exercise parental rights. Parental rights should be allowed to those who consensually decide to have a child together. In my case I am forced to share my child, my daughter, with the man that raped me, because since he hasn't physically hurt her, it's okay for him to have visits. I was told that it is in the best interest of my child to have a father in her life. And what makes this rapist safe to be a father? Who knows if rapists have good parenting skills? If he is the type of person to rape a women, why would he be trusted with a child, especially from his victim? Rapists don't have empathy. Never once has this man apologized to me or tried to make up for what he did. Instead he has forced himself to have visitation with my daughter and has been a complete bully to me. There is no way to know exactly what happens when she's on visitations with that man. When visits started unsupervised my daughter would smack herself in the face saying he would hit her, but she would not have any marks and she would still go with him like nothing happened until one day she told me that she wanted me to tell him to stop hitting her. When I confronted him, he did not deny it and just nodded to tell me he would stop. My daughter is still very little and should not be forced and misguided to go these visits. In this situation I feel like a terrible mother lying to my child about it being okay to go with my rapist. A mother should not have to lie to their child so they can have a bond with a rapist parent. Personally it has been a few years that she knows him and has to see him, yet she has no bond with him. She says he is a guy she goes and plays with his toys. She always is asking me if she has visits because she does not want to go. Sometimes she is upset because he takes her from her real family. This man did not want her. He would text me to punch myself in the stomach, fall down a flight of stairs, and text him back when it was dead. When I wasn't going to abort he texted me to give it up for adoption, and that he knew a family who would take the baby. Personally having to have contact with this person after what happened was terrifying, but now having to share my daughter with no supervision is worse. Would you hand your preschooler over to a rapist? My daughter is my teammate in this terrible situation. We are extremely close. I know some people say, how could you love the child from the man that raped you? It must not have been rape. But I look at how nothing happened is her fault. Neither of us asked for it, but we are together in it. And with that, I'm happy to try to answer any questions you may have. [LB188]

SENATOR PANSING BROOKS: Thank you, Senator Howard. Any questions? Thank you. [LB188]

SENATOR HOWARD: Thank you. I also have the testimony from Liane Bode who works with Noemi and her daughter Isabelle (phonetic) in Norfolk. [LB188]

SENATOR PANSING BROOKS: Okay. Thank you. [LB188]

SENATOR HOWARD: Thank you. [LB188]

SENATOR PANSING BROOKS: Proponents, do we have some proponents? Welcome.
[LB188]

STEPHANIE HUDDLE: (Exhibit 9) Thank you. Good afternoon, Senator Brooks and members of the Judiciary Committee. My name is Stephanie Huddle, S-t-e-p-h-a-n-i-e H-u-d-d-l-e. I'm the public policy coordinator for the Nebraska Coalition to End Sexual and Domestic Violence and I'm here today to testify regarding our support of LB188. The Nebraska Coalition to End Sexual and Domestic Violence is a statewide nonprofit advocacy organization committed to the prevention and elimination of sexual and domestic violence. We provide training and program capacity building to Nebraska's Network of Domestic Violence and Sexual Assault Programs, supporting and building upon the services they provide. Our mission is to enhance safety and justice by changing the beliefs that perpetuate domestic violence and sexual assault. We believe LB188 will provide a form for relief for sexual assault survivors whose assault results in the conception of a child and addresses a serious gap in Nebraska law. Sexual assault is a pervasive problem throughout the country. According to statistics from the National Sexual Violence Resource Center, nearly 1 in 5 women and 1 in 71 men have experienced rape or attempted rape. The Crime in Nebraska 2015 report showed there were 653 reports of forcible rape made to law enforcement, 202 arrests for forcible rape, and 453 arrests for sex offenses. However, the number of sexual assaults are likely much higher than those known to law enforcement. Across the country, sexual assault continues to be one of the most under reported crimes, with an estimated 63 percent of sexual assaults never being reported to law enforcement. The effects of sexual assault can be devastating. Victims may experience fear, shame, and guilt. Long-term consequences include depression, attempted or completed suicide, and posttraumatic stress disorder. The crime scene can never be avoided, because it's the body of the victim, and as such, she or he must live with daily reminders of the violence that occurred. And there is another consequence of sexual assault, one that is not discussed as frequently as the physical, emotional, and mental trauma endured by victims. What if the sexual assault results in the conception of a child? According to the National Alliance to End Sexual Violence, at least 1-5 percent of sexual assaults result in pregnancy. The highest rates of pregnancy as the result of a sexual assault are reported by women in abusive relationships. Pregnancy that results from sexual assault can lead to additional fear, uncertainty, and traumatization. In Nebraska, there is currently no law that addresses terminating the parental rights of perpetrators whose child is conceived as the result of sexual assault. As such, victims must endure facing their perpetrator time and time again, which may impede their healing process and force them to relive their assault. LB188 would protect victims from having to have frequent contact with her or his perpetrator if the court determines termination of parental rights of the convicted offender would be in the best interests of the child. There is precedence for this legislation, as 29 other states have laws that address the termination of parental rights of those who perpetrate sexual assault. And of those, 21 states allow for

