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Judiciary Committee
January 17, 2007

[LB6 LB8 LB15 LB141 LB157]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, January 17, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB141, LB8, LB15, LB6, and LB157. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None. [LB141]

SENATOR ASHFORD: (Microphone malfunction) ...one minute after time, so I think it's time to get going. Welcome to the new Judiciary Committee, the first hearing. I'd like to introduce myself. I'm (microphone malfunction) Chairman of the Committee. Senator McDonald, Senator Pirsch, Senator Schimek, Senator Lathrop, Senator McGill. Committee counsel, Jeff Beaty, and Stacey Trout. And Jonathan Bradford is the committee clerk. So a few new faces and some not so new faces. But welcome. We have a few...those of you who have been before the committee, the rules have not...guidelines, not rules, guidelines have not changed dramatically. We're still using the light system that you remember from Senator Brashear's day because this year is the same as every year going back to when I was here 15, 20 years ago. The number of bills in the Judiciary Committee exceeds any other committee by some significant amount. So we want to keep things moving. We'd ask everyone, before they testify, if they would sign in at the table behind the witness table there and if they would print their names for the record. The introducer--in this case, Speaker Flood, Senator Flood will be introducing the first bill--we'd ask that the introducer spend five minutes introducing the bill. Each testifier would then have three minutes and then the introducer would have an additional five minutes to close. And we'll notify with a blue light when there's a minute left on your time. I'm sorry, white light is one minute. The colors have changed. (Laughter) Thank you, Mr. Bradford, I appreciate that. I'm open to any suggestions that anybody might have. Senator Flood, the first bill is LB141, and welcome. [LB141]

SENATOR FLOOD: Thank you, Mr. Chairman, members, good afternoon. Members of the Judiciary Committee, my name is Mike Flood and I represent the 19th Legislative District and I'm here to introduce LB141. LB141 amends the current burglary statute and removes the element of breaking from the offense. Nebraska presently defines the crime of burglary as the act of willfully, maliciously, and forcibly breaking an entering any real estate or improvement erected thereon with the intent to commit any felony or with the intent to steal property of any value. For decades, the Nebraska courts have struggled to fully define the word "breaking." After much consideration, the court settled the definition of "breaking," that it is an act of physical force, however slight, to remove an obstruction to the entry of the premises. This has lead to a series of inconsistent convictions under the law of burglary. The problem was specifically addressed in a Nebraska Supreme Court opinion, concurring opinion in the case of State v. Greer. An example is given in the concurring opinion. Under the present interpretation of breaking,

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climbing over the newly erected fence at the Governor's mansion with the intent to commit any felony is not burglary. But opening and walking through the gate with the same intent is burglary. The concurring opinion called on the Legislature to resolve the issue. The purpose of this legislation is to clarify the burglary statute and so remove the element of breaking from the offense. The intent of the burglary statute is to protect the sanctity and security of our homes and businesses. This intent should not be hindered by formalistic and hypertechnical application of the law. The statute is also narrow under LB141 to only define burglary as those acts where a person not privileged to do so enters or remains unlawfully in a building or occupied structure, rather than any real estate as currently prescribed. And it has been brought to my attention that inadvertently before, when this bill had been drafted, if you were going to break in to a premises with the intention of committing any other felony, that would have been an included element. But it was not, and it will be amended. We'll provide an amendment to the committee at your request or you can do it. [LB141]

SENATOR ASHFORD: Thank you. Did you...I noticed when you walked in the hearing room that you were preceded by a group of individuals in the front row there. Are they associated with you or... [LB141]

SENATOR FLOOD: They're not my children. (Laughter) But they are from Madison County and this is a group of young people, seventh graders, part of the Home Schooling Association that are visiting the Nebraska State Capitol today. And they have very good questions and they have been...we were just talking in my office and we were talking about this burglary statute and they decided to come down and watch how a committee does its important work. [LB141]

SENATOR ASHFORD: Welcome. I hope you have a good day today. Senator Pedersen has arrived. Thank you. Does anyone have any questions of the Speaker, Senator Flood? We're on LB141, Senator Pedersen, just started the introduction. Yeah, Senator Pirsch. [LB141]

SENATOR PIRSCH: I'm sorry. What was the nature of the amendment that you were... [LB141]

SENATOR FLOOD: I'll let the county attorney's office from Lancaster County share with you more of the specifics. They're following me here in just a second and he's actually addressed it in advance of the hearing. Thank you. [LB141]

SENATOR ASHFORD: Thank you, Senator. [LB141]

SENATOR FLOOD: Thank you for having me. I appreciate it. [LB141]

SENATOR ASHFORD: Could I ask how many are testifying on this bill? One? Okay. If

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you just, yeah, come on up and... [LB141]

PATRICK CONDON: Good afternoon, members of the committee. My name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am a deputy Lancaster County attorney. I am here on behalf of the Nebraska County Attorneys Association, speaking in support of this LB141, as I understand, as it is to be amended. In regards to that amendment, the statute previously, or as it is now, reads that an individual commits burglary if such person willfully, maliciously, and forcefully breaks and enters any real estates or any improvements erected thereon with the intent to commit any felony or with the intent to steal property of any value. The new language or the proposed language would be that they willfully and maliciously enter or remain unlawfully in any building or occupied structure or separately secured or occupied portion thereof, knowing that he or she is not licensed or privileged to do so. And I think the language that was inadvertently left out was with the intent to commit any felony or with the intent to steal property of any value. That "with intent to commit any felony" I believe would be put back into the proposed LB141. The intent of this--and being a prosecutor for the past 16, 17 years--we see the problem with burglaries and it is in the sense of, you have an individual that...you have an open window, the individual moves the curtain to get into the residence and that is a burglary. If that window is open and there is no curtain and they go in without removing any obstacle, technically that is not a burglary. This language basically will make that second scenario be a burglary in that they are going into the residence or to the business. As you know, or it was noted, it does take out the real estate aspect of the statute. So as in Justice Wright's concurring opinion in the Greer case, that would still not be a burglary under the new statute because that is real estate and that is being removed from this statute. Any questions? [LB141]

SENATOR ASHFORD: Any questions? Senator Pirsch. [LB141]

SENATOR PIRSCH: Just...has this issue arisen in any other jurisdiction? [LB141]

PATRICK CONDON: I think it's something that has arisen. I know the...I believe that the Zemunski case out of Grand Island, it arose out there. And the instruction given to the jury has always been any breaking, whatever, however slight. So that is a...it's a common instruction that's given in all burglary cases. So that, basically that would be removed and it's just the unlawful remain or unlawfully enter into the premises or the business. So when I was out in Grand Island, it had come up, it had risen out there in that jurisdiction. [LB141]

SENATOR ASHFORD: Senator...anyone else? The amendment, though, will clarify what we have now. Is that...I mean, obviously now the bill as written does not provide for the necessary language. [LB141]

PATRICK CONDON: May I approach the committee and... [LB141]

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SENATOR ASHFORD: (Exhibit 1) Do you have an amendment? Do we have that in here? Do we have someone to hand these out? In the future, I think if we just had the copies of the amendments for everyone, it would be helpful. But I see what you're saying here. The amendment provides...a person commits burglary if such person willfully and maliciously enters or remains unlawfully in any building or occupied structure or a separately secured or occupied portion thereof, knowing that he or she is not licensed or privileged to do so. That's the amendment that you're referring to? [LB141]

PATRICK CONDON: That is the amendment. But then inadvertently, when LB141 was first proposed, the "or with the intent to commit any felony" was left out of the LB. So I think we were asking that the committee amend LB141 to put that language back into the... [LB141]

SENATOR ASHFORD: With the intent to commit any felony or with intent to steal property, in that portion of it? [LB141]

PATRICK CONDON: Right. We'd go back and...yes. [LB141]

SENATOR ASHFORD: And the reason for this is the Greer case? [LB141]

PATRICK CONDON: The Greer case, and it goes back, if you go back through the previous Supreme Court rulings, basically this has come up since 1889 where an individual went through... [LB141]

SENATOR ASHFORD: That's a long time to go. [LB141]

PATRICK CONDON: An individual went through a transom and the transom was open so it wasn't a burglary. [LB141]

SENATOR ASHFORD: Right, but what is the...in the situation we're trying to address, can you just anecdotally give me another, just very simply, what is the situation we're trying to address again? [LB141]

PATRICK CONDON: If an individual went through an open window to a residence, say there's a window that's open, there's no screen. If they go through that window now to commit any felony or to steal property of any value, that is not a burglary because there was no breaking other than going through the open window. If there was a curtain there and they removed that curtain, that would be considered a breaking under the, because it's a breaking, however slight, is how the Supreme... [LB141]

SENATOR ASHFORD: Touching of the curtain is a breaking. [LB141]

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PATRICK CONDON: Touching of the curtain, removing that obstacle would be considered the breaking in this case and that is being removed from this with the proposed language here. [LB141]

SENATOR ASHFORD: If there was no breaking, what would the crime be? [LB141]

PATRICK CONDON: Trespass, of course. [LB141]

SENATOR ASHFORD: If there was a taking, what would the... [LB141]

PATRICK CONDON: It would be a theft, depending on the value, you would have a trespass and then a theft, depending on the value, that would determine the level or the degree of the theft, the level of the penalties. With the burglary now, it's any taking of anything. So however they take a thing that's worth \$5 or \$100, it doesn't matter, it's still a Class III felony burglary, is the taking. And then the committing or committing any other felony. [LB141]

SENATOR ASHFORD: Thanks, Patrick. Any other questions of...yes, Senator Chambers has arrived with a question. [LB141]

SENATOR CHAMBERS: Let me glance at the amendment. Is it different from what's in the green copy? [LB141]

PATRICK CONDON: It is, Senator. I believe inadvertently the language "or with the intent to commit any felony" was left out of the green copy. And that's being put back in. [LB141]

SENATOR CHAMBERS: Well, in the green copy, the words "with intent to steal property of any value," you want to...have you got the green copy with you? [LB141]

PATRICK CONDON: Yes, I do, Senator. [LB141]

SENATOR CHAMBERS: Okay, on page 2... [LB141]

PATRICK CONDON: Yes. [LB141]

SENATOR CHAMBERS: And remember I'm coming in cold on the amendment. In line 9... [LB141]

PATRICK CONDON: Yes. [LB141]

SENATOR CHAMBERS: ...the existing language is, "with intent to steal property of any

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value." [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: Based on this amendment that we have, we're amending the same section, 28-507, but the language which is considered existing statute says, "with intent to commit any felony or with intent to steal property of any value." [LB141]

PATRICK CONDON: Correct. And if you see in line 5, Senator, they remove that "to commit any felony" and I think that was inadvertently stricken. [LB141]

SENATOR CHAMBERS: But based on the way this amendment is drafted, this language, "with intent to commit any felony or with intent to steal property of any value," is not new language. [LB141]

PATRICK CONDON: That is correct. That would not be new language. The amendment would be, Senator, is to remove breaking from the language of the statute so you would not have the "willfully, maliciously, and forcibly enter any real estate." It would just be "willfully and maliciously enter or remain unlawfully in any building or occupied structure." [LB141]

SENATOR CHAMBERS: Well, it seems to me, in this amendment that I'm looking at that has just been handed to us... [LB141]

PATRICK CONDON: Yes, sir. [LB141]

SENATOR CHAMBERS: ...this language, "with intent to commit any felony or with intent to steal property of any value," is existing language at the end of Section 28-507. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: That's not the way it is in the statute now. The language at the end of 28-507 is "with intent to steal property of any value." So this amendment that we have before us is not really amending 28-507 as it exists now. You're putting language in a different location from what it is in the existing law, but you're offering the amendment and it gives the impression that the existing law places this language at the end of 28-507 and that language is not found at the end of 28-507. That language is found at a different location in 28-507. So it's misleading. If you're going to strike language from one part of the statute and put it someplace else, you show that language that you're eliminating as being...you have a line drawn through it. [LB141]

PATRICK CONDON: Correct. [LB141]

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SENATOR CHAMBERS: The language, if it has been placed someplace else, when you put it someplace else, it becomes new language because of its new location and it's underlined. If a person were to read what you just gave us, a person would get the impression that the final words of 28-507 are the ones that you put here, but those are not the final words in 28-507 as they exist in statute now. But let that be as it may. I want to ask you this. A person does not have to enter the property unlawfully; isn't that true, under what you're doing here? The person may lawfully enter the property. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: Now suppose at the time the person lawfully entered the property, he or she had no intention to steal. Let's say it was a department store and the person went to sleep or for some reason was in the store after it closed and developed the intent to steal after having lawfully entered. That is not burglary? [LB141]

PATRICK CONDON: No, I think under the new language, Senator, it's "willfully and maliciously enter." They willfully entered the store, they remained there unlawfully in the building or the occupied structure. So the argument, I suppose the argument there would be, did they remain there unlawfully. [LB141]

SENATOR CHAMBERS: The intent has to be a part of it. If you're just there unlawfully, that's not burglary. [LB141]

PATRICK CONDON: Correct. They have to have the intent to steal property. [LB141]

SENATOR CHAMBERS: I could break the window and climb in, but if I do it without the intent to steal, that's not burglary. [LB141]

PATRICK CONDON: I think the case law is such that you can, it would be argument to what your intent was, depending on were you breaking in at 4:00 in the morning... [LB141]

SENATOR CHAMBERS: No, what I'm trying to do is get you to focus on what I'm asking you, because I don't want to push you well into deep water. I just want to take it a step at a time. [LB141]

PATRICK CONDON: Okay. [LB141]

SENATOR CHAMBERS: If I break into a building... [LB141]

PATRICK CONDON: Yes, sir. [LB141]

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SENATOR CHAMBERS: ...that by itself is not burglary, is it? [LB141]

PATRICK CONDON: No, it's criminal mischief, perhaps. [LB141]

SENATOR CHAMBERS: And this doesn't say that my intent will be presumed from the fact that I broke in, does it? [LB141]

PATRICK CONDON: No. [LB141]

SENATOR CHAMBERS: So I can break in and then you would have to prove my intent. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: So if I broke into the building and there was an alarm that went off someplace else and they caught me in the building and there is nothing which does not belong to me which is in my possession, then I could not be charged with burglary on that basis alone. I could be charged with it, but they would have to have something in addition to convict me of burglary, wouldn't they? [LB141]

PATRICK CONDON: I would agree, sir. [LB141]

