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Judiciary Committee  
March 25, 2009

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[LB4 LB226 LB423 LB589 LB660]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 25, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB660, LB589, LB423, LB4, and LB226. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None.  
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SENATOR ASHFORD: Good afternoon, everyone. I think we should...I'd like to get started, please. Why don't we all gather round and listen to Senator Fulton. Welcome, everyone, to the Ernie Chambers Judiciary Committee Hearing Room. We have five bills today, two of which we're going to hear together, LB589 and LB423, both dealing with custody issues, and so those bills will come after Senator Fulton's bill, LB660, involving the Auditor of Public Accounts. Senator McGill, my colleague, is here from Lincoln; Senator Council from Omaha; Senator Lautenbaugh from Blair in Omaha; and Stacey Trout, legal counsel; and Christina Case, the committee clerk. And Senator Lathrop is also present and accounted for. Senator Christensen, welcome. Senator Christensen, as we all know, is from Imperial, Nebraska, from God's country. Senator Fulton, LB660. [LB660]

SENATOR FULTON: (Exhibits 1 and 2) Thank you, Chairman Ashford and members of the Judiciary Committee. For the record, my name is Tony Fulton, F-u-l-t-o-n, and I represent Legislative District 29. I bring to you today LB660. In 2007, the Legislative Performance Audit Committee submitted a request for an Attorney General's Opinion regarding the scope of its ability to access certain documents that the Department of Education claimed it did not have to disclose based on the attorney-client privilege. That Attorney General's Opinion, Opinion 07004, stated that the performance audit section could access information and records belonging to an agency which is subject to the attorney-client privilege in connection with a performance audit provided that the section or committee does not disclose that privileged material. It is this AG Opinion that provides the basis for LB660 today. LB660 amends sections related to both the performance audit section and the Auditor of Public Accounts. The bill amends the performance audit statute as follows. It clarifies the section's access to communications under the attorney-client privilege. It specifies a reasonable time for an agency to either comply with the request for access to information by the performance audit section or provide a written denial within three business days or, at the very latest, three calendar weeks. The language of this subsection is derived from the requirements for a public record request by any citizen of this state per Section 84-712. Thirdly, the bill protects...or this performance audit statute, this section protects state employees who provide information from personnel action by subjecting managers who take retaliatory personnel action against such an informant to a Class III misdemeanor and dismissal. This language, incidentally, is consistent with the punishment already extant under the

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act. As the AG Opinion also stated that "the State Auditor's general authority to review records in the context of an audit is broader than that of the Legislative Performance Audit Committee." LB660 also amends the State Auditor's statute. It adds language related to the Auditor's access to confidential records or privileged communications that mirrors that found in the performance audit statute. Number two, it creates a penalty for willful failure to comply with a record request. That also mirrors the performance audit statute. Number three, it protects informants from personnel action in the same manner as the performance audit statute. Number four, it protects the identity of whistle-blowers from a public entity's access to the Auditor's working papers and audit files. And number five, this is AM335 which I am now going to hand distribute to you. This amends Section 7 to include local, state, and federal law enforcement agencies as entities who may have access to the Auditor's working papers and audit files. To explicitly ensure that agency or public entity compliance with a performance audit or State Auditor request for access to information that may be privileged or confidential does not result in a complete waiver of the attorney-client privilege, I am introducing AM202 which I will ask to similarly be distributed. AM202 amends both Sections 1 and 5 of the bill to ensure that no agency or public entity shall be deemed to have waived its attorney client privilege. This is an amendment that we worked on and I believe has been agreed to by the State Bar Association. Concluding, the enumerated duties of both the State Auditor and the Performance Audit Committee necessitate access to information of public entities and agencies. Obfuscation of legitimate audits ought not to occur under the guise of the attorney-client privilege, especially when both the State Auditor and Performance Audit Committee have been determined to have the rights to access any and all documents and information to carry out their legitimate duties. One of the reasons that I have researched and decided to bring this bill has to do with my experience on the Appropriations Committee. Presently, I think, as you are well aware, we have some challenging fiduciary responsibilities, and obligations indeed, by the state, and it's very difficult to find excess monies. The work of the performance audit section as well as that of the Auditor of Public Accounts provides a mechanism by which we can ensure that existing state dollars are spent appropriately, and those that are not being spent appropriately might be put forward to those things for which the state does have an obligation. So I have an interest on this from the side of my own committee assignment also. With that, if there are any questions I will try to answer them. [LB660]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB660]

SENATOR LATHROP: Can I ask? Senator Fulton, is there anybody besides the Auditor...you're trying to get to there's a certain class of documents that the Auditor cannot get to, is that it? [LB660]

SENATOR FULTON: I don't know if I would categorize them as a class of documents but there was some ambiguity within the law and the intention really here is to clarify per the AG Opinion. [LB660]

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SENATOR LATHROP: Okay. What is getting in the way of our Auditor getting the records he or she wants to get. I know it's a he now but that was asked in the hypothetical. [LB660]

SENATOR FULTON: I appreciate the grammatical correctness also. The State Auditor will testify after me. Probably a more appropriate question for him. [LB660]

SENATOR LATHROP: Is the problem the attorney-client privilege? [LB660]

SENATOR FULTON: That...there may be other problems, but for the vantage of this bill, this is really in reaction to that AG's Opinion, which, yes, the attorney-client privilege was invoked and the Attorney General's Opinion indicated that the attorney-client privilege would not necessarily be usurped if...let's see, how did I read it? Well, if that information is not made public. [LB660]

SENATOR LATHROP: Is there anybody who can access this information other than the Auditor? Can the AG get to it? I mean, are we trying to give the Auditor access to information the AG can already get or some other office can already get other than the people that appear to be concealing it? [LB660]

SENATOR FULTON: Yeah, that's a good question. I would say that this is not...I'm not positive, the answer to your question, but, to clarify, it wouldn't just be the Auditor; the Auditor and the Performance Audit Committee. This bill is for both. [LB660]

SENATOR LATHROP: Okay. I got that part. [LB660]

SENATOR FULTON: Yeah. Outside of those two functions I'm not positive. [LB660]

SENATOR LATHROP: Okay. Thank you. [LB660]

SENATOR ASHFORD: Thanks, Senator Fulton. Proponents. Are you going to stick around, Tony, or...? [LB660]

SENATOR FULTON: Yes. [LB660]

SENATOR ASHFORD: Mr. Foley. Welcome. [LB660]

MIKE FOLEY: (Exhibits 3 and 4) Thank you, Chairman Ashford and members of the committee. From my years in this committee I know what those lights mean so I'll move right through this. [LB660]

SENATOR ASHFORD: I was going to get into the lights but I knew you knew so, you

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know, wait till you finished. [LB660]

MIKE FOLEY: Good afternoon, Chairman Ashford and members of the committee. My name is Mike Foley, Auditor of Public Accounts, appearing today in support of LB660. During the years that each of you will serve in the Nebraska Unicameral, I hope that in addition to your heavy responsibilities of writing the laws and setting the budget for our state, you will also engage in the process of oversight of government programs. And I know that some of you are already well down that road and I'm grateful for your work. As you engage in the work of oversight, I can almost guarantee you that inevitably you will encounter government officials who will demonstrate remarkable creativity in their efforts to prevent you from knowing what it is you seek to know about a particular program or expenditure. You will request documents and you will wait and you will wait and you will wait some more, and ultimately you may even get them if the spirit moves the agency that's under question. You'll seek specific information on given financial transactions of state government and you'll be told that, yes, that transaction does involve state funds but, no, you can't see it because it's protected under attorney-client privilege, when, in fact, the attorney and the client are two state employees working in the same office who have worked out some kind of transaction that they don't want you to know about. And you will encounter government employees working in our political subdivisions who have information on alleged improprieties and they will decline to come forward with their information because of the inadequacies of our whistle-blower protection statutes. These are common occurrences in the world of government oversight and auditing, and most states have long ago addressed them. It's time for Nebraska to do the same. The legislation before you can be summed up in two words: full accountability. The goal of LB660 is simply to ensure that the citizens of this state, as well as the public officials whom they elect to represent them, have complete and immediate access to any and all information needed to determine whether or not tax dollars are being spent appropriately and whether or not governmental agencies and employees are functioning according to law. The need for LB660 can be traced back directly to the attorney-client privilege excuse that was used by the Nebraska Department of Education to withhold records from your Legislative Performance Audit Committee in '06. The Attorney General ultimately issued a formal legal opinion in favor of the Performance Audit Committee. But despite that favorable AG Opinion, agencies still try to hide behind attorney-client privilege to avoid revealing information during the audit process. LB660 would stop that from happening in a manner that satisfies the Nebraska State Bar Association. The second major goal of LB660 is to ensure that the Legislature's performance auditors and my financial auditors have timely access to needed agency records and files. Under the current public records law, any citizen of the state may demand access to nonconfidential records of a public body. Certain exceptions aside, that demand must be complied within four business days, and there are sanctions for failure to do so. However, what people fail to realize is that when my auditors or the legislative performance auditors ask for those very same documents, we don't get them within four days. We get them when the agency feels like giving them to

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us and that may be a very long time. LB660 corrects that and puts us on the same footing as the typical citizen when asking for records. Also LB660 addresses the whistle-blower protection. Right now, we have no whistle-blower protections for employees of political subdivisions. We have it for state employees. They can go to the Ombudsman's Office or to an officer of the state, but we don't have that protection for political subdivision employees. LB660 addresses that problem. I'll conclude by saying that LB660 is good legislation on many levels. First, it represents a high water mark of cooperation between the legislative branch's Performance Audit Committee and my office. And I'd ask you to advance the bill. Thank you, Mr. Chairman. [LB660]

SENATOR ASHFORD: Thank you. Any questions of the Auditor? Seeing none, very clear apparently. [LB660]

MIKE FOLEY: Thank you, Mr. Chairman. [LB660]

SENATOR ASHFORD: How many proponents do we have of this bill? Opponents? One opponent. Neutral testifiers? One neutral. Okay, come on up. [LB660]

LAURA PETERSON: Good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Laura Peterson, P-e-t-e-r-s-o-n, general counsel for the Department of Administrative Services. I'm here on behalf of the administration in opposition to LB660. The administration has several concerns about this bill. First, it provides only three days to respond to a request for any information. The bill allows that response to indicate that we need more time to respond, but in no instance, and regardless of the difficulty of the response or the reason for the delay, may an agency ever have longer to respond than three calendar weeks. This provides deadlines far more stringent when responding to the Auditor or Performance Audit Committee than are provided when responding to the public's request for records even though the state of Nebraska has records laws widely regarded among the friendliest in the country. Further, it establishes no flexibility regardless of the size or complexity of the request or the other obligations of agency-required personnel. The deadlines in this bill create a situation where state employees and agencies would be required to prioritize requests by these two auditing entities over requests of the public and the services that agency provides to the public. Of even more concern is the creation of criminal penalties in Sections 3 and 6 of the bill for failing to comply with the requirements of the bill, particularly failure to respond within the outlined time frames. Let's say I receive a request for information from the Auditor and I happen to be in a several-day mediation on a tort claim and I don't get my response to the Auditor within three business days of receipt of his original request. Under Section 6 of the bill I am now guilty of a Class II misdemeanor punishable with up to six months imprisonment, a \$1,000 fine, or both, because I willfully failed to comply with the provision of the law that requires me to respond within three calendar days. In other areas of the law we have been seeking to decriminalize administrative errors such as this, often substituting disciplinary action or

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termination if the facts warrant. We have also sought to leave discretion as to the penalty based on the circumstances surrounding the public official's failure to comply. So for example, if I have the letter in my office, and I simply fail for no good reason, my penalty should be more severe than if I could not respond because I was engaged in other mandatory work activity during the eight hours a day during the three days I have to respond. Finally, we have a concern about shifting the burden to identify documents that should not be disclosed from the Auditor to the agency as is done in Section 5, which requires the public entity to provide the Auditor with a written explanation of the laws prohibiting disclosure to the Auditor. The administration appreciates the good and necessary work done both by the State Auditor and the Performance Audit Committee. My agency and others attempt to comply with all appropriate requests in the timeliest manner possible. I am not aware of any agency that unnecessarily delays responses that would give rise to the need to criminalize every delayed response, whether there is good reason or not. Therefore we would urge that you indefinitely postpone this bill. [LB660]

SENATOR ASHFORD: Any questions? Yes, Senator Christensen. [LB660]

SENATOR CHRISTENSEN: Thank you, Chairman. Laura, how many days does it take you to respond to the general public? [LB660]

LAURA PETERSON: Under the public records law, we are required to respond within four days, but the difference is that response can tell them that it's going to take us longer, tell them why it's going to take us longer, and allow us to kind of choose the time that we need to take. In my particular agency, because we own a lot of statewide data, the kinds of requests that we get for statewide expenditures on a certain item that have to cross all agencies can be...you know, take a lot of research, can take computer programming. Some days we can respond...sometimes we can respond within the four days. Sometimes it can take a month or two, depending on what it is we're trying to communicate. In the public records law, we tell them how long it's going to take. We can allow them to prioritize. This bill provides for that too, but then it says, no matter what, it can never take longer than three weeks, and I think it's that particular part of this bill that's troubling because there could be an instance where it's just going to take us longer than three weeks. An example might be if somebody wants employee health benefit data, expenditures on health out of our health plan, and we happen to be in our open enrollment period, it may be difficult for us to obtain that data and do benefits open enrollment at the same time, and benefits open enrollment lasts longer than three weeks. So mostly we would hope we could comply but there's simply no exception in this bill at all. [LB660]