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termination if the court finds by clear and convincing evidence the sexual assault occurred and resulted in the conception of the child. By passing LB188 you are providing additional protections for Nebraskans whose sexual assault results in pregnancy. More importantly, you are ensuring victims of sexual assault you care not only about their safety, but also the well-being of their children. The Nebraska Coalition to End Sexual and Domestic Violence asks you to advance LB188. Thank you for your time and I will be happy to try to answer your questions. [LB188]

SENATOR PANSING BROOKS: Thank you, Ms. Huddle. Are there any questions? Thank you very much for coming. [LB188]

STEPHANIE HUDDLE: Thank you. [LB188]

SENATOR PANSING BROOKS: Appreciate it. Next proponent. Welcome. [LB188]

EMMA EATON: (Exhibit 10) Hi. I'm Emma Eaton, E-m-m-a E-a-t-o-n. Thank you all for allowing me to be here. It's very important that I speak on behalf of LB188 today. This bill is quite personal to me and I found it necessary to speak on behalf of it. I became aware of this issue when I heard Noemi Martinez's story. Her story touched me due to the fact that I was unaware of this law in the state of Nebraska. Feeling this is an extreme injustice, I decided to contact my local senator to draft a bill. From here, I've been active in this process and been waiting for this opportunity to testify as a proponent. As a high school senior, I feel very passionate regarding sexual violence and want to advocate for those that chose to stand up to their predators. I am also here for those who did stand up for justice, but still have to remain in contact with their rapist. By standing up, I hope to prevent others from being sentenced to a lifelong relationship with their abuser, which is the worst punishment imaginable for a victim. Like so many others, I was a victim of sexual assault. What happened to me in middle school has now empowered me through my recovery to be a vigilant survivor and not to allow my perpetrator to victimize me, although I continue to see him in my community. It has not been an easy task getting to this point. It has been difficult to overcome the boundaries that come along with sexual assault. I was presented with the choice to allow my abuser to win by giving up, or to use this experience to fight for justice for others. I decided to do the latter and join the fight against sexual assault. Although it would have been easier to remain silent, I felt it was more important to speak on behalf of those who have been quieted by their abuser and on behalf of those who have made the harder choice to keep the child conceived by rape. Many of you do not think that this bill may apply to you. I did not ever think I would be a victim. Being chosen as a victim cannot be categorized by socioeconomic class, race, or a community. I was raised in a very small community with close-knit relationships, and I never thought this would happen to me. I was surprised to find out that 1 in 5 women have been sexually assaulted in their lifetime,

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approximately 32,000 pregnancies occurring from these attacks every single year. With these staggering numbers, it is a testament on how important this bill is to send a message that sexual assault will result in consequences. With the conditions of how the Nebraska law are currently, I don't believe that parental rights is a consequence for rapists. You all may have daughters, granddaughters, or friends that may find themselves in this position. It is awful to consider the primary violence, but it is also awful that we continue to stand by and grant parental privileges to a rapist. And worst of all, Nebraska allows a rapist to be in contact with a child who doesn't have the capacity to understand the danger. This is about human rights. This is about allowing those victims to courageously move on, and this bill would send a message that sexual assault is not a tolerated act that results in oversight and rights for the rapist. We must stop allowing perpetrators to win. The actions and behaviors of these people are repeatable. After committing this action once, what will stop them from terrorizing their victim again, or worse, harming the child. I was not willing given my personal experiences, but I strongly believe that using them as a platform to speak out on sexual assault injustices will help others. I stand here as a survivor to tell you that no means no and that should not result in privileges for the rapist and I will continue to advocate for those who have suffered, will suffer, and for children that may be secondary victims of this crime. Thank you. [LB188]

SENATOR PANSING BROOKS: Thank you, Ms. Eaton. Thank you for coming forward today and for your courageous story. Are there any questions? I appreciate your stand. Thank you. [LB188]

EMMA EATON: Thank you so much. [LB188]

SENATOR PANSING BROOKS: Any other proponents? Proponents? Did you have a question? [LB188]

SENATOR HALLORAN: No, I was just going to compliment Ms. Eaton for taking the initiative to contact her senator. [LB188]

SENATOR PANSING BROOKS: Thank you, Senator Halloran. Okay, opponents. Any opponents? Okay, anybody in the neutral? Neutral? Okay, would you like to close? Thank you, Senator Howard. [LB188]

SENATOR HOWARD: Thank you, Senator Pansing Brooks. I'll be very brief. I'm a little disappointed Senator Chambers isn't here today. Consistently he's been opposed to any legislation of this kind. And so I want to clarify how this is different than in years past. This does not provide an avenue for automatic termination. What this does is it allows a victim to apply for termination and then the court can apply a best interest standard to that termination proceeding.