SENATOR CHAMBERS: Okay, so now tell me what the purpose of this amendment is. [LB141]

PATRICK CONDON: This amendment, sir, would be so...take your example of being in a convenience store or a department store I believe was your example. If you go in that department store at a legal time when the public is invited in and then you secretly remain there with the intent either to commit a felony or with the intent to steal property of any value and you remain there, say, at 11:00 when the store is closed and then you take something out of that or you try to get out of that store with property, under the old statute the question is, is what did you break to get into that? You didn't. Your intent may have been to go in there to steal, but the door was open, you went in, and you remained there secretly. That is not a burglary under the statutes as we have it now because there was no breaking for you... [LB141]

SENATOR CHAMBERS: Right. [LB141]

PATRICK CONDON: ...to get into that building or that establishment. And that is addressed in one of the cases that the Supreme Court noticed, just such a case where the individual went into a YMCA during the time that it was open. [LB141]

SENATOR CHAMBERS: If I went in this building when it was open and remained there

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with the intent of sleeping because it's cold outside; would they say that I stole heat, or they could not charge me with a burglary? [LB141]

PATRICK CONDON: I think it's taking property. I'm not sure. [LB141]

SENATOR CHAMBERS: So there's no way I could be charged with burglary if they could... [LB141]

PATRICK CONDON: No, trespassing I... [LB141]

SENATOR CHAMBERS: ...if the only thing, I was just found sleeping. [LB141]

PATRICK CONDON: I think if they were just intent on sleeping and there was nothing to show anything different, it would be a trespass. [LB141]

SENATOR CHAMBERS: And if I broke in to do that, then it's not burglary? [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: And if we don't change the law, then there still has to be the breaking before there would be a burglary? [LB141]

PATRICK CONDON: Correct, sir. [LB141]

SENATOR CHAMBERS: Now here's a question that I want to ask you. Why do we need the crime of burglary in Nebraska's criminal law? [LB141]

PATRICK CONDON: The intent of this is, my understanding of the intent of this statute and of the legislation is protect the sanctity of our businesses and our homes. That is, we... [LB141]

SENATOR CHAMBERS: Why do we need a crime of burglary? Couldn't we do the same thing...we could just abolish the crime of burglary and achieve the same thing under theft statutes, couldn't we? We could call it a different level or a different degree of theft if you broke in addition to just being there. We could call it something else, couldn't we? [LB141]

PATRICK CONDON: The problem there would be in the other language which was inadvertently taken out, and that is it's a separate crime if you would break into, say you break into an apartment complex to effectuate a rape on a victim. [LB141]

SENATOR CHAMBERS: But the Legislature is not limited to what's existing in the statute now. The Legislature could say the crime of burglary is hereby abolished. It can

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do that, can't it? [LB141]

PATRICK CONDON: Yes. [LB141]

SENATOR CHAMBERS: There are no common law crimes in Nebraska, isn't that true? [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: So the only reason burglary is a crime is because there is a statute that makes it so. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: If the statute that makes it so is repealed, there is no longer a crime of burglary. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: But there could be statutes drafted without using the term "burglary" and drawing with that term, all of the common law and any other case law that goes along with the word "burglary," we could eliminate all of that by doing away with the crime of burglary and create an offense that amounts to the same thing with a different name. Could we do that as a legislature? [LB141]

PATRICK CONDON: As a legislature, I think you could do that, sir. [LB141]

SENATOR CHAMBERS: Why don't we do that then and start with a clean slate? Whose idea was it to do it this way? [LB141]

PATRICK CONDON: I believe Senator Flood was the proposer for the bill, sir, is the senator that proposed this bill. [LB141]

SENATOR CHAMBERS: And since I was late, and I apologize, can you tell me who you are? [LB141]

PATRICK CONDON: I'm sorry, sir. I'm Patrick Condon. I'm a deputy Lancaster County attorney and I'm here on behalf of the Nebraska County Attorneys Association, sir. [LB141]

SENATOR CHAMBERS: Oh, so the county attorneys want this. [LB141]

PATRICK CONDON: The County Attorneys Association is in support of this bill, sir.

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[LB141]

SENATOR CHAMBERS: Who drafted this amendment that you handed us? [LB141]

PATRICK CONDON: I believe that was Senator...I believe Senator Flood handed me...sir, I'm not sure who prepared it. [LB141]

SENATOR CHAMBERS: Has he testified yet? [LB141]

PATRICK CONDON: Yes, he has, sir. [LB141]

SENATOR CHAMBERS: Who opened on the bill? [LB141]

PATRICK CONDON: Senator Flood. [LB141]

SENATOR CHAMBERS: Well, he'll close so then some of those questions I can reserve for him. Thank you. [LB141]

SENATOR LATHROP: I do have a question... [LB141]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB141]

SENATOR LATHROP: ...prompted perhaps by the questions we've just heard. But what's happened with the changes that are proposed to the burglary statute is we're taking out the element of "forcibly break." Is that right? [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR LATHROP: Essentially we're taking that element out and now it becomes "entering property unlawfully with the intention to steal." [LB141]

PATRICK CONDON: Or remaining unlawfully. [LB141]

SENATOR LATHROP: Right. Is it not now broad enough to encompass a shoplifter? I mean, if somebody has been told to stay out of the Target or the Dillards or wherever and they go in there and they don't have permission to be there and they go in with the intention to steal a \$2 scarf. By eliminating the need for a forcible entry, are we not turning this misdemeanor shoplifting into a burglary? [LB141]

PATRICK CONDON: That could be...I would agree with that, sir. In looking at it that way, I think that is a possibility. [LB141]

SENATOR ASHFORD: Senator Chambers, is that... [LB141]

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SENATOR CHAMBERS: Was that your intent? [LB141]

PATRICK CONDON: Senator, my intent was...no. My intent was to, and as I explained, as a prosecutor it is sometimes difficult to explain to the public why an individual whose garage doors may be up inadvertently and somebody gets in and steals property, the individual is charged with a theft where if somebody went and opened that door and went in, that's a burglary. The distinction there is...the only distinction is that lifting of the door, the breaking. [LB141]

SENATOR CHAMBERS: Were our laws passed so that the untutored public will understand or is the law passed because there is an evil which exists and the law is designed to provide a way to remedy it? [LB141]

PATRICK CONDON: I think the latter, sir. And I think the evil exists regardless if that door is closed or open. If somebody goes in with the intent to steal property, that is the evil, not the necessary opening of the door. [LB141]

SENATOR CHAMBERS: Well, based on the questioning of my colleague--and I agree with him absolutely--why would the prosecutors want to convert a misdemeanor into a felony? Maybe now you understand why I was thinking we do away with the term "burglary." You're trying to do something within a certain framework and keep that framework. But in the way you've done it, you have come up with what I think is an unintended result. That's my view. But you're not sure that it was not a secret intent to convert misdemeanors into felonies, are you? [LB141]

PATRICK CONDON: Well, Senator, I guess, going back to Senator Lathrop's example, let's say the store is...let's say the individual has to go through a door, forcibly breaks and enters that door and goes in and does the shoplifting. That is a burglary. In my years, I've never charged it nor have I heard anybody charging that as a prosecutor as a burglary because they are forcibly going into that door with the intent to steal property. That is a shoplift and that's... [LB141]

SENATOR CHAMBERS: Well, regardless of what you would do as a prosecutor, you know that prosecutors may approach the same incident in different ways. [LB141]

PATRICK CONDON: Absolutely. [LB141]

SENATOR CHAMBERS: A crime consists of statutory elements. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: If the elements are there, then that crime can be charged.

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[LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: But if a prosecutor chooses, a prosecutor can charge a lower grade offense. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: And the elements of that lower grade offense must be present for that lower grade offense to be charged. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: So you could ignore the fact that a door was broken and just look at the value of the property that was taken. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: And it could be simple theft. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: Or you could call it a trespass if nothing was taken. [LB141]

PATRICK CONDON: And they were given, either they were given notice or they were told... [LB141]

SENATOR CHAMBERS: That's what I mean. [LB141]

PATRICK CONDON: ...as in Senator Lathrop's example. Right, yes. [LB141]

SENATOR CHAMBERS: Right, but they're unlawfully on the premises. [LB141]

PATRICK CONDON: Yes, that is correct, sir. [LB141]

SENATOR CHAMBERS: It doesn't have to be a burglary, it doesn't have to be charged as a theft. [LB141]

PATRICK CONDON: That's correct. [LB141]

SENATOR CHAMBERS: Even if something had been taken unlawfully, a plea agreement could be reached where the person, if he or she would plead guilty, could be

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charged with a simple trespass. [LB141]

PATRICK CONDON: Absolutely, sir. [LB141]

SENATOR CHAMBERS: So we have to look at what can be done under the law based on the elements rather than how different prosecutors may handle the offense. And the offense is going to exist based on what we as legislators say it means. [LB141]

PATRICK CONDON: Yes. [LB141]

SENATOR CHAMBERS: Would you agree with that? [LB141]

PATRICK CONDON: Yes. [LB141]

SENATOR CHAMBERS: Did you follow Senator Lathrop's questioning? [LB141]

PATRICK CONDON: Yes, sir. [LB141]

SENATOR CHAMBERS: And I think you did, too. And what would amount to shoplifting could be burglary under this language, is that true? [LB141]

PATRICK CONDON: Probably under the existing language, yes, sir. [LB141]

SENATOR CHAMBERS: Well, we're talking about the new language. [LB141]

PATRICK CONDON: Yes, sir. [LB141]

SENATOR CHAMBERS: Under the existing language, would a person have to break and enter? Would a person have to forcibly break and enter under the existing language in order for it to be a burglary? [LB141]

PATRICK CONDON: Yes, sir. [LB141]

SENATOR CHAMBERS: Well, if the person had been told don't come here, even if there had been a restraining order, but the person walked through an open door. It couldn't be burglary under the existing statute, could it? There is no forcible breaking and entering. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: So it couldn't be, under the present statute as you suggested. Under Senator Lathrop's example, it could not be burglary under the existing statute, could it? [LB141]

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PATRICK CONDON: Again, depending on how...and I apologize, Senator. [LB141]

SENATOR CHAMBERS: Then let it be my example. We'll leave Senator Lathrop out of it. (Laughter) A person is told, you cannot be on these premises. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: And there's a restraining order... [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: ...so that we don't just have a guy saying, well, I told him he couldn't be here. [LB141]

PATRICK CONDON: Correct. [LB141]

SENATOR CHAMBERS: If there is a restraining order, can I legally be on those premises? [LB141]

PATRICK CONDON: No, sir. [LB141]

SENATOR CHAMBERS: So it's Dillards. Everybody in this room is walking in. I walk in, too. Am I unlawfully on those premises? [LB141]

PATRICK CONDON: I would say you are, sir. [LB141]

SENATOR CHAMBERS: Now everybody in here stole something, they're guilty of theft if convicted, shoplifting. [LB141]

PATRICK CONDON: Correct, sir. [LB141]

SENATOR CHAMBERS: What would I be guilty of if I shoplifted the same thing they did? What I would be guilty of since I was unlawfully on the premises, with this new language? [LB141]

PATRICK CONDON: You could be charged with burglary under the new language, Senator. I would agree with you on that. [LB141]

SENATOR CHAMBERS: But I couldn't be under existing statutory language, could I? [LB141]

PATRICK CONDON: Not with that example; no, sir. [LB141]

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SENATOR CHAMBERS: Okay, this is a bad bill the way it's drafted, in my opinion. And it goes beyond what your intention was as a prosecutor, doesn't it? [LB141]

PATRICK CONDON: With that example, sir. [LB141]

SENATOR CHAMBERS: Do you see why legislators draft bills and not prosecutors? [LB141]

PATRICK CONDON: I do, sir. [LB141]

SENATOR CHAMBERS: And do you see how a well-intentioned prosecutor may seek language that accomplishes what he or she wants but it could go beyond that also? [LB141]

PATRICK CONDON: Yes, sir. [LB141]

SENATOR CHAMBERS: And would you agree that these legislators are paid to make sure that statutes say what we mean and mean what we say? [LB141]

PATRICK CONDON: Yes, sir. [LB141]

SENATOR CHAMBERS: Do you think that Senator Lathrop and I are really trying to earn our money? (Laughter) We're not paid well, but we're paid to do what we're doing. [LB141]

PATRICK CONDON: I'm sure you're doing your job, sir, and I appreciate that. [LB141]

SENATOR CHAMBERS: Okay, that's all I have. Thank you. [LB141]

SENATOR ASHFORD: Any other questions of Mr. Condon? Senator Pirsch, did you have another question? [LB141]

SENATOR PIRSCH: No. [LB141]

SENATOR ASHFORD: Thank you. [LB141]

PATRICK CONDON: Thank you. [LB141]

SENATOR ASHFORD: I'm sorry, Senator Pedersen? [LB141]

SENATOR PEDERSEN: No, I'm motioning. [LB141]

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SENATOR ASHFORD: I must say I forgot to give the no cell phone guideline (laugh) before the hearing, so I thought I heard a cell phone. So I'm sorry I didn't give the warning, but no cell phones. (Laugh) So next time I'll...that was my first job, Senator Chambers, and I failed miserably on the cell phone. [LB141]

SENATOR CHAMBERS: But you could correct it, see? [LB141]

SENATOR ASHFORD: I did, and I corrected it. (Laughter) [LB141]

PATRICK CONDON: May I be excused, sir? [LB141]

SENATOR ASHFORD: Yes, you may be excused. [LB141]

PATRICK CONDON: Thank you. [LB141]

SENATOR ASHFORD: Next...and by the way, that yellow light is not white. I was wrong there, too. It's a yellow light for the one-minute warning. So I've corrected myself. Hopefully I'll get it right next time. [LB141]

COLEEN NIELSEN: Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Coleen Nielson, C-o-l-e-e-n N-i-e-l-s-e-n, and I am the registered lobbyist for the Nebraska Criminal Defense Attorneys Association. The association hasn't met yet and so they've not taken any positions on the bill, but I thought I might. So I am testifying in a neutral capacity today. I did take a look at the particular bill and my comments are that it appeared to me that what was happening here is that trespass language was being substituted into the burglary statutes so that the elements basically were being removed from burglary. And it was my thought that if there was some gap in the law that wasn't covered by burglary, that perhaps it would be better handled by putting into effect a felony trespass. Trespass as it is now is a Class I misdemeanor. That's all the farther that it goes. But rather than abolishing the elements of burglary, which is a well-settled crime, we think that changing it the way that they have would promote confusion and perhaps more litigation. And I'd be happy to answer any questions. [LB141]

