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Judiciary Committee
January 22, 2016

[LB744 LB833 LB893 LB924]

The Committee on Judiciary met at 1:30 p.m. on Friday, January 22, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB833, LB744, LB924, and LB893. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; Patty Pansing Brooks; and Matt Williams. Senators absent: None.

SENATOR SEILER: And welcome to the Judiciary Committee. If you don't have anything to do with the Judiciary, there's other committees meeting at the same time. And you will find senators getting up. They're not being rude to you. They've got bills in other committees and that's where they're headed for. That may be why we're a little thin right now. On my far right...my name is Les Seiler and I'm Chairman of the Judiciary from Adams County and the west half and the south half of Hall County. Senator Williams is from Gothenburg and Senator Ebke is from Crete. And counsel is Josh Henningsen here on my right. And our clerk is Oliver VanDervoort. And we have two pages working today and they are the hardest workers in this group--Annie and Kaylee--and they will be the ones handling your documents as you testify and give them to them. And your sign-in sheet, make sure you have it if you're planning on testifying; get it filled out. And if you're testifying on more than one bill, fill one out for each bill. Turn off your cell phones at this time, and I will do the same. Each testifier will be given three minutes. They're allotted with a green, yellow, and red. Red means stop. If the committee wants you to go forward, we will ask you to continue. So we need to keep this time set so we're not pushing the record tonight at 11:30. Folks, when you're sitting out in the audience, they've redone these mikes and they're super sensitive. So if you want to make a disparaging remark about somebody in the back row, it could become public record, so be careful--just want to give you a warning up-front. Okay, I think we're ready to start with LB833, Senator. [LB833]

SENATOR SCHUMACHER: Thank you, Senator Seiler, members of the Judiciary Committee. I'm Paul Schumacher, S-c-h-u-m-a-c-h-e-r, representing District 22 in the Legislature. And I brought the bill today because a very frustrated young woman called me a career politician just like President Obama and, well, that was enough to motivate me a little bit. The situation is apparently where there's a child support order been issued and in a court as a result of a divorce in the state, and the order is not being complied with. The person who is entitled to the support, usually the custodial parent, moves off to another county on the other side of the state and is there with the child and the support isn't being paid. So apparently right now what is happening is there's a little bit of an issue of where that support enforcement action should be dealt with. Should it be dealt with in the county out west where the child and the mother reside or the county back east where the divorce order is entered? And this particular young woman had the bad experience of being bounced back and forth, saying from a county attorney out west, no, that's a Douglas County problem, to Douglas County saying, no, this person no longer resides

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here, we don't feel that it's our problem. Also with it, not addressed in this bill but maybe it should be addressed at some point, is, where is the proper place for a criminal prosecution for nonsupport? The issue in this case that I'm referring to, it was pretty severe and, it appeared to me at least, quite intentional nonsupport that was going on and probably very well could have risen to the level of criminal nonsupport. What this provision basically says is, you know, the kid's going without child support, you can bring an...she can bring her action to try to enforce that order at either end. And the county attorney, if she's eligible for that, brings the enforcement order either out west or in Douglas County, whichever place they...the system can't use the excuse that we don't have jurisdiction here, so this says either place is proper to bring the action. And I think it probably, in her case, would have helped resolve the situation. And that's all that I have on it. [LB833]

SENATOR SEILER: Any questions? I have one. [LB833]

SENATOR SCHUMACHER: Okay. [LB833]

SENATOR SEILER: The language that you used in the bill, that reside for at least 90 days of the sum of 180 days next preceding to the filing of the process, that's a little...I thought that was a little unusual language. But were you intending to capture the person that goes to Scotts Bluff for 30 days, comes back to Douglas County for 30 days, goes back out to Scotts Bluff? [LB833]

SENATOR SCHUMACHER: Right. Yeah, I don't think you...the reason I did that is there should be some stability in the new place of residence; otherwise, you... [LB833]

SENATOR SEILER: Just not bouncing back and forth. [LB833]

SENATOR SCHUMACHER: How many different actions would you be authorizing... [LB833]

SENATOR SEILER: Okay. [LB833]

SENATOR SCHUMACHER: ...where this is basically there is some permanence in the new location. [LB833]

SENATOR SEILER: Okay, that's what I...yes. [LB833]

SENATOR KRIST: Where is that language? What line reference? [LB833]

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SENATOR SEILER: It's in almost every one that's underlined. I was looking on page 2, the last two to three lines of the deal. [LB833]

SENATOR KRIST: Oh, okay. Got it, thank you. [LB833]

SENATOR SEILER: Okay, that's the same way I read it and I just wanted to make sure I was reading it correctly. [LB833]

SENATOR SCHUMACHER: Yeah. [LB833]

SENATOR SEILER: Any other questions? Yes, Senator Williams. [LB833]

SENATOR WILLIAMS: I just had one quick question, Senator Schumacher. This only would apply to these child support issues though. You mentioned maybe a need to do this broader than that at some point into criminal activities? [LB833]

SENATOR SCHUMACHER: This only deals with supporting or enforcing the enforcement order. [LB833]

SENATOR WILLIAMS: Okay. [LB833]

SENATOR SCHUMACHER: There's also a statute, a criminal statute that says if you knowingly and wilfully neglect to pay your child support, it can be I believe a felony. That...and quite honestly I don't know. I would almost think that any county attorney where the child was might be able to bring that action. But in thinking through it, it may at some point be good to clarify that, yeah, it's either that action for criminal nonsupport can be brought in the county where the divorce was granted or where the kid has lived. [LB833]

SENATOR WILLIAMS: But LB833 is not addressing that issue. [LB833]

SENATOR SCHUMACHER: And it does not address the criminal component. [LB833]

SENATOR WILLIAMS: Yeah. Thank you. [LB833]

SENATOR SEILER: Senator Pansing Brooks. [LB833]

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SENATOR PANSING BROOKS: Thank you. Thanks, Senator Schumacher. Can you just explain to me, so is it...is the law as it stands now the site of original jurisdiction, is that what... [LB833]

SENATOR SCHUMACHER: Yeah, I think so. [LB833]

SENATOR PANSING BROOKS: And so there's no reciprocity among jurisdictions within the state, is that basically what's happening? [LB833]

SENATOR SCHUMACHER: That's been...that was the experience here. The county attorney took the position that it was not his problem and with some justification because it isn't clear if it's his problem. And it's not like you have...in an interstate support squabble, if the person had been out in Colorado with her kid instead of out in a western county, she'd have gone to the local county attorney out there and they'd have filed a reciprocal action where they'd have made a finding there and dittoed it into her county for support. [LB833]

SENATOR PANSING BROOKS: You know, it's funny because we have reciprocal laws between states. As long as they can prove that they had jurisdiction in the original case, then other states can enforce that ability. And then we just passed last year the ability for us to...those that have signed under the Hague agreement, they can reciprocally enforce the support orders in foreign countries. And now we can't even do it within our own state? [LB833]

SENATOR SCHUMACHER: Well, and I can understand somewhat the issues where a county attorney might take the position that, look, we got one court in this state who's burdened by this case, judge in charge of the child support and the divorce decree, and go back there, that's where it belongs, we don't need to have a second case opened up in a western county when we've got one in Douglas County. Well, in the meantime she's not getting child support. And she is certainly not in a position to run back to Omaha in order to, you know, be present for hearings and fill out paperwork or whatever else. So this says, okay, the place is...you can open up that enforcement action. [LB833]

SENATOR PANSING BROOKS: Thank you. [LB833]

SENATOR SEILER: Any further questions? Thank you, Paul, for...you're going to close? [LB833]

SENATOR SCHUMACHER: No, I've got something over in Revenue and I've said I think all that I needed to say. [LB833]

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SENATOR SEILER: Okay. [LB833]

SENATOR SCHUMACHER: And it's kind of in the hands of the committee if it has any merits. Probably it's not a priority bill for me. If it can be worked into something, if it has merits in the view of the committee, then you've got the bill. [LB833]

SENATOR SEILER: Okay, thank you. [LB833]

SENATOR SCHUMACHER: Thank you. [LB833]

SENATOR SEILER: Proponent testimony--anybody here to testify in favor of this bill? I don't see any movement. Anybody opposed to this bill? Anybody in the neutral? Close the hearing on LB833. Okay. Senator Watermeier, you here to testify on this one? [LB833]

SENATOR WATERMEIER: I can be next if that's on your agenda next. Did you announce as far as a time testifying now? [LB744]

SENATOR SEILER: Yep. [LB744]

SENATOR WATERMEIER: You did? [LB744]

SENATOR SEILER: Three minutes. [LB744]

SENATOR WATERMEIER: Okay. [LB744]

SENATOR SEILER: But that doesn't apply to you. [LB744]

SENATOR WATERMEIER: Well, I know that but I was...this might be that you...a little leeway on that with some of the testifiers here today. You ready for me? [LB744]

SENATOR SEILER: Yep. [LB744]

SENATOR WATERMEIER: Thank you, Chairman Seiler and members of the Judiciary Committee. I am Senator Watermeier, spelled W-a-t-e-r-m-e-i-e-r. I represent District 1 in the southeast corner of the state. I am here today to introduce LB744 dealing with open adoptions. LB744 recognizes that adoptive parents and birth parents can agree to communication and

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contact after the adoption of a child in private and agency adoptions but makes it clear that the failure to comply with such agreements does not affect the adoptive decree, the relinquishment of parental rights, or the written consent to adoption. Furthermore, such an agreement may not be enforced by civil action. To make sure that all parties are aware that the failure to follow the terms of an agreement for continuing communication and contact does not affect the adoption decree, the relinquishment of parental rights, or the written consent to adoption, the bill specifically states that such language shall appear on this agreement. I introduced this legislation in response to a recent lawsuit which was appealed from the district court to the Nebraska Supreme Court. The Supreme Court affirmed the district court's decision. In their ruling the Supreme Court stated that until the Legislature acts to approve of those open adoption arrangements in a private adoption context, they will not recognize them and will instead continue to hold the relinquishments signed with the promise of such an open adoption invalid. As a result, a child was removed from a home of adoptive parents and given back to the biological parents after living with the adoptive parents for 14 months. The decision to place your child up for adoption would have to be one of the most difficult decisions a person would ever have to make, but for the best interest of the child it has to be a permanent decision. I introduced this legislation in response to the lawsuit and in an effort to ensure that a similar situation does not happen again. Due to this earlier lawsuit, the Legislature passed a bill dealing with open adoption for state wards but did not address private and agency adoptions. Adoptions involving state wards are different from private and agency adoptions as they include a history of state involvement with the Department of Health and Human Services, foster care, a guardian ad litem, and etcetera. With state wards, usually the child has resided with the biological family for some time and there are preexisting relationships between relatives and this child. Even in these situations where an agreement regarding communication/contact after adoption has been approved by the court after being recommended by the guardian ad litem and HHS, failure to comply shall not be grounds for setting aside an adoption decree, for revocation of a written consent to adoption, or for revocation of a relinquishment of parental rights. LB744 recognizes open adoption agreements for private and agency adoptions, as the court has suggested, but does not change how adoptions have successfully been handled in Nebraska for years, with the exception of this case. When a biological parent relinquishes their parental rights and agrees to an adoption, they must trust the adoptive parents to raise the child as their own. They must trust that the adoptive parents will make the right decisions that are in the best interest of the child. The adoptive parents will be the ones to decide what day care to place the child in, what school they will attend, and what time their curfew is. Likewise, biological parents will have to trust that the adoptive parents will make a decision based on the child's best interest regarding the involvement of the biological parents after the adoption has taken place. If the adoptive parents could be taken to court every time that biological parents don't like a decision, this would not be in the child's best interest. Court enforcement can easily turn a cooperative relationship into an adversarial one. Currently most adoptive lawyers and agencies make it clear to biological parents that by giving up a child for adoption they are relinquishing their parental rights. Such attorneys

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also inform the biological parents that although they may have discussed possible future contact with the child, that such contact or communication is entirely at the adoptive parents' discretion and is not legally enforceable. They make sure that the biological parents understand that their parental relinquishment is not contingent on any possible communication or personal contact that they may hope to have with this child. They inform them of how important this decision is and that they cannot change their mind. The attorneys tell them not to sign if they are not thinking clearly. LB744 will assure that all biological parents are aware that failure to comply with the agreement for communication and contract does not affect the legality of the adoption. No one should have to experience what these families have experienced during this recent lawsuit. It is the Legislature's role to ensure that that does not happen again. If you have any questions, I'd be glad to answer them. I also have brought several people that would like to testify in support of the bill. The technicalities of this are hopefully not hard to understand at the big level that I've tried to learn this. But it is important that we address it and I appreciate the committee's attention. Thank you, Mr. Chairman. [LB744]

SENATOR SEILER: Any questions? Bob. [LB744]

SENATOR KRIST: Thank you, Chair. And, Senator Watermeier, on page 2 of the bill, line 14, "(3) If the adoptee is fourteen years of age or older, an agreement under this section may not be entered into without the consent of the adoptee," can I just ask how did we...how did you come to the age of 14? [LB744]

SENATOR WATERMEIER: I don't remember that discussion and I'm hoping that's already in statute, but I don't know that. [LB744]

SENATOR KRIST: Yes. [LB744]

SENATOR WATERMEIER: And I'm assuming that people following me can answer that question. [LB744]

SENATOR KRIST: Okay. If they can't, I'd ask legal counsel before we talk about it to figure out what that... [LB744]

SENATOR WATERMEIER: Sure. [LB744]

SENATOR KRIST: ...what's significant about 14 in that particular line. And then in line 24, "(5) An agreement entered into under this section may not be enforced by civil action..." [LB744]

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SENATOR WATERMEIER: That's the part that I struggled with for the last three months when I had this brought to my attention and we decided to take this on. I just looked at that and said, this just can't be. But as I've worked with the adoption agencies and all the people involved, it's become clear to me what they try to do--and "they," I mean the whole adoption arena--is that it's a three-way situation--you have the adoptive parents, the biological parents, and the child--and that just has to be worked out before this adoption decree is signed. And if that's got the legality of that enforcement over its head, it just won't be a cooperative arrangement; but more importantly, if there's always a chance that the biological parent could come back and say, I agreed to this and so...and I'm not getting it, I'm not getting my texts or I'm not getting my pictures once a week that I want, then I'm going to hold the whole thing harmless and try to get out of the whole adoption decree. So that's the environment that I've had to come to. It took me a long time to get past that enforceability side of it, but that is where the adoption agencies will be able to speak to that probably better than I can. But that's...I've finally come to that conclusion that that is the best working environment for the best interest of the child. [LB744]

SENATOR KRIST: So, subsequent testifiers, the question stands. And if you'd like to...anyone knows that and would like to answer that, the question will be there. Thank you very much. Thank you, Senator Watermeier. Thank you, Chair. [LB744]

SENATOR WATERMEIER: Senator Krist. [LB744]

SENATOR SEILER: Go ahead, Senator. [LB744]

SENATOR CHAMBERS: Senator Watermeier, I understand that you're not an expert or authority in this, so the questions are just to tip off other people who come after you as to my concern. First of all, the mere fact that the Supreme Court says in a decision that the Legislature has not acted on this particular thing is not a recommendation by the court that it's good policy for the Legislature to do that. So I'm not governed...and I read that case. I get the Advance Sheet and I read cases as they come out. I'm not going to formulate a judgment on the fact that the Supreme Court said, until the Legislature does thus and so, we're not going to recognize this. What the Supreme Court was saying, if you read their case, is what the Legislature says is going to be the law if it's not unconstitutional; what the Legislature says is going to be carried out whether it's good policy or not because it's not the Supreme Court's role to formulate policy. The court may feel that it's not good policy but, nevertheless, that is the policy established by the Legislature so it must be carried out. So that statement doesn't mean anything to me whatsoever. I am aware of how people who work in this area, especially the professionals, can manipulate legislatures and others into getting their way because there are people who make money out of adoption arrangements. I don't know if you're aware of that. But if a relinquishment occurs and the biological parent is given the understanding that there will be the contact, communication,