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And so this is a may, not a shall. It's not automatic. And it really does preserve parental rights the way we would want to see in Nebraska. So with that, I'm happy to try to answer any questions you may have. [LB188]

SENATOR PANSING BROOKS: Any questions from the committee? Okay. (Exhibits 1-5) We have letters: Peg Harriott from Children and Family Coalition of Nebraska is in support; Toni Jensen from Victims of Crime is in support; Traci Bruckner from the Women's Fund of Omaha is in support; Tom Venzor from the Nebraska Catholic Conference is in support; Ivy Svoboda, Nebraska Alliance of Child Advocacy Centers wrote in support; and we have a letter from Nathan Leach that's neutral testimony. Thank you very much, Senator Howard. [LB188]

SENATOR HOWARD: Thank you. Have a great afternoon. [LB188]

SENATOR PANSING BROOKS: You too. Thank you. Okay, and now we have LB300, Senator Krist. Welcome, Senator Krist. [LB300]

SENATOR KRIST: Thank you. Good afternoon, fellow members of the Judiciary Committee and Vice Chair Pansing Brooks. My name is Bob Krist, B-o-b K-r-i-s-t, and I represent the 10th Legislative District in northwest Omaha, along with north-central portion of Douglas County which includes the city of Bennington. And I appear before you today in introduction and support, strong support of LB300. It eliminates the statute of limitations on civil actions for sexual assault of a child, thereby giving the victim or victims an opportunity for closure and justice. I think I'd like to save my personal comments until after the testifiers come up, so I'll take any questions you might have for me now but, again, I reserve the right to close. Thank you. [LB300]

SENATOR PANSING BROOKS: Thank you, Senator Krist. Okay, proponents, please come forward. Welcome. [LB300]

JACK HOSKING: Thank you, Thank you, Senators, for your time today. My name is Jack Hosking, H-o-s-k-i-n-g. I'm the father of a child that was abused as far back as 1977 when he was 12 years old. Finally discovered something was wrong in his mid-30s and now he's 50 and still struggling with the effects of the child abuse. This bill, if passed, both give great healing and justice for those if somebody would be abused in the future. It just opens a world for people when they have someplace to go, someplace to look for justice. I thank you for your time and I ask for you to vote in favor of. Thank you, Senator Krist, for sponsoring this bill. [LB300]

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SENATOR PANSING BROOKS: Thank you. Any questions? No. Okay, Mr. Hosking, thank you for coming. Next proponent. Welcome. [LB300]

DENNIS DUGAN: Thank you. Dennis Dugan, D-e-n-n-i-s D-u-g-a-n. I'm here today because I am a sexual abuse victim and it happened to me when I was 11 years old. And I wanted to share my story so you guys maybe get a better understanding. I've been in therapy for 17 years and it was maybe about 6 years ago when I changed...with the help of my sister Molly (phonetic) I changed therapists because I was going to the same therapist for about 11 years, figuring out something was wrong but was never able to admit that I was a sexual abuse victim. My present therapist Sally Kaplan told me when I admitted to her, and it came really freely once I switched, she said, you know, someday you'll come forward and you'll want to speak as an advocate for this. I said I will never, ever, ever speak about this in public. I said I'd hear too much shame and it's humiliating, so, at least it felt at the time. So, you know, I think the reason why we're here is, you know, to talk about the issue of delayed disclosure and to make that more understandable. You know, Project Harmony in Omaha states that majority of children sexual abuse victims do not disclose that they've been a victim for many years after the actual incident, if at all. I myself was 11 at the time and, you know, it took me till I was probably the age of 37 to really understand what had happened to me. My mother was a single mother raising six children. She had welcomed in a family friend into our family and he earned the trust and he was a well-respected businessman in the Omaha community. And this guy would do stuff for kids all the time: take them on trips, bowling. He was a husband and a father of two, two good kids. The point, you know, I want to make here is it takes a long time to come forward and to admit this and...and I finally was able to come clean and admit what happened to my sister and was able to come forward and I didn't realize. I thought maybe I was the only one. And then to find out that there was probably I knew of 50 more kids who this guy was doing this to and to much horrific ways, that I felt like I finally had to speak up. And I went on the air and did a segment on the news, a two-part series to talk about this person, not disclosing the name but to make it clear. Unfortunately, you know, we passed, you know, the time frame of, you know, the statute of limitations of convicting this person. And this is a very smart person. He knew exactly what he was doing. And he even admitted, his own son told me he admitted it to him, that he did this to kids. But it was never going to come forward. Don Kleine from the city of Omaha prosecution brought us in, says, we're pretty much aware but unless someone is of that age, we can't prosecute this man. Yes, was he run out of town? Absolutely. He moved to Palm Springs and has lived a very comfortable life until a month ago, until they found him dead. And does that give me justice and peace? No, it doesn't. It's not the way I saw this ending. You know, people are like, it's great he's dead, we don't have to worry about it anymore. I'm like, it doesn't give me the satisfaction to know what he's done to other kids. And I mean realistically there's not a night that doesn't go by that I don't think about this. There's many times I've prayed not to wake up the next day because of the pain that you carry, and it will never go away. It will never go away. And I guess what I'm stressing is it takes many years, if at all, for people to want to come forward and