SENATOR ASHFORD: Any questions of this witness? Thank you. We had a...any opponents? Senator Flood. [LB141]

SENATOR FLOOD: Senator Chambers, members of the...or, Senator Ashford, Senator Chambers. (Laughter) [LB141]

SENATOR ASHFORD: That's very understandable, Senator Flood, but I...(laughter) I have to assert my...go ahead. [LB141]

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SENATOR FLOOD: I'm a forgetful person. (Laughter) And because I'm a forgetful person, sometimes when I go to bed at night, I forget to close the garage door. And we have a screen door that leads from our garage into our kitchen. And oftentimes I leave that open, too. If it's 3:00 in the morning and I, my wife, and my child are sleeping--hopefully (laughter)--somebody walks into my garage with the intent to steal our television and our couch and our china, then he's downstairs or she's downstairs, I think that's burglary. And I think it should be punished as a burglary. And I think it should be a Class III felony. Now the examples that this committee cited, especially Senator Chambers and Senator Lathrop, give me pause to relook at the language that is currently included. I want to add a couple of things. I did not try to short-circuit our system by adding language at the end of the amendment that wasn't there. Currently in our statutes, 28-507, it says, sub 1, "a person commits burglary if such person willfully, maliciously, and forcibly breaks and enters any real estate or any improvements erected thereon with the intent commit any felony or with the intent to steal property of any value." So the requirement that they be walking in there to commit a felony or to steal property of any value, I think, obviously exists in our statutes. What happened when I drafted this bill, and it was my error ultimately, instead of striking the language "and forcibly breaks and enters any real estate" on line 4, page 2 and leaving...and going to "willfully" on line 6, it accidentally struck the language "with the intent to commit any felony" on line 5. That's what happened. It was not caught. That was not my intent. That's what the amendment is primarily designed to do is to keep that "with the intent to commit any felony" in the statute. So that was not any grand plan I had to try to short-circuit this process. The example of the Dillard's with the person entering Dillard's without the permission was not contemplated when I thought through this bill. However, when I think of burglary I think of the common law elements, none of which apply in our current statute. But as you will recall--I'm sure the lawyers here will remember--burglary as under the common law had to be committed at night, which to me suggests that the business or the dwelling would not either be open for business or that the residents of such dwelling would not be awake enough to understand what was going on. That's why burglars hit at night with their tools. I think there is a way to make this change in this bill without compromising a situation where a shoplifter could be charged with a Class III felony. And I'd be willing to work on that. I guess those are my comments in closing and I appreciate the committee's consideration. [LB141]

SENATOR ASHFORD: Thank you. Senator Chambers. [LB141]

SENATOR CHAMBERS: Mr. Speaker, I wasn't there during the time that you made comments with reference to the new Chairperson of E&R, but you had described me in a way that would suggest that I pay attention to language. Here's what I'm going to ask you to do because you have copy of the statute book with you. [LB141]

SENATOR FLOOD: Yes. [LB141]

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SENATOR CHAMBERS: With this amendment that you gave us, you would strike the original section 1 as it appears in the green copy. But the new language that you offered nevertheless amends Section 28-507. [LB141]

SENATOR FLOOD: Yes. [LB141]

SENATOR CHAMBERS: Now looking at what is in the statute book, would you read from the point where it says "with" at the very end? What's actually in the statute book? [LB141]

SENATOR FLOOD: Section 28-507, beginning with the word "with" says, "with intent to commit any felony or with intent to steal property of any value." [LB141]

SENATOR CHAMBERS: And that's what's in the statute book? [LB141]

SENATOR FLOOD: Yes. [LB141]

SENATOR CHAMBERS: Okay, so the green copy did not correctly cite language that is in the statute book? [LB141]

SENATOR FLOOD: Yes. It's my understanding we have a new computer system in the Revisor of Statutes office and for whatever reason it kicked out a different section of the code, which I do not understand yet, Senator. [LB141]

SENATOR CHAMBERS: And that's why I wanted to wait until you came here. So if I would look at the statute book, so it's crystal clear for the record, the same language beginning with the word "with" that we have in the amendment you offered us would be the following: "with intent to commit any felony or with intent to steal property of any value." [LB141]

SENATOR FLOOD: Yes. [LB141]

SENATOR CHAMBERS: That is currently in the statute book? [LB141]

SENATOR FLOOD: Yes. [LB141]

SENATOR CHAMBERS: Okay. Now we can just ignore everything then in the green copy and not try to reconcile or do anything with that? [LB141]

SENATOR FLOOD: I don't understand what happened. [LB141]

SENATOR CHAMBERS: Okay, that's all I needed to be clear on. And with what you said about looking again at the language, it takes care of what I was talking about. But

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here is what I wanted to ask you. When you said you think that a certain thing is burglary, what constitutes burglary is not what any of us thinks; would you agree? [LB141]

SENATOR FLOOD: What the...well, I have an opinion as a legislator what the citizens of my district would classify burglary as, in my opinion. [LB141]

SENATOR CHAMBERS: But that's not what the law calls it now. What you describe would not be burglary under the existing law, if I understood correctly the example you gave. [LB141]

SENATOR FLOOD: Someone breaking into my home in the middle of the night? [LB141]

SENATOR CHAMBERS: If you left your garage door open and they didn't have to break in order to enter it. [LB141]

SENATOR FLOOD: Right. [LB141]

SENATOR CHAMBERS: You would still consider that burglary. [LB141]

SENATOR FLOOD: I do, yes. [LB141]

SENATOR CHAMBERS: But so it's crystal clear in the record, under the current statute, that is not burglary. [LB141]

SENATOR FLOOD: That is true. [LB141]

SENATOR CHAMBERS: Why would you be...that might be leading. Let me ask you a question. Would you be opposed to doing away with the crime of burglary altogether and handling this situation with a clean slate? [LB141]

SENATOR FLOOD: I would be interested in looking at the severity of the punishments to those that commit these types of crimes. I guess I'm not interested in creating a Class I or II misdemeanor for what I really think is felony behavior. [LB141]

SENATOR CHAMBERS: If we do away with burglary as a crime, then common law and case law would have no application to a new offense that we created. Would that be true? Because if we create a new offense, it's not known to the common law. [LB141]

SENATOR FLOOD: The Legislature strikes the burglary statute in 28-507 and recreates a different criminal violation subject to a penalty, that would be the law of the land, yes. [LB141]

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SENATOR CHAMBERS: That's all that I would have. Thank you. [LB141]

SENATOR FLOOD: Thank you. [LB141]

SENATOR ASHFORD: Thank you, Speaker Flood. [LB141]

SENATOR FLOOD: May I be excused, Mr. Chairman? [LB141]

SENATOR ASHFORD: Yes, you may. LB8, Senator Preister. [LB141 LB8]

SENATOR PREISTER: Chairman Ashford, members of the Judiciary Committee, my name, for the record, is Don Preister, spelled P-r-e-i-s-t-e-r. I represent Legislative District 5 and am here as the primary introducer of LB8. It was introduced to increase the penalties on the accumulation of junk in order to give the citizens, public officials, and courts greater flexibility in their efforts to clean up their communities. Currently the accumulation of junk carries with it a Class IV misdemeanor, which is a maximum of \$100 fine with no minimum penalty. The bill would change the penalty to a Class III misdemeanor, which is a maximum of a \$500 fine with a minimum penalty of \$100 fine. Neither a Class IV nor a Class III misdemeanor includes possibility of imprisonment. It is rarely necessary to charge an individual with this crime. However, there have been circumstances when, despite the best efforts of citizens and public employees to work with people to remove unsightly and dangerous junk from their property, all efforts have failed. Increasing the fine would provide a greater incentive for individuals to either voluntarily clean up their property or pay something other than a minimum charge. Two examples that I would cite in my district, and I have an older area that I represent where these things have taken place. One was accumulation of almost a half a million tires and it sat with a gas station on either side of it. And right next to that was a veterinary clinic that housed dogs primarily outside and across the street was a school. And it took us ten years to finally get rid of all those 500,000 scrap tires that sat outside, and two fires that endangered the people in the area. A second example is one where, and you may be familiar with the name Otis Glebe, but Otis lived in a packing plant. And Otis had 13 acres where old vehicles, feral animals were allowed to roam, children were able to get in the weeds and among the trash, children were hurt, and it took over ten years to finally clean that situation up. This would not totally address it but it would be a tool that would help and it would be some leverage at the earlier part of cases like this. And so I offer it for your consideration. With that, Chairman Ashford, I would certainly entertain any questions. [LB8]

SENATOR ASHFORD: Thank you, Senator Preister. Any questions of Senator Preister? Senator Chambers. [LB8]

SENATOR CHAMBERS: Senator Preister, although you're not trying to make it a crime

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nor have you used language this blunt, you are of the opinion that a certain provision that I put into a bill last year to reorganize the OPS School District would be considered junk that needs to be done away with? (Laughter) If you were as blunt as I am being. [LB8]

SENATOR PREISTER: If I were as blunt as you were being, that could be characterized so. Yes, Senator Chambers. However, I would not charge you with a Class III or a Class IV misdemeanor. [LB8]

SENATOR CHAMBERS: Do you think Shakespeare respected his plays? [LB8]

SENATOR PREISTER: I would think so. He was certainly entertained by them. [LB8]

SENATOR CHAMBERS: Do you think he would have destroyed his plays if somebody had asked him to do so? [LB8]

SENATOR PREISTER: Probably not. [LB8]

SENATOR CHAMBERS: But might there be other people who thought his plays were of such a quality or character that they ought to be destroyed? [LB8]

SENATOR PREISTER: Probably there were and still are. [LB8]

SENATOR CHAMBERS: Would you ask me to do to my legislation what you're attempting to do with it? [LB8]

SENATOR PREISTER: I would not ask you to do that, Senator Chambers. But your point is well taken. [LB8]

SENATOR CHAMBERS: Here's what I would say if somebody had asked me to do it. It would be like asking Shakespeare to destroy his plays. It would be like asking the sun to abandon days. It would be like asking Louis Armstrong to trample his trumpets. It would be like asking Miss Muffet to forswear her crumpets, meaning I wouldn't do it. That's all I have, thank you. [LB8]

SENATOR PREISTER: Thank you, Senator Chambers. Message delivered. (Laughter) [LB8]

SENATOR ASHFORD: Thank you, Senator Preister. Any other questions? Anybody here to testify on LB8? You may close or you may forgo that. [LB8]

SENATOR PREISTER: I will waive closing. I need to get back to the Revenue. [LB8]

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SENATOR ASHFORD: Thanks, Senator Preister. [LB8]

SENATOR PREISTER: Thank you. [LB8]

SENATOR ASHFORD: LB15, we're moving right along. LB15. Ready? LB15. Senator Mines? Can we stand down a second? We're going to see if Senator Mines is somewhere. Senator Mines, welcome, LB15. [LB15]

SENATOR MINES: Chairman Ashford, members of the committee, thank you. My apologies, I was obviously in another committee meeting. My name is Mick Mines, M-i-n-e-s. I'm the principal introducer of LB15. I represent the 18th Legislative District. LB15 is not difficult to understand so I was comfortable introducing it. It amends Section 28-416. This section of law deals with the penalty for those individuals that make, sell, deliver, or possess with intent to make, sell, or deliver a controlled substance to a person under 18 years of age within 1,000 feet of a school, college, or a playground. Under this section, an individual would be punished by the next higher penalty classification but in no event will it be larger than a Class IB felony. And the maximum penalty for Class IB is life imprisonment and a minimum would be 20 years in imprisonment. This bill came from the mouth of babes, young children in a school within my legislative district. The Alice Buffett Magnet School contacted me of their own accord and asked if I would introduce a bill that would include playgrounds in statute. They were concerned that although playgrounds are currently included within prohibited areas, recreational areas that don't have apparatus intended for the recreation of children--as an example, slides and swings--are not included within the definition of playground are thus not prohibited areas. The change would include all public parks as prohibited areas. And there was no definition of a public park in statute so we also have inserted definition, that public parks are defined for this section as publicly owned open spaces provided for recreational use. And that is it. It's inserting the word "public parks" and offering a definition for that classification. With that, Mr. Chairman, I would answer any questions. [LB15]

SENATOR ASHFORD: Thank you, Senator Mines. Any questions? Senator Chambers. [LB15]

SENATOR CHAMBERS: Must it be specifically for recreational use or could it be something that is used for recreational purposes but it is not exclusively for that purpose? [LB15]

SENATOR MINES: Give me an example. [LB15]

SENATOR CHAMBERS: Well, the Missouri River. [LB15]

SENATOR MINES: Oh, exactly, that is a public facility or...you're right. [LB15]

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SENATOR CHAMBERS: So that would...anything that happened on the Missouri River would then be subject to a higher, because we're creating a new offense when we do this. [LB15]

SENATOR MINES: Yes, we are. [LB15]

SENATOR CHAMBERS: I just thought I'd mention that. There are probably other examples. [LB15]

SENATOR MINES: Yes, we are. [LB15]

SENATOR CHAMBERS: I'm not sure that this bill, which on its face has an allure, is really wise. I just wanted to let you know that there are things I'm looking at that might not be obvious. [LB15]

SENATOR MINES: Thank you. I hadn't thought of that. Again, my scope was more public areas that we're used to thinking about and I hadn't thought about the Missouri River. But I will, I will. Thank you. [LB15]

SENATOR CHAMBERS: That's all I would have. Thank you. [LB15]

SENATOR ASHFORD: Thank you. Any other questions of Senator Mines? Thank you, Senator. [LB15]

SENATOR MINES: Thank you. I'll waive closing. [LB15]

SENATOR ASHFORD: Anyone else...Senator Mines waives closing. Anyone else testifying on this bill? Thank you. LB6. Who do we have here? Senator Pahls, is he...we're moving right along, Senator Chambers, so we're already to LB6. Hello, Senator Pahls. [LB15 LB6 LB157]

SENATOR PAHLS: Hello. The last one was so fast. [LB6 LB157]

SENATOR ASHFORD: Well, thank you. LB6, Senator Pahls. [LB6 LB157]

