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Judiciary Committee  
February 03, 2016

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[LB780 LB934 LB953 LB1008 LB1103]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 3, 2016, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB953, LB780, LB1103, LB934, and LB1008. Senators present: Les Seiler, Chairperson; Colby Coash, Vice Chairperson; Ernie Chambers; Laura Ebke; Bob Krist; Adam Morfeld; and Matt Williams. Senators absent: Patty Pansing Brooks.

SENATOR SEILER: (Recorder malfunction)...Senator Coash will be taking care of Chairmanship today. I'm not here. I'm supposed to be in Kearney right now, but State Patrol says they won't let me on the interstate, so go ahead.

SENATOR COASH: You want me to do it? All right. Do we have enough? We do. Well, welcome to the Judiciary Committee hearing. We are going to follow the agenda that's posted on...outside the front door, starting with Senator Kolterman. If you're here to testify we would ask that you fill out a green sheet that's back there on the tables, hand that to the page so we make a clear record. If you've got some handouts we can...pages will get that to the committee; ask you to silence your cell phones, senators included, before we start. And with that, we are going to start...open the hearing on LB953. Senator Kolterman, welcome. [LB953]

SENATOR KOLTERMAN: (Exhibit 1) Thank you, Senator Coash and members of the Judiciary Committee. I've introduced LB953 on behalf of the Nebraska Association of Insurance and Financial Advisors. I'm going to request that the bill be held in committee. I'll address that request shortly, but first I'll discuss briefly the intent of the bill. LB953 addresses a growing issue: the financial exploitation of senior citizens and other vulnerable adults. The issue of elder abuse and exploitation of vulnerable adults continue to present substantial problems nationwide, and Nebraska is no exception to that. LB953 is an attempt to address a portion of the overall issue, particularly with regard to financial exploitation of adults. In essence, it allows financial advisors, referred to in the bill as qualified individuals, and their associated firms the ability to temporarily refuse to execute financial transactions if they suspect that the client is a victim of financial exploitation. The transaction may be delayed for a maximum of 15 business days unless there is a court order to extend the temporary delay. If a qualified individual suspects financial exploitation, he or she is given the opportunity to notify the appropriate agencies: the Department of Insurance or Department of Banking and Finance, Department of Banking. That notification is permissive and not compulsory. The agency must then respond to a qualified individual or affirm within 15 business days whether or not the transaction should be executed. A client, defined as a qualified adult in the bill, is anyone 60 years of age or older. On that note, there is some dissent about how best to define the intended group or persons who should receive protection under the legislation. We are most concerned about the exploitation of vulnerable

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adults. An adult need not be over the age of 59 to be vulnerable; not all adults over the age of 59 should necessarily be considered vulnerable. In fact, the bill doesn't mention the word "vulnerable." That, among other issues, is why I want to start the discussion on the best way to address this type of legislation. I believe you received a letter from Director of Department of Insurance Bruce Ramage. In that letter he expresses concerns about the time frame for investigations and the agency's power to decide whether or not a transaction should be executed. These issues should be studied carefully, and so I would like to have an interim study on that matter. Accordingly, I request that you retain the bill for the remainder of the session and take no further action on it. Along those same lines I'd just like to say that I know Senator Coash has got three bills pending, I believe, that are going to be heard this week or next week along this same line, and I don't know where that will lead. I haven't really studied his bills that well yet, but I'm willing to work with Senator Coash, as well as the Department of Banking, Department of Insurance, and others that are...have a strong interest in this bill. I personally had this type of incident occur in my practice many times. One time is too many, but it seems like it occurs a couple times a year with me. I have a lot of senior citizens that are clients of mine, or their children, and somebody going door to door preys on them, sells them something, and convinces them that it's the best thing in the world and it comes back and it's not in their best interest. So that's why I'm really carrying the bill is for my clients and the vulnerable senior citizens across the state. You will hear some testimony from my association, NAIFA-Nebraska. It's a good organization. Their intent is well-intended. And so with that, I'd answer any questions. [LB953]

SENATOR COASH: Thank you, Senator Kolterman. Seeing no questions from the committee, we will go ahead and open up the testimony on this bill and we'll start with the proponents. Welcome. [LB953]

CHUCK OLSON: (Exhibit 2) Thank you. My name is Chuck Olson, C-h-u-c-k O-l-s-o-n, and I am here on behalf of NAIFA-Nebraska. I also serve as a trustee for NAIFA-National. The National Association of Insurance and Financial Advisors, NAIFA, is in strong support of LB953. Our association's membership includes 1,000 insurance agents and financial services professionals throughout the state of Nebraska, and we are committed to effectively serving the financial needs of all Nebraskans. In order to best protect the interests of our clients—and especially the seniors, who are the most common victims of financial exploitation—our national association developed model language to help states create a process to start the discussion for this protection. We are very grateful to Senator Kolterman for introducing LB953 based on this model language. We would like to especially draw the committee's attention to what we believe are the three most important features in this bill. LB953 creates a voluntary process whereby agents and advisors can notify their firm's supervisory personnel of a possible suspicious financial transaction involving a senior client. The firm can then notify the appropriate state authorities and the process would allow the firm to review the questionable transaction with greater scrutiny. Advisors would not themselves be able to notify authorities or delay

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transactions. We believe this is the right approach and protects against unnecessary reporting of possible fraud. The bill also helps clarify and eliminate current risks that advisors have in reporting suspicious transactions. They're kind of caught between potentially violating a client's confidentiality on the report and potentially being accused of not acting in the best interest if they don't report. Liability immunity for advisors and their firms is important. The bill also permits the insurance or financial firm to temporarily delay the senior disbursement or transaction if the firm suspects the exploitation or fraud is involved. We are aware of some of the questions about the details in the bill and are willing to work with Senator Kolterman and other interested parties to address these needed clarifications. We hope this starts a discussion about the issue and hope the committee and the Legislature are supportive of the intent. If you have any questions... [LB953]

SENATOR COASH: Thank you, Mr. Olson. Senator Chambers. [LB953]

SENATOR CHAMBERS: Could you give me an example of a type of transaction that might raise a suspicion of fraud or exploitation? [LB953]

CHUCK OLSON: Sure, Senator. You know, in my practice, I haven't had a lot of incidents, but I'll give you some that I've had from our counterparts: a phone call from a client that says they need \$5,000 and when asked about that they say, well, I have a grandson who is in jail and they said that they need that for bail. Well, that's a scam that's been going around for quite some time. We know it's a scam, but where do we go with that in this instance? We have to abide by that client's wishes to take money out of an account or to cash in the...you know, some type of financial product. And what we're trying to say is there's got to be a way for us to suggest to a supervisory...that this might not be a good transaction, there might be a problem here. Or, you know, somebody that comes by and paints a foundation of a house and says that's \$10,000 and a week later comes back and does it again, these things happen and it's...something like this would help at least mitigate. [LB953]