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talk about it. And a lot of times I've had probably, since I went on the air and it was November 8, 2015, I've probably had minimum of 150 strangers come up to me and go, I saw you on the news, that happened to me too. But I was like, I don't know who you're talking...I don't know who you are, but okay. And I think it was just a relief that they saw a face that they could relate to. So we can't put a time frame on how long it takes for kids to come forward and be able to come forward and talk about this, these wrongs, because the humility and embarrassment, we can carry them to our graves. And that should not allow the perpetrator to walk free just because of the time frame. So thank you for your time. [LB300]

SENATOR PANSING BROOKS: Thank you very much... [LB300]

DENNIS DUGAN: Thank you. [LB300]

SENATOR PANSING BROOKS: ...for your testimony and your courage in coming forward. Any questions? Thank you. [LB300]

DENNIS DUGAN: Thank you. [LB300]

SENATOR PANSING BROOKS: Any more proponents? [LB300]

MARTY HOSKING: My name is Marty Hosking, M-a-r-t-y H-o-s-k-i-n-g. Thank you very much for allowing me to share my experience. I am familiar with this issue because I, too, I was pursued by a faculty member and teacher when I was in high school and was abused. I think each of the abuse situations is slightly different so but I don't need to go into the detail of that but I was aware that something unusual was happening to me. But I didn't understand it at that time. I think we're all aware of the ample scientific research that has been able to conclude a couple of things: first of all, that a perpetrator will continue to abuse if not stopped and given treatment; and (2) children at this developmental stage are egocentric and, therefore, will not often see themselves as a victim or that even anything improper has taken place at that time. And when and if they do realize something improper has occurred, they often feel they are to blame for that because, again, of their developmental stage. So they would not...it would not occur to children usually to do anything about it or to tell anyone. And in my case, I thought it was just an unusual situation. I felt sorry for the man and I just thought it was odd but I didn't consider the ramifications that it would have on my life--nightmares and lots of different things--well into adulthood. It wasn't until 20 years later that I was actually in a situation where I was aware of his presence and knew that he was still teaching or at least a faculty member or involved with children at the very least in high school. Twenty years later it just hit me that that's what happened to me. I witnessed the way he was behaving with some children and I realized that that is exactly what happened to me and that he has not been stopped. He had continued to do this for

over 20 years. So I would just like to support this bill because it gives an opportunity for closure and justice for those who are survivors and victims. It also is an important step to educate our society about the dangers that are out there that can happen and it gives an opportunity as well for our society to, whether you are sympathetic to the abuser or not, it gives society the chance to actually get help for the one who is the perpetrator so that they don't do this anymore and that there may be some, maybe, some reconciliation and healing in society. If there are any questions, thank you. [LB300]

SENATOR PANSING BROOKS: Thank you very much for coming forward. [LB300]

MARTY HOSKING: Thank you. [LB300]

SENATOR PANSING BROOKS: Next proponent. [LB300]

DON WESELY: Senator Brooks, members of the Judiciary Committee, my name is Don Wesely, D-o-n W-e-s-e-l-y. I'm here representing the Nebraska Association of Trial Attorneys in support of Senator Krist's bill, LB300. We are here recognizing the victims you've just heard and families that have been affected by this and question why the current statute of limitations is in in place. I don't know if there's any explanation for why we picked 12 years after the 21st birthday but, as you heard, this can go on for decades. One of the things I was sent from one of our attorneys who has dealt with these cases, there are some studies have been done on this obviously over the years. The first thing to recognize is that it is...there is a consensus among memory researchers and clinicians that most people who were sexually abused as children remember all or part of what happened to them, although they may not fully understand or disclose it. That's what you just heard. They remember. But there's also a situation, and this is from the Harvard Gazette, a study that was done back in 2006, and it's not unusual to forget childhood sexual abuse. I'm going to read this summary of the results of that study. "When questioned closely by psychologists from Harvard University about their feelings, victims of childhood sexual abuse revealed some surprising impressions. First, the abuse apparently was not seen as traumatic, terrifying, life threatening, or violent at the time. 'It hurt,' said one man who was raped as a boy. 'And after a while I knew it was wrong, but not at the beginning.' Only two out of the 27," who were interviewed, "recalled feeling traumatized at the time, (report psychologists Susan Clancy and Richard McNally). Some psychologists believe that forgetting childhood sexual abuse is a deep-seated unconscious blocking out of the event, an involuntary mechanism that automatically keeps painful memories out of consciousness." This research report that was referenced here led the researchers to conclude that it's also ordinary forgetting. "'I never told anyone,' said one victim." And, "'Basically, I just forgot about it.' 'Memories of childhood sexual assault can slip from awareness in the same way that ordinary memories can,' (Clancy asserts). Everyday forgetting can include voluntary suppression, insufficient reminders, or avoidance. 'A failure to