SENATOR CHRISTENSEN: Okay. Thank you. [LB660]

SENATOR ASHFORD: Thanks. Neutral testifier? [LB660]

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MARTHA CARTER: (Exhibit 5) Thank you, Senator Ashford and members of the committee. For the record, my name is Martha Carter, C-a-r-t-e-r. I'm the legislative auditor. And the leadership of the Performance Audit Committee could not be with you today and so I'm here to deliver a letter on their behalf, which says that the committee has...is somewhat divided on whether or not to support the bill. People have different opinions and so they're taking a neutral position on the bill. So as staff, I'm really not at liberty to talk anymore about policy issues, but if you have any questions about the audit process I'd be happy to answer those. [LB660]

SENATOR ASHFORD: Thank you for that neutral...very neutral, I thought. (Laughter) [LB660]

MARTHA CARTER: Thank you. [LB660]

SENATOR ASHFORD: Senator, would you like to close? [LB660]

SENATOR FULTON: Thank you, Chairman Ashford. I'll just make a couple of points, responding points. The opponents indicate that...or the opponent indicated that there is concern with the period of time in which to effectuate the request. If indeed that is the concern then perhaps we can find amendatory language that would assuage that concern. If three days is too short, then perhaps four days, perhaps five days. I would hope that a period of time would not disallow this bill from moving forward. Number two, the criminal penalties...and that, incidentally, is the reason I was given as to why this bill was referenced to Judiciary Committee and I can understand that. The criminal penalties. I'd like to point out that these criminal penalties are not any different than what already exists with respect to those who obstruct or hinder the conduct of a performance audit or preaudit inquiry. This is on page 5, line 24: Such persons would be guilty of a Class II misdemeanor. That's existing language. One who knowingly disseminates information; that is page 4, line 8 of the green copy of the bill. Again this language is extant. So while I appreciate the nature of this bill, of putting it into the purview of the Judiciary Committee, and can recognize that logic, I hope that the penalties are not the stumbling block for the forward movement of this bill, for indeed these penalties exist now. If there are any other questions I could try to answer them, otherwise I appreciate your favorable... [LB660]

SENATOR ASHFORD: Senator Council. [LB660]

SENATOR COUNCIL: Yes, thank you, Senator Ashford. Senator Fulton, if that would be the case and you referenced page 5 with obstruction, if that's the concern that the audit committee and the Auditor have, why don't you treat these as obstruction for failing to provide the information requested? [LB660]

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SENATOR FULTON: Yeah, I suppose this is...I suppose that is a potentiality. But the case which generated the Attorney General's Opinion, that displays, to me anyway, without...I don't have to be a lawyer to recognize that that wasn't effectual in accomplishing the task that the Performance Audit Committee was trying to conduct with respect to the Department of Education. So perhaps that is a way forward, but it didn't work in 2006. So this is a means to clarify the law as it relates to attorney-client privilege per Attorney General Opinion 07004, I think is what it was. [LB660]

SENATOR COUNCIL: No, no. The question I'm asking is--and put it in context--in light of the Attorney General's Opinion, any subsequent failure to produce that information upon request of the Auditor, wouldn't it fall within the definition of obstruction? And just as you stated, you already have penalties dealing with obstruction. And it gets to the point that I think is of concern here, is that...and I agree with Ms. Peterson's testimony, you're basically criminalizing administrative inefficiency, because with that penalty being available in the event you don't timely respond as opposed to the existing penalties, there is some intent connected with it: an intent to obstruct or intent to willfully disclose information that shouldn't be disclosed. In this context, if the agency just simply fails to provide the information in the time required, they're subject to criminal penalties. I mean, those are two totally separate and distinct situations there. So if there's a concern about obstruction and you've got an Attorney General's Opinion that says the attorney-client privilege doesn't insulate the agency from its duty to respond, why don't they just pursue obstruction? [LB660]

SENATOR FULTON: Perhaps that could be pursued, but I think that the intent here--or I think--the intent of the bill is to make clear what is and isn't acceptable by way of time in the objective order. When one is trying to prove obstruction, one would have to delve into the subject of order, and that is demonstrating will or intent or whatnot. By putting forward in statute what is or isn't acceptable by way of request from the Performance Audit or the Auditor of Public Accounts, it's clarifying, because if...if we have to have one area of government suing another area of government to get government information, I don't see how that serves the public interest. So if it's a matter of whether or not there's enough latitude to allow administrative inefficiency...so I understand what you're saying. If there's administrative inefficiency such that one could be punished with a Class II or Class III misdemeanor, that is a concern if indeed inefficiency is what the problem is. Okay? [LB660]

SENATOR COUNCIL: Okay. But I'm saying if it's not inefficiency and there's some intent, then you have obstruction which you already have a statutory remedy for. And in that case, reasonable minds could agree that obstruction can amount to criminal activity and that the criminal penalty is appropriate in that regard. But in the case as broadly as this is, is written, like the situation that you get the request and you write back and say we can't do it in three days; we need four weeks. And the statute says, well tough, you've got three weeks, and after the third week somebody is subject to being charged

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with a criminal violation. No intent to obstruct; no intent...presumably no intent to deceive; just an inability to gather the data in that period of time. And it doesn't appear, the way it's written, to provide any leeway. I mean, in fact, it doesn't even allow for that agency to contact the Audit Committee or the Auditor's Office and say, look, really truly, government, I can show you we can't do this in three or four...in three weeks; we must have four weeks. There's no...there's not even a provision here that says in that situation you're not subject to the criminal penalties. [LB660]

SENATOR FULTON: Would there be language that would be acceptable by way of amendment? [LB660]

SENATOR COUNCIL: And perhaps, because there has to be...I mean, I'm not supportive of criminalizing administrative inefficiency, and that's basically...and that's one of the elements, and I understand the whole issue about the attorney-client privilege and as an attorney, which causes me some discomfort, but I understand there's been some discussion around that. But there may be...and I guess my final comment is with regard to the reason this bill is before the Judiciary Committee. Based upon the neutral position of the Audit Committee, I don't know that it would have fared very well in front of the Audit Committee, because they've indicated they're split. [LB660]

SENATOR FULTON: Well, the choice is it would...the Performance Audit Committee, not being a standing committee, isn't where it would be heard to move forward to the floor. So there were a couple of options. I guess if we leave status quo, then the potentiality exists that the Attorney General's Opinion could be repeated, and the Attorney General's Opinion doesn't have the force of...doesn't have statutory force. So that's one of the reasons I agreed to bring this bill forward is because this does clarify what the Attorney General's Opinion indicated. It adds the force of statute which is, indeed, what we enjoy as senators: the ability to effectuate that force. To leave it as status quo, I don't think that serves the public good. [LB660]

SENATOR COUNCIL: And I guess one assumption there is that you agree with the Attorney General's Opinion. [LB660]

SENATOR FULTON: True enough. [LB660]

SENATOR COUNCIL: Thank you. [LB660]

SENATOR ASHFORD: Thanks, Tony. That concludes the hearing. We now move to Senator Dierks. And as I mentioned earlier, we're going to hear both Senator Dierks's bill and Senator Cornett's bill at the same time. So I think, Senator Dierks, you're first though...no. Yes, you're first, LB589. Would you mind...or do you want Senator Cornett to go first? Okay. [LB660 LB589 LB423]

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SENATOR LATHROP: Always the gentleman. [LB589 LB423]

SENATOR ASHFORD: Thank you, Senator Dierks. And the way we'll work this is that once the bills are introduced then we will go to proponents and opponents, but what we would like you to do is to come up and give your...tell us whether you're a proponent of either or both bills or an opponent. And then I might also say, Senator Rogert has joined us from Tekamah, and Senator Lautenbaugh had an illness in his family and he had to leave, so he will not be with us this afternoon. Senator Cornett. [LB589 LB423]

SENATOR CORNETT: Thank you, Senator Ashford, for your indulgence in allowing me to go first. Good afternoon, members of the Judiciary Committee. My name is Abbie Cornett and I represent the 45th Legislative District, and I'm here this afternoon to introduce LB423. LB423 would add to the parenting act the presumption that both parents are fit and they should share in joint legal custody and joint physical custody. It also adds language that this presumption may be rebutted by...based on preponderance of the evidence that joint legal custody and physical custody would not be in the best interest of the child. This language is added since both parents should be allowed to have joint physical and legal custody. Both mother and father should be given the opportunity to have time with their children or equally. The bill also changes that the child shall be placed with both parents on a joint legal and physical custody basis when both parents agree to such arrangement in the parenting plan and the court determines that both parents are fit. When the court specifically finds after a hearing in open court that the presumption that joint physical custody or joint legal or both is in the best interest of the minor child has not been rebutted by any credible evidence to the contrary. LB423 also changes the definition of joint physical custody, legal custody, and physical custody. These changes would match the statutory language with case law language used by the Nebraska Supreme Court in these cases. I would thank you for your consideration of LB423. And since introduction of the bill, I know that there are opponents to the bill and have spoke with one of the groups and have offered to sit down and work on any possible amendments over the course of the next few weeks and/or over the interim. I would waive closing this afternoon. I do have to get back to my committee. [LB423]

SENATOR ASHFORD: Thank you, Senator Cornett. Thank you. Seeing no questions, you're excused. [LB423]

SENATOR CORNETT: Thank you. [LB423]

SENATOR ASHFORD: (Laugh) Senator Dierks. [LB589]

SENATOR DIERKS: Good afternoon. Senator Ashford and members of the committee, my name is Senator Cap Dierks, spelled C-a-p D-i-e-r-k-s, representing District 40. I'm

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here today to introduce LB589. LB589 would require that both parents involved in a divorce have joint legal custody and joint physical custody of their minor child or children unless there's a medical or legal reason why this should not occur. I was contacted by a constituent who asked me to introduce this legislation. I am sympathetic to the children of divorced parents who want to spend time with both mom and dad. In these situations, the children suffer because they're denied time with one of the parents. Although the Judiciary Committee has heard several bills in the past, LB589 allows the public to bring this very important matter to your attention once again. With that, Mr. Chairman and committee members, I will end my testimony and try to answer any questions you might have. [LB589]

SENATOR ASHFORD: Any questions of Senator Dierks? Okay. Thanks, Cap. Do you want to stick around? [LB589]

SENATOR DIERKS: I will stick around. [LB589]

SENATOR ASHFORD: All right. Thank you. Let me just say a few more things, maybe those of you who have not been here before. Each testifier is given three minutes to talk and we have the light system which will give you a one-minute warning when we ask you to start concluding your comments. Let me ask how many proponents of this bill are there? And how many opponents? Okay. We will go to 3:15, which means that we'll break it up equally, but we will conclude the hearing at 3:15. So when you come up, the proponents would give their...tell us whether they're for both or one of the bills. So with that, we'll go to the proponents. [LB589 LB423]

LES VESKRNA: (Exhibit 6) Good afternoon, Senators. I'm a proponent of both bills. My name is Les Veskrna. I am executive director of the Children's Rights Council of Nebraska. I'd like to talk about just a few simplicities that I've learned over many years that I'd hope you strongly take into consideration as you hear testimony today. Please keep in mind that sole custody is often a death nail for one parent/child relationship. Fifty to 60 percent of noncustodial parents drop out of their children's lives after two years. This statistic comes from the Douglas County conciliation and mediation services Web sites, so I hope you'll consider this statistic nonbiased. The problem with sole custody is two-fold. One, it marginalizes the noncustodial parent, and over time, either parent, child or both tend to go their own way because it's just not nurturing for any. And two, sole custody gives one parent all the power and control, and this is precisely what drives conflict between parents. The advantage of shared parenting is that it permits parents a lot of flexibility in determining parenting time schedules that fit their needs, which I've provided you examples, and this reduces conflict. In contrast, there are very limited permutations to the two-day, every other weekend standard in sole custody. Shared parenting can work if you allow parents access to nonadversarial services, which I've listed on the handout I've provided to you. I think this idea parallels what we have learned from the safe haven matter last year about parents needing help with their

family. Shared parenting does not work well if parents who need people encounter people or institutions that are adversarial, unaffordable or see this as all too messy and prefer to look the other way. This creates skepticism among professionals and parents, it creates a self-perpetuating concept of this doesn't work. Rather than this being a flaw in the concept of shared parenting, failure is much more often due to the fact that we're just not doing a good job understanding what divorced or separated parents and their children need. Now, there's no question that when there's a history of family or intimate partner violence, shared parenting can increase the risk of further violence and sole custody can decrease this risk. However, when there's no prior history of family violence, there's an increased risk of transforming low parental conflict into high conflict and/or first-time violence when sole custody is awarded presumptively. The way to reduce conflict between parents is simple: Don't back good parents into a corner and threaten one of them with being excluded from their child's lives because we have some mistaken notion that sole custody is somehow in their child's best interest. Thank you. [LB589 LB423]