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and so forth, and then that is violated, then that biological parent has been suckered and under this there's nothing that can be done about it. But when I read this language about...that Senator Krist called attention to, starting in line 24 on page 2, "An agreement entered into under this section may not be enforced by civil action," the relinquishment is an agreement, isn't it? [LB744]

SENATOR WATERMEIER: Yes. [LB744]

SENATOR CHAMBERS: So then that cannot be enforced either; and maybe it would throw the whole thing into the court to make a determination as to where the equities lie. So I'm going to listen to what the people who are the experts have to say. Now who drafted this legislation and gave it to you? [LB744]

SENATOR WATERMEIER: My office and along with Susan Sapp which is going to testify behind me. [LB744]

SENATOR CHAMBERS: With who? [LB744]

SENATOR WATERMEIER: Attorney Sapp behind me that's going to testify. [LB744]

SENATOR CHAMBERS: Oh, but it was an attorney? [LB744]

SENATOR WATERMEIER: I believe so, yes. [LB744]

SENATOR CHAMBERS: Okay, that person should be able to answer every issue I have, but I wanted to tip...I don't want anybody to be caught by surprise by my questions. So you were just the sounding board. You don't even have to answer unless you just want to observe something. [LB744]

SENATOR WATERMEIER: Well, just to your point, I appreciate your comment that you don't feel obligated to respond to the Supreme Court, I get that, but they are telling us they will not recognize open adoptions. And that's what we are trying to answer today is to recognize that part of statute. I mean we need to be able to recognize that in my opinion. [LB744]

SENATOR CHAMBERS: But the Legislature may not think it's a good policy to recognize them. [LB744]

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SENATOR WATERMEIER: They may not. That's why I'm here today. [LB744]

SENATOR CHAMBERS: Okay, that's all that I have. [LB744]

SENATOR SEILER: Senator Ebke. [LB744]

SENATOR EBKE: Thank you, Senator Seiler. Senator Watermeier, you and I have talked on several occasions about my own family situation. I don't know if I'm the only adoptive parent on the committee, but I certainly am one. Here is the issue that I would just ask you to respond to. If there is an agreement signed for an open adoption or a partially open adoption, however, and there are certain agreements but there's also been a relinquishment, the child has been placed with the adoptive parents, and for whatever reason circumstances have changed, you know--and that's not outside the realm of possibility that, you know, the relationship with the natural parents, biological parents has been somehow changed with the openness--is that what you're getting at, a problem like that, or a potential problem where biological parents may not necessarily...may sort of...I don't want to say...I don't...I'm trying to choose my words carefully because I think there are some cases where biological parents maybe impose themselves more than the adoptive parents are comfortable with at any particular point in time. [LB744]

SENATOR WATERMEIER: You know, there's several questions in there but I'll reach...let me explain it to you. Maybe, if you don't mind, I can expand on how I finally come to grips with this whole process was first the decision that the biological parent would have to make to give up their child and that's that decree. And I was...can get my arms around that. The secondary part is the involvement in the future. But all of that is a snapshot in time. That's the best decision that both these parents are making at that point in time. They may agree to, like I said, texts or pictures or some sort of a communication or birthdays or holidays, whatever it is. And that may be great and that may be in the best interest of the child at that point in time, but things do change and obviously the child will grow with every day and the relationships grow every day. But as that adoptive parent decides the best interest of that child is that they either change those arrangements and/or terminate those arrangements or expand those arrangements, that needs to be the decision of that adoptive parent. And I guess that's the only thing, the only way I can get to this idea that it's almost two standing agreements. The adoption decree needs to stand. The side agreements are just that, they're just side agreements, but hopefully they're for the betterment of the child. But to make this adoption decree invalid because these side agreements don't match the situation, either one day or ten years later, just does not look to me like to be the best interest of the child. [LB744]

SENATOR EBKE: Thank you. [LB744]

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SENATOR SEILER: Any other questions? I have one. [LB744]

SENATOR WATERMEIER: Yeah. [LB744]

SENATOR SEILER: And this may be with drawing the document. It appears to me...let me explain what I understand this document. You have the adoption papers, the agreements, everything. And those should not be attacked collaterally by a civil action. [LB744]

SENATOR WATERMEIER: Right. [LB744]

SENATOR SEILER: I agree with that. [LB744]

SENATOR WATERMEIER: Okay. [LB744]

SENATOR SEILER: Now we're talking about the other agreement of how we're going to handle our relationship down the line and one day one person gets disgusted at the other. How does it help not being able to go into at least a mediation or into a civil court and say, our agreement says this and they say it says this, we want to know what the court says? Because then you're back into a project where you can sit down and get these differences moderated. I don't want to touch any of the adoption. Once that's done, the appeal time has run, it's over. But the second agreement, and it has to do with how this is arranged, I would think paragraph (6) should be actually in place of (2) and then moving it down so that you get that decree of adoption and all the supporting documents right up-front. Anything above this paragraph can't be collaterally attacked. Then down below you talk about your agreements on how much information you're going to share and that. But it seems almost ironical, and I'm not trying to drum up business for lawyers, but it appears to me that the best place to mediate that is in the civil action. [LB744]

SENATOR WATERMEIER: You know, if we're thinking about anything other than the best interest of a child, I would agree. But when you think back to why we're here today on an adoption agreement, it's for that best interest of the child. And those best interests need to be turned over by this adoptive family decisions that they're going to have that opportunity to know. I've never heard a good result, I've never heard a good example, I've never heard a good outcome when a child goes into court, whether they're there or not; but if the parents are there, they're indirectly there in court being discussed about these arrangements. The minute that happens, this child is at risk of something bad happening. And I think you have to go back to that moment in time when everyone agreed, and especially the biological parent agreed at that point in time that I am relinquishing my parental rights to this child and I'm turning them over because I think they can do a better job as an adoptive parent to take care of my child. [LB744]

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SENATOR SEILER: My only... [LB744]

SENATOR WATERMEIER: But I get what you're saying, Senator, I really do, because I've struggled with that whole thing about that would be the place that you would naturally want to take care of that, in a court. But as I think through what goes on in these processes and the difficulty to get to what's best for the child, I've come completely full circle on this thing, because I fought this, I did, having this in statute that it's not going to hold up in a civil case. [LB744]

SENATOR SEILER: Okay. I still have some questions about it but I'll talk to the lawyer that drafted it... [LB744]

SENATOR WATERMEIER: Okay. [LB744]

SENATOR SEILER: ...because it just seems to me like even in the best interest that the adoptive parent could start screwing down the conditions and if you don't have a relief valve, you could have a real problem. [LB744]

SENATOR WATERMEIER: That's very possible. I mean that's... [LB744]

SENATOR SEILER: Okay. [LB744]

SENATOR WATERMEIER: That's what we are...I think that's what we're recognizing today is that they have that...that's their job to decide what's the best interest. [LB744]

SENATOR SEILER: Thank you. [LB744]

SENATOR CHAMBERS: Just along the line... [LB744]

SENATOR SEILER: Yes, Senator. [LB744]

SENATOR CHAMBERS: I wasn't going to touch it, but along the lines of what you were getting at--and this is not just what Senator Seiler was bringing up so don't connect mine to his--how can you determine that the adoptive parents were not intending to violate these agreements they made in order to procure the relinquishment? [LB744]

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SENATOR WATERMEIER: You can't. You just cannot other than the fact that they try their darnedest, in my opinion, as I have seen it. It's a three-way arrangement. You got the adoptive parents, the biological are involved in that, and the child. [LB744]

SENATOR CHAMBERS: Well,... [LB744]

SENATOR WATERMEIER: And you're right, you see it exactly right, Senator Chambers, you do. But in the forms that I've seen, they sign off on every paragraph, they sign off. And we're putting a lot of trust in these attorneys in those positions to make sure they're doing their job, there's no doubt about it. [LB744]

SENATOR CHAMBERS: But to me those things don't mean anything in these kind of situations because often somebody who is going to give up a child is under some kind of stress and can be easily placed under duress. Certain offerings can be made to them, certain representations can be made to them, and they probably won't have legal counsel of their own but the others will. So I always use the example, and the lawyers will understand this, the analogy of an adhesion contract which, no matter what the final agreement is on paper, if it's an adhesion contract where one side has all of the marbles, the court will strike it down. And the one who has got the advantageous position cannot say, but this person signed it and agreed. The court will say, well, under the circumstances, there was no meeting of the minds; all of the things that are necessary to have a contract, they're not present. I'm saying all that not to get you to respond to it but to make my point if I can. We're formulating policy here. We're not a court taking testimony and saying only admissible probative evidence can be accepted. So we can speculate, we can theorize, we can create hypotheticals. If it could be determined that fraud was utilized in order to obtain the relinquishment, that matter could not even be raised to challenge any of these areas where it said the challenge cannot occur, the way the bill is drafted. It's what I'd call...analogize to an adhesion contract. [LB744]

SENATOR WATERMEIER: Adhesion? [LB744]

SENATOR CHAMBERS: You've got a lawyer and I don't. I'm poor. I can't take care of my child, but I don't want to lose contact with my child. And so you're going to take advantage and say, well, I'll make sure that you can maintain contact, the child will have a good education, we'll consult with you on the school the child ought to attend. All of the things that they saw were of concern to me, they agree, but they don't intend to keep the agreement. And then after the adoption has gone through, then the adoptive parents can say, we're not going to do any of that, and you have no recourse to go anywhere, even if you can establish fraud. But the lawyers, whoever comes up here, will I think remember the basics of what I said and we can discuss it. But I want you to be aware of what I'm looking at as we formulate this policy because I'm not

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convinced this is in the best interest of the child. I think it is the kind of thing that might lead to the taking advantage of people who are not in a position to protect themselves or their child. [LB744]

SENATOR WATERMEIER: I appreciate the comment and I was exactly right there when I first started studying this. I just said there's just no way you'd want to write this without having that stand up in court. I just couldn't get myself around it until I... [LB744]

SENATOR CHAMBERS: What persuaded you? [LB744]

SENATOR WATERMEIER: When I really learned what was going on behind...when I...I guess I'm beginning to trust the system that what goes on behind this three-legged stool, I mean, you have the adoptive parents and that biological mother or parent and then the child and the future child--in many cases it hasn't been born yet--when they're entering into these decrees. I've just come to appreciate the process, but I'm certainly open for discussion on this. I knew this very issue would be the big contentious point of the bill because it was for me. I mean I appreciate it. It was for me. [LB744]

SENATOR CHAMBERS: And that's really that I have of you. [LB744]

SENATOR WATERMEIER: Okay. [LB744]

SENATOR CHAMBERS: Thank you. [LB744]

SENATOR SEILER: Thank you. [LB744]

SENATOR WATERMEIER: Thank you. [LB744]

SENATOR PANSING BROOKS: We've got another question. [LB744]

SENATOR SEILER: Oops. Senator Ebke. [LB744]

SENATOR EBKE: Thanks. Okay, so is it safe to say that the questions that are before us are these: Should the side contact agreements, whether it's an open adoption or whatever, be cause for nullification of an adoption? Is that one of the questions we're addressing? And is a relinquishment agreement or a decision to relinquish, is that contingent on the side agreements? I mean it seems to me that those are the questions that you have to get to. If it's contingent on the

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side agreements, then, you know, then perhaps, you know...and I guess it flows the other way. I mean, if they are actually contingent on those agreements, then perhaps there is some of the fraud that, you know, could be argued that there's some of that fraud. On the other hand, if the relinquishment is separate, then these side agreements, you know, may not perhaps be cause? Is that...am I getting to where you're trying to go? [LB744]

SENATOR WATERMEIER: Yeah. But at the...if the side agreements are so far off and just detached from the adoption agreement, then they would probably have...wouldn't carry any weight anyway. So I can't exactly explain that legally, and I'll let the process go, especially with the testifiers that we have today here. And maybe on the closing, if we could clean it up a little bit and talk about it, I'd be glad to do that. But let's let the testifiers go behind me, I'd say. [LB744]

SENATOR SEILER: Nothing else. Are you going to be back for closing? [LB744]

SENATOR WATERMEIER: I will. I'm...Appropriations is shut down today, so I'll stick around. [LB744]

SENATOR SEILER: Some people have all the... [LB744]

SENATOR WATERMEIER: We do, all the time. [LB744]

SENATOR SEILER: Proponent testimony. [LB744]

SUSAN SAPP: Good afternoon, Senator Seiler and committee members. I'm Susan Sapp. I'm a senior partner at Cline Williams law firm, Lincoln, Omaha. I've been in private practice for about 26 years with a significant portion of my practice in the area of adoption. I've represented hundreds of birth mothers and hundreds of adoptive families, but primarily birth fathers over the last...or birth mothers over the last 26 years. I'm a fellow in the American Academy of Adoption Attorneys. I'm one of two attorneys in the state that's received that designation. Kelly Tollefsen is the other. She was going to join us today and speak in support of LB744, but she was unable to make it due to an illness in the family. Why do we need LB744? The Supreme Court's ruling in an unfortunate case last May, is a highly unusual case, proves the point that bad facts make bad law. LB744 codifies the law and the practice in the area of adoption as it has been for the entirety of my career and at least 30 years since the McCormick case. It is not new. It is exactly how things have been working. Adoptions right now, because of the Supreme Court decision in May, are legally unstable. That's the case that Senator Watermeier referenced. The Supreme Court has indicated it will not recognize the validity of the type of open adoption we do every day where

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birth parents and adoptive parents know each other and work together for the good of the child. We need a statute in order to continue to have safe and stable adoptions in Nebraska, the type of adoptions that are best for children. I've researched similar laws in other states that govern communication and contact postplacement. Senator Krist had the question about why the consent of a 14-year-old: because the adoption statutes require a child 14 and older who is the subject of an adoption to actually consent to the adoption. So if they need to consent to the adoption, they should consent to the communication and contact agreement. That arises most frequently in connection with step-parent adoptions, but might also arise in connection with other adoptions. In terms of the communication and contact statutes in other states, there's a variety across the board. Some states have no communication and contact statutes, some have some that are enforceable, some have some that are not enforceable. What I found that I thought was very significant that's in some states like California, Washington, Arizona, Virginia, these communication and contact statutes have been in place for 20-25 years and there have been one or two lawsuits to enforce these communication and contact agreements over those years. Most of the time, the disagreements do get resolved through mediation, negotiation, communication with the adoption attorneys that worked with the folks or the adoption agency that worked with the folks. Adoption is a collaborative process; it is not an adversarial process. Senator Chambers, I wanted to respond to something you said about birth mothers not being represented. They are always represented if the adoption is being done properly, and it is my opinion that it's legal malpractice for an attorney to take a relinquishment from an unrepresented birth mother. So they do have legal representation and I feel strongly that they always should. So it is a collaborative process. We don't represent adoptive parents so we can go get a child and save it from these birth parents. Birth mothers are some of the smartest, strongest, bravest people I've ever met in my life and they are not to be minimized. They are extremely important in this process and extremely important people making really hard decisions for their child. [LB744]

SENATOR CHAMBERS: Excuse me. [LB744]

SUSAN SAPP: Yes, sir. [LB744]

SENATOR CHAMBERS: When the red light comes on, you have to stop. But one of us can... [LB744]

SUSAN SAPP: Okay. [LB744]

SENATOR CHAMBERS: ...engage you so that you can... [LB744]

SUSAN SAPP: Okay. [LB744]

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SENATOR CHAMBERS: ...so in order that we do it according to the book. [LB744]

SUSAN SAPP: Thank you. [LB744]

SENATOR CHAMBERS: I think I heard you say that a birth mother usually is represented and it's the desirable or accepted way. Is every birth mother represented? And you wouldn't be able to answer that. [LB744]

SUSAN SAPP: I can only speak to my experience, which is yes, and I have publicly stated and I've stated here today that I think it's legal malpractice to not have her be represented. I think that's one of the problems that I see in the case that Senator Watermeier talked about that prompted us to be here today is that there wasn't representation on both sides. So... [LB744]