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think about something is not the same as being unable to remember it,' (McNally adds). A major reason for such 'normal forgetting' is that the abuse, even multiple episodes, was not seen as terrifying or life threatening at the time. But how about later when the violations were recalled? All 27 of those assaulted reported multiple negative effects from the abuse, such as loss of trust in people, difficulties with relationships, sexual problems, loss of self-esteem, mental health problems, or alienation. 'It may be recovered memories of the assaults are (sic--as) traumatic, rather than the event itself (being that way), that is responsible for these adverse impacts,' (Clancy concludes)." So it's a very difficult situation and sometimes it takes an event or somebody coming forward that will trigger in people those memories coming back. You're kind of seeing that right now with the Olympic gymnasts and what's happened and I think there's 50-some women that have come forward now. And so having an arbitrary statute of limitations doesn't make sense. These people, you know, for whatever reason, have not come forward. But when they do, they should be given a chance to go to court and deal with the situation in a civil action. And that's why we support this bill. [LB300]

SENATOR PANSING BROOKS: Thank you, Senator/Mayor Wesely. Any questions? Thank you for coming. Okay, further proponents? Proponents? Okay, any opponents? Welcome. [LB300]

HENRY FULLER: (Exhibit 4) Good afternoon, Senator Brooks. [LB300]

SENATOR PANSING BROOKS: Welcome. [LB300]

HENRY FULLER: Senators on this committee, I'm here to give some personal testimony about what happened to me when I was young. I thought I was molested. [LB300]

SENATOR PANSING BROOKS: Excuse me, we don't...could you... [LB300]

HENRY FULLER: Oh. My name is Henry Fuller, H-e-n-r-y, Fuller, F-u-l-l-e-r. [LB300]

SENATOR PANSING BROOKS: Okay, and when you...we do need you to sign the yellow sheet. [LB300]

HENRY FULLER: I'm hard of hearing. [LB300]

SENATOR PANSING BROOKS: We need you to sign the yellow sheet that's... [LB300]

HENRY FULLER: I did. I put one out there. [LB300]

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SENATOR PANSING BROOKS: But you could probably do it after you testify and give it to...or...you want to go ahead and do it now. I don't know. [LB300]

HENRY FULLER: Okay, I thought I did but I have it. [LB300]

SENATOR PANSING BROOKS: Okay. We don't have it, so thank you. [LB300]

HENRY FULLER: Okay. I thought I had been molested. Years later I was in therapy and there was a specialist--this was in the 1980s--and I thought about this for many years. And I finally saw a counselor who came in who was a specialist in male victims. And he had convinced me that because I had all these manifestations of someone who had been molested, I must have been molested. But I don't remember it and now it's been over 30 years and I've come to the conclusion that it really didn't happen. I was just being programmed to believe it. Now I can't discount people who have very valid testimony. But speaking for myself, I would have remembered and I don't. I have testimony there from a Derek Logue. He was here during LB60 a week and a half ago and the reason I'm including that is he questions how good is memory when you give up civil statutes of limitations. And he has a four-page report that he's presenting to all of you. The other issue is we keep hearing that we want to stop these monsters from molesting again. Well, I believe LB300 has to do with civil statutes of limitations. This won't stop offenders. It'll just expose them. The trouble is we gave expert testimony back during LB60 where we proved by empirical evidence that there's not a high rate of recidivism. It simply isn't there. So that's my point and that's why I oppose LB300. I think it's dangerous to throw away something as established as a statute of limitations as though it were nothing. It is something and it does apply to civil statutes, too, not just criminal. And that's all I really have to say. And thank you for your time. [LB300]

SENATOR PANSING BROOKS: Okay, thank you. Yes, Senator Baker. [LB300]

SENATOR BAKER: Thank you, Senator Pansing Brooks. I get that you're against LB300. But for someone to bring something up, would they not have to prove? I mean just one person saying I think I remember that so-and-so did something to me, that would not be enough proof in itself. They'd have to have some type of substantiated evidence. Is that not true? [LB300]

HENRY FULLER: Well, I can't speak as an expert but I can say that that might be true. I don't know. [LB300]

SENATOR BAKER: So the harm, well, what do you see as the harm in LB300? What's the harm? [LB300]