SENATOR LATHROP: Thank you, Les. Any questions for the witness? I don't see any. Thank you for your testimony. We appreciate that. Next proponent. And I think Senator Ashford explained the light system, but because we had so many people raise their hand and so many people want to speak, we'll ask you to wrap it up when you get to the red light. The yellow light is a one-minute warning. You get a total of three minutes, which are burning. (Laugh) Welcome to the well-run...yeah. Go ahead and state your name and begin. [LB589 LB423]

CHRIS JOHNSON: Thank you, Senator Lathrop. My name is Chris Johnson. I'm an attorney in Hastings, Nebraska. I'm a previous chair and vice chair of the family law section, as well as a member of the executive committee. I've been in practice for 16 years with an emphasis in family law, but today I appear to you as an individual. The current state of law in Nebraska is that there are three types of custody arrangements that are available to parents. You have a sole custody arrangement which everybody wants because that one give one person all the power, they get to make all the decisions, and the other parent is basically a visitor. You have a joint legal custody arrangement that is available which allows both parents to share in major life decisions concerning the children, but the children permanently reside primarily with one parent or the other, and the parent who the children reside with primarily makes most of the decisions, but the major life decisions have to be shared. And then you have a shared or what I call shared custody, joint custody, physical custody arrangement where the children are actually moved back and forth between the parents, and more cooperation is required of the parents to meet that work. In reality, joint legal custody and shared or joint custody have to be something the parties agree on. It's not something you can win in the courtroom. Most courts take the attitude that if you're getting a divorce and you're already fighting, you probably can't parent together, an opinion I would disagree with. In my practice, I do divorce. That's been my emphasis for the last 16 years, what some

describe as the nastiest, most personal type of law practice that there is. And why is that, is because there is nothing more important to the good parent in resolving the question where are my children going to live. Many, many times I get couples who are going through a divorce and they are both good parents. They both love their kids dearly, and they both don't want to give them up. With the advent of the women's movement and push for equality in the workplace, couples in two income homes have had to, by necessity, share in the raising of their children. What happens is the parents find out they like that. Now if they're not going to live together anymore because a divorce happens. They already may be mad at each other, but they still dearly love their kids and nothing is more important to them. Yet under our current law, they have to fight, they have to fight because they need to win. If they don't fight, they lose. Imagine being told that you now cannot live with your children, you can only see them four days a month and maybe a couple of weeks in the summer. You don't have any say in how they are raised, where they will live or even who they will live with. You've gone from being a parent to being a visitor. Of course you fight. You have no choice. But fighting has its own consequences and damage to the children. This bill, I think, needs to be carefully considered. It's a fundamental shift in how we approach divorce. A fundamental shift because it creates this presumption that both parents are okay, and that is the shift. Under the current law, parents have to prove which one is better. If this presumption goes into place, both parents are presumed to be okay. It's a presumption. It can be overcome. But you start with the premise both parents are okay. If they work from that premise I believe a lot of fighting will be avoided. And I see I'm out of time. There's others who want to speak. [LB589 LB423]

SENATOR LATHROP: You are. It's like the Supreme Court when that red light comes on. Senator Council has got a question for you. [LB589 LB423]

SENATOR COUNCIL: A quick question and thank you for your testimony, Mr. Johnson. Is the issue more the presumed power or authority associated with being designated the sole custodian or is it really the issue of participation in major life decisions? And the reason I'm asking that question is now with the requirement of the parenting plan, even when the parties can't agree on the terms of a parenting plan, they still can't agree on the terms of a parenting plan after mediation, and then you proceed with the divorce or the custody proceeding. This has been my experience that the parenting plan that is approved by the court, regardless of what custody arrangement is ordered, whether it's sole or shared, contains the provision about shared decision making on major life decisions. I mean, is my experience different from yours in that regard? [LB589 LB423]

CHRIS JOHNSON: All parenting plans are unique in that the parenting plans that the parents come up with, the parents come up with it in its entirety. Now, lawyers hopefully will give them good guidance, but the parenting plans are wide open. There is no normal, each one is its own individual. So you're going to have a parent-made parenting plan or you're going to have a court-made parenting plan. Now, if you have a

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court-made parenting plan because the parties can't get along and come to terms themselves, the court is going to place custody, which is also synonymous with power, with one parent or the other. Now, you may have language that says that the parents should share in the major life decisions concerning the children. But where one parent has sole custody, if it comes down to a one-to-one vote, their one is bigger. And it's that aspect that one parent can be so muscled out of the right or the ability to have a meaningful role in the raising of their children that causes so much angst. [LB589 LB423]

SENATOR COUNCIL: So the answer to my question is it is the authority or the perceived authority associated with being named as the sole custodian that is at the root of the problem, even in the case where there's supposedly this shared decision making, you find the balance of power in that arrangement is tilted because of the status of being the sole custodial parent. [LB589 LB423]

CHRIS JOHNSON: It certainly is. [LB589 LB423]

SENATOR COUNCIL: Okay. [LB589 LB423]

CHRIS JOHNSON: And the authority is very real, I mean, very real, can be used as a club and often time is. [LB589 LB423]

SENATOR COUNCIL: Okay. Thank you. [LB589 LB423]

SENATOR LATHROP: The one thing it does do is have somebody ultimately in charge instead of the court though, right? I mean, if truly both parents have the equal voice and an equal say, then every time they got to an impasse the tie breaker would be a district court judge someplace. [LB589 LB423]

CHRIS JOHNSON: Or a mediator or an agreed upon third person. [LB589 LB423]

SENATOR LATHROP: Or mediator, but presumably if they...I mean, they get to the place where they can't agree and they know I'm going to have to spend money on Lorin Galvin, then they...they either skip that process or go through it and then we've got the district court sorting out what high school a kid is going to instead of having somebody that's ultimately responsible. [LB589 LB423]

CHRIS JOHNSON: But if the general rule is that they have to share in the raising of their children and that's the general rule from the beginning, the focus, the nexus of the whole divorce is going to change. If you are told from the beginning rather than let's race to the courthouse to see if we can win, if you're told from the beginning what you need to do is find a way that you can share the raising of your children, then when you draft your parenting plan you will have tie breaking precisions in the parenting plan.

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[LB589 LB423]

SENATOR LATHROP: Okay. Like a jump ball. Mom gets it once, then the dad gets it the next. [LB589 LB423]

CHRIS JOHNSON: I think you'll find less conflict rather than more conflict. [LB589 LB423]

SENATOR LATHROP: Okay. Thanks. Any other questions? Okay. Next proponent. [LB589 LB423]

JOSEPH PICCOLO: It's going to take me three minutes to not be nervous. My name is Joe Piccolo. I'm a proponent to these bills. I just want you to see my son. This is Tucker (phonetic). I go have lunch with him once a week at school. I'm here to represent myself. I also represent the organization, Nebraskans for Family. We share a common vision. We wish for only fairness and equality without prejudice for one sex or the other when it comes to raising and caring of our own children. My case was four years ago, but to this day district court judges austere a standard response in divorce cases is the noncustodial parent, whom is almost always the father, gets the parent of their own child on a Wednesday night and then two overnights every 14 days. That's what you just heard. Needless to say, this was completely unacceptable to me, and in fact, considering this was my first marriage and divorce I had no idea the state even had the authority to do this to me. I somehow thought it was a fundamental right of parent that superseded any state laws. I was lucky. I'm a physician and I make enough money to have the resources to fight for equal parenting time, and I did fight to the tune of about \$30,000. I can only assume my ex-wife paid about the same. To this day, the only reason I can justify for this 14-month battle for my son was the amount of child support my ex-wife was going to receive if she was the sole custodian. Because I'm a good dad why in the world would my ex-wife want Tucker (phonetic) to not spend as much time with his dad as possible. It made no sense to me otherwise. Now, I respect to the good and caring families struck by divorce, there is custodial parents who ask for joint custody for the noncustodial parent who's generally the father. And I applaud these parents. They've truly placed the children first. A mediation can help passing a bill last year, but when starting from a position of joint custody, the judges and the attorneys are removed from the equation as much as possible. Only a change in the state law or somebody like me that had the funds to force it...could force a change in the judge's behavior. But my case is not unusual. You've just heard most of noncustodial parents don't have the money to pay for attorneys to fight for their children. And more importantly, why do we have to. The state, through the Health and Human Services, they usually attempt to keep a parent or parents with their children if possible. However, why then when two parents divorce does the state allow judges to limit visitation, essentially separating the children from at least one parent? Thank you. [LB589 LB423]

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SENATOR LATHROP: Thank you, Dr. Piccolo. Any other questions or any questions for this witness? Seeing none, thank you for your testimony. Next proponent. [LB589 LB423]

ERNEST KUBR: (Exhibits 7, 8, 9, 35) Hello. I'm Ernest Kubr from Papillion. I thank you for the opportunity to speak today. What's being handed out is several packets. Previous people have testified about divorced families and the effects. There are...one packet I have is shared parenting studies, which is all documented where the studies came from showing that joint shared parenting does in fact lower conflict and is better for children, less truancy, less drug use, less teen pregnancy, and so on. Another one, myths versus truths about divorced families, much information there also documented. The other packet that I have has proposed testimony, which I altered. I thank you for the chance to speak today. Others will cover a lot of stuff, and I'm sure the Domestic Violence Coalition will talk about domestic violence. But the fact is that according to studies done I've neglected to bring with me today, the government's own sanctioned studies have found that women are more aggressive and more prone to violence when pushed up against a wall than men are. So just to get that out of the way. One of the things I wanted to concentrate on was fundamental rights and the duty of government, which is to protect the rights of the people--nothing more, nothing less. Referring to the information packet I gave you, if you flip the first four pages, one of the reasons that rights aren't brought up in most divorce cases is attorneys are sworn officers of the court and their first duty is to the court. And the client by hiring an attorney becomes a ward of the court according to the legal encyclopaedia, Corpus Juris Secundum. So as a ward of the court you've declared yourself incompetent because on the back side, if you note, it says infants and persons of unsound mind are wards of the court. So you've declared yourself unsound by hiring an attorney. I did get joint legal and physical custody myself after nine years of custody with the court placed by Judge Zastera. I handled the case myself. I claimed my rights. They found for my rights, and if you look at the case cites and quotes that I have, I believe it's the fifth page in, parental rights. I have a bunch of federal case law, which is in Troxel v. Granville quotes, all of the Supreme Court case law going all the way to Meyer v. Nebraska starting in 1923. I also have a copy of Farnsworth v. Farnsworth which defines what parental unfitness is and shows that a parent's fundamental right supersedes the best interest of the child and child preference. That's from the Nebraska Supreme Court just last October. I support both bills, but I see that LB423 has a major hole because the term "best interests of the child" is not defined in the statutes. So it leaves it arbitrarily up to a judge to decide what he deems to be in the best interests on a he-said, she-said basis. LB589 truly recognizes parental rights by saying joint legal and physical custody shall be issued unless there is a finding of unfitness through due process, which generally doesn't occur in most divorce cases. There is no due process finding of unfitness. Thank you for your time, and I'd be happy to take any questions. [LB589 LB423]

SENATOR ASHFORD: Could you just spell your last name just for the record? [LB589

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LB423]

ERNEST KUBR: K-u-b-r. [LB589 LB423]

SENATOR ASHFORD: Okay. Thank you. Any questions? Thanks. Other proponent testifiers. [LB589 LB423]

RUFINO VILLARREAL: Good afternoon. My name is Rufino Villarreal. It's spelled R-u-f-i-n-o V-i-l-l-a-r-r-e-a-l. I'm a proponent, obviously, and I'm just a citizen. I've been involved in a few groups for equal parenting, but I'm commenting as just a citizen. I think we can all agree that most people believe and most psychologists believe that children need both parents. They need the role model of the father and the caring of the mother. And I think this bill is moving us into that direction. I think it's really important. I've had a couple of divorces and so I've kind of been through the mill on this. And I think what our society is seeing as a whole is because the father is usually excluded from the family that it's a negative impact on the child, which in turn affects our communities with more, you know, violence, drug abuse, and so forth when they don't have the father figure or at least equal parenting for the children. Now, I was in the Fathers for a Lifetime group and there's a lot of fathers out there that really want to get involved. And part of the problem is because of the laws they don't have that opportunity. The court for some reason seems to say the best interests usually to the mother. And I'm not saying that children don't need mothers, but they need fathers. And I guess kind of listening to the other questions that was brought up, there was I guess it's kind of like a power thing, but it's not really a power thing. It's just the kids need both parents. You know, I guess I learned about parental alienation syndrome the hard way with my divorce, my last one. And as far as the power goes, my wife has changed my son's name, Rufino Junior, to Tony (phonetic) in her school. And I told the school, you know, his name is Rufino. They go, no it's Tony (phonetic). And I go, why? They said because your wife has custody. You know, I don't think that's right. I think all we just need is some equality, you know, nothing more. And that's about it. [LB589 LB423]

SENATOR ASHFORD: Thanks for your comments. Thank you. [LB589 LB423]

RUFINO VILLARREAL: Okay. Thanks. [LB589 LB423]