SENATOR CHAMBERS: So then what I said was borne out by the very case that we're talking about. [LB744]

SUSAN SAPP: It is an unusual case, Senator, and your point was borne out, but it was unusual and it shouldn't happen that way and typically it does not. [LB744]

SENATOR CHAMBERS: But what the policy is to deal with are those unusual cases because the only time a controversy arises is when there's a disagreement. If everything went the way people wanted it to go, we wouldn't need courts, lawyers, or anything. But I think it was James Madison who said that if this were a society of angels we wouldn't need laws. Here's what I'm trying to get at, and you're a lawyer so I want to strip away some of the things I was saying to Senator Watermeier so we can get right to the nub. [LB744]

SUSAN SAPP: Sure. [LB744]

SENATOR CHAMBERS: If a person or a couple who are going to adopt make all these representations to the birth mother about how there will be the communication and so forth, if this law is in place, they can violate that, that very day, and there is no recourse for the birth mother at all. They can even say, we're not going to do any of this, and there's nothing you can do about it. Can that be done if this law is in place? [LB744]

SUSAN SAPP: I guess you can't prohibit human behavior to do the wrong thing, Senator. [LB744]

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SENATOR CHAMBERS: But here's the thing. You...and she, the birth mother, has no recourse, does she? [LB744]

SUSAN SAPP: Not under the scenario that you're talking about, but that has not been my experience. Everybody who adopts in the state of Nebraska has to be home studied, they have to go through an extensive process, not... [LB744]

SENATOR CHAMBERS: Not to be rude and interrupt, but I don't want to make you answer more than what I'm asking. [LB744]

SUSAN SAPP: Okay. [LB744]

SENATOR CHAMBERS: This law cannot be put on the books based on your experience. Are you the only lawyer who practices in this area of the law? [LB744]

SUSAN SAPP: No, sir. [LB744]

SENATOR CHAMBERS: How many such lawyers, if you can make an estimate, would there be in Nebraska doing this kind of work? [LB744]

SUSAN SAPP: Primarily folks who identify themselves as adoption lawyers in that area, there's probably a handful. [LB744]

SENATOR CHAMBERS: How many? [LB744]

SUSAN SAPP: A handful. [LB744]

SENATOR CHAMBERS: Okay, a handful. And you don't know how all of them conduct their affairs. [LB744]

SUSAN SAPP: Well, I pretty well do, Senator, with all due respect. I've written every adoption manual for the bar association; I've done virtually every training in the state. [LB744]

SENATOR CHAMBERS: That doesn't get to what I'm talking about. [LB744]

SUSAN SAPP: And people... [LB744]

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SENATOR CHAMBERS: The Bible tells people the way they should behave, but there are still wars, murders, rapes; everything that it says don't do, they still do it. So the fact that you wrote a manual doesn't indicate that even somebody who read it is going to follow it. I'm talking about the realities and not theory at this point. [LB744]

SUSAN SAPP: Sure. [LB744]

SENATOR CHAMBERS: My concern is with people who can be taken advantage of. [LB744]

SUSAN SAPP: Me too. [LB744]

SENATOR CHAMBERS: So here's what I want to know. When none of this can go to court, there is no enforcement, what we're talking about is an agreement that means nothing and it cannot be enforced. [LB744]

SUSAN SAPP: It's a... [LB744]

SENATOR CHAMBERS: That's what we're talking about with this so-called agreement, isn't it? [LB744]

SUSAN SAPP: It is a gentlemen's agreement, gentlepeople's agreement, and it...but adoption is a complete severing of rights. It has to be, Senator. [LB744]

SENATOR CHAMBERS: I'm not talking about that yet. [LB744]

SUSAN SAPP: Okay. [LB744]

SENATOR CHAMBERS: I want to focus on this agreement. [LB744]

SUSAN SAPP: Okay. [LB744]

SENATOR CHAMBERS: It really means nothing, does it? [LB744]

SUSAN SAPP: It is an agreement of trust. [LB744]

SENATOR CHAMBERS: It doesn't bind anybody, does it? [LB744]

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SUSAN SAPP: In terms of civil enforcement, no, sir. [LB744]

SENATOR CHAMBERS: Do you...have you heard of a man named Ronald Reagan? [LB744]

SUSAN SAPP: Yes, sir. [LB744]

SENATOR CHAMBERS: Did you hear of...he quoted somebody else: trust but verify. [LB744]

SUSAN SAPP: I recall. [LB744]

SENATOR CHAMBERS: Well, as a policymaker I cannot trust even you, and I'm not saying you're untrustworthy. We are putting...being asked to make a law... [LB744]

SUSAN SAPP: Yes. [LB744]

SENATOR CHAMBERS: ...that applies to everybody. [LB744]

SUSAN SAPP: Yes. [LB744]

SENATOR CHAMBERS: If actual fraud can be shown to have been used to procure the relinquish of rights by a birth mother who is not represented, will that fraud and the inducement nullify the relinquishment? [LB744]

SUSAN SAPP: Probably, because you're talking about a different set of facts, an unrepresented birth mother. Fraud, duress, coercion is always going to be actionable up to two years after an adoption decree is entered. So, yes, under those facts I think it would be, but to say breach of contract without fraud, no. [LB744]

SENATOR CHAMBERS: Can...you probably can't envision this because you live in an ideal world. Can you envision an inequality between the parties to this adoption? I don't mean as far as their lawyers. Well, here's...I'm not going to ask you any more questions. I'll make up my own mind based on what I've heard you say, from reading this. But without any recourse to a court, my vote is not available for this bill. And I don't think I can get the questions answered that I'm asking because it will sound like, based on the way you're responding, I'm questioning your integrity, which I'm not at all. But I'm not getting the questions answered that I have in mind. So I don't have anything else, Mr. Chairman, thank you. [LB744]

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SUSAN SAPP: And, Senator, I didn't mean to be evasive if...I'm happy to answer anything you have, sir. [LB744]

SENATOR CHAMBERS: That's...no, I'm not saying you were evasive. I probably can't frame the questions appropriately. So I don't want us to just go back and forth... [LB744]

SUSAN SAPP: Okay. [LB744]

SENATOR CHAMBERS: ...talking past each other. That's what it is. [LB744]

SUSAN SAPP: Okay. [LB744]

SENATOR SEILER: Any further questions? I have a couple. [LB744]

SUSAN SAPP: Yes, sir, Senator Seiler. [LB744]

SENATOR SEILER: One of the things in paragraph (4) is you set out these different things that cannot be used for grounds. You mention the statute of limitations on duress and fraud. I'm making a suggestion that maybe when it says that these shall not be grounds for setting aside the adoption decree subject to the statute of limitations as applicable. [LB744]

SUSAN SAPP: That would be good. That would be a good addition. [LB744]

SENATOR SEILER: The other one is that paragraph (5) on line 24 is that shall not enter into...under this section may not enforce by civil action this agreement. I'm wondering if I...when two parties can't get together, I know who is in the middle. I did enough divorce cases in my 49 years. [LB744]

SUSAN SAPP: Right. [LB744]

SENATOR SEILER: You know, you and I both know who is in the middle and it's the child. [LB744]

SUSAN SAPP: Yes. [LB744]

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SENATOR SEILER: So my question is, rather than outlawing a court, which I have no problems doing, but a question of mediation, which has become very prominent, rather than an agreement may not be enforceable by civil action, but shall be referred to mediation by the county court or something like that because, if they do have absolute "I said this, you said this, but I've changed my mind," and now we're interpreting it to mean this and you're screwed because we've got the written agreement and we've got control, I think in that scenario you need the mediation to bring those people back to the middle. [LB744]

SUSAN SAPP: I think mediation is an excellent usage. And my understanding from other states that have these statutes is that mediation is where these things are resolved because then the parties can focus on the best interest of the child. [LB744]

SENATOR SEILER: I agree. Those are the...my recommendations. And again, I have no problem, once the statutes run on all the documents,... [LB744]

SUSAN SAPP: Right. [LB744]

SENATOR SEILER: ...you can't touch them. [LB744]

SUSAN SAPP: Exactly. [LB744]

SENATOR SEILER: Whether this agreement is violated or the information sharing agreement is violated or not, it's not grounds to go back into the adoption. [LB744]

SUSAN SAPP: I agree. [LB744]

SENATOR SEILER: That would just be a holocaust out there. [LB744]

SUSAN SAPP: Yes, yes. Any other questions? [LB744]

SENATOR SEILER: Thank you very much. [LB744]

SUSAN SAPP: Thank you. [LB744]

SENATOR SEILER: Next proponent. [LB744]

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JEANETTE STULL: Good afternoon. My name is Jeanette Stull; it's S-t-u-l-l. I'm an attorney here in Lincoln practicing at Perry, Guthery, Haase, and Gessford. I am testifying in support of LB744 in my capacity as an attorney who does practice in the area of adoption law. But I do also happen to be the attorney who defended the adoptive parents in the habeas corpus petition that resulted in the Supreme Court case that we had back in May of last year, so I have some pretty firsthand, personal knowledge of what can happen in these cases. I support this legislation because in my experience virtually all private adoptions that happen here in Nebraska could be invalidated if the birth parents change their mind before the adoption decree becomes final because of open adoption agreements, representations, understandings. Every infant adoption that I've ever been involved with in my practice has been open to some extent, whether it's just knowing the identities of the parties who are involved, the parents who are involved, to exchanging pictures to text, e-mail, social media, letter updates to outright visits. So our state should not be in the business of outlawing what everybody already does and what everybody will do no matter what. My takeaway from the Supreme Court Opinion that I was involved in is that any time I am representing adoptive parents from here on out, I have to advise them that even if they want to have ongoing contact with the birth family and they think that that would be in the child's best interest, that I have to tell them they can't do that, they can't talk to a birth mother and say, I want you to have some role in this child's life after this is all said and done. I have to tell them that they have to say there will be no contact at all even if they want that contact. So the status quo essentially requires adoptive parents to lie to birth mothers and to say that I'm not going to let you have any contact even though I want to have contact and think that that would be in the child's best interest. So the natural result of this rigmarole is that birth parents who may really wish to follow through with an adoptive placement for their child are dissuaded from doing so because they're operating under the false assumption that there will be no contact when everybody wants there to be contact. So in sum, both adoptive parents and birth parents here in Nebraska want the ability to have open adoptions, and they're going to do them regardless. So I urge you to change the law and adopt LB744 to make it possible to have these type of open adoption agreements that everybody has without jeopardizing the placement of adoptive children. Any questions from anyone? [LB744]

SENATOR SEILER: Senator Chambers. [LB744]

SENATOR CHAMBERS: I'm going to try again. [LB744]

JEANETTE STULL: Sure. [LB744]

SENATOR CHAMBERS: And as I stated, maybe I'm not framing the questions correctly to convey what I have in my mind that I'm trying to get a response to. I'm not trustful of human beings in general who are talking about the welfare of another person who is not old enough or

capable of looking out for his or her interests. There could be a kind of collusion between birth parents and adopting parents for whatever reason that would not be in the best interest of the child at all. And if, after all of these, all this rigmarole has been gone through, the meaningless, perfunctory agreements that people are going to go through to make it look like it's on the up and up, and the interest of the child is not even considered. And maybe if somebody who is objective would look at it would say, this is not in the best interest of the child, the relinquishment under these terms are not in the best interest of the child, if you are not going to properly provide for this child, we're going to go into court and have your parental rights terminated, then, if that is determined, then those who have given up their parental rights are clearly out of the picture, then you look only at the suitability of those people who say, we want to adopt this child. But there would be no collusion between two thieves, so to speak. And I look at what worst thing can happen where a child is involved rather than hope for the best and cross my fingers but say, once the deal is struck, I have nothing else to do with it because I got my money, I'm out of it now. They can go their own way and I can't even be brought back into it because there can be no challenge of anything that was done in any court. Now you think, based on what I heard you say, that despite all considerations of that kind, in order to have stability and finality, then this law should be...this language should become law and these people can make these agreements about the contact when the adopting parents have no intent to do that at all. See, you spoke of people who may mutually want the contact. I'm looking at it from the standpoint of some who don't want it and the law is telling them go ahead and make these agreements, procure the relinquishment, and write any agreement you want, whatever they want, agree to it, and then violate it and there's nothing they can do. It can't even go to court. Is what I'm saying possible under the language of this law or is it impossible? And if it's impossible, you'd have to involve a court, it seems to me, but you can't. [LB744]

JEANETTE STULL: I understand that concern. My reading of this legislation is that the fact of creating an open adoption agreement, whether it's a very structured, on-paper, signed agreement or just general representations about we want you to be part of this child's life, that cannot be civilly enforced through the courts. What you are talking about though, Senator Chambers, is a situation where somebody has engaged in fraud. You have...that is a situation where you have adoptive parents who say, I want you to be part of this child's life, but we really don't intend on following through with that. If you have a situation that is truly fraudulent, you would be able as the birth parent to go into court to attack the signing of the consent and relinquishment and the validity of the consent and relinquishment on the grounds of fraud. That is not changed by this legislation. [LB744]

SENATOR CHAMBERS: How are you going to prove it when this says that any violation of that agreement cannot be a basis for anything? How are you going to get it in court? The court would look at the law and that person's lawyer and say, this is an agreement that's not enforceable, it doesn't mean anything even when it's entered into. [LB744]

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JEANETTE STULL: And I think that's the...what Senator Ebke was talking about I think sort of dovetails into that, that why this can't be court enforceable is that things change. And so if you have over a period of time...there are good reasons why we have to change what we originally agreed to. Birth mother is now hooked on drugs and we don't think it is appropriate for her to exercise visits with the child anymore, those are the...when you're talking about a 19-year span of life for a child, we can't have the court interjecting all of the time into...or have the potential to interject all of the time. Once that decision has already been made that these are the adoptive parents and they're the parents, it would be like somebody coming into court and saying that my husband and I have to let somebody visit our child when we don't want to. There has to be some sanctity with that parental relationship. [LB744]

SENATOR CHAMBERS: But here's...see...but... [LB744]

JEANETTE STULL: But you can show over time and circumstances that...prove that there was fraud because the minute the consent and relinquishment is signed we no longer allow you to see them. There are ways to prove those things. That was...I was trying hard not to get into the facts of our actual case. But there are some lessons to be learned there about the kinds of proof that you can have to show whether or not there was fraud in what we agreed to and then what we followed through with. And in our particular case, the court looked at that evidence and said there was no fraud, there was no coercion, but there was an agreement to have an open adoption and that's what I'm going to ding the consent and relinquishment on. So there are ways to prove. [LB744]

SENATOR CHAMBERS: And that part I'm not looking at because that is what the court said. But here's...see, people always want to put the fault on the birth mother. Suppose the adoptive parents are on drugs. Can the birth mother use that as a basis? And they decide that they don't want the visitations because the birth mother may decide she doesn't want her child involved in something like that. See, it works...you all are accustomed to looking at it from one side. I look at the underside of the garment and I still haven't become convinced. If the law stays just as it is now, are you saying that your belief is there will be no more open adoptions because people's word cannot be counted on and they will violate these agreements, that you can count on that happening? [LB744]

JEANETTE STULL: What I take away from the Supreme Court case is that adoptive...the attorneys for adoptive parents are going to advise them that there can be no agreements, no representations, no even insinuation that there's going to be any contact after the fact. Now they could change their mind after the fact, or not change their mind but follow through with what they really wanted anyhow and allow that sort of contact after the consent and relinquishment is signed. But you can't make any sort of representations beforehand because then you have just

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turned that relinquishment into a conditional relinquishment conditioned on the retention of some parental rights. So I think the natural result, at least it will be in my practice, is that there...if the law stays the way it is, I will tell adoptive parents that you need to tell birth parents that they will have no contact, period. [LB744]

SENATOR CHAMBERS: There won't be open adoption. [LB744]

JEANETTE STULL: Right. [LB744]

SENATOR CHAMBERS: Unless everybody is, indeed, going to abide by it, then it never is challenged, it never goes into court. [LB744]