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HENRY FULLER: I don't see it as harm. I see it as perhaps going after people who have money who can be sued. The average sex offender is almost destitute. He can't find a job. He's going to be poor and ridiculed the rest of his life. For someone that has money, perhaps, but that to me is going after money. Is money satisfaction? I don't know. Maybe it is. Is it justice? I don't know. Is it revenge? I wish I had an answer, Senator. [LB300]

SENATOR BAKER: Well, my only point is going after money is not necessarily getting awarded money but it would have to be...have to develop a case if something truly happened I would think. But thank you. [LB300]

HENRY FULLER: Yes. Thank you very much, Senator, for the question. [LB300]

SENATOR PANSING BROOKS: Thank you, Senator Baker. Any other questions? Thank you for coming today. [LB300]

HENRY FULLER: Thank you, Senators. [LB300]

SENATOR PANSING BROOKS: And if you could please fill out the yellow sheet so we can have sort of some knowledge about...okay, any other opponents? Opponents? Welcome. [LB300]

GREGORY LAUBY: Thank you, Chairman. My name is Greg Lauby, G-r-e-g-o-r-y C. L-a-u-b-y. As I understand it, the present Nebraska law allows a child subject to a sexual assault to bring a civil lawsuit 12 years after the child reaches 21 and that LB300, if passed, would remove all time limitations on the filing of such a civil lawsuit. No conviction would be required as a precondition, nor would an investigation or even a timely report to a disinterested party be required before a civil suit was filed. That led me to be curious about the statute of limitations itself because in my knowledge it had applied to both civil and criminal suits with almost the only exception being the cases of murder. I found in Blackstone's Commentaries on English Law, Volume 3 (sic--Commentaries on the Laws of England, Volume 3), page 370, the following. "The use of statutes of limitation is to preserve the peace of the kingdom, and to prevent the (sic--those) innumerable perjuries which might ensue, if men (sic--a man) were allowed to bring an action for any injury committed at a distance of time. Upon both these accounts the law therefore holds, that..." And if you'll forgive me, he puts in a Latin adage that I won't butcher by trying to pronounce it. It's beyond my Latin education. But Black's Law (Dictionary) translates it as: it concerns the state that there be an end to lawsuits; or, alternatively, it is for the general welfare that a period be put to litigation. And then Blackstone continues, "...upon the same principle the Athenian," and I'm assuming he means Athens of Greece, "Athenian laws in general prohibited all actions, where an (sic--the) injury was committed five years before the

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complaint was made." That's a pretty longstanding tradition to wipe out with one legislative bill. And what purpose does the statute in this case have? Well, it preserves the peace and tranquility of all residents from the protection of unfounded and untrue allegations after a period of time. And that's one of the very justifications for the state's police power. By requiring suits be brought before all evidence refuting the allegations are lost memory or to material decay and discard. The limitation also functions as a barrier to attempts to extort the innocent by accusations that, in themselves, are damaging even if unproven and which would be expensive to refute. I'm from Gage County and we have had an ongoing example of the danger that testimony from four individuals who were assisted by a therapist to testify to their memories of an incident that occurred four years before the matter of trial which were later proven that they had no presence during. So there is a danger for any recovered memories after a period of time. There is also a danger in trying to establish a corpus delicti of an event at an unlimited time after its occurrence. It seems to me that if the real goal is an opportunity for closure and justice, perhaps the appropriate thing to do is to fund and expand the victim assistance program so that it would include eligibility for counseling for victims so that it might speed their recovery and their capacity for disclosure. Are there any questions? [LB300]

SENATOR PANSING BROOKS: Thank you, Mr. Lauby. Do you have a question? Thank you for your testimony. [LB300]

GREGORY LAUBY: Thank you. [LB300]

SENATOR PANSING BROOKS: Any further opponents? Opponents? What about people in the neutral? Any neutral testimony? Senator Krist. [LB300]

SENATOR KRIST: This is by far one of the greatest opportunities I've had in my eight years to bring forth a change in legislation to protect the lives and futures of our youth. In order to stop the heinous crimes of sexual abuse of our young men and women, we have to break the chain. This man that we will not name today had enough money to entertain many young boys and make sure that they were comfortable and sexually abuse them. And when a man becomes a man and knows that years before those things happened to him and decides it's time to break the chain, the statute of limitations is gone. You heard the testimony that Don Kleine could not prosecute because the statute of limitations was over. How many young men or women are continued to be abused by abusers because that same scenario exists? It's about closure for victims. It's about confronting the demons. It's about moving on. What you heard about the statute of limitations in most cases I believe to be true. But when children are involved, they need to grow to take their own actions and that's what we're hearing today. This man I shook hands with, I played golf with, all the time knowing, thinking that he was a fine, upstanding man, and then knowing that he had affected the lives of over 60 people, I think the correct number is, of

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which I probably know personally half. We need LB300. I ask you to pass this on for the rest of the Legislature to act on. [LB300]