SENATOR ASHFORD: Next proponent. [LB589 LB423]

RAY KEISER: (Exhibit 10) Senator Ashford, members of the Judiciary Committee, thank you for hearing me today. My name is Ray Keiser, K-e-i-s-e-r. I live in Cedar County between Hartington and Fordyce, and I'm here to support LB589. Shared parenting is 100 percent everything about the children. It's not about the mother, the father, the money, anything else that goes on, it's about the children. Today's divorce laws have a winner and two losers. The biggest loser we have out there is the children. And how do

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they lose? They lose out on the love, affection, and the teaching from both parents--not one, not the other, both. I wish for each one of you now to take a couple of seconds and close your eyes. Think of your children or grandchildren. Get their faces right up here in the front. Now, all of a sudden have those children taken away and you're down to a part-time parent or grandparent. The only contact with the children is your cookie-cutter, one-size-fits-all, two-times-a-month visit. That's it. No more. What things do you long to teach you kids? What life experiences could you be sharing with them, both big and small? Now it's all ripped away. You have 48 hours two times a month to squeeze in an entire lifetime of learning. Now put yourselves into the children's shoes. What do you think the children long for? As you can see by the handout there, my Felicia (phonetic), Steve (phonetic), and Megan (phonetic) long for equality with both parents. They long for love, affection, and time with both parents. I urge you to take a few minutes and take a look at the children. They need both parents to grow up to be strong, healthy, productive Nebraskans. Just keep that in mind. Keep that vision of your children or your grandchildren burned into your mind when you consider this bill. I have provided several handouts. The first one, first with each package are pictures of my children, and just several different ones. I strongly urge you to look at the child's bill of rights which is shortly thereafter written by the Wisconsin Supreme Court. The number one right, number one right is continuing relationship with both parents. That can only be accomplished by each parent having equal access and equal time with the children. The most important part of my life is my children. Give them what they deserve, both a mother and a father. Do you still have those images of your children or grandchildren in your mind? My children only have an image of their father 27 days out of the month. The other four days I actually get to see them. Please help me change this situation. I thank you very much for your time today and would be more than happy to answer any questions from anyone. [LB589 LB423]

SENATOR ASHFORD: Seeing no questions, thank you very much. [LB589 LB423]

RAY KEISER: Thank you. [LB589 LB423]

SENATOR ASHFORD: Next proponent. [LB589 LB423]

DEVIN SANTO: I'm going to testify three different times. I was initially expecting to testify for two bills, and I'm going to testify as a private citizen, as a family advocate, and as a litigant. [LB589 LB423]

SENATOR ASHFORD: You still have three minutes, so (laughter). Well, no, that's what we're going to do. But give us your name and... [LB589 LB423]

DEVIN SANTO: My name is Devin Santo, S-a-n-t-o, and I am testifying at this moment as an advocate for families. Formerly, I served as a capacity of a president, as a president of a nonprofit family advocacy organization. Currently, I serve as a state

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director of the United Civil Rights Councils of America. Serve in a volunteer capacity in a number of different organizations and have recently founded Fathers are Family, another family advocacy group. Let us begin with a little history for some perspective and some statistics. On January 1, 1970, no-fault, a.k.a. unilateral divorce originated in the United States in the state of California. Since that time, the Legislature and nearly every other state including Nebraska has adopted this practice, and as a result, the marriage rate in the U.S. has shown a 50 percent drop. In an article entitled "No Ring Thing," we learn that the U.S. has the lowest percentage among western nations of children who grew up with both biological parents. And let us not be coy, fathers are rarely awarded custody. The CDC reported that in the state of Nebraska, only 382 fathers were given custody while almost ten times that number of mothers were. According to the U.S. News & World Report article from February of '95, nearly two of every five children in America do not live with their fathers. That article was almost 15 years ago and the trend has increased so much so that the American Coalition for Fathers and Children estimates that early this century 50 percent of U.S. children will live apart from their biological fathers. So why does this matter? Because the CDC reports 85 percent of all children that exhibit behavioral disorders come from fatherless homes. Because the National Principals Association reports that 71 percent of all high school dropouts come from fatherless homes. Because the U.S. Department of Justice reports that 70 percent of juveniles in the state-operated institutions come from fatherless homes. Because a study of the Fulton County, Georgia jail populations in the Texas Department of Corrections reports that 85 percent of all youths sitting in prison grew up in fatherless homes. Because children from fatherless homes are 73 times more likely to be killed, 10.8 times more likely to be commit rape, 15.3 times more likely to end up in prison while a teenager, and 33 times more likely to be seriously abused that they'll require medical attention. Because the Pew Center reports that 1 out of every 99 Americans are in jail or prison. This is the highest incarceration rate of the world, both as a straight number, and as a calculated percentage of the population. Our laws are literally incentivizing the destruction of our families, and by extension, our community, and even threatening the social order of our country. If we are at all serious about families, we must take concrete efforts to deincentivize the dissolution. According to a study entitled, "Child Custody Policy and Divorce Rates" by Richard Gruen of the Children's Rights Council, and John Guidubaldi, director of education for John Carroll and Kent State Universities, the states with the highest levels of joint custody had significantly lower divorce rates four years later. States with higher levels of joint custody have an average four year decline in the divorce rate, approximately double that for states with medium levels of joint custody. If our intentions are to keep families together to reduce crime and delinquencies, to reduce the costs associated with those expenses, and to once again be the land of the free then this legislation which indirectly supports the unique role of a father is a good start in that direction. [LB589 LB423]

SENATOR ASHFORD: Thanks, Devin. Any... [LB589 LB423]

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DEVIN SANTO: Are there any...okay, go ahead. [LB589 LB423]

SENATOR ASHFORD: Thank you. [LB589 LB423]

DEVIN SANTO: (Speaking to audience) Any other proponents that would want to yield me three minutes of their time? Is there anyone else? Yes? [LB589 LB423]

SENATOR ASHFORD: We're not going to do that, Devin. Why don't we go to the next proponent. [LB589 LB423]

DEVIN SANTO: Sir, he's... [LB589 LB423]

SENATOR ASHFORD: Thanks, Devin. We appreciate your testimony. Okay. And if you have something to submit in writing, we will definitely read it. So if you have something else, let us...we'll be happy to read it. [LB589 LB423]

DAVID MAAS: Hi. Good afternoon. My name is David Maas. My last name is M-a-a-s. I'm from Omaha, Nebraska. I represent myself. My court case I was determined to be a proper and fit person for the custody of my daughter, but I was relegated to visitor status in my own daughter's life. I think the government recognizes the shortage of fathers because there's actually groups that encourage fathers to participate in their children's lives. But at the same time, the courts many times reduce fathers that want to participate in their children's lives to visitor status. Many fathers are denied their constitutional rights of equal protection under the law basically only because of gender is what I have found. I just want to speak so that public officials are made aware of this problem, and maybe we can right this public wrong that we're living in. We have a chance to conform with the U.S. Constitution and do what is right and make sure that all people receive their equal rights in family court. The proponents that you see today, I believe, only want equality, not any kind of favoritism. Thank you. [LB589 LB423]

SENATOR ASHFORD: Comments? Thank you, sir. [LB589 LB423]

SENATOR LATHROP: You know, maybe I can comment while you're here. And that is to reflect the committee's view on one thing, and that is we appreciate that your kids means so much to you, and I'm talking to all the guys that showed up today. I understand where you're at and we understand how you feel about it and how strongly you feel about it. And we're here to listen to the policy, but whether we do something or what ends up coming out of here if anything does, it doesn't diminish how important your kids are to you, and that message is very clear to us. And how important it is...and how much you want to be involved in their lives, so. That message is getting through to this committee. [LB589 LB423]

DAVID MAAS: Okay. Thank you. [LB589 LB423]

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SENATOR ASHFORD: Thank you. Next proponent. Thank you, Senator Lathrop.  
[LB589 LB423]

GEORGE KILLIAN: (Exhibit 11) Good afternoon. (Cough) Excuse me. I got a little cold still going on, so apologize for that. My name is George Killian, K-i-l-l-i-a-n. I'm a proponent for both bills today. As in the handout, I've copied an excerpt from a great article entitled, "Child Custody Access and Parental Responsibility: The Search For a Just and Equitable Standard." This study was done by Edward Kruk. He's a master in social work with a Ph.D. from the University of British Columbia. Obviously, it's not just a United States problem. I apologize for not having the full report. It's 101 pages, but I have put the link on the handout so you guys can do some further research on that. With that, some states are well advanced in the reform of their child custody and access laws and policy as child custody is under state not federal jurisdiction. More socially progressive states have advanced new child custody and access laws. At least six states have now entered some form of legal joint physical custody presumption, substantially equally shared custody or similar language. These include Iowa, and I quote: If joint legal custody is awarded to both parents, the court may award joint physical care to both joint custodial parents upon the request of either parent. If the court denies the request for joint physical care, the determination shall be accompanied by a specific finding of fact and conclusions of law that the awarding of joint physical care is not in the best interest of the child. Kansas, and I quote: Joint physical custody is the first order of preference. Oklahoma, and I quote: The court shall provide substantially equal access to both parents unless the court finds that the shared parenting would be detrimental to the child. The burden of proof that such shared parenting would be detrimental to the child shall be upon the parent requesting sole custody. Texas, I quote: Where the family code contains a presumption of joint conservatorship, which provides a minimum of 42 percent time with the noncustodial parent and by exercising other parts of Texas statutes, the time allocation may extend it to 50 percent. Wisconsin, and I quote: The court shall presume that joint legal custody is in the best interest of the child. Arkansas, and I quote: When in best interests of the child, custody shall be awarded to ensure that frequent and continuing contact of the child with both parents. The U.S., however, is in a study in contrasts in the area of custody and access legislation: 20 other states include frequent and continuing contact with both parents or similar language; 2 utilize case law; 3 have only a preference for joint legal custody; 7 presume joint custody when both parents agree; and 13 have no statutes that promote shared parenting. Thank you. [LB589 LB423]

SENATOR ASHFORD: Thank you. Any questions? Thank you, sir. [LB589 LB423]

JEFFREY BETTENHAUSEN: (Exhibit 12) Hello, Chairman Ashford. Thank you for hosting this committee hearing today. My name is Jeffrey V. Bettenhausen, B-e-t-t-e-n-h-a-u-s-e-n. I reside in Norfolk, Nebraska, a lifelong Nebraska resident. I'm

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here in support of both bills. I haven't really decided which one is better, but I am a product of the system. I've been here before. I've testified before. And I've done everything in my power to stay actively involved in my oldest son's life. I'm now married, have two other children. I've relocated my family. I commute 550 miles a week just so I can live in the same community as my oldest son. When he was young, I was the primary caregiver. I was deemed to be fit and proper to be the custodial parent, but I was not given sole custody or even joint custody. I was turned into a weekend visitor. And parents don't realize when they walk into a custody dispute that there's so much riding on the initial hearing. They don't realize once they are put into that position of being a noncustodial it is a tremendous uphill battle. And all I'm asking you to do is get this...one of these bills or both of them out of this committee and onto the floor for a full debate. I answered the phone for a year and a half for an organization here that supports joint custody. I spoke to fathers, mothers, grandparents from all across the state that can't understand why a good loving parent or grandparent such as them cannot spend more time with their children. If the safe haven legislation law indicated anything it indicated that kids are in need of loving parents. And there's going to be plenty of kids that come along or plenty of situations that will not warrant joint custody or joint physical and legal custody. But in those cases where it's warranted, we need to level the playing field. We need to do it not for me, but so when my boys are grown they can experience more equality and fairness. Thank you. [LB589 LB423]

SENATOR ASHFORD: Thank you. Seeing no questions, thanks for your comments. Looks like one more proponent. [LB589 LB423]

DUSTIN BECKER: (Exhibit 28) My name is Dustin Becker and I'm a proponent of this bill, D-u-s-t-i-n B-e-c-k-e-r. Thank you for your time to listen to me. I'd like to address Mr. Lathrop's concern about that this would create more arguments and more burden on the courts by having joint custody. In my instant case, I was subjected to false accusations, both criminal and mental health. Facts have proven most of this wrong. Multiple mental health experts have proven that I do not and have never had any mental health problems that my ex or my estranged wife has claimed. Despite that, my children were taken away from me for many months with no access, after which I gained only supervised visitation, and just recently I was awarded unsupervised visitation. I think there are many false accusations and much court time and much money wasted on these battles which could be avoided by simply having...starting at the idea of joint custody. There are numerous studies by many, many experts showing that joint custody and shared parenting is in the best interests of the children. I specifically like the wording which requires a legal or medical proof to rebut the presumption of joint custody as that would have eliminated nearly all problems I've had in my instant case in a resolved...it would have save thousands and thousands of dollars, many hearings, and an extensive amount of court time, which is just by simply requiring proof because there was no proof. I hope that you sincerely consider passing this because I think it would help many, many children live a much more better productive life. Thank you for your

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time. [LB589 LB423]

SENATOR ASHFORD: Thank you. Any questions? Thank you. Thanks for your comments. Opponents of either bill or both. [LB589 LB423]