SENATOR CHAMBERS: So it would be--excuse me--the type of thing which would be out of the ordinary in terms of transactions. Suppose this person wants to make a purchase of some kind which on its face would be like anybody making such purchase, but that advisor for some reason had suspicions. The advisor would have to contact the supervisors in the agency for which he or she works, and that supervisory person would then make a decision as to whether or not the transaction would be allowed or delayed while this investigation goes? [LB953]

CHUCK OLSON: They could delay it if it's an unusual, suspicious activity, but it wouldn't be that agent's responsibility to not carry out the transaction. This would be, you know, they're

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supervisory, so maybe to eliminate some of the misinformation that might be developed.  
[LB953]

SENATOR CHAMBERS: So how much time between when the agent develops the suspicion and notifies a supervisor will usually elapse? In other words, I'm suspicious. You're my supervisor. Will there be any appreciable delay before I'll be able to contact you with my suspicions (inaudible)...? [LB953]

CHUCK OLSON: I don't know that that's actually addressed in the bill as it's written today, Senator, and I think that's something that... [LB953]

SENATOR CHAMBERS: But I'm asking you the way it might go. So if that comes up, would somebody who could make that decision generally be available for the agent or advisor to reach pretty quickly or expeditiously? [LB953]

CHUCK OLSON: Yeah, I would think that we would always have somebody that we can talk to super...it kind of exists today in a lot of the financial transactions in that if we know there's suspicious activity in as money laundering, we're responsible to immediately notify and we've never had any delay in that. I don't know that this would be any different in that, you know.  
[LB953]

SENATOR CHAMBERS: We'd better make some changes. [LB953]

SENATOR KRIST: Quickly. [LB953]

SENATOR CHAMBERS: Thank you for tipping us off (laughter). [LB953]

SENATOR COASH: Senator Krist. [LB953]

SENATOR KRIST: I'm not addressing my comments, as they follow, at you, but you're sitting in the chair. I'm aware of a woman who at the age of 96 was confronted with her third increase in her long-term-care insurance in a five-year period. I'm sure you've seen that happen. [LB953]

CHUCK OLSON: I know of it happening. I personally have not seen that happen but I know of it happening, yes. [LB953]

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SENATOR KRIST: So at 96 years old, she is at a point where she doesn't feel like she can make that happen. She can't pay the additional \$250, and the insurance company through her son-in-law basically cancels the policy because she can't make the additional payment immediately. It didn't take any time. Would that seem to me...would seem to you...it seems to me that in researching all of this that should take a period of time, as Senator Chambers alluded to, maybe 30 days before that policy is completely gone, off the books, no way you can bring it back. It came to the attention of the extended family that one person was acting on ill-advised consent of a woman who couldn't really make her own decisions anymore based upon that, and that family went back and said, we can pay the additional premiums. And the insurance company would not reinstate the policy in total, which meant all the escalators and all the increases that were built into that "Cadillac" plan could not be put back in place. I think that's exploitation and I think you have the power in NAIFA to change that today. There should be a safeguard involved. When a person gets to be 96 years old, after they've paid in for 40 years to a "Cadillac" plan like that, that should be a red flag for me: Man, do you realize what you're doing? Maybe a personal contact with an agent or a person from the agency, and you have the power to do that right now, but yet you're going to come to us and identify some of this other fraud. That's great and that's why I think I'm really happy that Senator Kolterman is backing off on this, so that we can look at the other avenues that are being exploited out there through Senator Coash's bills and potentially an interim study, because that just means the insurance company doesn't have to pay out the "Cadillac" plan and they've taken in the premium for X number of years. [LB953]

CHUCK OLSON: Now, Senator, I will say that there is protections and there is a grace period that is on every contract, so the 30 days is there. And there's also on long-term care policies an ability to have additional people listed as to making that decision, so I... [LB953]

SENATOR KRIST: Forty years before, when this couple put their long-term care policy in place, they were their own conscience, they were their own director, they were fully capable of making decisions. [LB953]

CHUCK OLSON: Yeah. [LB953]

SENATOR KRIST: Nothing was changed in their life when he passed away. But when she was left and people were able to make decisions for her, she was able to say, I can't pay the extra \$238, the amount that was paid in on that policy to me is almost criminal that that insurance company would not have taken the extra step to go out and make sure. [LB953]

CHUCK OLSON: And I'm not disagreeing at all, Senator,... [LB953]

SENATOR KRIST: Okay. [LB953]

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CHUCK OLSON: ...because, you know what, I can't speak for insurance carriers. I can speak for the professional agent that works with these individuals. My fear is that person's professional agent probably didn't outlive the 96-year-old individual, so. [LB953]

SENATOR KRIST: Your fear is substantiated. He is dead and gone. [LB953]

CHUCK OLSON: Yeah. [LB953]

SENATOR KRIST: But the point is that that's still a policy in place, so that's the kind of abuse that our elders are seeing and that just...that happened within a family structure,... [LB953]

CHUCK OLSON: Yeah. [LB953]

SENATOR KRIST: ...let alone those people that will qualify for and have a professional GAL or a qualified individual, as it's defined. That's the part of this bill I think that really needs attention. Who is that qualified person? How does that person define who that is for them? Who speaks for that elder? So again, I didn't...I preface it by saying the comments weren't directed at you or your integrity, but I just think there's a lot of fraudulent activity and sometimes at the expense of the person who has paid in and at the credit or a lack of payment that would go out from the insurance policy. [LB953]

CHUCK OLSON: And we do think there's work to be done on this bill. We're not saying that we shouldn't have further discussion. We're saying we need to start the discussion and maybe it takes in the things that you're referring to. Now again, I can't speak for insurance carriers. They make those decisions. We are the distributors of the product and we do try to protect and that's what this is for. [LB953]

SENATOR KRIST: So for the record, we've just identified that it's not necessarily independent agents who may or may not outlive their clients or it may not be a qualified person who is defined, but it may also extend to the insurance companies themselves or the banks or the trusts, etcetera. Thank you. [LB953]

SENATOR COASH: Thank you, Mr. Olson. I don't see any other questions, appreciate your testimony. We'll take the next testifier in support. Seeing none, we will move to opposition testimony. Is there anyone here to testify in opposition of LB953? Seeing none, is there anyone here to testify in the neutral capacity? Welcome, Senator. [LB953]

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MARK QUANDAHL: (Exhibits 3 and 4) Vice Chair Coash and members of the committee, I'm Mark Quandahl, Q-u-a-n-d-a-h-l, here on behalf of the Nebraska Department of Banking and Finance, as its director, to appear in a neutral capacity on LB953. And so rather than read you the prepared testimony, in light of the compromise on this particular bill, we'd merely thank Senator Kolterman for introducing this bill and this concept. And we pledge to work with him on a solution for the problem of financial exploitation of vulnerable adults. [LB953]

SENATOR COASH: Okay. Senator Williams. [LB953]

SENATOR WILLIAMS: Thank you, Senator Coash. Thank you, Director Quandahl, for being here. [LB953]

MARK QUANDAHL: Sure. [LB953]

SENATOR WILLIAMS: A couple of questions, one...and I know we're holding this and going to be talking about it in the future. Is the department in a position of being able to be staffed in such a way that you could actually handle these kind of issues if they were...if you were called? [LB953]