SENATOR PAHLS: Good afternoon, Senator Ashford, members of the committee. My name is Rich Pahls, R-i-c-h P-a-h-l-s. I come before you today to introduce LB6, the Nebraska Safe Haven Act. The purpose of this legislation is to provide distressed parents a way to anonymously leave a child in a safe place rather than abandoning the child in a place that could lead to harm or death of the child. (Heavy breathing) I ran down here guys, you can see I'm out of shape. (Laughter) [LB6 LB157]

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SENATOR ASHFORD: We're not counting that against your time, Senator Pahls, so if you need some extra... [LB6 LB157]

SENATOR PAHLS: Allow me to break down some of the key components of the bill to help summarize it. Number one, infants must be 30 days or younger. The child can be left with the staff at a hospital, police station, or manned fire station. In the other states that are involved with this, most states, it is at the hospital. Parent or representative can remain completely anonymous. The representative can be anyone the parent designates, such as a pastor, friend, or counselor. Parental rights are given up after 90 days. Every effort is to be made to inform the parent or representative of that 90-day period. A public information program is to be established that should include a web site, a hot line, in addition to public service announcements and posters in designated facilities we have been working with an out-of-state safe haven organization who can provide templates, logos, and ads at a very reasonable fee. This would greatly reduce the cost of starting our public information program. A parent can also have a medical history of the child and parent left with the child. A report on the effectiveness of this legislation should be submitted by affected parties toward the end of the term of the legislation. A sunset clause is included in this legislation to allow for evaluation. This would be in September 2011. Although it does not always make a difference how many states are involved, but Nebraska is only one of four states that does not have this legislation; Alaska, Hawaii, Vermont, and of course, Nebraska. Today you will hear from people that say that this legislation is unnecessary because private organizations already have a program and they do not currently prosecute. Our intention is not to work against these organizations or their program. In fact, we want to work in conjunction with them and promote their programs wherever or whenever possible. However, there are some people who face very hard circumstances in which they must remain anonymous. Currently, there is no way for a teen mother, illegal immigrant, or a victim of domestic violence to remain completely anonymous if they must give up their child. We want to stress the importance of privacy for people who have extreme circumstances. I have a letter that I would like to read just a section of it, but I must double check and see if that person is not here. [LB6 LB157]

_____: I'm here. [LB6 LB157]

SENATOR PAHLS: Okay, well, then I will just skip that part. You will hear from groups today that will say that safe haven legislation is ineffective. To the contrary, states such as Florida, California, and Texas have very successful programs. For example, since its inception in 2000, 57 babies have been placed in the safe haven program of Florida. All 57 have been placed in permanent adoptive homes. Finally, after speaking with several people who had some concerns about this bill, I would like to offer an amendment to LB6. This amendment would allow for the search of a father when certain information is known in order to protect his parental rights and reduce the risk of a court battle after a permanent placement. Less than an hour ago, it was also brought to my attention that

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we need to take a look at some of our language, the word "designated representative" and some of the procedural and legal language for protection of the child's rights. We will review those recommendations and we will be happy to prepare any amendments that need to be made to account for these concerns. [LB6 LB157]

SENATOR ASHFORD: Thank you, Senator Pahls. Do we have any questions of Senator Pahls? Excuse me, may I ask how many in the room are testifying today on this particular bill? Has the list circulated for signing in and...okay. Thanks, Senator Pahls. [LB6 LB157]

SENATOR LATHROP: Mr. Chairman? [LB6 LB157]

SENATOR ASHFORD: Yes, Senator Lathrop? [LB6 LB157]

SENATOR LATHROP: I think we have two safe haven bills today. [LB6 LB157]

SENATOR ASHFORD: We do. [LB6 LB157]

SENATOR LATHROP: And maybe there's a way to organize the witnesses so that we... [LB6 LB157]

SENATOR ASHFORD: Well, there are two bills, LB157 is the other bill. And do we have the same...how about LB157? How many intend to testify on that? Let's see how this goes, Senator Lathrop, it's a good point, but let's see how it goes. We would ask though, when we get to LB157, which is similar to LB6, that when you're making your comments you recognize the fact, what you've already said and so forth and so on so we don't get redundancy. But go ahead, state your name. [LB6 LB157]

JIM GORDON: (Exhibits 3 and 5) Thank you, Senator Ashford, members of the Judiciary Committee. I'm Jim Gordon, I'm an attorney in private practice in Lincoln, Nebraska. My practice centers on family law issues, has been for approximately 32 years. I appear here today as a longtime member of the Nebraska State Bar Association's legislation committee. We study what you do here and we're pleased to be able to do it. But as an even longer-time member of the association's house of delegates. I speak here today, however, for the helpless abandoned newborn infants otherwise silently pleading to you, please don't let me die, please save me, please give me a chance to live. The Bar Association has supported the safe haven proposals in years past, both through its legislation committee and by the actions of its house of delegates. Similar legislation in 2005 was, I believe, LB307 and 2006, LB841. The association's legislation committee met just last week and, again, voiced its recommendation of support for LB6. And Senator Ashford, in, I guess, compliance with your request, I am testifying on both bills. The only difference in my testimony is that I have one amendment to offer to LB6 and another amendment to offer to LB157. The

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house of delegates is to meet this coming Friday and we expect that the house of delegates will follow its history in again supporting these safe haven legislation proposals. We do ask that this committee support LB6 and LB157 with an amendment to each, and I'll provide those. In fact, I have them here for the clerk to distribute if you would. The first is the amendment proposed to LB6. The language to be stricken is on the front. The amendment language is on the back. The amendments we request are simple. They are meant to delete the punitive or negative aspects of this bill. We want to make it as simple as possible for a parent so inclined to be able to leave his or her child in a safe place rather than leaving them in areas that we read about, in dumpsters and behind buildings and the like. We earnestly and sincerely believe that parents who want to leave their child, their newborn infant, in a safe place will be more likely to do so if there's no punitive sanction, no termination of parental rights, no finding of abandonment, no criminal sanction. And these bills don't have criminal sanctions but they do have some language which might deter someone who would otherwise be inclined to leave their baby at a fire station or a hospital or some other location. So I urge the members of the committee to vote both of these bills out for consideration by the Legislature with the amendments that I've proposed. I'm sorry, I make two trips. This is the one for LB157. Similarly, the language to be stricken is on the front, the amendatory language is at the end or on the backside rather. It's for those helpless abandoned newborn infants whom I mentioned earlier, with the passage of this legislation, who will have a chance to survive. And if the Legislature and this committee vote in favor of this bill, I, for them, sincerely thank you. I'm able to answer any questions you may have. [LB6 LB157]

SENATOR ASHFORD: Do we have any questions of...Senator Chambers. [LB6 LB157]

SENATOR CHAMBERS: Did you hear Senator Pahls state, or maybe I read somewhere, that there would be no offense that can be charged solely on the basis of the child being anonymously left at one of these locations? [LB6 LB157]

JIM GORDON: I heard that comment, yes, Senator. [LB6 LB157]

SENATOR CHAMBERS: But it said that would not blanket responsibility or do away with responsibility for any previous abuse that may have occurred. [LB6 LB157]

JIM GORDON: That's my understanding, yes, Senator. [LB6 LB157]

SENATOR CHAMBERS: How are we going to know whether the abuse, I presume they mean some injury might be detectable on the child. How would we know that the one that left the child caused the injury or the person receiving it caused it? [LB6 LB157]

JIM GORDON: We won't. [LB6 LB157]

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SENATOR CHAMBERS: Suppose the person receiving it said that this person dropped the child, then immediately said when this child was delivered to me, this injury was found. Then that person's word probably is going to be taken, isn't it? [LB6 LB157]

JIM GORDON: That I don't know. It's a matter of proof, I'm afraid. [LB6 LB157]

SENATOR CHAMBERS: Well, what do you think? Because you've been in the law business for a lot of years. [LB6 LB157]

JIM GORDON: I think there would be some credibility to that individual, but I think that credibility would have to be established. I think that the motivation, bias, prejudice, whatever may have to be brought out in cross-examination. [LB6 LB157]

SENATOR CHAMBERS: But there would be a tendency for society--and I've been in this world 69 years so I know how people tend to think in this society--even if in context of our discussion, there might be a denial. A person who would give up a child is not going to have much credibility in the first place, even if the allegation is made by that person or the justification that she couldn't deal with the child, didn't want anything to happen, so under the law she wanted the child to be placed where it might have a chance to survive. So on the one hand you have this woman, they might not even say mother, you have this woman or this person giving up the fruit of her womb. And we have this good samaritan who has no reason to lie, nothing to gain, saying that the child was injured when he, as a firefighter, received it. Which are you going to believe? [LB6 LB157]

JIM GORDON: You want my personal preference? [LB6 LB157]

SENATOR CHAMBERS: Um-hum. [LB6 LB157]

JIM GORDON: The language that would say that evidence of abuse or neglect would be admissible would be allowed under this law, under this bill as proposed, would be stricken. However, the committee for which I speak today did not take that position. In fact, it wasn't discussed. Personally, individually, I agree with you. I would prefer that any detriment, any possible negative inference to be drawn from this bill be eliminated from it, either LB6 or LB157. My purpose here as an individual would be to make sure that people in any circumstance where they're predisposed to leave their child in a safe place, be able to do so without retribution, without fear of negative consequences. I agree with you. But the committee for which I speak did not address that, sir. [LB6 LB157]

SENATOR CHAMBERS: Is there anything which deals in any way with the liability on the part of the one who receives the child? [LB6 LB157]

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JIM GORDON: In the bill as proposed, no. But I think in the statutes, generally, about providing those kinds of volunteer services, the volunteer, the good samaritan, I would hope, think that those statutes might apply. I've not studied that, sir, I don't know. [LB6 LB157]

SENATOR CHAMBERS: But that wasn't really looked at specifically... [LB6 LB157]

JIM GORDON: It was not. [LB6 LB157]

SENATOR CHAMBERS: ...and with these, okay. That's all I would have. Thank you. [LB6 LB157]

JIM GORDON: Thank you, Senator. [LB6 LB157]

SENATOR ASHFORD: Any other questions? Senator Lathrop. [LB6 LB157]

SENATOR LATHROP: Just briefly, we have two safe haven bills set for today. [LB6 LB157]

JIM GORDON: Yes, sir. [LB6 LB157]

SENATOR LATHROP: You've had an opportunity to look at both of them? [LB6 LB157]

JIM GORDON: I have. [LB6 LB157]

SENATOR LATHROP: And the Bar Association's legislative committee has looked at both of them? [LB6 LB157]

JIM GORDON: It has. [LB6 LB157]

SENATOR LATHROP: Do they have a...do you see a significant difference between the two and does the bar suggest that one bill seems to do a better job of providing a better public policy on safe havens? [LB6 LB157]

JIM GORDON: In answer to your second question, no, the bar did not take a position on which one is better. They support both bills in concept. They support both bills with the request that each be amended to strike language which creates a negative inference or at least some possible obstacle to a person fulfilling the abandonment or fulfilling the ability to leave the child at a safe place. I think that LB157 is slightly different in that it provides for the study to be made, the report to be made, some additional things to be done. Conceptually, I think both bills allow for the individual with that child and looking for a safe place to leave that child would be able to do so. Which one? I guess that's up to the Legislature to decide. [LB6 LB157]

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SENATOR ASHFORD: Senator Chambers. [LB6 LB157]

SENATOR CHAMBERS: Thank your colleague for this question. Based on what you've said about the bar's position, the bar would not object if we pass both bills, would it? [LB6 LB157]

JIM GORDON: No. [LB6 LB157]

SENATOR CHAMBERS: Would that be prudent? [LB6 LB157]

JIM GORDON: Probably not. I would prefer that they be combined, that there be one measure ultimately passed. [LB6 LB157]

SENATOR CHAMBERS: But the bar did not prioritize or state a preference? [LB6 LB157]

JIM GORDON: No, sir. [LB6 LB157]

SENATOR CHAMBERS: So did you ever study philosophy anywhere? [LB6 LB157]

JIM GORDON: I did. I studied the philosophy of science, of all things. [LB6 LB157]

SENATOR CHAMBERS: What they teach in the Jesuit system is that the will is drawn to an object based on the amount of good in that object. If an object has a great amount of good, the will is drawn more strongly to that. So if you had a nonreasoning creature or a reasoning creature, but to make it simple we would take a jackass... [LB6 LB157]

JIM GORDON: Wait a minute, are we talking about lobbyists or senators here, Senator? (Laughter) [LB6 LB157]

SENATOR CHAMBERS: No, I'm talking about the four-footed critter. And you take two piles of wheat, established by means of computer to be of exactly the same height and configuration, weight, and substance, and you place that animal exactly between both of them equidistant, that animal's will would be drawn equally to both of them. No decision could be made and the animal would starve to death in the presence of enough food in either place or both places to sustain it. That's the theoretical position. Now was the bar stating its position that each bill is equally good or that both of them are good? [LB6 LB157]

JIM GORDON: Is that your question? The bar said both were good. It didn't say that they were equally good. It didn't say that one was more good than the other. It just said they were both favorable and the bar's position is to support both. [LB6 LB157]

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SENATOR CHAMBERS: So we would not be going against the bar's position if we enacted both bills. [LB6 LB157]

JIM GORDON: No, but you'd probably be going against wisdom and discretion to do so. [LB6 LB157]

SENATOR CHAMBERS: So then sometimes the bar will give us a position which defines wisdom and discretion? (Laughter) [LB6 LB157]

JIM GORDON: I'm pretty sure that probably happens once in a while. [LB6 LB157]

SENATOR CHAMBERS: And we should still exercise our independent judgment as lawmakers? [LB6 LB157]

JIM GORDON: I think you should always exercise your independent judgment. If it were any other way, we would be more than lobbyists, we'd be more than testimony, we'd be more than witnesses. We would be assuming power that we don't have, that I don't have, Senator. [LB6 LB157]

SENATOR CHAMBERS: In your view, which of the two would be...say that there were to be a merger. Which bill should be the basis for the work to be done? [LB6 LB157]

JIM GORDON: LB6 is simpler. [LB6 LB157]

SENATOR CHAMBERS: Okay. And what in the other one is absent from LB6 that you feel maybe should be added to LB6? Or if you haven't thought about it, maybe you could get that to us later. [LB6 LB157]

JIM GORDON: I had not thought about it. But in reading the two, there is the provision in LB157, I believe, for the study to be made and the...bear with me for just one moment so that I don't misspeak. Actually, I'm glad you asked me the question. It appears that LB157 is the simpler of the two and it's LB6 that provides for the study and the report. [LB6 LB157]