AMIE MARTINEZ: Good afternoon. My name is Amie Martinez. I am an attorney in Lincoln. Martinez is M-a-r-t-i-n-e-z. About 90 percent of the work that I do is in the area of domestic relations, and I appear before you today as the chair of the house of delegates for the Nebraska State Bar Association. The Nebraska State Bar Association is opposed to both LB423 and LB589. We have a number of concerns specifically with regard to the presumption of joint custody. To be clear, we're not opposed to the idea of joint custody or to orders that include joint custody, but to the presumption imposing joint custody in all situations. First of all, not all families have equal parenting time roles up until the time that they are divorced. So this would be a change many times in circumstances. The American Bar Association favors a case-by-case to determination without rigid presumptions for or against joint custody. The National Council of Juvenile and Family Court Judges instruct judges not to presume that joint custody is in the best interest of children. In January of 2009, just a few months ago, Minnesota issued a joint physical custody presumption study group report. In Minnesota, the legislature directed the state court administrators to consider a potential impact of an adoption of a statute similar to this, to these that are being proposed with regard to a presumption for joint physical custody. With a group of lawyers, laypeople, psychologists, various groups of folks they came up with six recommendations. And the primary recommendation was that there should be no presumption for or against joint custody with the exception that in cases involving domestic violence, there should be a presumption against. Several states have in the past created presumptions of joint custody only to later change their statutes to eliminate that presumption and to allow joint custody only when parents agree to the same. One such state is California who reported that more than...according to the judges, more than two-thirds of them found that the imposition of joint custody under the operation of the presumption led to mixed or bad results. Several states have encouraged joint custody but do not impose the presumption. One of those states is Iowa. I heard one of the remarks included a quote out of Iowa. And the Supreme Court actually in 2007 interpreted the legislation to not impose that presumption. Nebraska previously had a presumption that mothers should receive custody, and we eliminated that presumption. In sum, the presumptions take the place of individualized attention to determine the best result for the child. And our concern is with regard to that presumption. [LB589 LB423]

SENATOR ASHFORD: Thank you, Amie. It's good to see you again. Next opponent. [LB589 LB423]

JOHN SLOWIACZEK: Good afternoon, Senator Ashford, Senators. My name is John Slowiaczek, it's S-l-o-w-i-a-c-z-e-k. I'm an attorney. I've been practicing law in Omaha

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for 35 years. My practice is devoted entirely to domestic work and it has had...I've done nothing but divorce law for all practical purposes for the last 25 years. I am very much opposed to the legislation. There should be no presumption one way or the other. The law as it presently exists works and it works fine. The presumption in favor of joint custody whether it's legal or physical would be chaos in the legal system. And as far as I'm concerned, it would do nothing but exacerbate divorces. It would make it much more expensive, and people would be fighting when they otherwise wouldn't fight. Right now we have a mediation program that is statewide that has been passed as a legislation last year. And that is working and I think it's working well. Historically, there have been problems. But I think that the state has worked on it with legislation that has come into play. If you want to look back 10, 15, 20 years there were difficulties, but they have been addressed and they have been addressed by our state. Amie Martinez spoke eloquently about what was going on in other states, and it's true. I deal with lawyers all over the country and we talk about custody and financial issues. And lawyers talk about presumptions and how bad it is. In California, it's no longer the presumption. They've changed the law. Iowa, as Amie mentioned, the Supreme Court recently ruled that the presumption is not effective and it's not applicable. When you look at children and you look at homes, generally speaking most parents have similar goals for their kids. But within most homes people divide their responsibilities and they divide the determination as to who's going to be performing certain roles. And in my experience, it's a very unusual family that has equal sharing of responsibility for children. To make a presumption that you're going to make equal responsibility is ludicrous. One thing I ask of you is ask yourself, do you want to spend one week in a bed in one home and one week in a bed in another home and go back and forth. People who want joint custody, whether...and they want to make a presumption, as far as I'm concerned are more concerned about their own best interests than the best interests of the children. The criteria here is what's in the best interest of the child, not what is in the best interest of a parent. And all I've heard today are people who want the best interest of the parents, not the best interests of the children. Thank you. [LB589 LB423]

SENATOR ASHFORD: Yes, Senator Coash. [LB589 LB423]

SENATOR COASH: Thank you, Senator Ashford. John, you mentioned something in your testimony that just brought up a question. You mentioned a mediation program that you've been working with. [LB589 LB423]

JOHN SLOWIACZEK: Well, last year we...there's new legislation that was passed and there is mediation now mandated in the state for parenting with regard to all issues that involve custody of children. So within the context of the divorce process, everybody goes to mediation sessions in an effort to resolve parenting issues. [LB589 LB423]

SENATOR COASH: With the limited time we've had that in place, what's your opinion on how well that's working for the children? [LB589 LB423]

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JOHN SLOWIACZEK: Well, I'm a product of Douglas County, so we've had it in place for probably I want to say ten years and I may be a little bit off on that. It has cut down custody fights and it's working fine. And I will admit, I went into the mediation process kicking and screaming saying it shouldn't work, and it... [LB589 LB423]

SENATOR ASHFORD: I remember that (laughter). That goes back to 1991, John, and that's a dim, dim memory for both of us. [LB589 LB423]

JOHN SLOWIACZEK: It works and it's working fine. I think it's really working fine. [LB589 LB423]

SENATOR COASH: Thank you. [LB589 LB423]

SENATOR ASHFORD: Yes, Senator Christensen. [LB589 LB423]

SENATOR CHRISTENSEN: Senator Ashford. How do you address the...I know you said how you want to live one week in one place in another, but how do you address the fact that the men or whoever is not the custodial parent is being basically left out because two weeks, two days, two weekends is not much influence. [LB589 LB423]

JOHN SLOWIACZEK: Well, I don't think they are being left out. And I think, you know, when you look at what's going on, that alternate weekend, one night a week historical thing that people want to talk about, you don't see that all the time. What you see is the visitation may be from Friday night until Monday morning, it may be one or two overnights during the week. I see more joint legal custody than sole custody in Douglas County, Washington County, Sarpy County. Those are the primary counties that I'm in. I don't see that much sole custody and the parenting time...people get all caught up on my days or my time. I think what you have to look at is look at children and children's activities and children's environments. Parents are not precluded from going to activities and events. Parents are not precluded from participating in extracurricular activities for their children or going to the baseball games or soccer games or whatever it may be. If they want to say the nonpossessory parent, I just don't see that claim that they say I'm being excluded from my children's lives. That's not my experience. You know, I don't see that Friday to Sunday, one night a week very often anymore. That used to be the case five, ten years ago. We don't see it that much. And I don't think my practice is unusual in that regard. [LB589 LB423]

SENATOR CHRISTENSEN: Thank you. [LB589 LB423]

SENATOR ASHFORD: Yes, Senator Council. [LB589 LB423]

SENATOR COUNCIL: Yes, thank you, John, for coming in with your testimony. And we

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each have a little different experiences, and clearly my family law practice isn't as extensive as yours. But there have been occasions in my experience where there is some merit to the limitation on the parenting time of a noncustodial parent without any evidence that indicates that there's any mental health reason, physical safety reason for that limitation. I mean, even in the...when the parties can't agree and we go to mediation and I assume Mr. Galvin will be testifying, but when you can't get those parents to agree, they can't come up with an agreement through mediation. And ordinarily then you just submit to the court what terms they were able to agree on. And if ordinarily they can't agree on who's the custodial parent and what the parenting time is, and at least it's been in my experience that one day a week every other weekend is often the court ordered parenting time. And I don't...I guess I...maybe from your experience is much more extensive than mine. What is the genesis of that? [LB589 LB423]

JOHN SLOWIACZEK: The genesis of alternate weekends and one night a week? [LB589 LB423]

SENATOR COUNCIL: Yeah. One night a week and every other weekend. [LB589 LB423]

JOHN SLOWIACZEK: You know, when I first started practicing law many years ago we started off with the presumption that you wouldn't set forth time frames and you'd just say reasonable liberal rights of visitation, let people work it out. Over a period of time over many years Wednesday night was a night that people did not have homework assignments, and it was a night that was kind of in the middle of the week that just evolved. And it was a nationwide evolution because if you talked to people in other states, Wednesday night has always been a night that they would have open. That has changed now that we have the two income families, so that's the dynamic that somebody had mentioned earlier. And I think part of it is just a carryover of historical processes that are gradually eroding now, now that people are being more sensitive to parenting time and what's going on. I don't disagree with you that historically that was what was going on. It was a Wednesday night every other weekend. Now we see Tuesdays and Thursdays kind of alternating back and forth, Friday starting earlier. And I don't think the judges are locking in that one night a week every other weekend. One of the things that really kind of hangs out there is in some respects if you look at a sole custodial parent and a noncustodial parent, and you want to use those words, some times the noncustodial parent has more power than the sole custodial parent because they can demand rights and the judges bend over backwards, I think, to support people. My experience over the...and if you want to look at the last five to ten years, I think our judges are really doing everything they can to support both parents being involved in children's lives and doing everything they can to make sure that that takes place. Where it used to be...I think you asked a question earlier about power and control, if the judges see that or perceive that, they go out of their way almost to spank that person and say, that's not going to happen in my courtroom. So I don't see that anymore, but I do see

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that time is being loosened up. But to say that you're going to have a presumption of equal time or presumption of shared time I think would be disastrous because you could almost assure yourself of a custody fight on every divorce. [LB589 LB423]

SENATOR COUNCIL: And one of the proponents alluded to the issue of child support. [LB589 LB423]

JOHN SLOWIACZEK: Yes. [LB589 LB423]

SENATOR COUNCIL: And in your experience, how often do these custody disputes boil down to the child support obligation? [LB589 LB423]

JOHN SLOWIACZEK: I think a fair number of people want shared custody because they want to pay lower child support, but they don't want to pay corresponding expenses associated with shared custody. I mean, the fundamental concept of shared custody is you're going to share time and you're going to share expenses, but they don't do that. Too often one person will say, I'm paying child support, but I'm not going to pay any of the other expenses. And I think it's fair to say that many people historically want shared custody because they don't want to pay as much support. [LB589 LB423]

SENATOR COUNCIL: No further questions. [LB589 LB423]

SENATOR ASHFORD: Thanks, John. [LB589 LB423]

JOHN SLOWIACZEK: Thank you. [LB589 LB423]

SENATOR ASHFORD: Thanks for coming down. Next opponent. [LB589 LB423]

JOHN KINNEY: Good afternoon and thank you, Senator Ashford and members of the committee. My name is John Kinney. I am an attorney in private practice in Omaha, Nebraska. I have not been practicing quite as long as Mr. Slowiaczek, but he and I practice against each other quite often. I am here today on behalf of the family law section of the Nebraska State Bar Association and on behalf of the Nebraska Academy of Collaborative Professionals in opposition to LB423 and LB589. I, as well as I believe a lawyer who testified earlier, Mr. Johnson, am a former chair of the family law section of the Nebraska State Bar Association. A few years ago, I provided written commentary in opposition to similar legislation, and that article I believe has been made available to members of the committee. I do have additional copies of the article here with me today. I want to comment a little bit about some of what I've heard today. There was commentary earlier that the current law is that when there is a custody dispute you have to prove which parent is better. That is simply not true. What you do in a custody case in the state of Nebraska right now is you provide the court with evidence of what is in the best interest of the child. And there is no question that that's the current law. The

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Nebraska Parenting Act currently states a public policy in the state of Nebraska to maximize the parenting time of each parent with their child. And I also heard commentary here today about other states having a public policy of frequent and continuing contact. That public policy has been the public policy in the state of Nebraska since 1993. The horror stories today are real and the fear and the emotions, I would echo what Senator Lathrop said. Those emotions are real. But many of those emotions arise from the pain of divorce. They arise from the separation that's natural from divorce. And there's not much we as policy makers and as commenters on policy can do about that. That pain is real, it's palpable. I would also echo what Mr. Slowiaczek said to this committee. In my experience, 15 years, practicing almost exclusively in domestic relations, the four days a month rubric that was in Wilson v. Wilson is not happening. It is simply not the case. For every Judge Zastera there is a Judge Randall. In two cases where I represented stay-at-home mothers with four children in the last year, Judge Randall has ordered joint physical custody with 7 out of 14 overnights every two weeks and 6 out of 14 overnights every two weeks. Those mothers were quite shocked that having been stay-at-home mothers with very young children that they were sharing joint physical custody over their objection. So there are stories going both ways in these cases, and there are many, many judges out there that have departed from Wilson v. Wilson and are departing from Wilson v. Wilson. Thank you. [LB589 LB423]

SENATOR ASHFORD: Good. Thank you. Next opponent. [LB589 LB423]