MARK QUANDAHL: Actually, at the present we are not. And so one of the handouts that you'll be getting right now is a model act from NASAA, which is the North American Securities Administrators Association, that pretty closely tracks LB953, except for a couple of different diversions. One of them is that we would suggest that we bring in Health and Human Services Department of Adult Protective Services because they've got more expertise in this area than we do at this time. So the short answer to your question is, no, at this time we don't have the staffing or particularly the expertise at this time to handle a complaint at this time. The second item that I'd bring up, too, is the 15-day turnaround on deciding whether or not a disbursement is to be made. It's pretty quick and it requires us to make a decision within 15 days. But the actual bill makes it permissive as to the actual financial institution to provide the documentation. And so we'd say if there is going to be some sort of suspicious activity reported to the department, the person or the company reporting that should also be required to come forth with the documentation. [LB953]

SENATOR WILLIAMS: Without a doubt, situations occur where there is elder abuse, and that's not the question here. My question to you is, also some insurance products and some investment products have...well, they all have suitability issues with them and one person will analyze a situation and maybe suggest this is a suitable product for this person to be in and another person might come up with a different answer. Would you be concerned with something like this if the question that was coming from the agent is this person came in and wants to remove \$1 million

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out of their investment account with me and move it to this agent and they tell me that they're looking at this kind of a product. I'm questioning whether the Department of Banking would be in a position of making the determination of suitability on that kind of an issue. [LB953]

MARK QUANDAHL: I mean that's a good point, Senator, and that's one of the reasons why we would suggest that Health and Human Services Adult Protective Services be involved in this because, you're right, we're the Department of Banking and Finance. Basically we're not in the business of determining the mental acuity of some of the consumers that come into contact with financial institutions. And so we would suggest that you bring in the experts to help us in that process. [LB953]

SENATOR WILLIAMS: We see people that you would never question their mental acuity make investment choices at times that other people would deem to be not the best choices. [LB953]

MARK QUANDAHL: Certainly. [LB953]

SENATOR WILLIAMS: So I think we're treading on an issue here that needs to be thought of in the legislation also. Thank you, Mr. Quandahl. [LB953]

MARK QUANDAHL: Yeah. Thank you. [LB953]

SENATOR COASH: Thank you, Senator Williams. I don't see any other questions, appreciate your testimony. [LB953]

MARK QUANDAHL: Thank you. [LB953]

SENATOR COASH: Is there anyone else here to testify in a neutral capacity? Seeing none, Senator Kolterman, you're recognized to close if you'd like to. [LB953]

SENATOR KOLTERMAN: Thank you again, Senator Coash. As you can see, there's a lot of good intentions sitting behind me and in this body. I hope this does start a good discussion. In regards to what Senator Williams was asking about, in my industry, in the securities industry, if we're involved in a changing, moving from one product to another, let's say another agent wants to move \$500,000 away from me, they have to report that as a replacement, and then we have a certain amount of time before that transaction comes into play which does give us an opportunity to review if the suitability was correct to begin with or if there is all of a sudden a huge change. But that doesn't necessarily work between banking products and investment products, as you probably well know, so there's a lot of work to be done in this area. I also understand where

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Senator Krist was coming from on his concerns. Those things all need to be looked at. So I appreciate the opportunity to visit today. I'm not asking you to move it, but I would ask that going forward Senator Coash and I could work together on some of these issues, because I know they're a priority of his as well, so thank you. [LB953]

SENATOR COASH: Senator Morfeld has a question. [LB953]

SENATOR MORFELD: I just...not really a question, just a comment that I saved for the end. I mean I just wanted to say that I appreciate you bringing this. I worked in the Attorney General's consumer protection division for two and a half years just manning the call lines, and this was one of the calls that we got in at least once a week, and I was just part time, where we would get a senior that came that realized that they were being scammed, usually by a relative or a close friend helping manage their accounts or finances or whatever the case may be, and it was just heartbreaking. There is really nothing...there's very little that we could do in many cases, particularly if it was overseas or out of state. And so in any case, this may not be the perfect solution, but I'm glad that you're looking into it and I'll support whatever you guys come out with. Thank you. [LB953]

SENATOR KOLTERMAN: Thank you, Senator. [LB953]

SENATOR COASH: All right, thank you, Senator Kolterman. [LB953]

SENATOR KOLTERMAN: Thank you. [LB953]

SENATOR COASH: That will close the hearing on LB953 and we are going to open the hearing on LB780, Senator Schumacher. Welcome. [LB780]

SENATOR SCHUMACHER: Thank you, Senator Coash. Senator Seiler, members of the Judiciary Committee, my name is Paul Schumacher, S-c-h-u-m-a-c-h-e-r, and I represent District 22 in the Legislature, here today to introduce LB780. LB780 is a very focused bill, but it's like focusing on the tip of an iceberg. Those of you that attended the LR34 hearing and the hearings on Nikko Jenkins before that realize that we have a real issue with mental health in this state. It has been something that is very easy to neglect because they have no lobbyist, no funded constituency, and probably we wouldn't be here today if they weren't packing our jails and our penitentiary and we weren't facing the consequences of that. But we have to face reality, and I think this begins to face reality on a very limited issue that probably over the next year or two will lead us into far more expensive and far more complex issues. Our law is kind of unusual. When someone is mentally ill and it is clear that they are a danger to themselves or to society,

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where do we plug them into the system at? What mechanism do we use to plug them into the system? Who do we charge with the duty of making that assessment and the follow-up? What resources do we have ready to deploy? Well, oddly enough, in our system it's the local policemen. That's who is responsible: somebody who doesn't have particularly any training in the area, doesn't have any degree or credentials. The same guy we expect to help the motorist on the street and to write traffic tickets and to break up the domestic dispute, that's the guy. And we say, when you spot somebody mentally ill and dangerous, you bring them into custody. Okay, well, we can take that. He's got a car. He drives around the neighborhood. He's got radios and everything like that. So it sounds like maybe, you know, for lack of a better idea, he should be the one that makes that initial screening and says, look, we've got a problem here. Okay, now let's suppose he says, look, we've got a problem case here. What's he supposed to do? Well, obviously, you put him in the back of the cruiser. Now what's he supposed to do? Well, should be a place to put him, someplace. Now when I was county attorney that was a little easier than it is today because we had a regional center 40 miles away and they--the policemen--drove the person up to the regional center for what they called an evaluation. And I think the time limit then was 72 hours, but I'm not sure if it was 48 or 72. At any rate, they saw doctors there. The regional center was equipped to take them right at the door. There was no waiting, no arguing whether or not it was covered by a contract with a region or whether they felt it was too dangerous a case to take. They took them. And usually within a day or so I got a call from the psychiatrist at the regional center saying, you know, it was a just a temporary episode due to intoxication or drugs or whatever and we're going to cut the guy loose, we think we can get him some counseling, some help. Well, fine, it went no further. Or they'd say, the person has voluntarily committed himself, there's no need for forcible commitment and we think that should adequately handle it. Fine, no problem. Or they'd say, you've got a real problem here, the guy is schizophrenic, he's got a serious mental problem and we feel that he is going to go out and commit suicide or he's going to hurt so-and-so who he dislikes or he's just really not...it's not going to be healthy for him or society to be walking the streets in his present state, at which time we'd convene the Mental Health Board. The Mental Health Board would usually have no difficulty in seeing exactly what the psychiatrist was seeing and make a commitment and it proceed from there. Okay, well, we no longer have that regional center. So here is a cop, policeman driving around with this guy in the back seat. What is he supposed to do? Where is he supposed to take him? One would think that there would be a hand-off that he'd know when you have somebody who is in this condition, you take them to this location and they are prepared to handle the situation and treat them from a mental health perspective--not the way it works. There are contracts between these things called regions--and that's a discussion for another day because that's something we need to examine--and various facilities who may or may not feel obligated to take them, may, if they feel they're uncomfortable with them, it's too violent, the situation is just not up to their admittance standards at that time, they turn them away. So we have the policeman not knowing what to do. Who do policemen call at 11:00 at night when they don't know what to do? The county attorney. And so there you have the county attorney, got somebody wild in the back seat,