SENATOR PANSING BROOKS: (Exhibits 1-3) Thank you, Senator Krist. Any questions? Thank you. There are the letters: Kristin Mayleben-Flott of the Nebraska Planning Council on Developmental Disabilities supports; Kenneth Ackerman opposes; and Nathan Leach is in the neutral. And now we will go forward with LB367, Senator Krist. Do we want to have a quick break? Do you want to have a quick break? [LB300]

SENATOR KRIST: I'm fine, unless you all do. [LB300]

SENATOR PANSING BROOKS: Do you need a break? How many people are here for the next bill? Could you raise your hands. Two, three, okay. Should we just try to forge ahead? We're going to try to forge ahead with this. Okay, Senator Krist, LB367. [LB300]

SENATOR KRIST: Good afternoon, Senators. My name is Bob Krist, B-o-b K-r-i-s-t. I represent the 10th Legislative District, northwest Omaha along with north-central portion of Douglas County, which includes the city of Bennington. I appear before you today in introduction of LB367. I have introduced LB367 to change provisions relating to the payment costs. In reality, there really isn't a change but clarification, rather clarification. Since the major juvenile justice reform efforts of LB561 in 2013 and LB464 in '14, the transportation, in quotes, related costs...payment costs has been interpreted several ways by various stakeholders. Specifically, past juvenile reform legislation was not clear enough as it relates to transportation that results from a detention intake decision. This proposed legislation clarifies the reform efforts did not change the detention intake process whereby a peace officer retains temporary custody of a juvenile who is taken into custody and delivers that youth to the probation for an intake decision. The peace officer is required by law to implement the probation officer's decision to release or detain in the placement of the juvenile. If you have specific questions about these placement from Probation, Probation is here to testify. Jeanne Brandner is here to testify behind. Just make a couple of personal comments and I probably won't close on this one. There has been a difference of opinion and a difference of interpretation about who pays for what. We have...not every county has a detention facility obviously. So when a county has a problem where a child is put in a detention facility, sometimes it's one of three or four or five. On the eastern side of the state it could be in Sarpy, it could be Douglas, it could be Lancaster County. The interpretation of how the money or how the charges are sent has been interpreted differently. This hopefully will clarify that and Jeanne will talk about that. More importantly I think you've probably read and understand that we...they have reached a compromise in terms of what those costs might be here just recently and I applaud those efforts from all angles. This is not an attack on any one of our detention facilities or any county. Although I've been known to get on a soapbox and point my

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finger at them on occasion, I think we're now at a point where we're starting to discuss these issues and rightfully so to make sure that our kids are taken care of. More importantly in a time...not more importantly, but besides the consideration of our children what's right for our children there's also a cost implication. And when the state is forced to pay a different rates at different times, it's not conservatively the best way we should do business. So per diems and transportation and those kinds of things should be done in the best interest of the child and then also in the best interest of the cost analysis. So with that, I'll let Jeanne and others come up and tell you why it is good or not good and I'll just waive closing. Thank you. [LB367]

SENATOR PANSING BROOKS: Okay, thank you very much, Senator Krist. All right. Proponents. Welcome, Ms. Brandner. [LB367]

JEANNE BRANDNER: Thank you. Good afternoon, acting Chairwoman Pansing Brooks and members of the Judiciary Committee. My name is Jeanne Brandner, J-e-a-n-n-e B-r-a-n-d-n-e-r. I'm employed by the Nebraska Supreme Court Administrative Office of the Courts and Probation as the deputy administrator overseeing Juvenile Services. I am here today to provide testimony in support of LB367. I would like to thank Senator Krist for the introduction of the bill. And as he stated in his opening, it is a clarification of the previous juvenile reform efforts. To put it simply, we are trying to solve a problem. Within those juvenile justice reform bills there was a, as I refer to it, 14-letter word and that word is "transportation." That word has caused much disagreement among how business occurs and has ultimately...has the potential to impact the best interest of the children. For those of you that weren't here when those major reform efforts transpired, I would just like to provide some foundation. Prior to LB561 and LB464 that Senator Krist mentioned, Probation did not pay any cost for detention at all. All Probation youth that were detained were paid for by counties. Those were first-time youth and those under Probation supervision. There was a subset of youth that were state wards within the Office of Juvenile Services Department of Health and Human Services and they did pay for detention costs for those youth who were in custody. The statewide detention amount paid by OJS at that time was just a little bit over \$2 million. With these reform efforts and the broadening of the detention payment, applying detention costs to Probation, and then the broadening of that within for LB464 have resulted in Probation--and again let me be clear that these are state General Funds--paying approximately \$10 million for Probation cost. In addition to us assuming a larger segment of detention costs, the available dollars to counties under the community-based aid was substantially increased. I bring up this history because some of what you may hear in opposition may talk about cost shifting, unfunded mandates, and those types of terminology and I just wanted to be very clear about what happened before and how it's happening now. As Senator mentioned, there is a variety of interpretations of this and we are looking to clarify that Probation...the process specifically of detention intake as Senator outlined in the statute, does require the peace officer that takes a youth into temporary custody which is another term for an arrest. We don't call it an arrest for juveniles but it's essentially the same thing. And this process