JANE LANGAN: Thank you. Senator Ashford and members of the committee, thank you for allowing us the opportunity to speak today. My name is Jane Langan, L-a-n-g-a-n, and I am an attorney in private practice in Lincoln. I do sympathize with the number of parents who have testified before you today at the pain of being a part-time parent. But the reality is, in a divorce or a paternity situation, every parent becomes a part-time parent, every parent has to share parenting time. And the issue I think that needs to be considered today is whether or not a presumption of joint legal and joint physical custody alleviates that or may perhaps make it worse. First, I'd like to address the definition of joint physical custody as it's set forth in LB423. LB423 would now provide that joint physical custody means joint responsibility for minor day-to-day decisions and the exertion of continuous physical custody by both parents over the child for significant periods of time. There was a question earlier, Senator Lathrop, about if you have two parents and one wants the child to go to a particular high school and the other wants the child to go to another high school, there's no provision in here to break a tie. But worse yet, LB423 as it's set forth now requires not only those kinds of decisions to be made on major decisions involving the child's life, but minor day-to-day decisions in a child's life. Typically since the implementation of the Parenting Act, we've been doing parenting plans that will provide that during mom's parenting time, mom can be in charge of minor decisions and during dad's parenting time, dad can. But to require joint decisions of all of those minor things I think will create a tremendous amount of conflict, and with no tie breaker, everybody will be either trying to go to mediation or running to

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court. And if it's a minor day-to-day decision, it should not require that level of intervention from either mediators or courts. Both of these bills would require or would institute a presumption of joint custody unless it's rebutted. The standard to rebut that is difficult for family law attorneys to interpret. LB589 talks about medical or legal proof. I think we know what medical proof is. I don't know what legal proof is, unless that just means evidence. LB423 talks about the preponderance of the evidence, but also talks about credible evidence and maybe that means preponderance of credible evidence, but that's confusing as well. There are a number of times where joint physical custody is simply not realistic. One parent testified earlier that he travels 500 miles to be involved in his child's life and that's fantastic, but a number of parents live too far apart to make that a realistic choice. And there is no way sometimes to set up a system whereby each parent has equal time. Finally, I would note that LB423 or LB589 would require attorneys who represent parties in these proceedings to focus on the negative. Previously attorneys could present the positive aspects of...can I just finish the sentence? [LB589 LB423]

SENATOR ASHFORD: Yeah, sure. [LB589 LB423]

JANE LANGAN: ...positive aspects of their client's case, but now to rebut a presumption would require making an allegation and then proving that the other parent is not suitable for joint custody. Any questions? [LB589 LB423]

SENATOR LATHROP: Can I ask one just...or maybe make a point? [LB589 LB423]

SENATOR ASHFORD: Yes, Senator Lathrop. [LB589 LB423]

SENATOR LATHROP: And that is that when we talk about joint custody, it's more than how much time you spend. And we've heard a lot of the dad's talk about, I don't get equal time. But it's about who ultimately has the call, right? [LB589 LB423]

JANE LANGAN: Right. [LB589 LB423]

SENATOR LATHROP: Who gets to break the tie. [LB589 LB423]

JANE LANGAN: Right and under the previous version the legal custody had to do with decision making, but case law generally said if parents had joint legal custody but one parent had physical custody, that parent could be the tie breaker. Under LB423, if the parties truly have joint decision making authority over even minor decisions, there isn't really any way to set up a tie breaker. [LB589 LB423]

SENATOR LATHROP: And so we can and probably do see more and more that the dads...typically the dads are getting closer to equal time, but ultimately the judge has to decide or the parties do who's going to break the tie when we decide, you know,

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whether the daughter can go out of the house in a short skirt or what high school they're going to. [LB589 LB423]

JANE LANGAN: I agree. Although I'm not sure I would concede that dads are the ones who usually don't get custody. I mean, that obviously happens quite a bit, but I've seen a number of fathers get custody. [LB589 LB423]

SENATOR LATHROP: No. But the point is it's about...this whole discussion has been focused on who gets and how much time the noncustodial parent gets. Do they get 50 percent? Do they get 40 percent? Do they get one night a week? And it's as much about who gets to break the tie as it is about how much time the kids are with mom or dad. [LB589 LB423]

JANE LANGAN: That's true. I mean, it could be that one parent has custody and the other parent has visitation of 7 out of 14 days. [LB589 LB423]

SENATOR LATHROP: Right. Okay. [LB589 LB423]

SENATOR ASHFORD: Thank you, Jane. [LB589 LB423]

JANE LANGAN: Thank you. [LB589 LB423]

SENATOR ASHFORD: Next opponent. [LB589 LB423]

ROBERT SANFORD: (Exhibit 13) Senator Ashford and committee members, my name is Robert Sanford, S-a-n-f-o-r-d, and I'm the legal director for the Nebraska Domestic Violence Sexual Assault Coalition. The coalition is a membership organization made up of 22 local organizations providing services to victims of domestic violence, sexual assault, and stalking across the state of Nebraska. I am here today to express the coalition's opposition to both LB423 and LB589 because presumptions for joint custody can increase the risk of harm to children and victims of domestic violence. Joint custody is often seen as an ideal for both parents and children, and those who are best situated for it are going to agree to it regardless of whether the presumption exists or not. Our concern for the safety of the parent and child when there is conflict and the potential for violence as presumptions for joint custody often compromise a victim's safety. The 2009 Minnesota joint physical custody presumption study group, which Amie Martinez referenced earlier, lists both the benefits and concerns of a presumption of joint physical custody. The identified concerns include the detrimental impact on children continuously exposed to high levels of parental conflict, the likelihood of heightened conflict between parents, and the impact joint physical custody would have on victims of domestic violence and their children. I recently received a call from a victim advocate who shared the following situation with me: A Nebraska judge had ordered joint physical and legal custody and if the mother took the kids to the doctor without calling the father first, he

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threatened to take her back to court. At one point, she made a decision without his approval after trying to get in touch with him. When he didn't respond to the message, she was left to be forced to make a decision on her own. The father filed a motion for contempt, which was later dismissed. This continued for over a year before the court finally saw the problem and granted custody to the mother. Mindy F. Mitnick, a Minnesota licensed psychologist, stated in the Minnesota study group that infants and toddlers are at risk under equal parenting time schedules and that parents who have never married are generally not good candidates for joint physical custody because they lack the trust necessary to coparent. A presumption of joint custody requires more interaction between parents to negotiate the day-to-day life of a child, increasing the likelihood children will be exposed to high and moderate levels of conflict. Loretta Frederick of the Battered Women's Justice Project also states that both the logistics of the child's schedules and needs must be workable in order for joint custody to work. Why would Nebraska pass a law adopting a presumption for joint custody when states such as California, the first state to pass a presumption of joint custody, have moved away from it? While these two bills have language regarding the best interests...may I finish my sentences? [LB589 LB423]

SENATOR ASHFORD: Yes. [LB589 LB423]

ROBERT SANFORD: ...regarding best interest of the child, best interest is clearly to be ignored if the parents are both fit. We stand in opposition to both of these bills. [LB589 LB423]

SENATOR ASHFORD: Okay. Any questions? Good. Thank you. [LB589 LB423]

ROBERT SANFORD: (Exhibit 14) I do have a copy of the Minnesota report if the committee would like that. [LB589 LB423]

SENATOR ASHFORD: I think we would like that. Thank you. Lorin. And you can finish your sentence if you are...but only the sentence that you're in the middle of. [LB589 LB423]

LORIN GALVIN: (Exhibit 15) Senator Ashford and committee members, my name is Lorin Galvin, G-a-l-v-i-n. I've been an attorney for 33 years. I've been a mediator for 15 years and for the past 5 years I've been the director of the conciliation court mediation services in Douglas County. And as Senator Ashford said, Douglas County has had mediation since the early nineties. I'm here today testifying just on my own behalf. I'm not speaking for the conciliation court or the judges of Douglas County. I'm opposed to both of these bills. I'm not opposed to joint custody. As a mediator in the conciliation court, we keep statistics. And over 50 percent of all the cases that attorneys negotiate in Douglas County are joint legal custody. We have 1,300 cases a year and over 50 percent of the attorney-negotiated are joint legal. Those that can't be settled by the

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attorneys go to mediation. Currently we have about 30 mediators in Douglas County that are mediating these cases. Over 50 percent of the mediated cases are joint custody. The point there is that when parents can agree, when they can sit down and talk about who has provided the parenting functions, who has done what in the family, who will continue to provide parenting functions after the separation, if those parents can agree to have joint legal custody it's in the best interest of the child to have joint legal custody. If they're in dispute, if they're in conflict, if they can't agree who's going to do the parenting functions and how the parenting time is going to be divided, you are creating conflict, everyday conflict that these children have to live in. And every study that's being done today says it does not harm children to live in dad's house, it does not harm children to live in mom's house. What harms children? Conflict between mom and dad that the child gets caught in. And what you're ask... [LB589 LB423]

SENATOR ASHFORD: (Baby crying) The baby is okay. You don't have to take the baby out. [LB589 LB423]

LORIN GALVIN: ...what you're being asked to do is create conflict for children every day of their life if you use a presumption. As has been said by many people here today, California learned its lesson. It instituted a presumption in '74, got rid of it in '94. It didn't work. It was bad for kids. What these bills do is they eliminate the best interest completely from the Nebraska statute. It's no longer a question of who performs parenting functions and what's in the best interest of the children relative to those parenting functions. That's how a child is raised. That's who feeds them, clothes them, bathes them, buys their things for them and provides their care is the person that provides the parenting function and that's what's in the best interest of a child. These bills eliminate that. Nebraska passed the new Parenting Act last year. It is the most progressive and best parenting act in the United States. And these bills will dismantle that hard work of Senator Flood and this committee in passing that legislation last year. Thank you. [LB589 LB423]

SENATOR ASHFORD: Yes, Senator Council. [LB589 LB423]

SENATOR COUNCIL: Lorin, thank you for your testimony. But you were making the statement about the parenting function being the guidepost in the decision as to who should have custody, whether it should be joint custody or sole custody. Is that, in your experience as the director of the conciliation and mediation services, is that the guidepost that the mediators generally use when parents are unable to agree to negotiate a parenting plan when they come in? Is that what the guidepost is in terms of trying to come to some agreement on parenting plan? Do they have the parents discuss those parenting functions so that you can kind of illuminate for each party what is actually occurring here? [LB589 LB423]

LORIN GALVIN: Absolutely. The gentlemen here today who have had pictures of their

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children, I get that every time I mediate. Dads and moms both will lay a picture down of their child, and then I ask them to talk about what they do with their child. What parenting functions do they provide for their child? How long have they been doing it? What have they been doing? What's important to them? What does their child need? That's what I talk. I don't talk about father's rights. I don't talk about mother's rights. I talk about the needs of a child in relationship to the parenting functions. You know, that's what...all our statute asks you to do is be a parent from the time this child is born until the time this child is 19 years of age. Perform parenting functions. Have a quality relationship with your child, not a quantity relationship, not a I'm-right-and-you're-wrong relationship, but what are the actual parenting functions that you're performing. And we talk about that in mediation. And many, many times parents agree, you know, he's a great dad. He does these things. He goes to the ball games. He goes to the doctor. He picks our child up from school. He takes our child to school. And in those conversations I'm hearing I have two parents that are active in this child's life and want to remain so even though they're in different homes. But if I have a parent that comes in and says, I'm right, he's wrong. He's always wrong. He never does anything right. I'm not hearing anything about parenting functions. But in this statute I hear it doesn't make any difference, doesn't make any difference. Doesn't make any difference if he or she has participated in this child's life. We're just going to presume because there's a child that they're both equal, and that doesn't work. [LB589 LB423]

SENATOR COUNCIL: Just two other quick points. Earlier and I think you were present, Lorin, when I was asking the question in those...even in the cases where despite your best mediation efforts the parties are unable to agree on a parenting plan. And the case proceeds with notification to the court that all efforts at arriving at a parenting plan, be a negotiation or mediation have failed, leave it to the court. And for whatever reason the court grants sole custody to one parent or the other, there still is a parenting plan that is adopted as a part of the decree. In most cases it's a divorce, but it could just be a paternity and child custody and support situation. But in those cases where there's sole custody, am I incorrect in my recollection that even in the sole custody cases that one of the provisions that is highly recommended to be included in the parenting plan is that both parents share in major decisions affecting the child. . [LB589 LB423]

LORIN GALVIN: No, no. If there's sole custody, that person, whether it's dad or whether it's mom, is going to decide where the child goes to school. Is the child going to go to church or temple or not? Who's going to be the doctor? Who's going to be the dentist? If we have to have medication for ADD or cancer or anything, one parent is going to make those major decisions. Okay? Again, that reduces a lot of conflict. What we do see though is after that person has the right to make those decisions, we have what's going to be the parenting time? What's going to be the involvement of these two parents? And my experience in Douglas County is the judges do not follow the old Wilson v. Wilson of every other weekend and a Wednesday. They listen to what the parents are doing and they craft parenting agreements, parenting plans that involve both parents in all these

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activities and in the child's life. I'm not seeing parents excluded. You know, the most difficult cases I face right now in mediation are cases where the judge arbitrarily gave joint legal and joint physical custody at the temporary level without any determination on the facts as to who was involved in the child. When those two parents come to mediation, they don't want to mediate. You know, they're both right. The other person is wrong. And that case goes into a custody trial the vast majority of the time, and I think that's what you're going to see from this legislation. And we also have about 3,000 paternity cases a year where we may have a father who's denying that he's even the dad and has never been involved in a child's life, and then suddenly there's a paternity order. Now we have to have joint legal and joint physical custody for a parent who has denied being the parent and has never been involved in that child's life. Now in mediation and through the Fathers For a Lifetime that some people have talked about here today, we get men involved in their child's lives. They do parenting classes. They get involved in parenting and learn what parenting functions are. Those kids need those men in their lives, but they need them in their lives appropriately, in a proper way, not just a walk in one day and say, you're mine half the time. [LB589 LB423]