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perhaps pounded on the officer a little getting him in to the back seat. And the county attorney tries to find a place to put this person, to tell the officer, to say, drive them to this location and they will take care of him there and then we'll cross the bridges with respect to whether or not we need to convene the Mental Health Board. I think you're going to hear today, and some of you already have heard, that that place sometimes, more often than not, does not exist or is full or you have to barter for this bed or that bed in that location trying to find a spot. And you know what happens if you can't find a spot? Well, our statute says, thou shall not treat the mentally ill as criminals and throw them in jail. So you got to scratch your head a little bit and say, hmm, maybe he isn't mentally ill, maybe he's just a criminal who kicked a police officer in the leg, and reclassify him, reclassify him as a criminal and take him to county jail. What else you going to do, turn him loose? The public protection is first. The system is broken and you will hear that today. What this does is it puts responsibility for the "what you supposed to do" where it should be. We have supposedly a Department of Health and Human Services, supposedly a Division of Behavioral Health, supposedly have lots of money going down to these five little, or is it six little, fiefdoms called regions which are largely discretionary spending by administrators under a board of county supervisors, one a county, who really have, if they're honest with you in many cases, more interest in the price of gravel than they have experience and competency in mental health. But at any rate, it isn't the county attorney's responsibility. It isn't the policeman's responsibility. It is the mental health responsibility. And if they're not up to it, then it's our responsibility to do what it takes to get them up to it. But this bill is very simple. It says, look, they have an hour to take custody of that person after the officer detains them. I'll admit an hour is a fairly arbitrary figure. Maybe it should be 90 minutes but, whatever, it's a limited time period in which to transfer that custody. And then, you know, it's their problem where they take them. And if they haven't provided for the facility, then we start bringing that devil to a head. No longer is it, oh, well, we have no place to put them but that's the county sheriff's problem or the county attorney's problem, not our problem, we just didn't provide for one but not our job. And it has a little bit of a stick in the bill making a minor, minor misdemeanor if somebody doesn't do their duty. Now, as we all know, misdemeanor filings are discretionary with the county attorney, so what it does is give the county attorney a stick in order to enforce the obligation. But this simply says the mentally ill should be treated by a system set up to treat mentally ill, particularly if it's an acute mental illness case where somebody is about to go hurt themselves or somebody else. It is not up to the county attorney, not up to the police department to go try to make do, to drive them around until they sober up or come off of a drug high or to make believe they're criminals and put them in jail or, if they don't do that and something bad happens or they're repeat offenders and this happens repeatedly, end up in the penitentiary not as somebody who we're afraid of but who somebody is a nuisance to society and we have no other place to put them. So I think you're going to hear some interesting testimony today. It's the tip of an iceberg because once you say they've got to put them someplace and they got to provide for that someplace, then it becomes, where is that someplace and how much real money does it cost? Before I close I might mention I found the fiscal note very interesting and highly inflated and I think that, when

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we look at that, either the counties have one heck of an unfunded mandate put on them of \$14-15 million dollars here or it's really inflated. And \$9 million of it they say, well, we'll...you know, we assume there's a new \$9 million. Well, there isn't a new \$9 million and they can contract under the terms of the bill to have the sheriff's office transport the person to wherever they need to be transported but be under their umbrella rather than the sheriff's umbrella and under their responsibility. So they don't need a stand-by office staffed with an FTE and whatever in 70-some locations across the state. It's just...this is...the fiscal note is simply saying, we don't want the problem, we don't have it now, let somebody else take care of it and maybe it just goes away. Thank you. [LB780]

SENATOR COASH: Thank you, Senator Schumacher. Senator Krist. [LB780]

SENATOR KRIST: Senator Schumacher, you and I have been almost tied at the hip with most of the special oversight and special investigative committees and I have heard I think most everything that you have heard. And you are absolutely on target with the assessments that you have just made. This bill may not be the end-all, see-all, but it sure for me...you know, a couple of years ago I was on the Health and Human Services Committee and I made a joke one day and I said, you know, I feel like the scarecrow in The Wizard of Oz: Which way do we go and whose fault is it? That earned me a little cartoon by Mr. Koterba which I am terribly proud of and it's in my office. But in this particular case, here we go down this road again on a different issue. I applaud you for bringing it forward. And I would interject to this group and to anyone who is listening, if that's all it costs us to fix this problem, bring on the fiscal note, because \$14 million can be whittled down into the counties' share and the regional share and all the rest of it. But, I mean, I would have thought that to fix this problem overall it would have been much larger. So if someone is going to come up and argue that they can't do this yet they're able to put a price tag on how to do it, my challenge is, do it. You don't need us except the money that we would provide. The other comment I would make though is that I think--and I think we should point it out to everyone--when you actually read, if you actually read what's in statute already, we have...the inhumanity of it is amazing. "Such person shall be admitted to an appropriate and available medical facility, jail, or Department of Correctional Facilities, as provided in subsection (2) of this section," which brings us right back to your point. What do I do with this guy? I'll just charge him with kicking the sheriff. Then he's not mentally ill; he's not a drug addict. We'll just stick him in jail. In response to my diatribe, I'd like you to tell the story of the young attorney, county attorney, deputy county attorney who came to us in a hearing and told us about what she was forced to endure in just one particular case, if you could, please. [LB780]

SENATOR SCHUMACHER: I'll do one better, Senator Krist. She's here to testify and she's a whole lot better to look at than I am. [LB780]

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SENATOR KRIST: Oh, there she is, okay. Well, you're right, and thank you. [LB780]

SENATOR COASH: Thank you, Senator Krist. Senator Seiler. [LB780]

SENATOR SEILER: Well, having served 15 years as the chairman of a committee on the mental health, you're right on. There's two things I'd like to add though. You took them one round. Take that same person to in front of a district judge three times and where does he end up? Nebraska State Pen, and that accounts for 31 percent of our prisoners. So I think you just took it one step but it really revolves into three steps. And the second thing is that you can see that if you look at the closing of the regional centers in 2008, we've been spiraling out of control ever since. So we do have a real emergency here and I look forward to working with you and solving this problem. [LB780]