SENATOR CHAMBERS: What expertise does a firefighter have to deal with a relative, a close to newborn infant? [LB6 LB157]

JIM GORDON: The training that he or she receives as an EMT probably. [LB6 LB157]

SENATOR CHAMBERS: Are they trained to deal with infants? [LB6 LB157]

JIM GORDON: I assume so. [LB6 LB157]

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SENATOR CHAMBERS: But you don't know for sure? [LB6 LB157]

JIM GORDON: I do not. [LB6 LB157]

SENATOR CHAMBERS: And who are the others? [LB6 LB157]

JIM GORDON: A hospital and a...in LB6 it provides that the designated facility means a hospital, police department, or manned fire station. LB157 provides for leaving the child with a firefighter or hospital staff member. [LB6 LB157]

SENATOR CHAMBERS: Now the one that says at a hospital, the child can be left with anybody at that hospital? [LB6 LB157]

JIM GORDON: Says staff member, Senator. It does, I agree, in LB157. Actually, it says a hospital staff member who engages in the admission, care, or treatment of patients. [LB6 LB157]

SENATOR CHAMBERS: So then the person who's bringing this child who is in a very distressed state of mind is going to have to seek out the person who does that without having read the statute? [LB6 LB157]

JIM GORDON: I think that if the person comes to the hospital, the hospital staff would be trained to receive that infant. [LB6 LB157]

SENATOR CHAMBERS: Suppose there were an orderly and the first person that this individual saw said, I am going to leave this baby at the hospital here and gave it to the orderly. That would not be in compliance with the statute, would it? [LB6 LB157]

JIM GORDON: If the orderly were trained to provide for the care of patients, I believe that it would arguably within it. [LB6 LB157]

SENATOR CHAMBERS: Well, are orderlies trained to do that, all of them? [LB6 LB157]

JIM GORDON: All of them? I don't know. I would hope that... [LB6 LB157]

SENATOR CHAMBERS: Suppose if it were a custodian. [LB6 LB157]

JIM GORDON: I'm guessing that a custodian would probably not be trained in the "or who engages in treatment of patients." [LB6 LB157]

SENATOR CHAMBERS: Would the person have violated the law if the child were delivered to a custodian in a hospital? [LB6 LB157]

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JIM GORDON: I think we'd have to look at the intent of the law, Senator, which is to protect the infant. [LB6 LB157]

SENATOR CHAMBERS: If the child were handed to a security guard, that would not be what the law allows, would it? [LB6 LB157]

JIM GORDON: I still think we'd have to look at the intent. And if that security guard or that janitor or that custodian or the orderly were knowledgeable about the statute, as I hope they would be, they would see to that child being delivered to the correct, appropriate person. [LB6 LB157]

SENATOR CHAMBERS: But if you're going to specify the duties of the person receiving the child and the custodian does not have those activities as part of his or her duties, then giving the child to a custodian would not be in compliance with the law, would it? [LB6 LB157]

JIM GORDON: Well, that's why, Senator, we might want to combine LB6 and LB157 because LB6 doesn't have those limitations. [LB6 LB157]

SENATOR CHAMBERS: That would have, under the other one--and I don't want to bind myself to the number--but under the other one, anybody in the hospital could receive the child? [LB6 LB157]

JIM GORDON: Under one of them, yes. [LB6 LB157]

SENATOR CHAMBERS: Now under the one which allows anybody, how does that language read? [LB6 LB157]

JIM GORDON: If a person has received placement has received placement of a newborn infant at a designated facility, and designated facility is hospital, police department, or manned fire station, there is no reference to the individual. [LB6 LB157]

SENATOR CHAMBERS: So then it could be somebody who is a visitor at the hospital, somebody visiting a patient. [LB6 LB157]

JIM GORDON: Arguably, yes. [LB6 LB157]

SENATOR CHAMBERS: At the police department, it could be a defendant, it could be an arrestee. [LB6 LB157]

JIM GORDON: Could be. [LB6 LB157]

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SENATOR CHAMBERS: (Inaudible) ask you anymore and this is just to try to get clear in my mind what is allowed under these bills. So that's all I would have. Thank you. [LB6 LB157]

JIM GORDON: No, thank you, Senator. [LB6 LB157]

SENATOR ASHFORD: Any other questions? I just...Mr. Gordon, I just have one quick question. The two bills are different when it comes to the due process... [LB6 LB157]

JIM GORDON: There are some differences. [LB6 LB157]

SENATOR ASHFORD: ...obligations for third-party notice and hearing and so forth. Could you just very briefly comment on that issue? [LB6 LB157]

JIM GORDON: I think there are some other witnesses who could do it better. [LB6 LB157]

SENATOR ASHFORD: Okay, there are some others that are going to talk about the due process? [LB6 LB157]

JIM GORDON: Yes, sir. [LB6 LB157]

SENATOR ASHFORD: Okay. Thanks, Mr. Gordon. In the spirit of how we're going with this, if somebody has a comment on LB157 and would like to make that comment, they may do so as well. [LB6 LB157]

JIM GORDON: I'd like to shoot for both bills, Senator. Thank you. And thanks to the members of the committee. [LB6 LB157]

SENATOR ASHFORD: Okay, thank you. [LB6 LB157]

SARA JUSTER: Good afternoon, Senator Ashford, members of the committee. My name is Sara Juster and I'm here on behalf of Methodist Health System and Nebraska Methodist Hospital. If it would be permitted, I'd like to invite my colleague up with me. Is that possible? [LB6 LB157]

SENATOR ASHFORD: Is she going to testify as well, or... [LB6 LB157]

SARA JUSTER: If there would be questions, she could answer... [LB6 LB157]

SENATOR ASHFORD: Okay, that's fine. [LB6 LB157]

SARA JUSTER: ...especially with respect to some of Senator Chambers' questions.

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[LB6 LB157]

SENATOR ASHFORD: Okay, so that...yes, that's fine. We'll have to, have you signed in as a testifier? [LB6 LB157]

SHARON MCARDLE: Yes. [LB6 LB157]

SENATOR ASHFORD: And could you give us your name, please? [LB6 LB157]

SHARON MCARDLE: My name is Sharon Mcardle and I'm the nurse manager over all of the birth services, obstetric department at Methodist Hospital. [LB6 LB157]

SENATOR ASHFORD: And you're prepared to answer the questions of... [LB6 LB157]

SHARON MCARDLE: I hope I am. [LB6 LB157]

SENATOR ASHFORD: Okay. Thank you. Proceed. [LB6 LB157]

SARA JUSTER: (Exhibit 4) As I said, my name is Sara Juster. I'm a vice president with Methodist Health System. As the leading provider of birthing services in the state of Nebraska, Methodist Hospital and Methodist Health System strongly support LB6. We urge the senators to pass this bill and make Nebraska a safer place for newborns. Safe haven statutes such as LB6 allow desperate mothers to relinquish their newborns legally and confidentially with authorized caregivers in designated locations rather than abandoning them unsafely or directly harming them. Their purpose is to reduce the number of infant deaths and traumas through unsafe abandonment in such infamous places as dumpsters and toilets. These statutes work by providing the desperate birth mother a nonthreatening escape from her crisis so she will not harm her child. Once legally relinquished, the babies are placed for adoption. Safe haven laws typically regulate the age under which the newborn must be to qualify as a newborn, the designated safe have locations, and the nature of the protection afforded to the birth mother. Currently I believe that 46 states have enacted safe haven laws. Only Nebraska, Alaska, Hawaii, and Vermont are without this child welfare safeguard. Opponents of safe haven laws often argue that it encourages the abandonment of babies or that it simply doesn't work yet the experience in New Jersey, which was the fifth state to pass safe haven legislation, shows that it does work. In the 12 months before New Jersey passed its safe haven law, eight babies were abandoned in public places; and in the first 12 months after the safe haven legislation, there were only two such abandonments. Since the New Jersey Safe Haven Infant Protection Act went into effect in August 2000, 14 babies have been made safe from August 2000 to November 2003. Out of those, most of them adopted; one is being cared for in a foster family; two were actually returned to their mothers after their mothers had a change of heart. And you can imagine if the baby had been abandoned in a dumpster that probably would not

have been an option. The other four are in various preadoptive stages. And the children actually came from a variety of races and all regions of the state of New Jersey. We do believe that there must be certain principles included in the legislation, and that's why we are here testifying of behalf of LB6 and we are not taking a position on LB157 because we don't believe it includes the principles that we believe are important. Those principles include anonymity. If a woman has kept her pregnancy a secret, the guarantee of anonymity will help alleviate her fear that someone will find out. Anecdotal evidence shows that most newborn, or many of the newborns who are abandoned are abandoned because the mother denied or didn't admit that she was pregnant and then tries to hide the fact that she was and had a baby after the fact. So without that guarantee of anonymity, the safe abandonment simply may not take place. The fact that the baby must be left unharmed is also very important. The guarantee of anonymity and immunity apply only in those cases where the infant is brought in unharmed. If a newborn has been abused after birth, neglected, or harmed, the guarantees don't apply. The police may be called, an investigation would be undertaken, and the person who brought in the baby or was suspected of being the abuser could be charged. An age limit is also important. The first days of a child's life are so very critical, and if the mother doesn't provide proper care and feeding at the beginning, the child will likely suffer long-term effects. So this legislation has to be limited to encourage people to, if they're going to abandon the baby under the provisions of the law, they need to do so quickly and enable the baby to be cared for. The baby needs to be left in a safe place. We believe hospitals are the best because we believe that everyone in the hospital is trained to respond to what we call a Code Adam, a missing or abandoned child. We have policies in place to deal with these situations. We think that police and fire probably also would be such policies into place, so they would also be acceptable. There needs to be no fear or prosecution. Child abandonment is against the law. If a woman who might otherwise abandon her child chooses to leave her child in a hospital in lieu of a more disastrous choice, then she shouldn't be prosecuted because what we have done is enable a life to be save. And finally, the law has to include appropriate education, especially to teens. Again, anecdotal evidence shows that many of the mothers who abandon their babies are young mothers, teenagers, and if they don't know about this option they may choose something much, much worse. LB6 includes all of these important provisions. Again, Methodist Health System, Methodist Hospital, strongly support this legislation and we urge you to pass it, and both Sharon and myself will be happy to answer any questions you might have. Thank you. [LB6 LB157]

SENATOR ASHFORD: Senator Chambers. [LB6 LB157]

SENATOR CHAMBERS: If there is anonymity, how are you going to determine who the person is if there is suspected abuse? [LB6 LB157]

SARA JUSTER: We might not be able to, but again that's not our major concern. Our major concern is saving the life of a child. [LB6 LB157]

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SENATOR CHAMBERS: So why do you have that in the statute at all? [LB6 LB157]

SARA JUSTER: Why do we have what in the...? [LB6 LB157]

SENATOR CHAMBERS: The notion that if abuse has taken place then the police may be called. [LB6 LB157]

SARA JUSTER: Because it's not our intent to protect people who abuse their children and then want to drop them off. [LB6 LB157]

SENATOR CHAMBERS: So then if somebody has abused a child, it would be better to dump that child in a dumpster instead of to a hospital which may result in prosecution. In the dumpster, there is no way for anybody to find out, right? [LB6 LB157]

SARA JUSTER: Maybe or maybe not. [LB6 LB157]

SENATOR CHAMBERS: When you do the educating, is it going to be forthright and tell everything, namely that if abuse has occurred the mother will...there will be a police report and the police will contact the mother if she is known and she will prosecuted. Will that be a part of the...? [LB6 LB157]

SARA JUSTER: Well, the statute doesn't indicate exactly what must be included in the education, but again it's not our intent to give a free pass to people who abuse babies. What our intent is, is to give people an option if they are going to abuse or throw away their child, their newborn, a safe place to give up that child, and... [LB6 LB157]

SENATOR CHAMBERS: But you want only the pure to do this with immunity and impunity, correct? [LB6 LB157]

SARA JUSTER: I don't think it's an issue of the pure. I think, again, the idea of having a limited time frame is specifically to encourage people before something terrible happens, give up that baby. If you don't want the baby, don't do something terrible; give the child a chance. [LB6 LB157]

SENATOR CHAMBERS: I understand that. But the reality is that something must be possible, and since that's put in the statute those who are supporting this bill believes that that abuse possible too. So we're not dealing with the theoretical. [LB6 LB157]

SARA JUSTER: I understand. [LB6 LB157]

SENATOR CHAMBERS: If a person is going to throw away a child,...I think you had said something like that, this person is going throw away a child...if you can throw away

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the child and not have any punishment attached, then you'll throw away the child to a hospital. If you know that there is abuse and you're going to throw away the child anyway, why would you throw it away someplace where you can wind up being prosecuted? Why wouldn't there be an incentive in that case to throw the child into a dumpster to avoid prosecution? [LB6 LB157]

SARA JUSTER: Well, if it would satisfy your concerns to say that a... [LB6 LB157]

SENATOR CHAMBERS: Not my concerns; I want it to be in the general discussion. Because you all support the bill, your view is that...let me try to put in the form of a question instead of saying what your view is. Is it your view that if a person has abused a child during this window during which ordinarily the child could be turned over to one of these designated entities or individuals, if abuse has occurred would it be better for the mother to believe that there is not going to be prosecution if she turns over the child, and therefore whether there is abuse or not would turn the child over, or be given an incentive from the standpoint of self-preservation to say, if I turn this child over I'm going to be charged with abuse, there's going to be a trial, there's going to be publicity; I'll leave it on a doorstep someplace and maybe the child will survive and maybe it won't? What is so wrong with not even dealing with this notion of abuse? Why do you have to have that anyway? Is it so necessary that the mother be punished? That's the only purpose you could have for prosecution. [LB6 LB157]

SARA JUSTER: I think when one person harms another person, especially a helpless newborn, the law should not be written in such a way as to give them a free pass. [LB6 LB157]

SENATOR CHAMBERS: Why not? Is punishment so important? You said you're with Methodist Hospital? [LB6 LB157]

SARA JUSTER: Yes, sir. [LB6 LB157]

SENATOR CHAMBERS: Is that a part of Methodist dogma that every sin committed must be punished regardless of the surrounding circumstances? Is it more important, in other words, that this woman be punished or that the baby be saved? [LB6 LB157]