SENATOR COUNCIL: And my final question, of the cases that reach you in mediation based on your experience where they've been unable to negotiate and one party or the other is like adamant about joint legal and physical custody, in your experience how often is that a result of a concern about child support? [LB589 LB423]

LORIN GALVIN: We don't normally directly talk about child support, but, you know, sometimes it's very apparent that it's really about child support. I don't want to pay child support. I'm paying this and I don't know what's being done with the money. Now, I have moms-executives make a lot of money and dads have custody that make the same argument, that make the same argument. I should have physical 50/50 because they don't want to pay that amount. But I think as one of the attorneys mentioned, what we aren't seeing and what we had in the originally parenting act that got taken out was a requirement that if you're going to have joint physical and joint legal custody that there has to be a determination of who's going to pay all these expenses. The cases that we get back a lot are the cases where joint physical, joint legal child support went from \$680 to \$120. And that person that's getting \$120 is supposed to pay for everything. I give you \$120, you better...no. The person that got out of that other \$500 should be paying for tennis shoes and school activity funds and all these things, but if it's not delineated in some way, it doesn't get done. And the problem that I see, you know, they're back over and over and over again fighting about those things. And the kids are caught in the middle. They can't go to swim camp or they can't go to the YMCA or they can't do this or they can't do that. There's no money to pay for it, you know. And so when there isn't that determination, the kids again are caught in the conflict. And that's...the present Parenting Act is about children, it's not about father's rights, it's not about mother's rights. It's about the best interests of the children, and I hope the committee will keep that in mind. [LB589 LB423]

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SENATOR COUNCIL: Thank you. [LB589 LB423]

SENATOR ASHFORD: All right. I'm sure we'll keep that in mind. I mean...thanks, Lorin. Thanks for all your good work. One last...Kathy is going to be the last testifier. And we're already about two minutes before it's equal time. So I'm going to ask you to... [LB589 LB423]

KATHY BIGSBY MOORE: (Exhibit 16) And I'll make it very brief. I've got written testimony. It's always nice to be here on a day when we're talking positively about legislative accomplishments and the Parenting Act. Senator Ashford, Senator Flood, and many other members of the Unicameral have done significant work since the early nineties on this bill. And I think we have a parenting act, as has been said, that is a remarkable, very progressive piece of legislation. I do want to reiterate that the current law focuses on the best interests of the child. The modifications that were made in the last two to three years really strengthen the role of mediation. One thing Lorin touched on, the Omaha cases and the number of findings for joint custody, I looked in our Kids Count report for last year, and statewide it's important to realize that of the 3,189 custody decisions, 762 of those were for joint custody. So 25 percent of custody cases are being found for joint custody without this presumption. Presumptions, as most of my testimony indicates, are dangerous. They are particularly dangerous when there is domestic violence and imbalance. And so another statistic that is not included in my testimony is that last year in domestic violence centers we had services provided to almost 8,000 women and men, most of them women however, and 2,168 of those cases were children. So when you're looking at that number in relation to custody decisions, there is an overlap between domestic violence and custody issues. And so you have to assume that there is a fair number of cases that should not be granted joint custody. This presumption would make the level of proof, if you will, higher and inappropriately so. And then lastly, I think the issue of child support that Senator Council has raised, while we don't always have clear statistics on how many people are requesting joint custody for that purpose, you've heard several practicing attorneys allude to the fact that that does happen. And what we do know is that in custody and child support decisions, generally it is the lower income families that are going to lose the most ground in a joint custody decision. So when you lose the amount of child support, generally speaking, is the lower income families that will be hit the hardest by that decision. I'd be happy to answer any questions. And thanks for your consistent work on this issue. [LB589 LB423]

SENATOR ASHFORD: Thank you, Kathy. Senator Council. [LB589 LB423]

SENATOR COUNCIL: Real quickly, and thank you, Kathy, for that information. Just a data question. Your reference to the 3,189 custody decisions in 2006... [LB589 LB423]

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KATHY BIGSBY MOORE: Correct. [LB589 LB423]

SENATOR COUNCIL: ...in divorce cases only. [LB589 LB423]

KATHY BIGSBY MOORE: Correct. [LB589 LB423]

SENATOR COUNCIL: And that 762 of those, the award was for joint custody. [LB589 LB423]

KATHY BIGSBY MOORE: Right. [LB589 LB423]

SENATOR COUNCIL: Do we know of that 762 were they the result of negotiated parenting plans, mediated parenting plans, or... [LB589 LB423]

KATHY BIGSBY MOORE: I don't know that. I think Lorin's statistic was... [LB589 LB423]

SENATOR COUNCIL: His was 50/50. [LB589 LB423]

KATHY BIGSBY MOORE: Right...was tied more to those mediated. These were just generally the final decision. Exactly. [LB589 LB423]

SENATOR COUNCIL: The decisions themselves. Okay. So it could have been 50 percent of those were the parties agreed to joint. [LB589 LB423]

KATHY BIGSBY MOORE: Exactly. Exactly. [LB589 LB423]

SENATOR COUNCIL: Okay. Thanks. [LB589 LB423]

SENATOR ASHFORD: Thanks, Kathy. [LB589 LB423]

KATHY BIGSBY MOORE: Thank you. [LB589 LB423]

SENATOR ASHFORD: Senator Dierks. Thank you for remaining the whole time. [LB589 LB423]

SENATOR DIERKS: You bet. I was going to waive closing, but I think better say just a few things, Senator Ashford. My constituent that was here and testified from Cedar County, the district court judge in Cedar County comes to Cedar County once a month. He has been waiting since November of '08 to go back to court. So if the law works and works fine, as one of the testifiers said, why are all these folks here? And they also say the law is perfect and I want to know in whose eyes. The mediation in Senator Flood's bill works until one parents refuses, and then they have to end up going to court. And I

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thank Senator Flood too for his work on this and yours, Senator Ashford. I want to thank the parents who came here to testify today. I'm not sure what the outcome is going to be. If you take time to do more study, if you do I would like to see you include also grandparents' rights as well because I hear that a lot from my constituents. Someone also told me there's no definition of "best interests" in the law. With that, I'll try to take any questions you might have. [LB589 LB423]

SENATOR ASHFORD: Yes, Senator Coash. [LB589 LB423]

SENATOR COASH: Thank you, Senator Ashford. Senator Dierks, we heard from attorneys on both sides, we heard from parents, one of the groups I was really hoping to hear from that I kept waiting for somebody on one side or the other to come from is the judges. They seem to have a lot of power in their hands and I'm just wondering if as you researched this bill and crafted it you had talked with any judges that deal with these cases and what your feedback was from them. [LB589 LB423]

SENATOR DIERKS: I have not. In fact because I haven't visited with many attorneys about it either for that matter, some but only the things that I've told you in my opening and what you've heard, the same thing that I know about it, so. Sorry, Senator Coash. [LB589 LB423]

SENATOR COASH: That's okay. Thank you. [LB589 LB423]

SENATOR ASHFORD: It's all right, Senator Dierks. Thank you very much. [LB589 LB423]

SENATOR DIERKS: I thank you all. It's been a long afternoon. You're holding up very well. [LB589 LB423]

SENATOR ASHFORD: (See also Exhibits 21-52) Well, thank you for...LB4 is next. Senator Christensen. [LB589 LB423]

SENATOR CHRISTENSEN: (Exhibit 17) Thank you, Chairman Ashford and members of the Judiciary Committee. I'm Senator Mark Christensen, M-a-r-k C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District here to introduce LB4. LB4 would change the jury compensation for services discharged, from \$35 per day to the state minimum wage rate. Jury compensation in Nebraska has not changed for 15 years, since January 1, 1994. Prior to 1994, it was changed from \$20 to \$30 in 1991, and from \$10 to \$20 in 1974. It is the intent of LB4 to provide a more appropriate jury compensation rate that recognizes the value of the juror's time when called to serve in the capacity. Many people are self-employed and do not earn a living when they are not at their present job. The job compensation rate of \$35 a day is inadequate and outdated and needs to be increased. I've handed out information put together by Legislative Research that

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highlights this fact. The state minimum wage is what the Legislature has told employers is the base pay in Nebraska. Should not government live by its own standards when compensating jurors? I believe this is a logical connection and reasonable public policy. Currently, the state minimum wage is \$6.55 and will increase to \$7.25 on January (sic) 24, 2009, therefore if LB4 passed it would go into effect after July 24, 2009, making the compensation rate \$7.25 per hour or \$58 for an eight-hour day. A per-hour rate may save some money when jurors don't serve in the capacity for a full day, but it may cause more work for court employees needing to keep track of jurors' hours served. If the committee desires to stick with a per-day compensation structure instead of per hour, it could be used as a minimum wage rate for an eight-hour day for the per-day amount. This would lessen the amount of work for the court employees while still connecting compensation to the state minimum wage. I strongly urge you to consider changing jury compensation so that it reflects a greater appreciation for the time of the Nebraska residents. Knowing that the current economic situation does not favor an increase in county expenditures in the form of jury compensation, I would ask that the committee at least carry LB4 over for the 2010 session to reevaluate the economic situation. I might give you a little background on why I decided to bring this bill: I was called to jury duty this last year. (Laughter) [LB4]

SENATOR LATHROP: So it hit close to home. [LB4]

SENATOR CHRISTENSEN: It hit real close to home when being paid by commission and having a family of seven kids, nine of us around there, \$35 a day didn't come close to covering what it takes me to operate or what it costs me to be gone from my job. [LB4]

SENATOR LATHROP: Senator Christensen, I went to my mailbox two days ago and there was a jury summons in there, so I too have a keen interest in this. The difference between \$35 a day and minimum wage is... [LB4]

SENATOR CHRISTENSEN: You work for the state; that's an increase. (Laugh) [LB4]

SENATOR LATHROP: Exactly. It might be more money for me. Are there any other questions? I don't see any. Well, we'll look forward to the testimony. [LB4]

SENATOR CHRISTENSEN: Thank you. [LB4]

SENATOR LATHROP: Hopefully there will be proponents out there somewhere. Any proponents? Hello? Anybody back there? Anybody here in opposition? Oh-oh. [LB4]

PAMELA SCOTT: (Exhibit 18) Okay. Good afternoon, Judiciary Committee. My name is Pamela Scott and I am the president...Scott is S-c-o-t-t. I am the president of the Clerk of the District Court Association and I'm also the Clerk of the District Court and ex officio

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jury commissioner for Richardson County. I'm here to testify in opposition to LB4, which would increase the compensation for a juror. The compensation at this time, as he said, is \$35 a day. Included in the testimony is a listing of what other states compensate their jurors. This information was compiled from the other states' Web site and there's also a study from the National Center for State Courts which was completed in April 2007 for jury compensation by each state. From the information, there are various amounts that other states pay, and also the pay increases after more than one day of jury service. And from the information that we have in those packets, Nebraska pays their juror the \$35 for his initial day of service, which is more than 46 other states. So we are pretty high on that list. If the compensation is amended to the minimum wage it will require the jury commissioner to request jurors to complete a W-4 when they appear for jury service. Although the amount to be reported to the IRS is \$500 for a year, we can't always predict the length of a jury trial or the sequestration of a jury. The change from \$35 a day to minimum wage will not appropriately compensate some jurors for their service, such as self-employed truck drivers. I have a husband who works in Kansas, that they don't pay you if you're on a Nebraska jury, their wages, so I understand that. Nebraska law does require that no employer shall subject an employee to discharge, loss of pay, loss of sick leave, vacation time, or any other form of penalty on account of his or her absence from employment by reason of jury duty, except that an employer may reduce the pay of an employee by an amount equal to any compensation other than expenses paid by the court for jury duty. That would probably create some problems for employers maybe having to figure out the difference, what they got paid, the difference. Our association believes that this legislation will cause the counties additional fiscal concerns should jurors be seated for a lengthy trial or be sequestered for 24 hours a day. Our association also believes that Nebraska appropriately compensates jurors for their service at this time and a change in the form of payment would not benefit the juror, the county, or the employer. So thank you. Any questions? [LB4]

SENATOR LATHROP: Great. There is a bit of a problem with paying by the hour because there's plenty of times where they actually...you know, they may say come at 10 o'clock tomorrow; in the morning we're going to jury instruction conference. And so it's still killing part of their day. [LB4]

PAMELA SCOTT: Correct. [LB4]

SENATOR LATHROP: There's a lot of practical problems with paying by the hour. [LB4]

PAMELA SCOTT: Yeah. And you know, what if they are there for 20 minutes; the judge sends them out but nobody catches what time they actually leave. So...and \$35 is just a...and if you want to increase it? You know, just increments, not hourly wage. [LB4]

SENATOR LATHROP: Okay. Got it. Thanks. [LB4]

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SENATOR ASHFORD: Okay. I guess we must be on the opponents. (Laughter) [LB4]