JEANETTE STULL: Right. [LB744]

SENATOR CHAMBERS: But that's not realistic. Everybody would have to be a person of his or her word and we know that's not going to be the case. And since we know that's not going to be the case, I have to look at the side of the one who is going to have the least going for herself, himself, or themselves. See, the ones who are going to do the adopting will always be able to have representation. They always will have, just like when it comes to what they call surrogate parents. A rich woman will never be a surrogate and a poor woman will never have a surrogate. It always goes one way. The poor woman is going to be the surrogate for the rich woman always, and this society has a penchant for viewing things from one side and it's always down the nose at the one who is least able to protect himself or herself or the one who is most vulnerable. And I'm not saying there's anything unethical about you or any other lawyer. But I'm just saying my point of view is entirely different based on my experiences, the observations I have made, I can say the way I myself have been treated, even when I was going to law school where there is supposed to be equity and it wasn't for me. And I'm not going into the facts of that. But if in the place where they're teaching equity and he or she who comes to equity cannot come with unclean hands but the law school can have unclean hands and you've got no recourse, I'm looking at this, understanding everything you said, understanding what the other witness said, understanding what the Supreme Court ruled, but maybe the concept of open adoptions is not a good policy to have in a society. Maybe that's what it comes down to and it might be more arduous, more onerous. But if you can persuade somebody to go into court and relinquish his or her parental rights in that fashion, then that does give a clear, bright line when legal relationships, that which is recognized by the law, is severed and it cannot be rejoined. But when these kind of areas, these issues where so much in the way of human perfidy, unreliability, changeableness are ruling, you can expect problems. So I'm saying all these things in order not to give anybody the impression that I've been persuaded that this law...that these words ought to become the law. And I understand what the Chairman said about adoptions--once they're done, that should be it. But,

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see, I don't even agree with that. But you answered the best you could the way I framed the question. That's all that I have. [LB744]

SENATOR SEILER: Okay. Further questions? You heard me ask the question about Section...or line 24, section (5), which it says that you...this agreement, referring to the open contact agreement, cannot be enforced by civil action. [LB744]

JEANETTE STULL: Yes. [LB744]

SENATOR SEILER: I find, when people don't have relief, from my many years of practice it leads to more problems than could be solved. I'm wondering if...what your opinion would be to have an application to the county court or juvenile court to ask for mediation--be a lot cheaper. You'd get a result. People both could come in and express what they understand and how it's being treated, have a third person make that decision. [LB744]

JEANETTE STULL: I agree that mediation would be a very good compromise between this position and full-on court intervention in what should be a traditional parent-child relationship. I think that's a good way to get everybody on the same page and solve some of the problems of communication and disagreement on things. I think that's a good idea. [LB744]

SENATOR SEILER: Because having raised a daughter and when they turn about 13 they become very manipulative... [LB744]

JEANETTE STULL: I've got one of those (laughter). [LB744]

SENATOR SEILER: ...and you become the dumbest person in the world as a parent until they turn about 21, 22, and then you're the smartest person. But, yeah, it just seems to me there's got to be a relief of the pressure on both sides with something and I don't want a civil. I don't want to be able to go back and destroy a decree. I don't think that's right. But the separate agreement, it seems to me like there ought to be a third party involved to put that back into what was intended to start with. [LB744]

JEANETTE STULL: I would support that. [LB744]

SENATOR SEILER: Senator Ebke. [LB744]

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SENATOR EBKE: Just for the record, could you go through the chronology of a typical adoption process from, you know, prerelinquishment to the final adoption decree, the high points? [LB744]

JEANETTE STULL: Thumbnail? And I'm assuming you want this in the context of infant adoption... [LB744]

SENATOR EBKE: Um-hum, sure. [LB744]

JEANETTE STULL: ...as opposed to a step-parent adoption? [LB744]

SENATOR EBKE: Sure. Sure, yeah, yeah. [LB744]

JEANETTE STULL: I mean things are a little different depending on the circumstances. First of all, I have to say, I have never dealt with agencies and agency adoptions, so don't expect me to be an expert or to be able to speak to what happens in the agency situations. But in private adoptions, generally my experience has been attorneys get involved while the child is in utero, involving representation of both sides the vast majority of the time. In our situation that was a problem. Agreements are reached and everybody...not agreements, but everybody talks about what their plans are. And once the birth mother and birth father make those decisions, you sit around and wait basically. There can be some notices that have to be done. But assuming that everybody is involved and consents to the adoption, once the child is born, consents and relinquishments can be signed no sooner than 48 hours after the child is born, so we have a little bit of a waiting period after the child is born. At that point in time, consents and relinquishments are signed. The child generally goes home from the hospital with the adoptive parents. Home studies have already been done on the adoptive parents ahead of time. There's also postplacement home studies where the home study agency comes in and looks at how things are going when the child is in their care. The adoption cannot actually be finalized until the child has been in the care of the adoptive parents for at least six months. So that's where we sort of have this no-man's land that's been created under Nebraska statute and described pretty thoroughly in Nebraska case law of the time between the consent and relinquishment being signed. And then that at least six-month period of time until it can be finalized is when these kinds of things can happen that resulted in the case that we have. Does that answer your question relatively well? [LB744]

SENATOR EBKE: Pretty well, yeah. [LB744]

JEANETTE STULL: Okay. [LB744]

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SENATOR EBKE: Thanks. [LB744]

SENATOR SEILER: Any further questions? [LB744]

SENATOR CHAMBERS: Just one,... [LB744]

SENATOR SEILER: Yes. [LB744]

SENATOR CHAMBERS: ...not complicated. You pointed out that there would be the home studies of the potential parents, the adoptive parents. [LB744]

JEANETTE STULL: Right. [LB744]

SENATOR CHAMBERS: Don't take this as a disparaging remark, but it's a question that I have. We've looked at that side to be sure that these people, if they wind up with the child, are going to do the right thing and so forth. Is there ever any mental evaluation of the birth mother to be sure that she understands and is capable of making that decision, that she's not under duress from her parents or anybody else? Is that done? Or is she free to just say, I relinquish whatever parental rights I would have? [LB744]

JEANETTE STULL: There is nothing in statute that requires any sort of counseling for the birth mother or the birth parents. [LB744]

SENATOR CHAMBERS: Okay. [LB744]

JEANETTE STULL: Best practices are, and my experience has been, that the vast majority of the time there is legal counsel representing the birth parents and certainly counseling that is recommended, strongly suggested, to some degree shoved down her throat, to make sure that she has the chance to think about and talk about her adoption plan with a counselor. [LB744]

SENATOR CHAMBERS: In a different... [LB744]

JEANETTE STULL: But there's nothing statutorily. [LB744]

SENATOR CHAMBERS: In a different area of the law, I'm aware of cases where lawyers represented men who were charged with a capital offense. Based on the lawyer's representation, or lack thereof, the person wound up on death row and luckily was exonerated later and the

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lawyer was found not to have done the job properly. That's why I was wondering if there was some independent, intervening person so it wasn't just lawyers back and forth and maybe a vulnerable birth mother and the adoptive parents who are well represented. I can't help it, but I always have to look at the side which is disadvantaged, and I see the birth mother as the one disadvantaged in this. And I'm not faulting you or anybody else. I just look at life differently. But that's all that I have. [LB744]

SENATOR SEILER: Okay. Anything... [LB744]

SENATOR EBKE: One more. [LB744]

SENATOR SEILER: Senator Ebke. [LB744]

SENATOR EBKE: One more question: At what point do these contact arrangements, contact agreements, open adoption agreements, whatever, at what point in that chronology that we were just talking about, at what point did those become official? What point are they signed? Are they signed before birth, after birth as part of the take the baby home and, I mean, you know... [LB744]

JEANETTE STULL: Well, as an attorney doing primarily private adoptions, although I have been involved in a few "fos" adoptions, in a private adoption I would never have a signed written agreement because I know it's not enforceable. So it only comes up like the situation that I was just involved with, with the Supreme Court, where it's just sort of this general understanding. The birth parents and the adoptive parents talk about it either throughout the pregnancy, or even after, about this is how we foresee. It's never a cut-and-dry agreement because we all know that's not a legally enforceable agreement and so we don't, or at least I have never drafted up one. Now in a "fos" adopt situation where you can get court approval and you have to have a written agreement, I have certainly done those and that's been...that's always been something that has largely been handled by HHS before it even lands in the attorney's lap for finalization. [LB744]

SENATOR EBKE: Great. Thank you. [LB744]

SENATOR SEILER: Thank you very much for your testimony. [LB744]

JEANETTE STULL: Thank you. [LB744]

SENATOR SEILER: Next proponent. Next proponent. [LB744]

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KIM ANDERSON: (Exhibit 1) Good afternoon, Chairman Seiler and committee members. My name is Kim Anderson. I'm the pregnancy, parenting, and adoption program director for the Nebraska Children's... [LB744]

SENATOR SEILER: Would you spell your last name? [LB744]

KIM ANDERSON: Oh, I'm sorry. A-n-d-e-r-s-o-n. [LB744]

SENATOR SEILER: Thank you. [LB744]

KIM ANDERSON: Um-hum. And as I was saying, I'm the pregnancy, parenting, and adoption program director for the Nebraska Children's Home Society, which is a statewide nonprofit agency across the state in which we have provided an array of children and family services since 1893. I also serve as the president of the Nebraska Adoption Agencies Association and am testifying on behalf of the member agencies. NAAA is a coalition of 11 nonprofit licensed child-placing agencies. Those agencies include the Catholic Charities of the Omaha Archdiocese, Child Saving Institute, Lutheran Family Services, Adoption Consultants, Jewish Family Service, Nebraska Children's Home Society, Bethany Christian, Avalon Center, Holt International, Compass, and the Nebraska Department of Health and Human Services. I am here today in both capacities to provide support for LB744. A poll of member agencies indicated that all members, with the exception of the Nebraska Department of Health and Human Services who abstained, are in support of LB744. Adoption, in its most basic definition, is the legal transference of parental rights from one set of parents to another set of parents who are able to assume those rights. There are numerous statutes that govern the practice of adoption to ensure that adoption is a permanent plan for a child, while protecting the rights of the birth parents and the adoptive parents. The important feature of LB744 is that it recognizes the value of the open adoption relationship and does not impose any type of court enforcement. The purpose of a written agreement is to provide a starting point for a relationship that typically involves pairing strangers together for a lifetime. This bill clearly defines that no adoption decree shall be set aside and no written relinquishment of parental rights or written consent to an adoption shall be revoked due to the failure of either the adoptive parents or birth parents to follow the terms of an open adoption contract agreement. A court enforcement of the open adoption relationship would diminish the value of the importance of the relationship between the birth family and the adoptive family. A court-enforced agreement would also lessen the permanency and stability of adoption which, again, by definition is a permanent plan for a child. Agencies in Nebraska, as required by the licensing regulations of the Nebraska Department of Health and Human Services, are required to provide education, support, and counseling to a mother and father on the option of adoption, the grief and loss involved in making such a plan, open adoption relationships, and the legal requirements set forth by the Nebraska statutes. This education also

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includes information that the open adoption relationship is not legally enforceable. Parents are encouraged to make the plan they believe is best for their child regardless if there is an ongoing open adoption relationship or not. Open adoption is about the relationships that are created and nurtured over the lifespan of all members of the adoption circle, which includes the birth parents, adoptive parents, and the adopted persons. Birth parents, adoptive parents, and adopted persons are provided with education and support by agencies who specialize in adoption on the value and importance of the relationship for all members. This education and support is available for forever. The Nebraska Children's Home Society has been privileged to be a part of helping build open adoption relationships for over 20 years and with hundreds of families, all without the need for any type of court enforcement. Thank you. [LB744]

SENATOR SEILER: I need to make a disclosure at this time. I was on the board of directors for Nebraska Children's Home Society for ten years, so that's open disclosure for conflict. [LB744]

SENATOR CHAMBERS: So that's why they spiraled into utter confusion. (Laughter) I'm just kidding. [LB744]

SENATOR SEILER: Anybody have any questions for... [LB744]

SENATOR CHAMBERS: I have one... [LB744]

SENATOR SEILER: Yes, Senator. [LB744]

SENATOR CHAMBERS: ...because this is in the bill. But it talks about...first of all, before I get to that, "while protecting the rights of the birth parents," what rights of the birth parent are being protected in this discussion we're having on this bill when the birth parent winds up with nothing and the adoptive parents wind up with everything? Because the adoptive parents, they, if you're talking about this written agreement which is unenforceable, can make all kinds of representations which they're not going to follow. But they have possession of the child and that gives them everything. What rights of the birth parent would be protected? [LB744]

KIM ANDERSON: Well... [LB744]

SENATOR CHAMBERS: And that's in the third paragraph, the last sentence. [LB744]

KIM ANDERSON: Yep. What I'm speaking to in that is the way that the current Nebraska statutes read of everything that agencies and attorneys have to follow in regards to how an

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adoption occurs in the state of Nebraska and what needs to be done according to the statutes in order for an adoption to occur. [LB744]

SENATOR CHAMBERS: So this is dealing only with agency adoptions, this information. [LB744]

KIM ANDERSON: Yes. So this information...and so attorneys and agencies have a different set of regulations. [LB744]

SENATOR CHAMBERS: Right. [LB744]

KIM ANDERSON: So agencies, we're also governed by the licensing standards. [LB744]

SENATOR CHAMBERS: So why are you supporting this bill, which is dealing in a way that you don't even deal? [LB744]

KIM ANDERSON: Well, because it does affect our placements as well. We've had...we call them open adoption agreements. They are gentlemen agreements, but we do have them written down just as a starting off point of we're all in agreement. This is kind of that starting point for relationship. So because of this Supreme Court ruling back in May, the concern now--and trust me, we're hearing this from attorneys across the state--that now they're questioning the validity of our relinquishments based on the fact that we do have open adoption agreements even though currently, and we've done this for...I don't know. I've been doing this almost 20 years. So for 20 years we've had on the open adoption agreements that the relinquishment cannot be contingent on whether or not the adoptive parents or the birth parents follow through on what they've agreed to, that starting off point, because by statute, by definition in the statute, relinquishments are not contingent on any promises, anything like that. So going back to your question though, we're here because we're starting to see and notice that when someone does, when a mom and a father, mom and a dad make that plan for adoption, they really are making this plan a permanent plan where by virtue, again, of the relinquishment they are no longer able to have any parental rights over their child. So because of that and because now of this Supreme Court ruling, there is concern that would a relinquishment, an agency relinquishment, now be able to be overturned because there is...you know, we do have the open adoption agreements. [LB744]

SENATOR CHAMBERS: So what is there for the birth mother to not go along with? It says if the agreement is violated by either one. The birth mother is not in a position to violate any aspect of it. [LB744]

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KIM ANDERSON: Of the open adoption agreement? [LB744]

SENATOR CHAMBERS: Right, this written agreement. [LB744]

KIM ANDERSON: Well, based on my experience, so I'll just...from an agency experience, when we get to that point, it really is a mutually agreed upon...the things that they agree to are things that they can say, yep, we agree on this. So there's multiple conversations, there's getting together, having conversations, talking about how each party envisions the relationship. [LB744]

SENATOR CHAMBERS: But here's what I mean, so that you don't have to answer more than I'm looking at. [LB744]

KIM ANDERSON: Okay, sorry. [LB744]

SENATOR CHAMBERS: The adoptive parents have the child, they have possession of the goods, and there is nothing that the one who relinquished the goods can do to violate anything. [LB744]

KIM ANDERSON: Well... [LB744]

SENATOR CHAMBERS: And I think they threw that in to nullify criticisms by saying that failure to abide by this agreement by either the adoptive parents or the birth mother. [LB744]

KIM ANDERSON: Can I respond to that? [LB744]

SENATOR CHAMBERS: The birth mother can't violate it. She doesn't have anything (inaudible)... [LB744]

KIM ANDERSON: Well, can I respond to that though... [LB744]