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has to be collaborative to ensure that those who are deemed to be a community safety risk are safely and securely transported to those facilities. Additionally, this bill also clarifies the transportation agreed to as part of an established agreement or per diem shall not prohibit any other entity from taking on such cost if we're including that in a per diem and that's, Senator mentioned, what we've recently been working on with one of our detention facilities. The clarifications that have been outlined today are necessary and I urge you to support the passage of this important legislation. I thank you for your time and I'm happy to answer any specific questions that you might have. [LB367]

SENATOR PANSING BROOKS: Thank you, Ms. Brandner. Anybody have a question? Nope. Thank you for coming. [LB367]

JEANNE BRANDNER: Thank you. [LB367]

SENATOR PANSING BROOKS: Next proponent. No proponent? Okay, next we'll take opponents. Welcome. [LB367]

KERRY EAGAN: Good afternoon, Senator Pansing Brooks and members of the Judiciary Committee. My name is Kerry Eagan. I'm the chief administrative officer for Lancaster County here on behalf of the Lancaster County Board to testify in opposition to LB367. I intended a long testimony. I did have an opportunity to meet with Senator Krist prior to the hearing. It was a very good meeting. I did express our concerns about cost shifting and ambiguities that are created by LB367. I think he was very receptive to talking about it and working through it together. So at this point I really don't intend to go any further with any detailed testimony. I did provide a copy of my testimony to Senator Krist so that he was aware of our concerns. But I think I'd prefer to work in harmony with Senator Krist rather than at this point go into some of those details. So I would be happy to answer any questions... [LB367]

SENATOR PANSING BROOKS: About whatever it is you're not telling us. (Laughter) Okay. Anything else you want to tell us about what you're not telling us? [LB367]

KERRY EAGAN: I did share those concerns with Senator Krist. I provided him with a copy of the testimony. [LB367]

SENATOR PANSING BROOKS: That's fine. Thank you, Mr. Eagan. Appreciate you coming. Any questions? [LB367]

SENATOR MORFELD: It's Friday. We're getting feisty. [LB367]

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SENATOR PANSING BROOKS: Yeah, we are. Further opponents. Welcome. [LB367]

ELAINE MENZEL: Thank you. Senator Pansing Brooks and members of the Judiciary Committee, for the record, my name is Elaine Menzel; that's E-l-a-i-n-e M-e-n-z-e-l. I'm here on behalf of the Nebraska Association of County Officials. And it will come as no surprise to you that we're here in opposition because of unfunded mandates as Ms. Brandner indicated. I will tell you that a separate legislative committee had the interim study about unfunded and underfunded mandates. And I've previously referred about that information to this committee. Transportation costs and potentially paying counties for some of those transportation costs was one of the things that they had mentioned within that study. And so by transferring that to the county specifically the concern would be that that would be problematic to us. We certainly appreciate Senator Krist for working with the county and the counties we'll hope to continue dialogue if appropriate. And I'll open it up to any questions if there are any. [LB367]

SENATOR PANSING BROOKS: Does anybody have any questions? Thank you...oh, yes, Senator Halloran. [LB367]

SENATOR HALLORAN: Hi. [LB367]

ELAINE MENZEL: Hi. [LB367]

SENATOR HALLORAN: I just...I'm pretty much lost because I don't see any figures. I know it's not...you know, it's not something for the General Fund to deal with but it is a cost transfer between two parties. I'm at a loss. [LB367]

ELAINE MENZEL: I believe in the fiscal note I believe it was reflected that there's a possibly \$150,000 potentially to the county. I thought that that was reflected in there and maybe I'm recalling incorrectly. [LB367]

SENATOR HALLORAN: Okay. \$128,000. [LB367]

ELAINE MENZEL: Oh, I'm sorry. Yes. And then there was another component to it that they were unsure of what potential additional were...and I apologize, I don't recall what that specially was right now. [LB367]

SENATOR HALLORAN: No, no, that's fine. That's fine. Thanks. [LB367]

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ELAINE MENZEL: Thank you. [LB367]

SENATOR PANSING BROOKS: Thank you. Any other questions? Okay, any further opponents? Any testimony in the neutral? (Exhibit 1) Now we have the letters: There's one from Mary Ann Borgeson, Douglas County Board of Commissioners, opposed; and one from Nathan Leach in the neutral. And you're waiving closing? Okay, so that closes the hearing on LB367 and ends our hearings today. Thank you all for coming. [LB367]