SENATOR SCHUMACHER: Thank you, Senator. [LB780]

SENATOR COASH: Seeing no other questions, thank you, Senator Schumacher. We're going to start with testimony in support, LB780. Welcome. [LB780]

ELIZABETH LAY: Thank you. Hello, everyone. I am Elizabeth Lay, E-l-i-z-a-b-e-t-h L-a-y, and I am the deputy county attorney from Platte County. I'll try to keep this as short and sweet as I possibly can. I was here in October at which point I pretty much talked for an entire four minutes without breath explaining all of the things that I have come across in my very short, actually, few years' time at Platte County and the, to a certain extent, inhumanities that come across my desk in mental health, the problems that I have with the regions and the division as a whole, the problems that I have with insurance. I spelled out all of that information in pretty good detail. And after that, you know, as naive as I am, I expected something to happen, if not at the legislative level, then I at least expected to get a call from someone in my own region or someone from the division to try to figure out how we can solve some of these problems that we deal with. And surprisingly, I got a call from a couple of different people who really just wanted to talk about how the system works most of the time and how the ones...the times that I deal with, the times that the system doesn't work really isn't that big of a deal because it only happens a couple of times, right, a couple of times a year, or three or four, five or six or seven, you know, it really works 85 percent of the time, but that 10 or 15 percent of the time that it doesn't really work, are we really worried about that? And my answer to that is, yes, we are, because that 15 percent of the time overall is what we are concerned with 95 percent of the time because those cases are the ones that have the most...those have the most...I guess the biggest chance of causing the biggest problems for our community. Those are the most dangerous individuals. So my answer was, absolutely, those are the cases that I'm worried about, the cases that you can't fix but that you're unwilling to show up and testify to. So I decided that if I wasn't get to get to be a part

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of fixing the system overall that I would try to fix it piece by piece, and this is the first part of it. We have to pass that buck back onto those who have tried to pass it onto us who we aren't mental health experts, we can't deal with it appropriately. So if you don't think it's a big deal, those 10 to 15 percent of the time that you don't want to deal with it, then you won't think it's a big deal to take a misdemeanor every single time you tell me that, we're sorry, we can't help you find placement for that person. If I have to deal with that and the way that feels, then you can deal with the consequences that comes from not doing your job. And that's what this bill is about, starting to fix it. We have to start to fix the problem. And I would be happy to take any questions that you guys might have for me. [LB780]

SENATOR COASH: Thank you, Ms. Lay. Senator Seiler. [LB780]

SENATOR SEILER: I would like to ask you your permission from the last time you testified if we could use your testimony to supplement this record. [LB780]

ELIZABETH LAY: Absolutely, I wish that you would. [LB780]

SENATOR SEILER: Okay. [LB780]

SENATOR COASH: Senator Krist. [LB780]

SENATOR KRIST: And do you see specifically when that, in that misdemeanor, the charging of the Class IV, I think, misdemeanor, first of all, does it give you enough leverage? And secondly, would you use it? [LB780]

ELIZABETH LAY: I think it does give us enough leverage because we are not talking about just once. I mean we're talking about several times. And this is just in my county, so I don't know how many times it happens to other counties. But I'm sure if you talk to the Madison County Attorney, he is just as frustrated as I am with the fact that sometimes we need a place for people to go who are extremely violent or who need a specialized location and we get the comment of, we're sorry, we've done everything we can and there's just no place for that person right now. That's not acceptable. And the only reason that we're able to be told that is because that buck has been passed back to us. They know that ethically we can't stop. We have to continue searching for a place. And if that placement is jail until I can get a Mental Health Board, until I can find an appropriate placement, then that's what I have to do because I have to keep the public safe. And so if I have a person who is threatening to kill his girlfriend or his ex-girlfriend and I can't find placement for that person, then I have to do the next best thing and get that person secure in the only way I know how. That's not fair. It's not fair that I have to make that decision because

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someone else doesn't want to do their job. That's not okay. And so I think that the Class IV misdemeanor is appropriate because we're not talking about a situation I don't think in which someone should be facing jail time. But I do think that once you start racking those up, you start racking up four, five, six, seven, eight Class IV misdemeanors in a year, you're talking about a significant financial impact to that person, plus you're talking about their job. If you can't find placement for an individual over your region or over your division 8 times a year, 20 times a year, 25 times a year, and that person is popped with 25 Class IV misdemeanors, are we really talking about a person that still has a job? And if so, why isn't that being brought to the forefront? Because that's really what I want to see happen. I want to see these issues brought to the forefront and I want to see honest conversations about what we really deal with because I'm personally tired of hearing that everything is okay when I know for a fact, because I deal with it every day, that it's not, it's not okay. [LB780]

SENATOR KRIST: So I would ask you to do one other thing for us. There is a fiscal note attached. I'm sure...have you seen the fiscal note? [LB780]

ELIZABETH LAY: I have. [LB780]

SENATOR KRIST: Okay. So realistically, a person who lives in a county is a county resident. A person who is dealt with on the behavioral health side is probably falls to...not probably, falls to the state in terms of behavioral health issues. I'd love to hear an assessment from small counties and large counties about how we chew down that fiscal note. Where is the cost share between what you're willing to put into transportation? And the other thing I'd like to hear from the small and large counties is, is there an appropriate list, and the last resort is jail, and for how long they can actually sit there before you would, because I think defining that may force some other decisions to be made as well. [LB780]

ELIZABETH LAY: I think the first thing, if it's...if I may, one thing that I would like to clear up is that in this particular statute, when I was drafting with Senator Schumacher and we were thinking about this, the part that says jail, that is solely for sex offenders. The only time that we can keep a mentally ill person in jail once they've been EPCed is a sex offender. I left the language as is from the previous statute. So when it says an appropriate facility, jail, or correctional institution as in subsection (2), subsection (2) says that only a sex offender can be held in jail or correctional once an EPC has been done. [LB780]

SENATOR KRIST: Okay. [LB780]

ELIZABETH LAY: So once I file or once an EPC has been filed on an individual, I absolutely cannot put them in jail. So what that means is we file or the law enforcement officers will EPC a

person and then we'll call, we'll start calling the private hospitals. And those private hospitals will say, for example, just in one example, no, we're not taking that individual because they're too violent, they're too violent. Okay, so we call the next one. Well, if the first hospital won't take them, we won't take them. And then we call the next and the same thing happens. So we get through all our private hospitals and all of a sudden we realize very quickly that we don't have a hospital that's going to take this person. So then I call to the region and I say, well, what do I do now? And they say, well, call these hospitals because we have contracts with them too. And so I say, okay. So I start calling and sometimes our emergency support person will start calling as well. They won't take them either. And then I get a call back that says, okay, we've exhausted all our options, we don't know what to tell you now. And the regional center can't take them until they're committed. And then once they're committed, the regional center can't get them in within...until four months from now. And I say, okay, well, then great, we have two options, we can continue on with the EPC and not have a place to put anybody, or we can, what, send them back out into the community to kill someone? Because that's the second option that you're giving me. Well, neither of those two options work. So what we do is we decide in that particular case, because this person is violent and they have assaulted a peace officer in the throes of their psychotic episode, that the only thing that we know to do to keep this person safe from themselves and safe from the public would be to not EPC them. At that point we can charge them and put them in jail until we can come up with an appropriate placement, at which point I immediately EPC them and get them out of the jail and into that appropriate placement. When did that become the norm? That's my question. [LB780]