SENATOR CHAMBERS: Yes. [LB744]

KIM ANDERSON: ...because we've had multiple conversations about this in our...the Nebraska Adoption Agency Association. [LB744]

SENATOR CHAMBERS: But let's talk about... [LB744]

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KIM ANDERSON: I'm going to answer it. So... [LB744]

SENATOR CHAMBERS: Oh, okay. [LB744]

KIM ANDERSON: Yep. So what we have had, we have heard families come back to us and say--I'll use, say, if I was a birth parent--Kim does not stay in contact with us anymore, we agreed that we would be getting together once a month to, you know, spend whatever time, whatever that would look like, she's chosen not to do it anymore, what recourse do we have because we want her in our life but she is choosing for whatever reason not to follow it? So we've talked about the...I can't even talk today. [LB744]

SENATOR CHAMBERS: That doesn't make sense to me because they want to keep the child. Now they're not going to say, because she doesn't visit the child, then that voids the adoption. [LB744]

KIM ANDERSON: But when we're talking about having something, a court-enforced document, I can bring in families if you want to talk to families where they will say, we want to know what we can do then to have her commit to what she says she's going to commit to. Now does that happen every time? Absolutely not. But the difference in agency adoption and when we're talking about the mediation before, that's what agencies are designed to do. We are designed to be there to support them through, you know, difficult times, through the joys, help them work out whatever differences there are. When you start talking about going to mediation--we, again, had this conversation with NAAA--our concern is that birth parents are not going to be able to pay for the mediation most often. Who is going to be paying for that mediation? What does it do to the relationship? Which is why we've come to this point of, is it something that can be continued to work on and improved upon through the work of the agencies working with birth parents and adoptive parents if there are differences, if there are things that need to be worked out. [LB744]

SENATOR CHAMBERS: Okay, that's all that I'll hold you to... [LB744]

KIM ANDERSON: Okay, okay. [LB744]

SENATOR CHAMBERS: ...because I don't want to dominate the discussion. [LB744]

KIM ANDERSON: Okay. [LB744]

SENATOR CHAMBERS: Thank you. [LB744]

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SENATOR SEILER: Questions? Senator Williams. [LB744]

SENATOR WILLIAMS: I do have one question, Ms. Anderson, and you may not be able to answer it but I would like to hear from the attorneys here now, later. I think that the original witness testified that this piece of legislation is simply codifying what has been the practice of open adoptions before the Supreme Court decision. [LB744]

KIM ANDERSON: Correct. [LB744]

SENATOR WILLIAMS: Is that correct? [LB744]

KIM ANDERSON: That's correct. [LB744]

SENATOR WILLIAMS: Okay, thank you. [LB744]

KIM ANDERSON: Okay. [LB744]

SENATOR CHAMBERS: Wait a minute. That can't be left hanging. I have... [LB744]

SENATOR WILLIAMS: Oh, yeah, you just...hey, touche. [LB744]

SENATOR CHAMBERS: Now, remember, we go by our experience. We go by our experience. For decades and generations, segregation was all right until somebody made the proper challenge of it/to it in court. [LB744]

KIM ANDERSON: Sure. [LB744]

SENATOR CHAMBERS: So the fact that something has persisted a long time, even I think at the Declaration of Independence it talked about going along with these violations of your rights for a long time, kind of enure you to them and you continue to go along with it, but a point is reached where you have to say no more. So maybe what was going on was inappropriate all the time, but nothing brought to light just how bad it was for society to have that. I just want you to know that there is another view. [LB744]

SENATOR WILLIAMS: Someone must have jumped to the conclusion that they thought that's the direction I was going. [LB744]

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SENATOR CHAMBERS: I'm not talking to you. We don't argue back and forth on (laugh)...but that's all I have. Thank you. [LB744]

SENATOR SEILER: Senator, I remember you sitting across the table at the signing of the declaration (laughter). Thank you very much. Next proponent. [LB744]

SENATOR CHAMBERS: Now that is a touche, that is a touche. [LB744]

SUE MALLOY: (Exhibit 2) Good afternoon, Senator Seiler, Committee. My name is Sue Malloy, and that's M-a-l-l-o-y, and I am speaking today as a representative of Catholic Charities of the Archdiocese of Omaha. And my position at Catholic Charities is program director for pregnancy support services, adoption, and postadoption services. And it's been my privilege to work with children and families in the field of adoption and foster care for 25 years at Catholic Charities and also with the Nebraska Department of Health and Human Services system. Catholic Charities of the Archdiocese of Omaha has provided adoption services since 1923. In addition to pregnancy support and adoption services Catholic Charities provides extensive postadoption services to any adopted person, adoptive parents, or birth parents. For the past 20 years Catholic Charities has provided child-centered, fully open adoption, honoring the needs of the child, birth parents, and the adoptive parents. Catholic Charities takes our role as stakeholders in this legislative process very seriously and for that reason I am grateful for the opportunity to offer testimony today. Catholic Charities is offering testimony in support of LB744. We believe that LB744 will have significant positive impact on Nebraska's adoptive and birth families and most certainly Nebraska's children. Catholic Charities has long practiced adoption in a way that brings birth and adoptive families together for the shared journey ahead, recognizing that they must be the architects of their own plan. Catholic Charities provides our clients an avenue to find one another and together form a plan that allows them to place the needs of the child as their foremost mutual concern. If you ask five different people to define open adoption you will very likely get five different definitions. Sadly, much of what passes for open adoption is anything but. Catholic Charities does hold the belief that the goal of open adoption is to build relationships, lifelong relationships that have room to evolve and grow over time, with the child at its center. We believe the most important tool that child-placing agencies have to offer birth and adoptive families is preparation for the open adoption relationship. Our role is to help them define, flesh out, and to give voice to their expectations, roles, and responsibilities as birth and adoptive families as they prepare to commit to a lifetime, lifelong relationship. Invaluable to our work in open adoption is the open adoption covenant, or open adoption agreement, a document whose express purpose is to give voice to birth and adoptive families and that collective vision of their open adoption relationship as they plan for that lifetime commitment that lies ahead. When we want to be sure to remember something of significance, we write it down. When we know we will want to revisit that important information, we write it down. And when it's really important and we want others to know that

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we are committed to what we are saying, we write things down and we sign our names. This is the case with open adoption. [LB744]

SENATOR SEILER: Ma'am. [LB744]

SUE MALLOY: Sorry. [LB744]

SENATOR SEILER: You can go ahead, finish your last paragraph there. [LB744]

SUE MALLOY: Okay, thank you. This is the case with open adoption agreements. Open adoption agreements exist to create accountability for the things that birth and adoptive families promise one another and to provide the participants with the framework for building a new relationship. We stand firmly behind the belief that genuinely open adoption is most importantly about the relationship between birth and adoptive families and best honors the rights of adopted persons to have the security that adoption brings to their lives without losing their families of origin. Paragraph (6) of LB744 speaks to making it clear to all involved that the validity of an adoption is not tied to any participant's compliance with the open adoption agreement. For the 20-plus years that Catholic Charities has been practicing open adoption, this has always been stated in the open adoption covenant. The decision to place the child in adoption is a permanent decision and it creates permanence for children. As a child-placing agency our responsibility is to convey to the individuals that we serve in the clearest possible language, because we believe there is no place in child-centered adoption for anything less than secure plans for our children. Thank you. I appreciate the opportunity to speak. [LB744]

SENATOR SEILER: Questions? Seeing none, thank you for your testimony. [LB744]

SENATOR CHAMBERS: Can I make a comment? [LB744]

SENATOR SEILER: Yes. [LB744]

SENATOR CHAMBERS: I like that first paragraph on your second page, "When we want to be sure to remember," and all these other things about the value of writing things down and why. [LB744]

SUE MALLOY: Yes, Senator. [LB744]

SENATOR CHAMBERS: You stated it almost as well as Sir Francis Bacon. [LB744]

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SUE MALLOY: Thank you. [LB744]

SENATOR CHAMBERS: And he was not a fool. [LB744]

SUE MALLOY: Thank you, Senator. [LB744]

SENATOR CHAMBERS: Thank you. [LB744]

SENATOR SEILER: Next proponent. Next proponent. Seeing nobody moving, opponents. [LB744]

GEORGE BABCOCK: (Exhibit 3) Good afternoon, Senator Seiler and committee members. My name is George Babcock, B-a-b-c-o-c-k, and I am an attorney. I have been an attorney since 1989. I practice with my mother, Evelyn, and the primary area of the practice is adoption law. While we're not opposed to the concept of open adoption or contact agreements, per se, LB744, as it's drafted, fails to adequately address the complexity of the issues surrounding open adoption and contact agreements. It looks like this is a hasty response to the recent case of Monty S. v. Jason W.. And while that case invalidated that consent--you've heard about it already, I don't need to detail it--the Monty S. court concluded that the relinquishment was conditional and, therefore, was invalid. It relied on another case that the Supreme Court had decided back in 1984, which was McCormick v. State, and that case had similarly reached the same conclusion that because you had a conditional consent to relinquishment for the adoption or an open adoption, as the court characterized it in McCormick, that it was an invalid consent and, therefore, the consent was not valid and the adoption, therefore, was not valid. The response to McCormick was to enact 43-162 to 43-165, which authorizes judicially approved contact agreements and enforcement of those agreements and then modification of those agreements when it's necessary to serve the best interest of a child. It allows the prospective adoptive parent to enforce that agreement. And what LB744 does as a response to the Monty S. case is the opposite of what happened after McCormick. It creates a scheme that allows the prospective adoptive parent to make a promise that they cannot, in turn, enforce. And in adoption, particularly infant adoption, that is an area where people will say and do things, almost anything in some cases, to obtain possession of a child for an adoptive placement--the case of Gray v. Maxwell which was a 1980 case that shows that people even buy babies for that purpose. A right without a remedy is no right at all. The way LB744 is drafted makes it susceptible to being employed to defraud a legal parent of their parental rights in order to secure a child for adoption. And any amendment to the statutes that allows that I don't think is appropriate. They make no requirement for a parent contemplating adoption to be represented by counsel; and generally, and I would say almost all the time, men who are facing placing their children for adoption are not represented. My time is up. [LB744]

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SENATOR COASH: Thank you, Mr. Babcock. Senator Seiler mentioned to one of the testifiers possibly removing the language, taking away the remedy of a civil action and replacing it with the ability to go to a juvenile or a county court judge. Do you have any comment on that? [LB744]

GEORGE BABCOCK: Yeah, I actually think that makes a lot of sense with some exception. I would think that making that the first step of how to proceed with addressing a conflict regarding the open adoption agreement makes a lot of sense. But in certain circumstances, as Senator Ebke aptly pointed out in her questioning, things evolve over time and just because an agreement is proper in the first instance doesn't mean that it will stay that way over the entire 19-year course of the child's youth. And minority I guess was the term I was looking for. And in that case, if the parties can agree or mediate an agreement that serves the best interest of the children, that would be the ideal solution to that, so I think that would make sense to make that the first-tier solution. But as a secondary solution I think being able to enforce the agreement by going into court and seeking a judicial determination that it needs to either be enforced or modified under those circumstances if it's no longer proper. So in the case of somebody who is having issues, let's say...I think the example was somebody who was using drugs and is no longer in the proper position to be able to visit with the child, that might be a proper reason for modification. And at the same time, a person under that in those circumstances might not be making the best judgments in terms of mediation. So a judicial determination may be the only viable option under those circumstances. [LB744]

SENATOR COASH: Okay, thank you, Mr. Babcock. Any questions? Seeing none, we appreciate your testimony. [LB744]

GEORGE BABCOCK: Thank you. Thank you very much. [LB744]

SENATOR COASH: We'll take the next testifier in opposition. Welcome. [LB744]

TERESA SELLERS: (Exhibit 4) Good afternoon. My name is Teresa Sellers, and I am the birth mother in the recent Nebraska Supreme Court adoption case Sellers... [LB744]

SENATOR COASH: Would you mind stating and spelling your name for the record. [LB744]

TERESA SELLERS: Oh, I'm sorry. [LB744]

SENATOR COASH: That would be fine. [LB744]

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TERESA SELLERS: Teresa Sellers, T-e-r-e-s-a S-e-l-l-e-r-s. As I said, I am the birth mother in the recent Nebraska Supreme Court adoption case Sellers v. Wissmann, and I am here today to plead with you to make changes to the Nebraska law to protect innocent children from being the victims of coercive adoption practices in Nebraska. The proposed bill, LB744, is very one-sided, and if this bill is passed, coercion will become a normal occurrence to birth mothers and children will lose their natural families. A potential adoptive family will only have to promise a birth mother total participation in her child's life but once the ink is dry on her relinquishment, they can change their minds and the natural mother will be left hopeless. In doing research for this proposed bill, only adoption agencies and adoption attorneys were consulted. When a successful adoption goes through, who is it that profits? It is the adoption attorneys and agencies, so I am not surprised that they proposed a plan to ensure an adoption will go through, even with heavy coercion. So I am asking you to please consider my proposals. I am not looking for a paycheck or any personal benefit, unlike the adoption attorneys and agencies. I am simply giving voice to the hundreds of children who have lost their families to adoptions that were coercive. First of all, I would like to propose that it become mandatory for the mother to receive counseling with a counselor of her choice, so she can make an informed decision. This will help ensure she is not being pressured or coerced by anyone, and that she is well aware of all her options. Second, I propose that every pregnant woman would legally have to speak with an attorney prior to the day the relinquishment is signed. The document should be explained thoroughly by the attorney, and she should be told in no uncertain terms that once papers are signed she will not have any rights to ever see that child again. It is my understanding that an attorney is already an option, but in my case I was not even aware that I had that option. I am not alone, as I have had many other women share with me that they didn't know this either. Next, I propose that the waiting period to sign papers be lengthened. Giving birth is a very hard, life-changing moment and no woman should be expected to make such an important decision in that condition, in just 48 short hours. And last, I propose that all adoption documents for a proposed open adoption be signed in a courtroom in front of a judge. This will ensure that the parents understand the seriousness of the matter, and everything said and done will be on record. In my case things were not explained and I had truly no idea what I was signing was the permanent, final forms. I am an educated woman, yet I thought I was signing a temporary document. A permanent adoption of a child should not be handled so lightly and carelessly. I have spoken with a great number of biological parents who have lost their children because someone was so desperate for a child that they said and did anything they could just to get their hands on one. If changing these laws benefits both sides, will help just one child, then I feel it is totally worth it. I thank you for your time and careful consideration in this matter. [LB744]

SENATOR COASH: Thank you, Ms. Sellers. We appreciate your testimony and we like it when people bring ideas to the committee, so we thank you for that. We'll see if we have any questions. Senator Chambers. [LB744]

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SENATOR CHAMBERS: Had you and I ever met before you came here today? [LB744]

TERESA SELLERS: No. [LB744]

SENATOR CHAMBERS: Had we ever discussed this by phone or anything else before today? [LB744]

TERESA SELLERS: No, sir. [LB744]

SENATOR CHAMBERS: Is what I said similar to what you were thinking maybe should be the case in terms of the counseling and so forth? [LB744]

TERESA SELLERS: Yes. [LB744]

SENATOR CHAMBERS: And I think, had I not brought it up, nobody who is testifying for the bill brought up anything that had to do with the welfare of the birth mother. But I want to make it clear you were not a plant and we were not in cahoots. [LB744]

TERESA SELLERS: Correct. [LB744]

SENATOR CHAMBERS: But, see, good minds follow similar paths. Thank you, ma'am. [LB744]

SENATOR COASH: Thank you, Ms. Sellers. Thank you, Senator Chambers. I don't see any other questions, appreciate your testimony. [LB744]

TERESA SELLERS: Thank you. [LB744]

SENATOR COASH: Is anybody else here to testify in opposition of LB744? Welcome. [LB744]