SARA JUSTER: It's obviously more important that the baby be saved, and that's why we're here today. [LB6 LB157]

SENATOR CHAMBERS: Then why give a disincentive for the mother to save the baby by threatening prosecution? [LB6 LB157]

SARA JUSTER: I think that there is an incentive to give up the baby before the mother abuses the baby, and that's the intent. [LB6 LB157]

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SENATOR CHAMBERS: But if the abuse occurs, the disincentive is there. Let me try to make it clear what I'm saying from my point of view. I think the one most in need of compassion, care, is the one who is injured and hurt and most vulnerable. So the baby which has been hurt already is the one a special effort should be made to encourage a safe haven instead of saying this baby has been hurt already but our moral standards are so high that we want to make sure that the person who has hurt this baby knows you're going to be punished if you bring this baby here. Suppose that provision were stricken from the law, would you still support it? [LB6 LB157]

SARA JUSTER: Do you want to answer it? [LB6 LB157]

SHARON MCARDLE: I was thinking for a second here. [LB6 LB157]

SENATOR ASHFORD: Why don't we...let's do it this way: Why don't we stick with Ms. Juster, and if you feel the need to testify... [LB6 LB157]

SARA JUSTER: I probably would not oppose it. I again believe that the law should not provide a free pass to people who abuse newborns but again I believe the greater good is saving the child's life, so we probably would support it with some reservations. Does that answer your question? [LB6 LB157]

SENATOR CHAMBERS: If it's the best answer that you can give, so I accept your answer and I'm not going to quibble with your answer. [LB6 LB157]

SARA JUSTER: Okay. [LB6 LB157]

SENATOR ASHFORD: Any other questions? We're going to...I just want to follow up on...and that, Senator Chambers, has hit on the concern that I have in working, my experience working with many people in poverty. It's not so much that they are abusers, and I think we can...we get into these classifications of abusers and it's a broad...depends on who is looking at the problem, deciding who is an abuser and who isn't. But is the total confusion that exists amongst a group of people who may be in a situation where they have this newborn and not understanding. And any information that you get out there may or may not be heard or seen or understood, and I think as...I appreciated your answer that the overriding concern here is the newborn. And what we have to do is focus on that situation. And that is, so I understand fully what you're saying,... [LB6 LB157]

SARA JUSTER: Yes. [LB6 LB157]

SENATOR ASHFORD: That is your intent. [LB6 LB157]

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SARA JUSTER: Yes. Our overwhelming concern is the safety, the well-being of the child. And again, the other we would have some reservations about but I think we would probably still support the bill. [LB6 LB157]

SENATOR ASHFORD: Okay. I appreciate your answer and that was a redundant question, but I understand where that's going and I think it's an important point. We're going to take a...ten minutes, would that be enough time...ten-minute break while we change the tape, so thank you. And then we'll come back to LB6. [LB6 LB157]

JESSICA KOLTERMAN: (Exhibit 8) Thank you, Senator Ashford and members of the committee. For the record my name is Jessica Kolterman, K-o-l-t-e-r-m-a-n, and I'm from Lincoln, Nebraska. I come before you today with a background on this legislation and also with a personal experience to share with you. In my previous employment as a legislative aide I had the opportunity to work on several safe haven proposals. I was pleased to see such an interest in this legislation this year and I hope that the committee will seriously consider advancing the Save Haven Act, as Nebraska is one of the very few states in our nation who has not adopted such legislation. This legislation made sense to me at the time when I was working on it. It became even more important to me as I found myself facing an unplanned pregnancy. Wanting to keep my pregnancy private until I decided what I was going to do, I searched for an anonymous way to gather the information I needed regarding legal questions I had about placement. Having worked on this legislation, I was aware of all the resources available to a young woman facing an unplanned or a crisis pregnancy. However, when I approached the most noteworthy, Nebraska Children's Home, it was conveyed to me that they were not willing to work with me unless I gave them my name, the town in which I lived, and provided other details about my pregnancy. In other words, I was not given the option of receiving services anonymously. I was surrounded by a supportive family, a wonderful couple who later came to adopt my daughter, and a very supportive work environment. Most young women facing unplanned pregnancies do not have it so easy. Eventually, after I placed my child for adoption, I joined a birth mother's support group where I came to know many other women who had been in my situation and had not had the positive experiences that I had. Some of these women had been thrown out of their homes, some had been shunned by their family and friends, and some had spent much of their pregnancy denying what they were actually facing and hiding their pregnancy. Critics will tell you today that the safe haven law is not needed in Nebraska and that services are already available for women facing an unplanned pregnancy. In a perfect world that might be true, but in the throes of a complete crisis, denial, or panic, there are very few places for a woman to turn without sharing her name and the personal details about her story. In the past, women have literally abandoned their child in this state in a garbage can, on a riverbank, and have hidden them in closets. A safe have law provides an alternative for these women--women who for one reason or another need to keep their pregnancy hidden, secret, or private, who in a crisis see no other way to turn except to harm or hide the baby. It's my hope that women in this state will find support, but if they

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don't, I would urge the committee to consider that there needs to be a safe alternative for children. I'm also happy to answer any questions you might have comparing previous legislation to the proposals before you today. [LB6 LB157]

SENATOR ASHFORD: Thank you. Senator Chambers. [LB6 LB157]

SENATOR CHAMBERS: Rather than have you do that, how does anybody know who accepts a child under these circumstances that the person delivering the child is the mother or person designated by the mother to deliver that child there, or the child had been taken from somebody else? [LB6 LB157]

JESSICA KOLTERMAN: As I recall, that was one of the issues we were dealing with in the past, and there was no specific way to definitively say this child came from this mother and is being placed. However, there was some provisions in similar legislation we worked on previously that gave a certain window of time to keep the baby from being permanently placed so that if there were any issues that arose, those could be sorted out. [LB6 LB157]

SENATOR CHAMBERS: How would the true parent or parents know that their child had been left at one of these facilities? [LB6 LB157]

JESSICA KOLTERMAN: Well, one way to do that would be to look through any missing child databases that are available, and I know the state has some of those. From previous years I think that was passed into law. Another thing that they could do is there is a provision that they use for birth fathers' rights, which means that there must be some things published in the newspaper, I believe, that gives people an opportunity to come forward and claim paternity of a child. And perhaps I think Senator Pahls has an amendment that could address some of those issues that he gave to you earlier that might be included to include all parents, not necessarily just birth father. [LB6 LB157]

SENATOR CHAMBERS: Let's say that a young woman did become pregnant and the mother of the woman did not want her daughter to keep the child and she took the child to one of these places. And the actual mother was intimidated and didn't say anything about it, and after 90 days had elapsed during which this child apparently had been placed in foster care, the true mother found her voice. And let's say an adoption had taken place. The true mother is out of the picture then and can't do anything, is that true? [LB6 LB157]

JESSICA KOLTERMAN: No. Actually adoptions are not formally official until six months after placement. They have to go... [LB6 LB157]

SENATOR CHAMBERS: Well, let's say a year later. [LB6 LB157]

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JESSICA KOLTERMAN: Okay, a year later. [LB6 LB157]

SENATOR CHAMBERS: Let's say two years later. The person who gave up the child had no right to do so because it was not her child. Then the ones who adopted the child have rights superior to that of the actual mother? [LB6 LB157]

JESSICA KOLTERMAN: I don't know any...I'm not an adoption expert. I can only share about my personal experiences. But perhaps the adoptive family would find it in their hearts to allow the birth mother to be included in their lives and the life of the child in some way. [LB6 LB157]

SENATOR CHAMBERS: But if they didn't? [LB6 LB157]

JESSICA KOLTERMAN: If they didn't, that woman would probably not have any rights. [LB6 LB157]

SENATOR CHAMBERS: That's all I would have. Thank you. [LB6 LB157]

JESSICA KOLTERMAN: Thank you. Any other questions? [LB6 LB157]

SENATOR ASHFORD: I get to ask that. (Laugh) No, I'm just kidding. [LB6 LB157]

JESSICA KOLTERMAN: (Laugh) I'm sorry. [LB6 LB157]

SENATOR ASHFORD: Thank you. Thank you very much. They're different, so what we'll do, we'll just have them both in front of us and we can...go ahead. [LB6 LB157]

BRUCE RIEKER: Do you want me to address both of them? [LB6 LB157]

SENATOR ASHFORD: If you like, you may address both of them. [LB6 LB157]

BRUCE RIEKER: (Exhibit 16) Okay. My name is Bruce Rieker. It's B-r-u-c-e R-i-e-k-e-r. I'm the vice president of Advocacy for the Nebraska Hospital Association. And Chairman Ashford and members of the committee, it's my pleasure to be here before you to testify with regard to both LB6 and LB157. On behalf of the 85 hospitals in Nebraska and the more than 35,000 people they employ, the Nebraska Hospital Association wishes to express its support for LB6. The Nebraska Hospital Association is in favor of efforts to protect our children and provide for their health. With that said, we wish to outline a few of our concerns. If not carefully crafted, there are indications that such laws may lead to some unintended consequences such as ensuring the abandoned children will not learn their genealogical or medical histories, even when the consequences for healthcare are critical; concealment of pregnancies and abandonment of infants who may have been otherwise raised by biological parents or

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relatives, or adopted through established legal procedures; deprivation of the rights of biological parents to care for their children; and abandonment of babies by upset or disgruntled family members or individuals who have no legal right to do so. The Nebraska Hospital Association appreciates being mentioned in the bill as an entity that can help develop and implement a public information program pursuant to such an act. If enacted, Nebraska's hospitals will diligently carry out the responsibilities created and assigned to them. It is the duty of our hospitals to care for all Nebraskans, and we will fulfill that responsibility. Our intent is not to discourage this legislation but rather to make sure that, if adopted, as many consequences as possible have been examined. Thank you for the opportunity to comment on this important matter. The Nebraska Hospital Association appreciates your attention to our perspective and we welcome the opportunity to be involved in any capacity the committee so chooses. [LB6 LB157]

SENATOR ASHFORD: Any questions? Thanks. [LB6 LB157]

BRUCE RIEKER: You're welcome. Do you want me to do LB157 now or wait? [LB6 LB157]

SENATOR ASHFORD: Did you want to comment on...? No, let's wait until LB157. [LB157 LB6]

BRUCE RIEKER: Okay. [LB6 LB157]

SENATOR ASHFORD: Good afternoon. [LB6 LB157]

JUDITH BILLINGS: Good afternoon. I have copies. [LB6 LB157]

SENATOR ASHFORD: Cora, could we...? [LB6 LB157]

SENATOR CHAMBERS: Are you ready for her to testify? [LB6 LB157]

SENATOR ASHFORD: Yes, proceed. I'm sorry. [LB6 LB157]

JUDITH BILLINGS: (Exhibits 10 and 15) Members of the committee, I appreciate the opportunity to be able to speak before you today. My name is Judith Billings, J-u-d-i-t-h B-i-l-l-i-n-g-s. I'm a nurse from Kearney and I'm speaking today on behalf of myself and on behalf of the Nebraska Nurses Association. The Nebraska Nurses Association supports the concepts outlined in both LB6 and LB157. Nebraska has recently made considerable strides in protection of the state's children. We feel that a safe haven law is an important step in the state's child abuse prevention programs. The Nebraska Nurses Association is also willing to work with the state to help establish guidelines to implement a safe haven law. In June 2004, the body of a two-year-old baby was found in a spillway near Norfolk. This was a tragedy that had unfortunately occurred previously

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in Nebraska. And a few years ago in the Kearney area, a live infant was found on the doorsteps by some children walking to school. And fortunately that infant lived and was healthy, and within a few days was placed into a home where a couple welcomed him. Many couples contacted the state trying to adopt that infant, and the biological mother was never found. It is stated in a report by the National Abandoned Infants Assistance Resource Center that women who commit neonaticide are usually young, in their teens or in their early twenties, are of all ethnicities, and are poor. They usually have no criminal records. They are in denial of their pregnancy, as someone has mentioned before, and have avoided making any decisions about the pregnancy. In desperation they dispose of their newborns, and may suffer mental anguish the rest of their lives because of this decision. My data is a little different that some of the previous speakers. As far as my research in the last couple or three days, it appears to me that Vermont has passed a safe haven law. So I think that I thought that there were 47 states that have now enacted safe haven laws. I did try to find information about the numbers of babies that had been saved through safe haven laws in the other states. It's almost impossible to summarize that data because the states don't, some of them don't require reporting of legal relinquishments and some of them don't require reporting at all. But my own and the Nebraska Nurses Association's feeling about a safe haven law can be summarized in the words on a woman I heard from recently: If only one child is saved, that is a blessing. Thank you. Do you have a question? [LB6 LB157]

SENATOR ASHFORD: Thank you, Doctor. Any questions? Thank you. [LB6 LB157]

JUDITH BILLINGS: Thank you. [LB6 LB157]

SENATOR ASHFORD: Next witness; next testifier. Hi. Good afternoon [LB6 LB157]

CHRIS COSTANTAKOS: Good afternoon. My name is Chris Costantakos. [LB6 LB157]

SENATOR ASHFORD: Chris, would you spell your name for the...? [LB6 LB157]

CHRIS COSTANTAKOS: C-o-s-t-a-n-t-a-k-o-s; first name is Chris. [LB6 LB157]

SENATOR ASHFORD: Thank you. [LB6 LB157]

CHRIS COSTANTAKOS: Good afternoon, Senator Ashford and members of the committee. I am appearing only in my individual capacity and not on behalf of an organization, but as an attorney who practices primarily in the area of juvenile court law. I have practiced for 28 years and represented hundreds of parents, grandparents, children...not hundreds of grandparents, but children...and at times have been a special prosecutor in juvenile cases for the state of Nebraska. If I may in the interest of time, speak on both bills, LB6 and LB157. My concern with these two bills is very simple. I support the concept of safe haven and think it's a good concept and its needed, but