SENATOR KRIST: Yeah, it's like asking you to turn down the heat so you can just keep them in jail until it's... [LB780]

ELIZABETH LAY: Where they're not getting any... [LB780]

SENATOR KRIST: Right. [LB780]

ELIZABETH LAY: ...appropriate treatment. And I know experts that will testify that a person that is mentally ill that is in the throes of psychosis who does not get proper treatment gets to the point to where they cannot be restored to full capacity. So at what point are you looking at the humanity of it and saying we need to deal with this because this is a real issue and we aren't treating these people the way that they deserve to be treated? I mean that's really the...that's the issue. That's where this comes from. I don't care how much it costs. And since this happened what we have is the region coming back and saying, okay, well, now we'll...okay, fine, fine, we'll start to compensate the officers for their time in the ER, for their time doing this--talk about taking the total wrong point of view. I don't...it's not the money that we're worried about; it's doing the right thing for people who deserve the right thing done for them. We...these people

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deserve the right place to go, they deserve appropriate treatment. And when you shove that buck onto me as a county attorney--I have a law degree, I don't have a mental health degree--or our county sheriff, who does a wonderful job, a great job, but he's not a psychologist or a psychiatrist, he doesn't know where...if our region can't find appropriate placement, what hope do I have? But I have to keep fighting because I have an ethical obligation to do so and I have a moral obligation to do so. I don't want to put someone in jail who shouldn't be there. It's not the right thing to do. So we need to figure out what is the right thing to do, what's the right thing to do by these people. And if I have to go at it piece by piece, then you'll probably see me here sitting in front of you for the next three years because... [LB780]

SENATOR KRIST: Well, your testimony is as compelling today as it was when I heard you last fall and I hope you do and I hope we're here to help you get through this process, because it's a noble cause. Thank you very much. [LB780]

SENATOR COASH: Ms. Lay, I want to ask, just want to make sure I understood your testimony. So you'll have a person who is picked up by law enforcement through...the law enforcement will EPC them. You will try to find a place. When that...when all those doors are shut, you pull the EPC off and you say, okay, you're no longer in emergency protective custody, now you're charged with a crime. So that allows you to put the person in jail. And then when you find a place or somebody lets loose, you, what, drop the charges and reinstate the EPC? [LB780]

ELIZABETH LAY: Really the way it usually happens is, luckily I have a really good conversation, I really have good communication with our law enforcement officers. So if they have a troubling, a violent person, we already know that if we have a violent person we're out of luck. We already know that that's going to cause a problem and we know that from experience. So what will happen is our law enforcement officers will call me prior to doing anything and they'll say, how do we want to handle this, let's have a pow-wow on this and try to figure out what we're going to do going forward because let's...you know, it really is a team effort. So we try really hard not to EP...we're not going to rescind an EPC. If we've EPCed them then, you know what, it ends up with, you know, our county sheriff and I talking at 3:00 a.m. trying to figure out what we're going to do and him trying to find transport out to Scottsbluff if that's the only hospital available because once we've EPCed a person, boy, you just really get into shaky territory rescinding that EPC to put a person in jail, in solitary confinement, or in suicide watch or whatever it might be, because you know they're going to have to sit there for awhile while we find a...because the regional center is going to take four months maybe, if they're even accepting mental illness or mentally ill patients at this point. I mean, yeah, it's as convoluted as it sounds and... [LB780]

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SENATOR COASH: But you do...but I mean you described a situation where you pulled a... [LB780]

ELIZABETH LAY: Well,... [LB780]

SENATOR COASH: ...pulled the EPC back, charged him with a crime so that you have a place to put them. [LB780]

ELIZABETH LAY: Yes, we don't... [LB780]

SENATOR COASH: I mean... [LB780]

ELIZABETH LAY: I wouldn't say pull the EPC back. I'd say we have that conversation. I would say, don't EPC them, instead of that charge them with assault on a peace officer. We charge them with assault on a peace officer. We get them into a situation where they can be monitored for 24 hours until the violence deescalates to a point that we can find somewhere that would take them or until the regional center will accept them on commitment. If the regional center says that they'll accept them upon commitment, then I immediately file the EPC paperwork, pull them out of jail, get them to a hearing, and get them to the regional center. [LB780]

SENATOR COASH: How quickly can you get that hearing? [LB780]

ELIZABETH LAY: We can usually do an emergency hearing within a couple of...within a day or two. [LB780]

SENATOR COASH: You can? [LB780]

ELIZABETH LAY: Uh-huh, but as Senator Krist was saying, there was a situation which, you know, really...it really shook me and my belief in the system because I had an individual who was charged...he was started out as being charged with a crime. He was charged with terrorist threats for some threats he made to a child. And I got the reports and reviewed them and quickly realized that we were dealing with someone who was severely mentally ill. I contacted the family. They confirmed my thoughts. And I tried. I wanted to EPC him at that point. When I tried to get him into the regional center, because that's where he would have needed to go--he's very homicidal--I was told that the wait was three to four months long. He actually did sit in our jail for four months before I could drop those charges and get him to the regional center. That was a year and a half ago and he is still there. So he was severely mentally ill. We tried really hard to get him out of there as quickly as we possibly could, but the regional center couldn't take

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him. And we actually ended up, I think, borrowing a bed from another region, trying to barter that and make that so that we could get him out of there and into appropriate placement. [LB780]

SENATOR COASH: I'm not saying this is a good idea, I'm just interested in hearing your feedback. If the law was changed so that jail could be used as an EPC...I mean it sounds like you're jumping through a lot of hoops just to keep people safe and just...and I know how it is when it's...these things don't happen Monday through Friday, 9:00 to 5:00 either, right? I mean you're dealing with these things middle-of-the-night kind of thing. Do you have any comment on what the impact would be if you were able to remove some of that bureaucratic burden? I'm not saying that jail is the appropriate place for somebody who is mentally ill. [LB780]

ELIZABETH LAY: Um-hum, right. [LB780]

SENATOR COASH: It's not what I'm saying. But what I am saying is it seems like you have to do a lot at the front end when maybe it might be easier just to say, okay, we know while we're doing this we could hold this person in jail. Is that a practical possibility in your mind? [LB780]

ELIZABETH LAY: No. [LB780]

SENATOR COASH: Okay. [LB780]