MONTY SELLERS: Senators, my name is Monty Sellers, S-e-l-l-e-r-s. I am the birth father of the Sellers v. Wissmann case. I've heard a lot of things about gentlemen's agreement, do the right thing. In cases like this, it's a matter of people doing the right thing, and that doesn't always happen. Human nature of people, you know, it's easy enough for Senator Watermeier to say that this is the possibility, but when you see the human nature of people and they're given something, a great gift, you know, and within nine days decide that, you know, you're not going to have this, you know, we're not going to let you see this gift anymore which you've given us, you start to see

the true nature of people. As far as Senator Chambers, I did meet him back in the '70s at a north Omaha Boys Club when you were a councilman, so it's been 30-plus years. And what I find interesting about this case is we're now addressing something that happened...the McCormick ruling happened in 1984, so you're telling me that in 30, 32 years no one has contested anything like this up until our case, you know, that no one in 32 years has ever changed their mind. And now we're going to flood the moat, so to speak, with, well, let's get this done now because one case out of 32 years has tipped the balance and made people see things a different way. And that's what I find interesting about all this is one case out of 32 years. And I don't know the numbers. I suppose I could Google it or something as to how many cases have come across legislation or the courts involving adoptive parents and birth parents and someone changing their mind. There's no winners in this. You know, the Wissmanns lost six months. They lost the custody with the child now. We lost six months of seeing our child grow up. When you get down to brass tax of being a parent, time is all you have. That's really all you have. You have 18 short years to prepare your child to get out there, join the world, and hopefully carry on your legacy. That's basically all I have to say. I just think that LB744 will close the door on any parent that wants to build bridges with their child. I spent 40 years of my life searching for my father and at 40 I finally found him. It's not an adoption case, but you still have questions your entire life as to where your dad is, where your parent is. Those questions never go away. Thank you for your time. [LB744]

SENATOR COASH: Thank you, Mr. Sellers. I don't see any questions from the committee, appreciate your testimony. We'll take the next testifier in opposition. Seeing none, is there anybody here to testify in a neutral capacity? Seeing none, Senator Watermeier, you're recognized to close if you'd like to. [LB744]

SENATOR WATERMEIER: I apologize for not maybe warning everybody about the seriousness of the issue. I should have went around to all the committee members in the last couple days and talked about it a little bit more. I do appreciate both sides, appreciate Teresa and Rebecca (phonetic) both being in the room. This is a hard thing to talk about. But I think the points were made very clearly today that this was not a knee-jerk reaction proposal because of one case. We've been talking about it extensively, have several proposals that we had talked about. And the idea of mediation in which Senator Seiler had brought up the outlet, the reason to maybe give an outlet for the discussion, I'd be open to discussing that. But I also think the last testifier brought up a good point in the fact that we need to codify in law what we've done in this state. And the idea of changing your mind needs to be made very clear to these situations. And that's the only thing I'd like to say in closing, so thank you, Chairman Seiler. [LB744]

SENATOR COASH: Thank you, Senator Watermeier. [LB744]

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SENATOR WATERMEIER: Oh, sorry, Colby. [LB744]

SENATOR COASH: So we'll close the hearing on LB744. [LB744]

SENATOR SEILER: LB924, Senator Kolterman. [LB924]

SENATOR KOLTERMAN: You ready to go? [LB924]

SENATOR COASH: You can clear a room, Senator Kolterman. [LB924]

SENATOR SEILER: I was going to say you're not very popular. [LB924]

SENATOR KOLTERMAN: There's a few left. [LB924]

SENATOR CHAMBERS: When we have one of those bad bills, I'm going to just invite you to walk through the room (laughter). [LB924]

SENATOR SEILER: Go ahead, Senator. [LB924]

SENATOR KOLTERMAN: Good afternoon, Chairman Seiler, members of Judiciary Committee. My name is Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. LB924 is a simple bill that allows noncustodial parents who are not in arrears of their child support payments to pay through automatic withdrawal from a bank or financial institution of their choice. I propose this legislation at the request of the Department of Health and Human Services as another option for noncustodial parents to pay their child support. The state of Nebraska is required by Title IV-D of the Social Security Act to provide certain plans for child welfare services. Section 466 of the act specifies that noncustodial parents shall be subject to income withholding for child support payments. For your reference, a mandate from the aforementioned section of the Social Security Act is codified into Nebraska law under Section 43-1718.01 of Nebraska Revised Statutes. This mandate of course requires that the noncustodial parent's employer make timely and regular payments and properly withholds the necessary amount of funds. I'll outline a couple of examples of when this form of child support payment might be more convenient than the standard income withholding. As mentioned, the income withholding process depends in part upon an employer's timely payment to the noncustodial parent. If the employer is slow in remitting payments, the automatic withdrawal process may be more convenient for the noncustodial parent and help to ensure the custodial parent receives child support in a timely manner. The noncustodial parent may also change jobs, which may throw off the regular schedule of income for the noncustodial parent. This form of child support payment will likely

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not work for everyone but it gives noncustodial parents another choice that may be more convenient for them. Again, if the noncustodial parent is in arrears, this option will be unavailable to him or her. Similarly, if the payer ever misses a payment or is only able to pay a partial amount after the agreement is made, he or she would be subjected to the standard income withholding process and would never be eligible again for the autowithdrawal process. The process to set up autowithdrawal child support payments is as follows. The payer establishes that he or she is not in arrears and the payer, the custodial parent, and DHHS enters into a written and notarized agreement that authorizes such autowithdrawal arrangements. The agreement does not supersede the requirements that the payer be subject to income withholding. Rather, it is subsequent to the...subject to the judicial decree that outlines the duties and obligations of the parties. It essentially just defines a specific way to direct the funds from the payer to the payee through the DHHS state disbursement unit. As you see from the fiscal note, there is no impact to the state and there are no foreseeable costs to either party. I would be happy to answer any questions you may have. There will be testimony from those who probably will be able to answer more specific questions. Thank you for your consideration and I ask for your vote to send LB924 to General File. [LB924]

SENATOR SEILER: Questions? Senator. [LB924]

SENATOR CHAMBERS: Senator Kolterman, do you know who Morpheus was? [LB924]

SENATOR KOLOWSKI: Who? [LB924]

SENATOR CHAMBERS: Morpheus. [LB924]

SENATOR KOLTERMAN: No, I do not. [LB924]

SENATOR CHAMBERS: Look that up on Google. That's all I have. No, he...he must be... [LB924]

SENATOR SEILER: I have one question. [LB924]

SENATOR CHAMBERS: Okay, go ahead. [LB924]

SENATOR SEILER: Is financial...let's see, I just saw that term (inaudible)...financial institutions defined anywhere that you're referring to? [LB924]

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SENATOR KOLTERMAN: I don't... [LB924]

SENATOR SEILER: I mean would a credit card company... [LB924]

SENATOR KOLTERMAN: I don't know the answer to that. [LB924]

SENATOR SEILER: Okay. [LB924]

SENATOR KOLTERMAN: The people coming behind me probably could answer that. [LB924]

SENATOR SEILER: Thank you. No questions? Will you be here to close? [LB924]

SENATOR KOLTERMAN: Yes, I will. [LB924]

SENATOR SEILER: Thank you. Proponent. [LB924]

DOUG WEINBERG: (Exhibit 1) Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Doug Weinberg, D-o-u-g W-e-i-n-b-e-r-g. I'm the director of the division of children and family services of the Department of Health and Human Services here in Nebraska. I want to thank Senator Kolterman for introducing LB924 on our behalf, and for exploring ways to make the process to support children more efficient. The department's child support enforcement program is responsible to enforce child support orders in Title IV-D cases in Nebraska. We use a variety of legal collection processes to collect court-ordered child support. One of the most important is income withholding. An income withholding order authorizes the department to deduct income from the wages of the person obligated to make child support payments. Current Nebraska law mandates that the noncustodial parent's income shall be subject to income withholding and the court must require income withholding in its orders of support. It's used for the majority of child support collected in Nebraska. Although this process is tremendously effective and often the best tool to collect support, there are situations that call for greater flexibility; for example, if the noncustodial parent's employer is not consistent in making payments. Under such circumstances, if all parties and the department agree, a voluntary autowithdrawal from the noncustodial parent's bank account could be a better option. Currently, unless this is done at the time the court order is entered, there is no option allowing the obligor to later make regular, voluntary autowithdrawals. LB924 would allow autowithdrawal payments to occur after the entry of the child support order if problematic situations arise. This option promotes efficiency and regularity in the payment process and benefits children involved. To be clear, this bill only applies to cases in which the department provides Title IV-D services. It does not speak to an autowithdrawal process when only private parties are involved, and we take no

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position on cases that don't involve Title IV-D services. In summary, this bill will allow a noncustodial parent, who is not in arrears in support payments in an established court order, the option to use autowithdrawal outside the currently mandated processes, provided noncustodial parent, the custodial parent, and the department enter a written, notarized agreement. The amount automatically withdrawn must be at least the amount the court ordered and must occur on a consistent basis each month. Any partial payment or missed payment would subject the noncustodial parent to the mandatory income withholding process. Autowithdrawal payments would be directed to the state disbursement unit as required by law. I appreciate the opportunity to testify today regarding LB924, which we believe will help DHHS continue our mission of helping people live better lives. I am happy to answer any questions. [LB924]

SENATOR SEILER: Any questions? Senator Coash. [LB924]

SENATOR COASH: Thank you, Senator Seiler. Thank you, Mr. Weinberg. I was looking at the fiscal note on LB924 and it says there's no fiscal impact to the department on this bill... [LB924]

DOUG WEINBERG: That is correct. [LB924]

SENATOR COASH: ...which I would assume if the...when you came up to support it, I thought, well, this must going to...this might result in saving some money by the department, but apparently that's not the case. [LB924]

DOUG WEINBERG: Not necessarily; if anything, it would provide in many cases more timely child support payments. [LB924]

SENATOR COASH: So that more timely child support would be the motivating factor in... [LB924]

DOUG WEINBERG: That would be a goal and an objective, yes. [LB924]

SENATOR COASH: Okay. All right, thank you. [LB924]

SENATOR SEILER: Senator Chambers. [LB924]

SENATOR CHAMBERS: For my understanding, the bill says, and you touched on it in your statement, any partial payment or missed payment. Does that mean the person's account does not have enough to cover the payment due that time around or just what does that refer to? [LB924]

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DOUG WEINBERG: That could be a possibility. If the account does not have sufficient balance to make the payment, the noncustodial parent would automatically be required to have income withholding again. [LB924]

SENATOR CHAMBERS: But you could wind up in the situation again where maybe an employer is not regular in paying wages. [LB924]

DOUG WEINBERG: That's correct. [LB924]

SENATOR CHAMBERS: And, therefore, the noncustodial parent doesn't have the money with which to pay. So if that occurs, then that noncustodial parent is just back where he or she would be were this new program not in place anyway. [LB924]

DOUG WEINBERG: That would be correct. This new program wouldn't be for everybody, but I think in many, many cases it could provide greater flexibility. [LB924]

SENATOR CHAMBERS: Okay. It's clear. Thank you. [LB924]

SENATOR SEILER: I have a question. The definition of financial institution--I know you pulled this out of 43-1718.01--is financial institution defined anywhere? [LB924]

DOUG WEINBERG: I can't answer that offhand. Our intent would be this would be any depository institution. [LB924]

SENATOR SEILER: So credit cards or savings accounts? [LB924]

DOUG WEINBERG: That was not our intent. [LB924]

SENATOR WILLIAMS: Credit unions? [LB924]

DOUG WEINBERG: This would be credit unions, banks, savings and loans. [LB924]

SENATOR SEILER: Okay. Any other questions? Thank you very much. [LB924]

DOUG WEINBERG: Thank you. [LB924]

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SENATOR SEILER: Further proponents? Seeing nobody moving, opponents? Neutral? You may close. [LB924]

SENATOR CHAMBERS: Boy, that Kolterman is...he's quite a cat. [LB924]

SENATOR KOLTERMAN: Thank you. Senator Chambers, I had a dream that you would give us a consent on this bill. Thank you. [LB924]

SENATOR CHAMBERS: That what? [LB924]

SENATOR KOLTERMAN: I had a dream that you would give us consent on this bill. [LB924]

SENATOR CHAMBERS: I'd what? [LB924]

JOSH HENNINGSEN: You would consent to this bill. [LB924]

SENATOR WILLIAMS: How could you possibly say you had a dream during Martin Luther King week, Senator Kolterman, in front of Senator Chambers? [LB924]

SENATOR KOLTERMAN: It's all about the gods of dreams. [LB924]

SENATOR CHAMBERS: My interpreter told me what you said. Who knows? (Laughter) [LB924]

SENATOR KOLTERMAN: Thank you very much. I hope you'll pass this bill on. [LB924]

SENATOR SEILER: You're welcome. LB893, Senator Pansing Brooks. You may open. [LB893]

SENATOR PANSING BROOKS: (Exhibit 1) Good afternoon, Senator Seiler and fellow members of the Judiciary Committee. My name is Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, and I represent Legislative District 28 right here in the heart of Lincoln. I'm here to introduce LB893. This past summer I went to numerous juvenile justice seminars and came back to Nebraska with a list of ways I want to help our children. Upon my return, I immediately spoke to child advocates, juvenile judges, and attorneys about the ideas on how to help the youngest in our courts. This bill, like the right to counsel, is legislation which received wholehearted support from the experts, particularly the juvenile judges with whom I spoke. LB893 seeks to establish a minimum age for the juvenile court to handle juvenile offenses or delinquency proceedings

through the juvenile justice system. Acts and circumstances involving children under 11 would be handled through DHHS rather than the juvenile justice system and Probation. By way of background, and in order to place this in perspective, the juvenile court judges are given a wide array of powers to hear all matters regarding juveniles. Juvenile offenses are split into two tracks once heard. One set of acts or circumstances are directed toward a juvenile justice track of remediation of delinquency through Probation. The other set of acts or circumstances, set forth in Nebraska Statute 43-247(3)(a) and generally called (3)(a), are directed toward a track of remediation through DHHS. Under both tracks, juvenile court judges have a complete tool chest of remedies available for imposing appropriate rehabilitation as circumstances require. This bill would keep children 11 and over who commit offenses within the current juvenile justice track of delinquency and remediation through Probation. The change to state statutes would be the requirement that children under 11 years of age, 10 and younger, will be subject to the track...will all be subject to the track of court-directed remediation through DHHS under (3)(a) only. In the state of Nebraska, 716 children age 12 and younger were arrested in 2014. The most common offenses were: misdemeanor assault, like fighting; theft, like shoplifting; and vandalism, like graffiti. With many schools adopting zero-tolerance policies, misdemeanor assault could constitute a schoolyard fight, something that when I was in elementary school might warrant a visit to the principal's office. In today's tough-on-crime climate, there is nothing preventing a child younger than 11 from being served, charged, forced to choose between pleading or facing trial, and ultimately sentenced in a juvenile justice system for a schoolyard fight. It is impossible for me to imagine that a ten-year-old child would be capable of forming the specific intent required to commit a criminal act. I recognize that there are instances where ten-year-old children may commit acts that are much more serious than a schoolyard fight. In these circumstances, juvenile judges have the authority and the tools under (3)(a) to deal with the most serious acts as required. Judge Johnson's letter that was passed out to you speaks directly to that. Proceedings initiated pursuant to (3)(a) would involve the whole family. It would permit services and support to be given through the Department of Health and Human Services rather than directing the child to proceed through juvenile justice and Probation. By focusing on assessing the child's problems and needs and attempting to meet those needs and the families, not only would we better serve the child, but we would make better use of our state resources by involving the whole family. Rehabilitation of young children will be more likely if we divert them away from delinquency findings in the criminal justice system through providing support not only to the child but their entire family, and helping them access the necessary child welfare services. In such an environment, emotional and mental health issues can also be addressed without labeling the child as a criminal delinquent or subjecting an already vulnerable child to the criminal exposure and risks inherent within the criminal justice system...the juvenile justice system. Several other states set a minimum age to be placed in the juvenile justice system for children. Those age limits range from ten years to six years of age. The United Nations committees recommend that the upper age boundary should be no lower than 17 and criminal responsibility for youth younger than 12 is deemed to be, quote, not internationally acceptable.