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there is absolutely no incentive for any parent to drop off their children to a hospital, firefighter, or police department with the punitive provisions that are contained in both. And I think some of those have been already discussed and outlined. The existing Nebraska juvenile code has many mechanisms that are currently sufficient, again not to create safe haven but they're sufficient to address neglect, abuse, abandonment. If you look specifically at LB6, that actually provides for a period of abandonment, judicial abandonment, to constitute 90 days. This flies in the face of established case law which over and over and over again, and our statutory juvenile code which says abandonment must be six months. If the state needs to terminate parental rights immediately in a juvenile case, they can do that. They don't have to wait the six months; they can do it under 292.02, which is for neglect. This particular LB6, my suggestion is, on Section 3, the language in the second sentence of Section 3, that "Such placement...shall not constitute an automatic termination of parental rights but" shall constitute an abandonment. That needs to be stricken. The gist of that is to say, even though it will not constitute an automatic termination of parental rights...and by the way, there is no such thing short of a relinquishment of parental rights...the later part of that is, it shall constitute an abandonment "for purposes of 43-292.02." 292.02 is a statute that mandates that the state of Nebraska institute proceedings for termination of parental rights immediately based on abandonment. This is intensely problematic, and besides being a disincentive I think there's a violation here of a due process problem in relation to the standard of proof or termination of parental rights. LB157 interestingly creates a temporary custody right in the firefighter, hospital staff, etcetera, up until such point as that professional can make contact with Health and Human Services. But the problematic portion of Section 7 that I would call your attention to, Senators, is Section 7 of LB157, which authorizes the Department of Health and Human Services to place this child who has been delivered for safe haven in an adoptive placement as soon as possible, and directs the department to file a petition pursuant to the Nebraska juvenile code. One of the problems with this is the Department of Health and Human Services has no statutory authorization, at least none that I can find, to file anything to terminate parental rights. There are only two entities who can terminate parental rights in this state, and that's the county attorney who represents the state of Nebraska and the guardian ad litem for the minor child. The department as a state agency is represented by the Attorney General's Office, and they don't have independent authority to initiate termination proceedings. And if you open that door up, you're going to have the Foster Care Review Board wanting to terminate parental rights and grandparents wanting to terminate parental rights and other parents wanting to terminate the other parent's parental rights. The main concern I have with the punitive portions of both of these bills, that they are not only vague, particularly in LB157 which requires or indicates that the parent does not express an intent to return for the child. We have so many parents that come into juvenile court today who are, of course, in the poverty arena, but we have many people from other countries who don't necessarily speak our language or don't speak it well. It's not only a question about how effectively they can communicate, but how effectively can that firefighter understand and construe, or what interpretation might

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he or she put on that, and say, oh, I guess he's not coming back for the child. I think these are problematic things. The other thing that I think concerned me about the punitive portions is that they are overbroad. It's entirely possible to have someone, say with a sick child who maybe themselves is sick or mentally ill, doesn't know where to go, is new to this country, takes this child in. And that actually is a step of parental responsibility if you think about it. Even though at the end of the road they may be desiring to relinquish or lose their parental rights in some form or another, it seems to me that the punitive portions of these two bills punish what is, could be, included as innocent behavior where a parent says, look, I know, I can take this child to the fire station and give him to a firefighter or a policeman if need be. That's a step of safety we want for the child and that is problematic, I think, that it would violate the parents' due process rights. So I see the red light is on so I think that I'm out of time. [LB6 LB157]

SENATOR ASHFORD: Questions? [LB6 LB157]

SENATOR CHAMBERS: Were these two analyses provided by you? [LB6 LB157]

CHRIS COSTANTAKOS: (Exhibits 13 and 14) Oh, I'm sorry. There was...were they passed out? Yes, I failed to put my name on them but there is an analysis of LB6, the Safe Haven Act, and LB157. Those are both created by me. [LB6 LB157]

SENATOR CHAMBERS: And will they contain basically what you brought to us today? [LB6 LB157]

CHRIS COSTANTAKOS: Yes, they do, Senator; yes, they do. [LB6 LB157]

SENATOR CHAMBERS: Okay. Then I won't pursue you with questions because the answers will be here. [LB6 LB157]

CHRIS COSTANTAKOS: Okay, thank you. But again I support the concept of the safe haven but I think these bills are in serious need of some amendments. [LB157 LB6]

SENATOR ASHFORD: Thank you. How many additional proponents do we have, for either bill? I know I cut you off earlier. But any opponents of both bills or each bill or...? How about LB6? Opponents for LB6? LB157? Well, let's go to the opponents of LB6. And if you wish to comment on LB157 at the same time, that would be fine. [LB6 LB157]

SUSAN SAPP: Thank you, Senator Ashford and committee members. My name is Susan Sapp, S-u-s-a-n S-a-p-p. I'm a partner at Cline Williams Law Firm in Lincoln, Nebraska, and I'm appearing here in my individual capacity. For about the last 18 years one of my primary practice areas has been private adoption. I've worked with agencies, juvenile court adoptions, and private adoptions. And at this point I've worked with probably 250 birth parents, birth mothers, birth fathers included. In the last year I have

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assisted multiple teenagers, one illegal immigrant, and several domestic violence victims, doing completely confidential placements for purposes of adoption where I knew, the judge knew, and the adoptive parents knew, and no one else knew. And so earlier there were remarks that it's impossible under the current structure to do confidential placements for teens, illegal immigrants, or domestic violence victims. I do not believe that's true based on my own personal experience. I have been an advocate for children for my entire career, and so it pains me to come in here and tell you, I don't think that Nebraska should have either safe haven law in the current form or potentially any of the forms that have been discussed here today. I echo the criticism of the bills in their current structure that were shared by the last speaker, and so I won't belabor those. But what I want to tell you is that there are structures in place currently to address adoption in the way best designed to be legally stable and permanent for these children. And at this point a safe haven law provides an incentive for an abandonment. I have read studies, the Donaldson Institute has done multiple studies about safe haven laws in other states, and people point to the number of children who have been placed in safe haven placements, but there's nothing to show that those are children who would have otherwise been abandoned in tragic and unsafe way. What we do know is that if a birth parent or a grandparent or a stranger has an incentive to put a child out of reach of another birth parent or another family member, a safe haven law provides the avenue to do that with very little check and balances on who's delivering that baby, under what circumstances, with whose permission. A married female could drop off a baby to circumvent her husband's rights. An unmarried birth mother could do it. An unmarried birth father could do it to circumvent the rights of a birth mother. A married father could do it. There is no check and balance on the legal basis for that abandonment even though it's in an authorized way, it may not be in an authorized legal way. Currently, Senator Johnson just introduced LB478 today which will be additional ways to address some of the areas of adoption law to increase stability for children placed in adoptive placements. Safe haven does the opposite. And so my answer is not to simply say, well, then some children may be abandoned, because it pains my heart to see those circumstances and they should never happen. But what is available and what we're seeing is that private agencies like Nebraska Children's Home, Adoption Links Worldwide, CSI, they have 800-numbers; they do education in the high schools. If I was going to ask you to do one thing today, it would be to appropriate some money to those existing programs to get in and educate young people about how adoption can be done. An earlier speaker had wanted to do a completely confidential adoption where she didn't want to give her name. I was pleased to hear that she went through the process of adoption, became acquainted with open adoption, and now has a positive, wonderful placement that she's been part of. That can happen for anybody who wants to do an adoption and it can be confidential or it can be completely open. And I think we need to support the private agencies that are doing this work with their 800-numbers and their ability for birth mothers to contact them directly and educate people about some of the myths about adoption so that don't think that they have no options to do a confidential placement. But the birth mothers who are under the trauma of a denial of a pregnancy,

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fear of disclosure, who abandon babies in unsafe ways, are not going to stop by any other studies I've seen and say, gosh, I think I saw a new safe haven law go through this last year, I think I'll go to the fire station. If you're going to abandon a baby in a small town Nebraska like Newman Grove, for example, if you want to make sure that people find out about it, take it to the fire station. If you want to confidential placement, dial the 800-number for one of the agencies and do a cradle care placement until you can sort out the circumstances under which you can do an adoption. So at this point I'd ask Nebraska to stand strong. I know it's easy to say that every other state has it, but it doesn't mean it's doing good things, and it does mean it has scary and unintended consequences. Any questions? Thank you. [LB6 LB157]

SENATOR ASHFORD: Any questions? [LB6 LB157]

DAVID BUNTAIN: (Exhibit 17) Senator Ashford, members of the committee, my name is David Buntain. I am the registered lobbyist for the Nebraska Medical Association. Three years ago when the first safe haven law was introduced, the Medical Association created a task force consisting of physicians and attorneys who were interested in this issue, and came to the conclusion after receiving input that, for many of the reasons stated by your previous opponent, it did not make sense to pass a safe haven law. One of the principal things that was persuasive to us was a report that was done and it's being handed out, which has been done by the Evan B. Donaldson Adoption Institute, and it's called "Unintended Consequences: 'Safe Haven' Laws are Causing Problems, Not Solving Them." And I commend to you this as an excellent statement of what the other side is on this issue. And I won't repeat the arguments that are in here but I really urge you to look at this and think about whether this will really accomplish what the proponents are saying it will accomplish. And clearly, if the committee wants to move forward with legislation, we would like to have...to be participants on input into this. I think even the proponents have identified a lot of problems with both of the laws, and therefore I would encourage the committee not to advance either LB6 or LB157. [LB6 LB157]

SENATOR ASHFORD: Thank you. Any questions of Mr. Buntain? How do you though...I mean, I...how do you deal with the situation of a scared, frightened...? I realize there are agency options available, but how do you deal with someone that is so frightened that...? [LB6 LB157]

DAVID BUNTAIN: Well, clearly, the system... [LB6 LB157]

SENATOR ASHFORD: I mean, isn't there an issue, a problem? Just because 48 states adopt something doesn't mean we should adopt it, but on the other hand there's something that's out there that we need to resolve. [LB6 LB157]

DAVID BUNTAIN: First of all, if you pass this, it's not going to stop those occasion

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situations where the mother is in a panic, may not be mentally stable, and abandons the child. There's no...it is what I would call the propter hoc fallacy. If you're a student of logic, you're saying that after that therefore because of this; if we pass this, then that will stop. But the people that you're talking about stopping, by very definition are not likely to be people who are aware of what the legal system is and the option of doing this. Our concern is that...is not with those persons who I submit are not really going to be helped by this. It's with another category of persons who are for the most part being dealt with within the current system. And they may have panic and concern and want to conceal their pregnancy, but through the education system, through a variety of factors, family, they are making contact with the people that can help them through what is a very difficult time. If you pass this safe haven law, you are giving some mothers an easy out, and some fathers, as Ms. Sapp has indicated. It's not just the mother that could end up abandoning the child. [LB6 LB157]

SENATOR ASHFORD: But if you save one child... [LB6 LB157]

DAVID BUNTAIN: But what I'm saying is, I don't think you would... [LB6 LB157]

SENATOR ASHFORD: You don't think it will save one child? [LB6 LB157]

DAVID BUNTAIN There's no guarantee that you will. And what you're going to do is encourage mothers or let's just say parents of children who now are...I mean, it may not be easy, but they are getting into the system. We do not have that many instances. Any instance is too many, but I'm saying you're not going to prevent those occasional instances from coming, and I think you're giving a number of parents an easy out. And you're really saying to young mothers, don't take responsibility. [LB6 LB157]

SENATOR ASHFORD: Well, I mean, you might, and then again it's speculative on both sides. [LB6 LB157]

DAVID BUNTAIN: Right. [LB6 LB157]

SENATOR ASHFORD: I mean, we're speculating that we're giving them an out and we're speculating that they won't take advantage of it. I mean, that's speculative. I'm not criticizing your testimony. I'm just... [LB6 LB157]

DAVID BUNTAIN: No, you're correct. I mean, that is correct. [LB6 LB157]

SENATOR ASHFORD: Okay. Thank you. Anyone else? Thanks, David. [LB6 LB157]

DAVID BUNTAIN: Thank you. [LB6 LB157]

SENATOR ASHFORD: Can we help Cora out? There we go. We're getting our handout

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skills. We're just developing them here today. [LB6 LB157]

GRACE SUNDERMEIER: Okay, thank you. [LB6 LB157]

SENATOR ASHFORD: Generally, you don't have to come give us the...but we'll get that all worked out next time you come to testify. Thank you. [LB6 LB157]

GRACE SUNDERMEIER: Is it okay to begin? [LB6 LB157]

SENATOR ASHFORD: Okay, Grace, would you give your name and spell your last name for us, please? [LB6 LB157]

GRACE SUNDERMEIER: (Exhibit 12) Okay. My name is Grace Sundermeier, and the spelling is G-r-a-c-e S-u-n-d-e-r-m-e-i-e-r. And I'm a licensed mental health practitioner at Catholic Charities in Omaha and have been there going on 34 years. But today I'm testifying as an individual because I didn't have time. I heard about this hearing yesterday and I cannot testify for the agency without a meeting and wasn't able to arrange that. But I did talk to the members of the Nebraska Adoption Agencies at our monthly meeting last week, and find a lot of concern among the agencies. So I've worked with young persons experiencing an untimed pregnancy for a lot of years. I see baby abandonment as a large step backwards in the effort to help families deal with the crisis of an unplanned pregnancy. LB6 and LB157 will encourage unsafe infant delivery, which could endanger the lives of both mother and child. It says to people that unplanned pregnancy is so shameful that running away is an acceptable option--one approved by the state Legislature. It says that fathers and extended families have no rights to this child. All of the progress made over the years and years I've worked in adoption to make it a more humane process, in proper notification of the father, and in crafting laws that make adoption a permanent decision will be put at risk. Desperate persons abandon babies--persons not likely to research legislation and become educated on the correct way to abandon a baby. For information on this legislation to reach the entire population, considerable funding from our state resources would have to go into educating the public on how to abandon a baby without fear of prosecution. In Texas, thousands of dollars were spent in an effort to inform the public on how to abandon a child without fear of prosecution, and the children continue to be abandoned in Texas. Licensed adoption agencies in Nebraska are safe havens. Confidentiality is guaranteed and the parents are treated with care and respect. They are not prosecuted for abandonment. A safe plan is put in place for the baby, one in which the parent can have a sense of integrity. Babies left in police stations, hospitals, and fire stations will experience long-term foster care and legal uncertainty, and will be deprived of all their ties to their families of origin. While LB6 and LB157 would satisfy the needs of many for an immediate solution, it offers little which will help frightened adolescents and desperate women at risk of abuse, women with mental illness, nor will it effectively help children born into a crisis situation. I believe that the state's resources would be better

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used by educating the public about the services that are already available throughout the state, meaning all of the state's licensed adoption agencies, than by promoting the practice of abandonment of our children. [LB6 LB157]

SENATOR ASHFORD: Thank you. Any questions of Ms. Sundermeier? Thank you for coming in. [LB6 LB157]