SENATOR LATHROP: Yeah. We went through the proponents, like in quick fashion. [LB4]

SENATOR ASHFORD: Yeah, we went through the proponents fairly quickly. [LB4]

SENATOR LATHROP: We did discover that Mark and I have both been summoned to jury duty, so we have a keen interest in the outcome of this. [LB4]

SENATOR ASHFORD: Yes. Good afternoon. [LB4]

BETH BAZYN FERRELL: Good afternoon, committee members. For the record, my name is Beth Bazyn, B-a-z-y-n, Ferrell, F-e-r-r-e-l-l. I'm assistant legal counsel for the Nebraska Association of County Officials. I'm appearing here in opposition today for the same reasons that Ms. Scott pointed out: the record keeping issues and the financial issues. But we'd be happy to work with you over the summer on this issue if you'd like. Just as a matter of note, I was called to a jury last summer too, so (laughter) it's a popular thing. . [LB4]

SENATOR CHRISTENSEN: Popular. [LB4]

BETH BAZYN FERRELL: I'd be happy to try and answer questions. [LB4]

SENATOR ASHFORD: I don't...yes. Yes, Senator Christensen. [LB4]

SENATOR CHRISTENSEN: If you were to increase that, where do you think it ought to go? You said incrementally. So what was your thoughts there? [LB4]

BETH BAZYN FERRELL: We really haven't talked about what an appropriate dollar amount would be. We are higher than other states but certainly we could look at what the minimum wage would equate to and maybe figure out... [LB4]

SENATOR CHRISTENSEN: Did you see why I was trying to tie it to minimum wage just as a basic floor, but I have no problems not making it a per hourly thing. But is that something that you'd be willing to discuss? [LB4]

BETH BAZYN FERRELL: Oh, absolutely, yes. [LB4]

SENATOR CHRISTENSEN: Okay. Thank you. [LB4]

SENATOR ASHFORD: Thank you. Any other opponents? Neutral. Senator

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Christensen, do you have any other comments? [LB4]

SENATOR CHRISTENSEN: No. [LB4]

SENATOR ASHFORD: Okay. LB226, Senator Rogert, on age of majority. [LB226]

SENATOR ROGERT: (Exhibit 19) Well, good afternoon, members of the Judiciary Committee. For the record, my name is Senator Kent Rogert. I represent the 16th Legislative District and I'm here today to introduce to you LB226, a bill that reduces the age of majority from 19 to 18. In an effort to mess with the lobby, I had a 150-page bill drawn up and then I crossed it out with a two-page amendment. [LB226]

SENATOR ASHFORD: This is shorter than the other one. [LB226]

SENATOR ROGERT: It's great. It's a lot shorter, yeah. And so I apologize to some set of trees that I killed. The group of folks involved and I came to a meeting recently and my intent was to do the things listed in the amendment, and my intent was not to mess with those receiving services up to the age of 19. And so we came to an agreement where most of us, I think...I think we might have a language question as of now, just a minor tweak that we may work for in the future. But basically what my goal of this is, is to allow those that are aged 18 to be able to do things that most adults can do everywhere else in the country. Forty-eight states, I believe right now, allow for the age of majority to be set at age 18. The age of majority historically has moved around in the '50s, '60s, and '70s with the drinking age. Most all states now have moved it to 21, and so at the last time I think we were at age 19 it stayed at 19 except for drinking. It went to 19...or went to 21 which I have no intention to change. But Nebraska and Alabama are set at 18, and 18-year-olds in Alabama are able to contract. And that becomes a concern to me that an 18-year-old can head off into life before college or to the work force or to the service and do whatever they want, but if their address happens to be in Nebraska they're legally unable to contract for most services, including housing, insurance--either auto or health. They can't buy a car, if they have the means to do so, on a lease or with a loan. They can't get a...here's a big one today: a cell phone. Most folks have a cell phone now and you get off your parents and get with your own, you really wouldn't be able to do that. Utilities might be in the same type of thing. All those are contracts and you wouldn't be able to do those. So what I've done here in this amendment is I've written out that if your parents want to, as you move to go off to college or go to somewhere, at the age of 18 they can give you a power of attorney to contract for health insurance or for health services, healthcare, and then for all other binding contracts they'd be able to do so at the age of 18. I don't know that I have anything that really goes any further than that. What I wanted to do was make sure we didn't mess with child support services, Medicaid, HHS portions of that, and I think we've got that taken care of with the amendment. So any questions, I'll be glad to answer. Oh, Senator Council. [LB226]

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SENATOR ASHFORD: Yes, Senator Lathrop. [LB226]

SENATOR LATHROP: I do have one. I'm just wondering. If a person contracts, does one of these powers of attorney, and it allows the minor to go out and get necessary medical care, I think the parents are still going to be responsible for it. It doesn't absolve the parents of any liability as long as the person is still a minor. [LB226]

SENATOR ROBERT: Here's my thought on it. They may be, but most...maybe they...let's say you are...maybe you don't live in the same state or across the state from your parents, as an 18-year-old. You want to go have some elective medical procedure done, whatever it may be: eye surgery. You broke a finger but you... [LB226]

SENATOR LATHROP: Or something like that. [LB226]

SENATOR ROBERT: Something like that. You've got a broken finger or something like that. Nobody is going to give you a green light to do any services unless you can show a form of payment most of the time. I mean, whatever I've ever gone to, you set up a payment plan, you give them a credit card, you hand them the cash, whatever it is to do a medical procedure, or any type of...you know, maybe it's just copayments for doctor visits, that type of thing. I think that they would ensure you got payment done before you got it done. Now emergency medical services, you get hauled in on an ambulance, you're 18, I think your parents probably would be responsible regardless, yet, for another year. [LB226]

SENATOR LATHROP: Okay. Thanks, Kent. [LB226]

SENATOR ASHFORD: Thanks, Kent. Yes, Senator Christensen. [LB226]

SENATOR CHRISTENSEN: Thank you, Chairman. Senator, this totally negates the fiscal note and everything then, correct? [LB226]

SENATOR ROBERT: Yep. Correct. Zero fiscal ability. [LB226]

SENATOR ASHFORD: Thank you. Let's see, do we have any proponents of LB226? Laurel. [LB226]

SENATOR ROBERT: The ACLU likes me once in awhile. (Laugh) [LB226]

SENATOR ASHFORD: I was going to say, I'm going to have to start reading a little more closely. Go ahead. [LB226]

SENATOR LATHROP: You know we amended it, don't you? [LB226]

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LAUREL MARSH: (Laugh) I do. And my name is Laurel Marsh, M-a-r-s-h, and we are...ACLU Nebraska is here in support of the bill as drafted, LB226, though we would have no problem with the bill as amended. And our reason for being here was that we think it provides a solid move towards uniformity and clarity in application of the age of majority laws and that there are a number of rights that flow to a person as an adult. This would bring them on a little sooner. [LB226]

SENATOR ASHFORD: Thank you, Laurel. Any other proponents? [LB226]

SENATOR ROBERT: Oh, wow. This can't be good. We've got both these guys. [LB226]

SENATOR LATHROP: It's like an eclipse. (Laughter) The ACLU and Todd Landry. [LB226]

TODD LANDRY: There is a defibrillator out, I think, in the hall. [LB226]

SENATOR LATHROP: Somebody go grab it. [LB226]

TODD LANDRY: In case you need it. [LB226]

SENATOR ASHFORD: I just can't wait to find out what side Jim is testifying on. (Laugh) [LB226]

SENATOR LATHROP: If Cunningham comes up here in favor of it, then it's a...we may be ready for Armageddon. [LB226]

TODD LANDRY: (Exhibit 20) Well, I will make this brief. Senator Ashford and members of the committee, my name is Todd Landry, T-o-d-d L-a-n-d-r-y. I'm the director of the Division of Children and Family Services. I was here today to be in support of LB226 on the green copy. The testimony that you're receiving is information and our position on the green copy. The amendment I received just a few minutes ago, we haven't had a chance to really review that nor would I feel comfortable today addressing its impact potentially on, particularly, state wards within our division. But if we...we will review it and if we have any comments on that, we'll provide it to the committee under separate cover. [LB226]

SENATOR ASHFORD: Thank you, Todd. Any questions of Todd? Yes, Senator Coash. [LB226]

SENATOR COASH: She raised her hand first. You always look over here and she always beats me. [LB226]

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SENATOR COUNCIL: No, go ahead. You may ask my question. Go ahead. [LB226]

SENATOR ASHFORD: Go ahead, Senator Coash. [LB226]

SENATOR COASH: Thank you, Senator Ashford. Todd, I...first of all, I didn't like the green copy. I like the amendment. I think...and I talked to Senator Rogert about my concerns with the bill, and then he comes in with an amendment that took care of all my concerns. But I guess, and this isn't a question, more of a comment. I mean, I understand the cost savings to the green copy but I'm a little disappointed in the department coming in and saying...a department that's for children saying we're happy to cut a year off of services, so. I'm glad that we're not going to look at that but that bothers me. [LB226]

TODD LANDRY: Well, I will tell, for us, it was more of an issue of fairness and equity. And if...and as we read the original green copy--and I think my predecessors' positions on similar bills have been very much the same--is that if a youth...if an adult...if we decide as a state that the age of majority is 18 and they're going to be eligible to do all the things that other adults have rights and responsibilities to do so, then it did not appear to us to make a lot of sense to continue to maintain custody of them while they were an adult. And if we're going to be consistent with our age of majority, then those consistencies should apply to state wards as well as nonstate wards. [LB226]

SENATOR COASH: I understand that point. Thank you. [LB226]

SENATOR ASHFORD: Okay. Thanks, Todd. I think you apparently...that was Senator Council's question, as well, apparently. (Laugh) So, okay. [LB226]

SENATOR COUNCIL: It was. I mean, that's the... [LB226]

SENATOR ASHFORD: Okay. Thank you. Any other proponents? Opponents? Neutral? [LB226]

KORBY GILBERTSON: Good afternoon, Chairman Ashford and members of the committee. My name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Boys Town and happily here in a neutral capacity for the first time since this bill was introduced I don't know how many years ago. Every time this bill has been introduced in the past, the reason has always been the same as Senator Rogert said it was this year: to allow competent 18-year-old kids to come down to Lincoln and sign a lease. So we did meet with Senator Rogert and I think we finally managed to get to that in less than two pages. Boys Town has repeatedly opposed this bill in the past for just the reasons that were brought up with Mr. Landry. We have very serious concerns about kicking certain children that are at risk out of the system at age 18 when a great number of these are still in school and

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very much in need of the services that they are receiving. And so we would really like to thank Senator Rogert for working with us on this and we hope that the committee will advance this bill to the floor, as amended. [LB226]

SENATOR ASHFORD: Well, one thing that's certain about Senator Rogert, he usually gets down to the nub of the issue fairly quickly, so. Thank you. [LB226]

KORBY GILBERTSON: Thank you. [LB226]

JIM CUNNINGHAM: Senator Ashford and members of the Judiciary Committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I am executive director of the Nebraska Catholic Conference and I appear on behalf of the conference to testify in a neutral capacity on this bill, taking into account the amendment that has been presented to you by Senator Rogert. In the past, the many times that this bill has been introduced, we have always taken a view of it from a perspective of family life, and have had a great deal of concern and skepticism about making such a sweeping change throughout all the laws of the state with regard to dropping the age of majority. It has to be acknowledged, I think, that a lot of 18-year-olds are still attending high school and living in the family household, and to make such sweeping changes in the law with regard to making these 18-year-olds no longer minors, but adults under the law, we just always felt had the great potential of having unforeseen repercussions and unintended consequences. I would like to say that I've not had an opportunity to share this amendment in specifics with our governing board. That opportunity will be available to me next week. But I would like to say, on the record, that we do appreciate the effort of Senator Rogert to narrow the scope of this bill. Thank you. [LB226]

SENATOR ASHFORD: Thank you, Jim. Any questions of Jim? Seeing none, thanks. [LB226]

JIM CUNNINGHAM: Thank you. [LB226]

DENIS McCARVILLE: Good afternoon, Senator Ashford and the Judiciary Committee. My name is Denis McCarville; that's Denis with one n and M-c-C-a-r-v-i-l-l-e. I am here representing the Children and Family Coalition of Nebraska. I too want to thank Senator Rogert for introducing the amendment. Historically, we've been opposed to age of majority bills and, you know, probably would have come in...if I could have gotten my colleagues together quickly, we would probably come in support of the amendment, but couldn't get them. So I just wanted to thank you for hearing us. There's a huge gap for children, even with the age of majority at 19, with services, and so to go to 18 just creates even a larger gap. I appreciate the fact that you've recognized that and we can live with this amendment. Any questions? All right. [LB226]

SENATOR ASHFORD: (Also Exhibit 53) Thanks, Denis. Thanks. Any other neutral

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testifiers? Okay. That concludes the hearing. Senator Rogert, do you wish to close?  
Senator Rogert waives. Thank you all. [LB226]

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Disposition of Bills:

LB4 - Held in committee.  
LB226 - Held in committee.  
LB423 - Held in committee.  
LB589 - Held in committee.  
LB660 - Held in committee.

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Chairperson

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Committee Clerk