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As a matter of fact, most European countries set the age of criminal responsibility at 14, 16, or 18. LB893 sets a minimum age of 11. I have thought long and hard about what the appropriate age limit should be. I didn't pick an arbitrary age. I talked to many judges and juvenile experts. As a matter of fact, if it were up just to me, I would set a higher limit and have considered the age of 12 to be more developmentally appropriate. However, I realize it takes more than just my vote to pass legislation. The average ten-year-old, I want to remind you, is in fourth grade. He or she is approximately four feet and seven inches tall and ranks the current top three movies to be Despicable Me, Minions, and Despicable Me 2. To believe such a child to be capable of criminal intent would be to ignore a significant volume of widely agreed upon clinical research about the immaturity of children and their limited ability to make appropriate decisions due to the developing nature of their brain at the age of ten. Poor reasoning skills combined with potentially difficult family situations make children under 11 more appropriately rehabilitated through DHHS services than through the criminal justice system. To protect and rehabilitate our fragile children outside of the stigma of the justice system, please consider placing those children ages ten and under and potentially their families under the purview of DHHS via (3)(a) of our juvenile justice code. And as a final point I want to say that we are currently working with DHHS and with the Court Administrator's Office to work on addressing the additional funding need for the young kids that would now be coming through the system to DHHS rather than from Probation. So, and with that, I will take any questions you may have. [LB893]

SENATOR SEILER: Senator Coash. [LB893]

SENATOR COASH: Thank you, Senator Seiler. Senator Pansing Brooks, we're talking about moving a child under 11 by default from what would be now a (3)(b) to a (3)(a) case, right? [LB893]

SENATOR PANSING BROOKS: That's correct. [LB893]

SENATOR COASH: Under the current law, can that occur? [LB893]

SENATOR PANSING BROOKS: Can what? I'm sorry. [LB893]

SENATOR COASH: Your bill would mandate moving it from a (3)(b), which is... [LB893]

SENATOR PANSING BROOKS: It would, automatically. [LB893]

SENATOR COASH: ...a delinquent case, into a (3)(a) case, which is an abuse or neglect case... [LB893]

SENATOR PANSING BROOKS: Correct. [LB893]

SENATOR COASH: ...based on age alone. My question is, under the current law can that occur? In other words, a ten-year-old who starts out at (3)(b), can that be moved to (3)(a) with agreement of the parties as it stands now? Or are they stuck in (3)(b)? [LB893]

SENATOR PANSING BROOKS: I would have to defer, but it's my understanding that if it's a neglect or abuse case, if it's seen as that, it could be moved to (3)(a). But if you have a charge that's basically theft or vandalism or something like that, unless it can be proved that the parents are at fault...and this is not a case where we're trying to also fault the parents. There's...we've also got another matter that we're working with DHHS on so that the parents don't get the...a registry designation that you dealt with last year, Senator Coash. So that needs to be added to the bill as well. But again, this is to...it's like with human trafficking, under (3)(a), if they were...or under (3)(b), if they were arrested for prostitution, they could...well, they will now automatically go to (3)(a). I think I'll let the people who practice in juvenile law explain this better to you, but that's my understanding. [LB893]

SENATOR COASH: Okay. Okay, so my question... [LB893]

SENATOR PANSING BROOKS: Yes. [LB893]

SENATOR COASH: ...for the testifiers that are following is, can these cases be moved voluntarily now as the law sits? So that will be my question for... [LB893]

SENATOR PANSING BROOKS: Okay. [LB893]

SENATOR COASH: ...following testifiers. [LB893]

SENATOR SEILER: Anybody else, questions? Senator Chambers. [LB893]

SENATOR CHAMBERS: "Sister" Pansing Brooks, you've almost converted me. I think that I will accept what the Bible gave in the way of direction as to when a child might reach an age of accountability and we'll base it on Jesus. When he went into the temple and began to confute with the doctors and the lawyers, he was 12 years old. So if 12 years old is a good enough age for Jesus to be accountable, it's good enough for our children. So I'm going to support the bill. But if we can make it 12 years, I would like to try to do that. [LB893]

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SENATOR PANSING BROOKS: Make an amendment. I would be agreeable to that. [LB893]

SENATOR CHAMBERS: But however it winds up going, I'm going to support the bill. [LB893]

SENATOR PANSING BROOKS: Thank you. [LB893]

SENATOR SEILER: Any others? Okay, thank you. [LB893]

SENATOR PANSING BROOKS: Thank you. [LB893]

SENATOR SEILER: Proponent of the bill. [LB893]

JULIET SUMMERS: (Exhibits 2 and 3) Good afternoon, Chairman Seiler, members of the Judiciary Committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska supporting LB893. Kids aren't miniature adults. We don't expect our Little Leaguers to play baseball with the same capability as Major Leaguers. We don't expect a third-grader to read or solve complicated math problems the same way a high-schooler would. Why then would we expect a very young child who is engaged in bad behavior, even extremely bad behavior, to have the same reasoning ability, same capacity to create intent, and same capacity to understand complicated legal proceedings as we would a teenager or an adult? We support LB893 because we believe it will realign our process to respond to children's behavior in a way that is developmentally appropriate and tailored best to achieve rehabilitative goals. This bill would affect a small but meaningful number of children. Attached to my testimony you have a data snapshot that Voices for Children compiled on numbers of elementary-age children coming into contact with our juvenile justice system. As you can see, on the second page where the graphs are, in 2015 only 13 children age nine and ten were placed on juvenile probation. Since this bill sets the cutoff at 11 or above, those nine- and ten-year-olds are the only ones who would be affected by this move. And it wouldn't be those nine- and ten-year-olds if we're talking about just what the bill would do going forward. However, I will also note that there were 64 admissions to detention facilities in 2015 of children age 12 and younger--that's the only age breakout we can get--and 114 children who were under the age of 10 who were arrested in Nebraska in 2015. In years for which we received detailed data that links age to type of offense, what we see is that these little, tiny ones are most frequently arrested for, as the senator said, misdemeanor assault, which is like a schoolyard fight where there's not a great deal of damage done, theft, petty theft as in shoplifting, and vandalism or destruction of property, so breaking something or engaging in graffiti. These are not the hypothetical nine-year-old shooter. They're elementary school children acting out in typically childlike ways. They may need to be set straight and make things right, but that doesn't necessarily mean that it warrants a judge and a probation officer, much less that they're capable of understanding the legal processes that would

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drive that involvement. However, since the hypothetical nine-year-old shooter would be affected by this bill, I would like to talk about her. This bill does not prevent the state from acting when faced with a third-grader endangering herself or the public. Rather, the court would have a more appropriate mechanism to access needed rehabilitative services. A no-fault filing pursuant to Section 43-247(3)(a) permits court jurisdiction in a manner that involves parents or guardians accessing services and supports through the Department of Health and Human Services rather than through Probation. And to answer your question, Senator Coash, there is language in (3)(a) already when a child is in a situation injurious to themselves when they're engaging in behavior that would endanger themselves, but it's not clear that that language would cover a very young child who is acting out in a way that would endanger others. And furthermore, because those proceedings tend to involve more lawyers, more notice, affidavits, they're a little more complicated to file. So from a county attorney's perspective, you have a slam-dunk delinquency or (3)(b) case. It's not as easy a matter as the parties just agreeing to do (3)(a) instead. I've hit my red light. I do have further testimony but it is written and before you. I'd be happy to go further or answer any questions. [LB893]

SENATOR SEILER: Further questions? Thank you for your testimony. Further proponent. [LB893]

KIM HAWEKOTTE: (Exhibit 4) Good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e, and I am the executive director of the Foster Care Review Office and we are here in support of LB893. Senator Pansing Brooks is correct. There's about 20 states that do have a minimum age for delinquency, if you really call six years old a minimum age, but there are states that do have it. Also, just to bring forward some data that I did also discuss with you on Wednesday, when we looked at the Foster Care Review Office Probation data there are currently Probation youth in out-of-home care. There is one 10-year-old, one 11-year-old, and eight 12-year-olds. And then we do go also further on the age, so we know that these youth are currently in the Probation system and being placed out of home. Senator Coash, before I go into my testimony, because it is written, I do want to answer your question. I feel what LB893 really does is tell a county attorney what tools they have in their toolbox and it's taking a couple of tools away. When I would get a police report as county attorney sitting in front of my desk, I would have the option of filing a (3)(a) or a status or a delinquency. Through this bill, now a couple of those tools are taken away. It said, if you are under said age, the only option I can look at filing is either a (3)(a) fault or a (3)(a) no fault depending upon the situation. The other question you asked, Senator, is, if you have a (3)(b) status offense, could you change it into a (3)(a)? And basically the answer is, no, not without further filings before the court. So you would have to file another petition with the court, or a supplemental or amended petition, in order to get it changed to a (3)(a) filing. So hopefully that answers your question, Senator. To me, the Nebraska juvenile justice system and child welfare system, we are a rehabilitative system. You really...the question of this bill to me is not should

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they be charged or not charged; the question really is, what is the better system to deal with the issues that are involved with the child under this set age? Would child welfare system be better or would the juvenile justice system be better? There is a wonderful article out there I do make reference to in my testimony by the Office of Juvenile Justice and Delinquency Prevention, OJJDP, that talks very directly about what they call these child delinquents. These are kids ages 6 to 12 that are out there committing crimes. What they have found are their major risk factors are biological, family, and individual family factors. They have also found that most of the adult...the more juvenile services that we have out there are not effective for this population. In my testimony I have listed out what services are and have found to be effective for this population, and most of these services in our opinion are more available within the child welfare system, not within a juvenile justice system. I feel you're free to read the rest of my testimony. We do strongly support this. We feel it's a key legislation to then ensure that our children and families are getting the right services at the right time for the right reasons. And I'm available to answer any questions. [LB893]

SENATOR SEILER: Any questions? I have one. Where does the 12-year-old in Omaha that committed three murders, where does he fit into the system? [LB893]

KIM HAWEKOTTE: Right now he is fit in...I think it depends upon, for me, Senator, really, what is it you're trying to accomplish in a rehabilitative state? [LB893]

SENATOR SEILER: Well, one thing is keeping him off the street and keep a gun out of his hand. [LB893]

KIM HAWEKOTTE: Right. But can you do that also within a child welfare system or a juvenile justice system? [LB893]

SENATOR SEILER: That's what I'm asking. [LB893]

KIM HAWEKOTTE: Right. So are you looking for that 12-year-old that you want to be able to place him in a detention facility and put them in some things like that? Then, yes, you have to keep the delinquency charge there for the 12-year-old. If you are really looking for rehabilitative or more the treatment needs, then a child welfare system would be able to meet that need. Twelve years old to me is that difficult age that some 12-year-olds that we would see are very capable, others are not. They really are functioning at a six- or seven-year-old level. So I think you need to look at that. But to me the issue really is who can offer the best services to meet the needs of that child, and that should be what the decision or/and taken into consideration. [LB893]

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SENATOR SEILER: And this bill will allow the court to decide, or the prosecutor, which way to go on it? [LB893]

KIM HAWEKOTTE: The prosecutor would have the ability to decide. [LB893]

SENATOR SEILER: Okay. Thank you. Any further questions? [LB893]

SENATOR CHAMBERS: Just one comment. [LB893]

SENATOR SEILER: Senator. [LB893]

SENATOR CHAMBERS: Children have often been very cruelly treated. And in England there was a period when a writer had said that for a country that had such humane laws, it had some of the most barbaric punishments. And they would hang children eight and nine and ten years old. And one scene was described where these little children were being trundled through the streets on this cart and children were laughing because they didn't know what was going to happen. And when they finally had them hanged, these little girls were dressed in brightly colored dresses and it's said they looked like little flowers floating in the wind because their bodies were so light that when the wind blew it actually made them sway. And that didn't stop England from banning the hanging of children. So I think it is not appropriate to say that because a child will engage in certain conduct it means that the idea of culpability is there because the children a lot of times have no awareness even of what it is that they've done and it's why, if an animal does something, even in England they didn't hang the animals. They might kill it, like they'll do in this country, which I don't think they ought to do with animals either because it's usually when a human being has encroached on the animal's domain. But at any rate, I'm glad that this step is being made, even though it's not the one that I would like to see--I'd like to see the age raised higher--at least the recognition that children, as you say, are not miniature adults. [LB893]

KIM HAWEKOTTE: And we would agree, Senator. I also think the key is, when you look at these younger children, you have to be able to treat the whole family. It is not just a child issue. And when you think about delinquency charges, you are usually saying, child, you are having bad behavior. And when you're talking about a seven- or eight-year-old, you have to look at the whole family and what the family situation is. [LB893]

SENATOR CHAMBERS: And this picture you gave us of kindergartners, do you know if kindergarten (inaudible)...kindergarten court, little children. But I just don't think that this society views children as children ought to be viewed. And I quote the Bible a lot because I quote Roman mythology, Greek mythology, Norse mythology, because in the mythological world

people are allowed to be fanciful, whimsical, and say things which, if it was in a serious context, the person might feel embarrassed to say it. But they claim in this Legislature to believe the Bible. And Jesus was talking to grownups and some little children came and his disciples, like my colleagues in the Legislature, said, take those children away, he's too busy for that. And Jesus stopped them. He said, hold on a minute. He said, unless you become as little children, you won't go to Heaven, for the kingdom of Heaven is made up of such as these and woe to him who offends against one of these, my little ones; it were better that a millstone be hanged about his neck and he be drowned in the depths of the sea. And that's why I'm so critical when people around here quote the Bible and pray. They don't apply it in the real world as they're supposed to do. Now, if it was a guide for conduct and not just ceremonial shows every morning in the Legislature, I would look at it differently when they talk about it. I have my own view of things that are said by people regardless of their religious or philosophical persuasion. If it makes sense to me, they could be devil worshipers; if it makes sense to me, they can be three-god worshipers like all the Christians--father, son, and Holy Ghost. I wouldn't care about that at all. If it causes them to treat people the way they would want to be treated, to treat other people's children the way they want their children to be treated, to in fact treat children the way they wish they had been treated as a child, then some of the things I say around here I wouldn't say. And since my good friend, "Brother" Williams, is a man for whom I have profound respect, and if it wasn't for the fact that I never go on the floor of the Legislature when people pray, he might have been surprised that somebody would have been there when he did the...well, he called them devotions. I was going to say the festivities. But I believe there are people who are very sincere, and it's why I won't attack an individual for what he or she believes. But when it comes to organized religion, ceremonies, and rituals, no use for it unless those things lead people to do the right thing. And we're going to have an opportunity when this bill comes before the Legislature to see just not only where their heart is, but if they have one. I confess or admit I don't have one, but I don't need a heart to do the right thing by children. This is the final thing--I'm working up to it. [LB893]

KIM HAWEKOTTE: Okay. [LB893]

SENATOR CHAMBERS: This actually happened. It was in Africa. They heard this lion kind of, you know, making strange sounds. And what had happened, somebody was being mean to a child and the lion chased the human being away from the human child and had run him up a tree. And when they came, that's where this human being who had been abusing a human child had been chased by a lion, one of the lower orders who are far...who was far more appropriate in its conduct than the human being who had been chased up the tree. And that was really written about in a newspaper article. I'm not making that up. [LB893]

SENATOR SEILER: Is that where the "king of the jungle" comes from? [LB893]

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SENATOR CHAMBERS: Say it again? [LB893]

SENATOR SEILER: Is that where the "king of the jungle" comes from? [LB893]

SENATOR CHAMBERS: I don't know what it is or what it should be, but that lion should be sitting in the front of other churches teaching even the priests, preachers, rabbis, and monks how they need to treat little children. And if they don't do it right, he should bite their head off. [LB893]

SENATOR SEILER: Any further questions? [LB893]

KIM HAWEKOTTE: Thank you. [LB893]

SENATOR SEILER: Thank you. Any further proponents? [LB893]