GRACE SUNDERMEIER: Yes. [LB6 LB157]

JERRY STILMOCK: Senator, my comments are limited to LB157. Is this the proper time, or...? [LB6 LB157]

SENATOR ASHFORD: Is anyone else here to testify on LB6? []

_____ : I am (inaudible). [LB6 LB157]

SENATOR ASHFORD: Okay, why don't we go to that, John, if we could. Let's have the testifier on LB6 first. [LB6 LB157]

JERRY STILMOCK: Senators, my name is Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k. I'm a registered lobbyist for the Nebraska State Volunteer Firefighters Association, testifying in a neutral capacity on both bills that you have on the agenda, Senators. We, as volunteer firefighters and volunteer rescue personnel, are here to serve, and we serve in many different capacities. We form search parties when there is a missing child or an adult. We are on the watchout for tornados. When properly trained, we serve on dive teams or we serve in additional capacities with the training for serving as EMTs. So not all firefighters are trained as EMTs. Some are and some aren't, especially in the rural communities where a vast majority of the fire protection services are offered very well may be a situation where a firefighter is at the fire station infrequently. They are not going to be manned all the time. And one of the items brought up in LB6, frankly is, in a neutral capacity, keeping that perspective, is this tender child is turned over to, not a human being, but to a designated facility. And that causes me concern. It's not...the child is not being placed with a human. The child is being placed at a designated facility. That might be a hospital, a police station, or a fire station, if it's manned. Police stations in rural Nebraska are not manned, often, but yet the designation for being a manned police station is absent from LB6. The designation of...in both bills, take a reference to a time frame. LB6 is 30 days, within 30 days; LB157 is within 72 hours. The result in that for the volunteer firefighters is an inquisition. How old is the child? What (inaudible) if the person is wrong in designating the child? Am I still, as a firefighter, obligated to take that child even though that child is 31 days under LB6 or 75 hours under LB157? LB6 presents no absolution of liability in the event of any acts by that firefighter. LB157 has that grant of protection. The language in LB6 requires an affirmative duty by the designated facility, by the person presumably, to make every

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effort to inform that person dropping off the child that their parental rights may be terminated. We're not trained in those areas. Though we will go where duty calls, those are items and issues that were concerning to our membership, Senators. Thank you. [LB6 LB157]

SENATOR ASHFORD: Thanks, Mr. Stilmock. Any questions? Any questions of Mr. Stilmock? Thank you. [LB6 LB157]

JERRY STILMOCK: Seeing none, thank you. [LB6 LB157]

SENATOR LATHROP: Maybe just briefly. [LB6 LB157]

JERRY STILMOCK: Senator. [LB6 LB157]

SENATOR LATHROP: The Section 2 of LB6 does call for or define the designated facility as a manned fire station. [LB6 LB157]

JERRY STILMOCK: Yes. Yes, I agree with that. [LB6 LB157]

SENATOR LATHROP: And so I guess the idea or the intent behind the bill is not that the firefighters would hang on to the child for any period of time; just that they be a place to deposit a child or leave the child. [LB6 LB157]

JERRY STILMOCK: Yes, understood. [LB6 LB157]

SENATOR LATHROP: So immediately wouldn't you expect volunteer firefighters to take the child to a hospital or to receive proper care? [LB6 LB157]

JERRY STILMOCK: I would expect that to happen, yes. [LB6 LB157]

SENATOR LATHROP: Okay. That's all I have. [LB6 LB157]

JERRY STILMOCK: Okay. Thank you. [LB6 LB157]

SENATOR ASHFORD: Thanks, Mr. Stilmock. Senator Chambers. [LB6 LB157]

SENATOR CHAMBERS: Suppose there had been a call about a very serious fire, and as the personnel were preparing to leave, somebody dropped off a child. This may seem extreme but I want to call into sharp focus some things that could happen. Would that mean one person would have to not respond to that call and be there to deal with the child, or how would that be handled? And that's a rhetorical question because you didn't write the bill. But could there be situations where a primary responsibility of that firefighter could conflict with what is being placed on the firefighter here to do? [LB6

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JERRY STILMOCK: I agree with your statement and that very topic was addressed, at least thought of, the issue thought of while we were discussing the bill. [LB6 LB157]

SENATOR ASHFORD: Thanks, Mr. Stilmock. [LB6 LB157]

JERRY STILMOCK: Thank you. [LB6 LB157]

SENATOR ASHFORD: We had another neutral testifier. And again if the next testifier would just come up to the table and sign...I just wanted to make sure. All right, we'll work those flaws out. Thank you. Appreciate it. [LB6 LB157]

VANESA HERNANDEZ: (Exhibit 11) Good afternoon, Chairperson Senator Ashford and committee members. My name is Vanesa Hernandez, H-e-r-n-a-n-d-e-z, and I am here today representing Voices for Children in Nebraska. Voices has taken a neutral position on both LB6 and LB157. We chose to do this because after evaluation we found a lack of research on the effectiveness of current safe haven laws in other states. But the precedent is set by these other states' safe haven laws to show important components of the laws that you can take into consideration when reviewing both LB6 and LB157. After reviewing information on other safe haven laws, I'd like to share, in brief, some recommendations for your consideration. First and foremost, I recommend mandating the tracking of the number of infants abandoned at designated safe haven sites, but also tracking the number of infants abandoned at other locations, as well. Most importantly, this allows for a starting point for the evaluation of the Safe Haven Act. I also recommend the development and implementation of a strong education campaign to let the communities know about the safe haven program but also letting young women and men know their options about counseling services, adoption possibilities, and support services. This campaign should include information about permanency planning and preventative services. I believe, done effectively, this can help (inaudible) in men and women you mentioned earlier, Senator Ashford. One of the most critical components of the education program is ensuring the campaign is adequately funded and implemented, and I cannot stress that enough. Without the appropriate funds to implement the campaign, the act does not become effective because the public does not know about it. And finally, one of the most challenging recommendations, I have to admit, is this one: It is critical to nonrelinquishing parents and their children to create a way to notify the birth father or mother about abandonment and allow them to assert their rights. I am glad to hear that this has been included as an amendment in LB6 and look forward to reading it. Within the written testimony that you all now have in front of you, I have detailed recommendations that are specific to each of the bills. But at this time I will end here, urging you all to review the recommendations at your convenience and to keep in mind the children that are affected by these acts as you review this information. If you have any questions I would be happy to do my best to answer them.

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Thank you. [LB6 LB157]

SENATOR ASHFORD: Thank you. Any questions? Thanks. [LB6 LB157]

VANESA HERNANDEZ: Thank you. [LB6 LB157]

SENATOR ASHFORD: Any other testifiers on LB157...or LB6? I'm sorry. I didn't see any hands. This will conclude the hearing on LB6. Let's move to LB157. Senator. Oh, I'm sorry, Senator. Did you wish to close, Senator Pahls? I apologize. [LB6 LB157]

SENATOR PAHLS: Just a couple statements. Senator, I'll let you sit down. [LB6 LB157]

SENATOR ASHFORD: Senator, you may...we've got conflicting senators here. Just go ahead. [LB6 LB157]

SENATOR PAHLS: Senator Ashford, this has been a really...this has been an enlightening session, hearing some of the concerns, and some of them I see extremely valid. They are making me think and my AA is back there were jotting notes, some of the things that we need to work on. I do think that we can correct those issues that seem to be very significant. What I want to point out though, and I hear this from people who are the proponents, one of the testifiers said that she tried to get a relationship built with one of the agencies and she couldn't get it done because they needed her name, her address, etcetera. I am looking out or we are looking out for those individuals who don't have some of those assets. Think of me as somebody coming up from Nicaragua, I've been here a year, I know no one, I trust no one because I'm here illegal, and all of sudden I'm in a quandary. Those are the types of people we're looking at. Or if I'm looking at a person who is being abused. I do not think rationally like some of the people that I've heard speak this afternoon. My intent is not to take any dollars away from any attorneys. My intent is not to take any dollars away from any agencies. That's not the intent. I say, let's work together. We could...that one segment of individuals who needs some protection. I commend all the agencies because I think they're working hard. The dollar figure, I don't think it's, if you read the fiscal note, is not that elaborate. We've also talked to an outside agency, as I said, from outstate, who's willing to help. They have a lot of ideas so we don't have to reinvent the wheel. And here's another thing: As I made a comment earlier, now I know you can play with data, but in Florida, 57 children were at safe haven--57. They were adopted. At that same time...this is a five-year period from 2000 to 2005...33 were dropped off and 12 died. So there...I'm not saying the state of Nebraska and I don't have the data from all the states, but that is one state from 2000 to 2005. A number of them, in a safe haven placement, they were adopted. Thirty-some, 33, were not, and 12 of those children did not make it. So I do think that we do have some need for change. I listened to what you were saying, Senator Chambers, but I do think there is some validity in helping those people who are not as unfortunate as the number of us sitting around that I'm looking at or the ones that are sitting behind me.

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There are group of people out there who do need some help. Thank you. [LB6 LB157]

SENATOR ASHFORD: Thank you, Senator Pahls. Senator. [LB6 LB157]

SENATOR STUTHMAN: Good afternoon, Chairman Ashford and members of the Judiciary Committee. For the record, I am Senator Arnie Stuthman, S-t-u-t-h-m-a-n, and I represent the 22nd Legislative District in the Nebraska Legislature. I am here today to introduce LB157, and this bill would allow for leaving an infant with a firefighter or a hospital staff member. I'm going to explain some of the sections in my bill, what it does, and the definitions of it. It allows an on-duty firefighter or a hospital staff person that admits people to take an infant that is less than 72 hours old and if the parent expresses no interest in returning for the child. If a firefighter or a hospital staff member takes temporary custody of this infant, they shall perform any necessary act to protect, preserve, or aid in the physical health and safety of the child during their temporary custody. And then also they must notify the law enforcement of the abandonment within four hours of the abandonment. A firefighter or hospital staff member shall incur no civil or criminal liability for any good-faith acts. Then the law enforcement officer shall take the abandoned child into temporary custody, which is taken care of in Section 43-248. After that occurs, the Department of Health and Human Services shall maintain and update monthly records of abandonments. And then beginning on January 1, 2008, the department shall submit an annual report as to how many of these and numbers of children have been left with firefighters or with hospital staff members. I think after this then the Department of Health has to try to potentially get an adoptive parent as soon as possible, but in listening to the discussion prior to this, I think there are some legal things that will possibly have to be changed in my bill. The main concern that I have with my bill, and it is really just the basic bill, I'm very receptive to amending it or working it out so that both bills can come out as one bill. My main intent is that we can at least hopefully save at least one child from being put in a dumpster or on a creek bed to die. That is my main concern. And I'm also, in the discussion that we had earlier and some of the questions on LB6, was the fact of if there was an abuse, if there were signs of abuse, in my opinion I'm concerned for the child, the betterment of the child from the time of abandonment on. I'm not as concerned with the individual person or parent bringing the child there and prosecuting that individual. My main objective is the child--of saving the child. Thank you. [LB157 LB6]

SENATOR ASHFORD: Thank you, Senator Stuthman. Any questions? Thank you. Do you wish to close or what's your desire? [LB157 LB6]

SENATOR STUTHMAN: I'll see. [LB157 LB6]

SENATOR ASHFORD: All right. Any proponents? And I know we've heard testimony already on it. Any neutral? Any opponents? Senator Lindsay, Mr. Lindsay, whatever. [LB157 LB6]

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JOHN LINDSAY: Chairman Ashford, members of the committee, my name is John Lindsay, L-i-n-d-s-a-y, appearing before you today on behalf of the Nebraska Association of Trial Attorneys. The opposition to LB157 on the part of the Trial Attorneys is limited to page 2, lines 19-21. Those provisions provide an immunity from liability for firefighters or hospital staff members. You'll find, those of you who are experienced on this committee, will know that I'll testify probably repeatedly on some immunity provisions like this as the session goes on. The Trial Attorneys' position is that when you take accountability, separate accountability for a person's action from that action, you tend to breed carelessness. If people are held accountable for whatever actions they are taking, then they tend to be more careful and we can probably think about that in our own lives. In those cases where nobody is really going to check up on me, we maybe just have a different duty or standard of care. Excuse me. This provision...I should make clear we have no position on the Safe Haven Act itself or the concept or the public policy on doing that. That's outside the scope of what our association does. But the immunity from liability is something we would ask be removed from the bill. This particular provision causes some concerns because it refers to good-faith acts or omissions, which kind of covers two different standards. It blends the law or tort with the law or...I should be the law of negligence with the law of intentional torts. Good faith refers to a state of mind that a person...this is taking an action. Negligence refers to a failure to use do care. In good faith, you can be negligent and still be acting in good faith, but the harm is nevertheless occurring. And so that...frankly, I'm not quite sure what that standard would create and I think some further legislative intent, if there is going to be this provision, would be necessary. With that I would be happy to answer any questions that Senator Ashford and the committee might have. [LB157 LB6]

SENATOR ASHFORD: Thank you. Any other opponents or...? [LB157 LB6]

BRUCE RIEKER: (Exhibit 16) Again, my name is Bruce Rieker, B-r-u-c-e R-i-e-k-e-r. I'm vice president of Nebraska Hospital Association. I've already given you a copy of our written opposition to LB157. If I may summarize it very quickly, again we're in favor of efforts to protect the children however our members had strong concerns about two provisions of this bill: first, the short time frame of the 72 hours after the child's birth in which a parent may leave an infant with an on-duty firefighter or hospital staff member, and second, the directive of the Department of Health and Human Services to immediately terminate parental rights of the biological parent. Again, we'd like to reiterate our support of advancing LB6 and our opposition to LB157, again with LB6 with the caveats that I outlined in our prior testimony. And with that I'll answer any questions if you have any. [LB157 LB6]

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SENATOR ASHFORD: Any questions? Thank you. Thanks for sticking around. [LB6 LB157]

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BRUCE RIEKER: You bet. [LB6 LB157]

SENATOR ASHFORD: Anyone else in opposition? Senator, do you wish to close?
Waive closing. That concludes the hearing. Thank you all. (See also: Exhibits 1, 2, 6, 7,
and 9.) [LB157 LB6]

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Disposition of Bills:

LB141 - Held in committee.

LB8 - Advanced to General File.

LB15 - Held in committee.

LB6 - Held in committee.

LB157 - Advanced to General File, as amended.

Chairperson

Committee Clerk