ELIZABETH LAY: You know, you could ask a lot of people that question and they might all have a different answer. But jail is not an appropriate place for anyone who is mentally ill at any time in the process. And I refuse to answer yes to that because I think that gives credibility to the fact that maybe the department or the division isn't working as efficiently and as effectively as it should. I mean we know now that they have...I don't believe, really know what goes on in practice. And if those question were asked more often, you know, if they were even asked at all at this point--we know those needs assessments may not be done when they're supposed to be done--if those questions were asked at all and if they were at all honest about what really goes on, then we could maybe have a better and appropriate placement for people. The problem is that...the reason that the problems exist is because when we closed down the regional centers we allowed the regions to contract with private hospitals. And those private hospitals in their contracts, which I have seen, have no...they have no absolute...they have all the discretion to reject a person if they don't feel that person is appropriate for their facility. So when you have a person who is contracted by the region who can say yes or no to a case, you know, they can say yes to all the easy cases and no to all the hard cases and they're still getting their region funding. So really what is it that says that they have to take them? There's nothing. And so I think that's where the division should be stepping in and saying we need a better plan here. You know, you

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don't have to go back to the regional center system but we need a placement or some sort of placements for these people that's not jail because, I'm sorry, you will never have me say that jail is an acceptable place for these most vulnerable people, absolutely not. I just will not say that. [LB780]

SENATOR COASH: I appreciate that. Senator Seiler. [LB780]

SENATOR SEILER: I've been working with the state and some regional directors on a facility at Hastings with Mary Lanning, and you spoke very highly of Mary Lanning the last time. Well, since we talked they've picked up two more psychiatrists, so they're now at six. And having a secured, when you say a jail, you're not discounting a secured facility on one side and a longer-term programming and medication center on the other side to get them stabilized to put back in a community health center. Would you envision a program like that being able to function fairly well in your concept? [LB780]

ELIZABETH LAY: Like sort of a regional center that has the capacity for a residential type of step down? [LB780]

SENATOR SEILER: Right. First, when your sheriff brings them to the facility, they'd be--and they're violent--they'd be in a secured area, as the doctors work with them, move them to a programming and medical adjustment facility and then back to the mental health areas in their community. [LB780]

ELIZABETH LAY: If you asked me...and I feel the need to qualify this statement by saying I'm not a mental health professional. The only experiences that I have are my experiences as a deputy county attorney and what I see works and doesn't work in practice as opposed to what you think might work in theory. It's definitely different once you see things implemented, you know, on the ground. If you asked me what I think the best scenario would be is I believe that we need a state step-down facility. I think that you thrust people into the Lincoln Regional Center and then they are very pressured to get people out very quickly but the only secured psych rehab that we have in this state is private and so they have, again, the discretion to take people or not take people depending on whether they want to or whether it's an easy case or whether it's not. And so what you end up having is a person who is in Lincoln Regional Center who is doing very well who really needs a step-down facility like at Park Place where he could go and gain a little more freedom but still have that 24-hour oversight. But the one that we have in this state is private and won't take that person for whatever reason and so they just get put into the community again. Then we see failure because you're setting him up for failure because you're going from a completely structured scenario where they're doing really well, thrusting them into independent living where they have absolutely no structure. And that's pretty much just a setup

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for failure from the start. So if I could design any type of system, you know, I'm not a proponent or an opponent, I'm very neutral on the institutionalization or deinstitutionalization. I don't have an opinion on that. But I do think that the two--community-based treatment and institutionalization--can coexist. And I think to do that you would have a type of step-down system that would be the secured facility where they have that very structured...those very structured settings where those needs are met. Then they would step down into a state-secured residential facility where they are gained a little more freedom but yet they're able to reassess their needs in that particular setting and I would even go one step further into a nonsecured psych res rehab that's state run. That way, when someone gets out of that Lincoln Regional type setting, you're not just thrusting them back into independent living hoping that they make it. They're not going to, FYI, 95 percent of the time. You take them out of a structured environment and put them into an independent living situation and they're not going to do well because they're too used to operating under those strict rules. So, yes, in my...if you asked my humble opinion as a deputy county attorney and what I see, that is exactly what we need to help these people gain that freedom a little bit more and a little bit more, teach them the skills as you go to survive so that you're setting them up for a path of success as opposed to just thrusting them out into what will absolutely be a failure in society. [LB780]

SENATOR SEILER: That's what I have been working on, so. [LB780]

ELIZABETH LAY: I think that's wonderful. I think that's really great. And in the broad...in the grand scheme of things overall in the system, I think that is an absolute great idea as it relates... [LB780]

SENATOR SEILER: I didn't visit with you ahead of time and tell...(inaudible), did I? [LB780]

ELIZABETH LAY: No, no, I didn't know. [LB780]

SENATOR SEILER: Okay, thank you. [LB780]

ELIZABETH LAY: As with this bill right here, like I said, it's mostly because if I'm not going to...you know, if we're not going to fix the problems in total, if no one wants to listen to me as to what's going wrong on the ground, well, then I feel the need to attack it one step at a time and that's what we'll do, that's what I'll do, because something has to change. Something has to change, period. [LB780]

SENATOR COASH: All right. Thank you, Ms. Lay. [LB780]

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SENATOR SEILER: Thank you very much. [LB780]

SENATOR COASH: Appreciate your testimony. Thanks for being here. [LB780]

ELIZABETH LAY: Okay, thank you. [LB780]

SENATOR COASH: We'll take the next testifier in support. [LB780]

ED WEMHOFF: Good afternoon. [LB780]

SENATOR COASH: Welcome. [LB780]

ED WEMHOFF: Hello. My name is Ed Wemhoff, E-d W-e-m-h-o-f-f, and I am the sheriff of Platte County. In recent years the concerns regarding mental health and the mentally ill in our communities has drawn much attention. Although much of the attention is not positive, much of the attention is necessary as we look at how we can better serve our communities. Law enforcement workers on the front line become professional involved with those who suffer from mental illness during pivotal times in their lives. We are often the ones who make an initial assessment regarding an individual's actions and are frequently the ones who make the initial determination as to if certain criteria are met, allowing us to place the individual into protective custody. As the sheriff of Platte County, I am also responsible for the Platte County detention facility. I can say with certainty that numerous individuals within the facility suffer from mental illness. The mentally ill do not belong in our jail and I believe we should do what we can to keep them out. When law enforcement encounters an individual whose actions meet the criteria of an EPC we are left with responsibility of finding placement for that individual in an appropriate and available facility. Recently it seems that way too often we struggle with finding an open bed or, worse, finding a facility even willing to accept that individual. When there is a bed available, the process by which the facility requires us to follow often takes several hours to complete. This is taking valuable law enforcement resources away from our communities as that officer has to sit and wait for that patient to be accepted. When there are no beds available or no one is willing to accept that individual, law enforcement is left to their own determination as to how best to proceed all while attempting to maintain what we believe to be best for that individual. I beg the question, why is there ever a time when, after law enforcement has placed an individual into protective custody, that we are unable to find placement for that individual in an appropriate facility, an appropriate facility containing professionals whose purpose it is to serve the mental health needs of our community? Having listened to Ms. Lay and speaking with her quite often on this topic, I support pretty much everything and all that she has shared with you guys this morning. I come here this afternoon not only as the sheriff of Platte County but also as a member