SENATOR WILLIAMS: It's risky. [LB893]

CHRISTINE HENNINGSEN: Good afternoon. My name is Christine Henningsen, C-h-r-i-s-t-i-n-e, Henningsen, H-e-n-n-i-n-g-s-e-n. I've practiced law in the Separate Juvenile Court of Douglas County for five years and currently I'm the director of a project named Nebraska Youth Advocates at UNL Center on Children, Families, and the Law. I'm here today in support of LB893 as it provides a more appropriate manner to work with our very young when they come in contact with the law. Dealing with youth who are ten and under through Probation can be problematic. They do not have the expertise of the unique needs of very young children and are not as able to engage the entire family in the rehabilitative process or pay for services that the parents may need. Delinquency and status offense cases focus on rehabilitation for the minor child. Abuse and neglect are no-fault dependency actions focused on the family unit and can require parents to participate in family therapy and other services that courts are hesitant to do in juvenile justice cases. I've represented children ten and under in juvenile court, but that was prior to Nebraska's juvenile justice reform and there was a mechanism at that time where a youth could be served through HHS through the Office of Juvenile Services. That is not here today unless there is a separate (3)(a) filing. In talking to one of my colleagues, she related to me a recent case of hers involving a ten-year-old. He was in fourth grade. He was charged with graffiti. The county attorney did send him a letter to participate in diversion, but the minor child's father refused to bring him to the assessment center. Since he did not go to the assessment center, formal charges were filed in juvenile court. Once he did appear in court, his father tried to refuse an attorney for his child, but the judge in that case did eventually appoint the public defender's office. She was able to eventually get that case dismissed; but if she had not, there would have

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been some real concerns about that, the competency of that minor child to stand trial, and also to have the necessary mens rea to be culpable for that crime. LB893 recognizes that there may be youth and families in need of services, but the best place to receive that support is through HHS. Nebraska is a state which honors its children and we have a responsibility to put together a system which works with our children to put them and our communities into a situation where they can achieve success. I'd be happy to answer any questions. [LB893]

SENATOR SEILER: I have one. [LB893]

CHRISTINE HENNINGSEN: Okay. [LB893]

SENATOR SEILER: Do you have a conflict of interest that you want to disclose? [LB893]

CHRISTINE HENNINGSEN: I don't believe so, Senator. I am married to the legal counsel of the Judiciary Committee. I would disclose that. [LB893]

SENATOR SEILER: That's all I wanted on the record. [LB893]

CHRISTINE HENNINGSEN: Yes, on the record. [LB893]

SENATOR SEILER: Thank you. [LB893]

CHRISTINE HENNINGSEN: Thank you. [LB893]

SENATOR SEILER: Further proponent. [LB893]

MARGENE TIMM: Good afternoon. Margene Timm, M-a-r-g-e-n-e; last name Timm, T-i-m-m. I'm an attorney with the Lancaster County Public Defender's Office. I'm currently the supervisor of the juvenile unit. Prior to coming to the public defender's office I did civil practice for five or six years. I've represented clients as young as 7 and as old as 70. The seven-year-old that I represented was charged with truancy. The first time he came into court we sat down and he promptly got up and crawled underneath the table. He's crawling around, he's playing around down there, and the judge looks at me and says, Ms. Timm, would you control your client. And I said, Judge, he's seven years old. And the response of the judge of that was to stare at the prosecutor with cold eyes, who then dismissed it, and subsequently the case was filed as a (3)(a) educational neglect, which was the right filing if a seven-year-old is not going to school. The youngest child that I've ever represented that was actually adjudicated in juvenile court was nine

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years old. It was on an assault at school. There are significant challenges representing the very youngest kids in juvenile court. On Wednesday we heard a lot of testimony about why juveniles in juvenile court need attorneys. This is really the flip side of it. For me to be an effective advocate, to do a good job representing my clients, I need to have a client that can understand the process. The very youngest kids in juvenile court lack language skills. They lack experience. They are developmentally not able to make the kind of decisions that they need to make to work with their attorney. I'm not their guardian ad litem. I don't substitute my judgment for them. I represent their expressed interest. Most kids that are that young that I represent, they know the difference between right or wrong, but that's not sufficient to come into court process and get them through that juvenile court hearing. Even if I have a client that young that can get through a plea or get through a trial, that doesn't answer this next concern I have with the very young children, and that's what's going to happen when they're put on probation. They simply don't have what it takes to follow a probation order. Then what happens is they get a motion to revoke filed against them. That builds their juvenile record; that gets them deeper into the system. Our office has tried to use some creative lawyering in representing these young children. One is basically, to answer your question, Senator Coash, we would try to work with the prosecutor and the parents to see if they would dismiss the law violation or status offense in exchange for the parent agreeing to a no-fault (3)(a). Some parents would do that in recognition of their kid needed some additional help and services, but many parents didn't want to do that. They didn't want a filing that identified them and they were concerned about whether their name would be on the central registry. Now I think some of that was cleared up last year by your bill, but that remains a concern. This takes it away from a filing against a parent. [LB893]

SENATOR SEILER: Go ahead. [LB893]

MARGENE TIMM: And one of the other creative ways that we use to defend these kids, and it was something that was just mentioned by Ms. Henningsen, was that we would often challenge competency because they're just not developmentally able to participate in a trial. That also has its problems. There's not a lot of adolescent child psychologists that are able to do a proper adolescent competency evaluation. And then we always use the tactic of delay, delay, delay, delay, and hope that they grow up enough before they have to enter the system. [LB893]

SENATOR SEILER: Any questions? Thank you very much. [LB893]

MARGENE TIMM: Thank you. [LB893]

SENATOR SEILER: Further proponent. [LB893]

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ROGER LOTT: Senator Seiler, members of the committee, my name is Roger Lott, R-o-g-e-r L-o-t-t. I am here in support of LB893 and ask the committee to advance the bill for floor consideration. I am a lawyer who has spent many years in Nebraska juvenile courts representing both children and their families as well as representing the state. I'm also a psychologist. I am deeply interested in how we deal with children who need the help of the community in juvenile court. The children we deal with in juvenile court are there because their families have not been able to help them at home, many times because the adults in that family couldn't cope with their own problems. As I analyze this bill, LB893, I realize the best way to characterize it is as a bill to classify children who need help. We find out about children who need help in lots of different ways, one being when they violate the criminal law. LB893 says those children who violate the criminal law who are years of age or younger should not be treated as people to be sanctioned but as people who need to be protected, children who need help. So the question being asked by LB893 is whether there is any reason, psychological, neurobiological, or even in policy, why we as a state should ever treat a ten-year-old child as an adult or as someone who is culpable under the criminal law. From my own experience and from my reading of the psychological and neurobiological literature, my answer to this question is, no, ten-year-olds do not have the cognitive ability to understand their behavior, the behavior's consequences. They may in normal development understand that their behavior is wrong, but not know a great deal about what could happen in the world as a result of that behavior. If their development has not been normal, and many, if not most, of them have not...do not have normal development, their ability to understand what they have done is greatly impaired. Ten-year-olds are not usually even included in the group psychologists call adolescents. Ten-year-olds are not adolescents based on my understanding of the literature. Usually they are not...have not reached puberty. They have not had the biological...which is one of the biological events that is associated with big changes in neurological development. Ten-year-old children are preadolescent children. As I look at the bill, I realize that a question the Legislature has to answer in the bill is whether the bill should have unintended consequences: Would there ever be a child whose behavior ought to be sanctioned by criminal law? My experience is that ten-year-olds can do terrible things sometimes but as a matter of policy we should treat them as people in need of help rather than people in need of punishment. Even if there are ten-year-olds who really do bad things, if we build exceptions in the law for the very, very few people... [LB893]

SENATOR SEILER: Sir, your red light is on. [LB893]

ROGER LOTT: Oh, I'm sorry. [LB893]

SENATOR SEILER: Any questions of this witness? [LB893]

SENATOR CHAMBERS: Could he finish that statement he was about to make? [LB893]

SENATOR SEILER: Okay. [LB893]

SENATOR WILLIAMS: Yeah. [LB893]

SENATOR SEILER: Sure. [LB893]

ROGER LOTT: If we build exceptions into the law, those exceptions get to be used too much when we're outraged, I think, rather than when they ought to be. We ought to consider ten-year-olds always as children under the law. [LB893]

SENATOR SEILER: Thank you. Any questions? Thank you very much. Further proponent? Opponents? Neutral? [LB893]

DOUG WEINBERG: (Exhibit 5) Once again, good afternoon, Senator Seiler and members of the Judiciary Committee. My name is Doug Weinberg, D-o-u-g W-e-i-n-b-e-r-g. I am the director of the division of children and family services in the Department of Health and Human Services. I am here to offer neutral testimony regarding this bill. LB893 prevents youth under the age of 11 from being adjudicated for misdemeanors, felonies, and traffic offenses. It also prevents adjudication for youth under 11 years old who are uncontrollable. Instead, these youth would be adjudicated under the abuse and neglect statutes. The department understands the intent of this bill and is able to serve this population; however, there are questions with the implementation of LB893 as currently drafted, which we have shared with Senator Pansing Brooks. I would also like to thank the senator for being sensitive to these questions and her willingness to continue working with us. If youth are adjudicated under the abuse and neglect statutes contained in Nebraska Revised Statutes Section 43-247(3)(a), parents potentially could be placed on the central registry as court-substantiated abuse or neglect. The department will work with Senator Pansing Brooks's office to revise language and ensure this does not happen. Additionally, if a youth commits an action that requires him or her to be placed with DHHS at 10 years of age and then turns 11, who is to provide ongoing services? Is this the Administrative Office of Probation or DHHS? Again, the department will work with the senator to revise language, to clarify language for consistency of the children. Finally, the most significant obstacle to implementation of LB893 regards funding for this population. The fiscal note is unclear and, should this bill pass, it will not work without funding. When the Office of Juvenile Services was moved to the Administrative Office of Probation, the funding for this population was also transferred. The department will work with Senator Pansing Brooks's office to revise language proposing the Administrative Office of Probation reimburse DHHS quarterly for all costs associated with this population. It is important to the department, as well, to ensure this population receives the care they need. I'm happy to answer any questions. [LB893]

SENATOR SEILER: Senator Colby. [LB893]

SENATOR COASH: Thank you, Senator Seiler. Mr. Weinberg, with regard to the fiscal note, I'm assuming that the department looked at...I think it was testified that 84 children currently under probation under the age of 12, so the department probably said, well, if those 84 children were now in child welfare we would need some additional resources. And I don't dispute that, but this would only affect children moving forward. You've not...should this bill become law, the department is not all of a sudden responsible for 84 children the day after it became law than before, wouldn't that be correct? [LB893]

DOUG WEINBERG: Right, and obviously the fiscal is very difficult because at any significant point in time those numbers can vary from day to day, month to month, year to year. But it would be an increase in children served by the department, which we currently don't have funding appropriated. [LB893]

SENATOR COASH: But you would agree that the child welfare is not going to be responsible for any child under the age of 11 who was previously...you know, if it happened today, they're a (3)(b). [LB893]

DOUG WEINBERG: No, this would be moving forward. [LB893]

SENATOR COASH: This would be moving forward. So I just want to make the record clear. The department isn't expecting, should this become law, a dump of children who were previously (3) (b), under the age of 11, and now you're responsible for them. [LB893]

DOUG WEINBERG: That's correct. [LB893]

SENATOR COASH: Okay. So at worst, if I could put it that way, over time, as children under the age of 11 were moved into this system, that would build into the child welfare's responsibility. [LB893]

DOUG WEINBERG: That would be correct. [LB893]

SENATOR COASH: So as I look at number of positions, you know, one and a half positions, I mean, if you had one and a half positions today you wouldn't have 84 kids that need that position. [LB893]

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DOUG WEINBERG: That would be correct. [LB893]

SENATOR COASH: Could I ask you a question though about the fiscal note? Because I understand, well, the labor, you know, the positions that would be created, the benefits going with that operating cost that would be going with that. And then \$200,000 of aid, is that to pay for the service for the children? [LB893]

DOUG WEINBERG: It would be services, correct. [LB893]

SENATOR COASH: Just wanted to clarify that. Thank you. [LB893]

SENATOR SEILER: Further? Senator Chambers. [LB893]

SENATOR CHAMBERS: Mr. Weinberg, do you know where the name of your division, of your outfit originated, division of children and families? There was a very wise king named Solomon, and two women had gone to sleep together and there was a baby. And in the night one of them rolled on the baby and the baby...there were two babies. One was suffocated. So they took the child to Solomon, who was alive, and said, King, we need somebody to resolve this because each woman says it's her child and that the dead child neither one will claim. So Solomon listened to them. Then he said, bring me my sharpest sword. And when they brought him the sword he said, what I'm going to do is divide this child and give half to this woman and half to the other woman. And one woman said, no, let her have the child. And Solomon said, you indeed are the mother. And that became known as the division of children (laughter). [LB893]

DOUG WEINBERG: Understood. [LB893]

SENATOR SEILER: Any further questions? Thank you very much for your... [LB893]

SENATOR CHAMBERS: I couldn't resist. I'm sorry. [LB893]

DOUG WEINBERG: Thank you. It's appreciated. [LB893]

SENATOR CHAMBERS: Okay. [LB893]

SENATOR SEILER: Any further in the neutrality? Seeing none, you may close. [LB893]

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SENATOR PANSING BROOKS: I know it's 4:10 on Friday and I wasn't going to close. [LB893]

SENATOR SEILER: You're the only thing between me and the highway. [LB893]

SENATOR PANSING BROOKS: But two of you asked questions and I wanted to clarify the facts under the questions. First off, under this bill...a 12-year-old would not fit under this bill, so if you're talking about a 12-year-old that shot some people in Omaha...and then the other thing is that that 12-year-old is currently in Boys Town and the murder charges have been dropped. So definitely he could be...any child under (3)(a) could be safely maintained at Boys Town in the same regards. If you look at Judge Johnson's letter, it says here that, "This means that when extremely young children act out, permitting jurisdiction pursuant to 43-247(3)(a) instead of as a delinquency would not alter the sorts of rehabilitative services I would and could order: evaluations, treatment, even placement as necessary." So I just wanted to clarify that it wouldn't be handled any different than...or could be handled the same that the current case is being handled. And then also the thing I wanted to talk about, you mentioned that there were 180-some juveniles. Actually there are 13 children currently that are nine and ten if you look at the graph again, 13 who were placed on probation in 2015, not 180. If you look at the under 12, there were 131. So again, it's only 13 children that we're...we would currently be talking about under this bill, so it's not as significant as 185 children. [LB893]

SENATOR COASH: So I don't understand. Well, if I take those 13, and I understand it's a point in time, a position and a half for 13 children... [LB893]

SENATOR PANSING BROOKS: Pardon me? [LB893]

SENATOR COASH: A position and a half for 13 children seems kind of more than necessary if that's where the department...if they used 13 to calculate it and then we get one and a half positions, that seems...but it...the fiscal note doesn't look right. [LB893]

SENATOR PANSING BROOKS: Well, I don't know how many they...I don't think that the people knew how many...I don't think they had the facts of how many children at that time, but maybe they did, so I don't know. But we're going to have to...obviously this is coming down to who pays for it. Who pays for these young, innocent babes? And we've got to figure it out and we've got...the Legislature has to help deal with HHS and Probation and figure out the best alternative and the best resources to use to help these children be treated appropriately, and their families. And with that, I close. Thank you so much. [LB893]

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SENATOR SEILER: Any questions? Senator Chambers. [LB893]

SENATOR CHAMBERS: If children are like plants, you know, growing young flowers, I'd rather take some money from the rainy-day fund and help these children than put it on roads and streets. That's where the money can come from. I just thought I'd throw that out there. [LB893]

SENATOR PANSING BROOKS: Okay. [LB893]

SENATOR SEILER: Any further? Thank you. [LB893]

SENATOR PANSING BROOKS: Thank you very much. [LB893]

SENATOR SEILER: That concludes the hearings. [LB893]