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of the Nebraska Sheriffs' Association and the Nebraska Sheriffs' Association is in support of LB780. And I'll take any questions. [LB780]

SENATOR COASH: Thank you, Sheriff. I know you came down from Platte County because that's where Senator Schumacher is from. Do you know from your Sheriffs' Association if this is...I just kind of want to get it on the record. Are we talking about a Platte County problem or are we talking about a statewide problem? [LB780]

ED WEMHOFF: When the topic of mental health got brought up in one of our meetings, because this is such a hot topic for me and Elizabeth, I started talking and a lot of the responses I got from the sheriffs is we have a problem statewide. [LB780]

SENATOR COASH: Okay. [LB780]

ED WEMHOFF: When you look at the services that one region may offer as opposed to another region may offer, we have offices and departments who are unaware that this service is even available because it is not offered in their region but it is in another region. And those conversations with the other sheriffs, I do know that there are some specific issues that are to us in Region 4. But it was the general agreement of all the sheriffs there that we have issues that need to be addressed statewide. [LB780]

SENATOR COASH: Thank you, Sheriff. Senator Krist. [LB780]

SENATOR KRIST: To the point, we talk a lot in the juvenile justice area about justice by geography. And many times the counties are...it is a very diverse bag of tools and things that are available to you. I would imagine in your discussions, and I don't want to lead the question, but if you talk to the folks in Douglas or Sarpy or others I would imagine that they would tell you that they have more options, particularly going across the river, which we empowered them to do last year if they have to. Can you speak to that for me for just a second? [LB780]

ED WEMHOFF: Absolutely. It's...when you start talking of the different regions of the state, depending on where you're at, obviously, when you have higher population bases you're going to probably find more facilities because there are more people living in that area. One of the things that I became aware of really quick is that a lot of the resources don't evolve out into the rural communities. I have a mental health professional in my jail who is trying to work with the inmates to recognize problems, to diagnose problems, try to get them help when they leave our facility in hopes that they don't come back. It took me ten months to find a mental health professional who was able to even come and talk to us to come work in my jail. If I had the same

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facility, say, Omaha or Lincoln area, I don't think it would have took me ten months. So when you start talking rural Nebraska, it is lack of...we do lack the resources out there that the higher population bases do have. [LB780]

SENATOR KRIST: And then is there an exchange of that information in terms of what's available? Or is it even possible to use some of those other regions in terms of their capabilities? [LB780]

ED WEMHOFF: You know, most of it is just discussion of what is developing because, you know, we're pretty much...you know, we're tied to our region and we belong to this region and that is our first priority and that is where we go. We have had situations that I can't share exactly who was all called because I've been in conversations with Ms. Lay who is contacting every single facility throughout the state of Nebraska and is having trouble finding them anywhere. And I said, if you can just give me someplace for this individual who needed help to get them out of a hospital setting, medical facility setting to a mental health setting, I will drive them to North Platte, Scottsbluff, name it. And there was nothing and I think that took almost seven days before we got that person out. [LB780]

SENATOR KRIST: Thanks for coming. [LB780]

SENATOR COASH: Sheriff, I have another question. How long have you been the sheriff there in Platte County? [LB780]

ED WEMHOFF: A year and a half. [LB780]

SENATOR COASH: Okay. I don't know if I could ask this question then. From your experience in law enforcement, Platte County or elsewhere, is this...is the situation Senator Schumacher is bringing, is this new? I mean we've talked a lot about what is different between what's going on since the close of the regional centers as kind of that starting point. But if you've been in law enforcement for a period of time, I'm curious if you have any opinion on, you know, what happened in the old days. How did we deal with this way back when? [LB780]

ED WEMHOFF: Well, this is interesting. Granted, I've only been a sheriff for a year and a half. And without actually sitting here calculating, I think it's been 18 years I've been in law enforcement. And I look back to the early days when I got into law enforcement. And to be totally honest with you, I think it was overwhelming learning the job to actually remember a lot of what happened back then. But I do rely on a lot of men and women who have been in this profession a long time when we talk about this and there is a certain captain from a certain police

department where our discussions mimicked the exact same thing I heard from my chief deputy who has been in law enforcement about 30 years, that I don't know why we're still arguing about this, we have had a problem for 35 years and nothing ever changes. As far as the regional centers, when you talk to...and I believe...you know, I had an experience with the regional centers and from my experiences back then, if you placed somebody in protective custody, you drove them to that facility. Within a matter of minutes, maybe a half hour, you were back on the road going back home. You know, I encountered a problem where I don't have a large agency. In Platte County we try to keep two deputies on at a time. We're blessed if we are...the shifts overlap and nobody is off to where you have three or four. So if I have two deputies covering Platte County, a population over 30,000 people, and one of them is off transporting an EPC, which could take from the start of the process to the end of it, very possibly could take that whole entire eight-hour shift, leaves me with one deputy covering a community of that size and that is unacceptable to me. [LB780]

SENATOR COASH: Okay. Thank you, Sheriff. I don't see any other questions. Appreciate you coming down to testify today. [LB780]

ED WEMHOFF: Thank you for your time. [LB780]

SENATOR COASH: We'll take the next testifier in support. Seeing none, we will move to opposition testimony on LB780. Welcome. [LB780]

SHERI DAWSON: (Exhibit 1) Thank you. Good afternoon, Senator Seiler and the Judiciary Committee. My name is Sheri Dawson, S-h-e-r-i D-a-w-s-o-n, and I serve as the director of the Division of Behavioral Health for the Department of Health and Human Services and I am here to testify in opposition to LB780. The division is committed to providing access to emergency services for individuals experiencing a crisis through contracts with each of the six regional behavioral health authorities. LB780 changes several provisions related to emergency protective custody, or EPC, and shifts individuals placed under EPC from local law enforcement to the custodial care of the Division of Behavioral Health within one hour of notification. My testimony today highlights concerns with LB780. First, given the rural nature of Nebraska, the capacity and funding needed to accommodate the time frame of one hour for the transfer of custody of an individual, every medical facility, jail, or Department of Correctional Services would have to be addressed. Shifting the responsibility to the division would require a budget adjustment in order to fully absorb the shift of costs for custody, payment, and transportation for individuals placed under EPC. As the Nebraska behavioral health system is complex and has a capitated system, this change would impact a mix of state, regional, and county dollars. Realigning existing dollars for administering the one-hour response, as well as developing additional capacity, removes dollars from existing, less restrictive services also essential to

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consumers. The proposed changes in custodial responsibility would also require revision to the Nebraska Mental Health Commitment Act and the statute governing EPC. Second, the bill does not address the public safety, the safety of individuals in crisis, and DHHS staff for custody and transportation of individuals placed under EPC without involvement of law enforcement. The safety risk includes the absence of appropriate vehicles, training, and backup that would otherwise be addressed before custody is awarded to the division. The involvement of law enforcement would likely be necessary and could be done with a contract; however, LB780 does not include a requirement for law enforcement entities or counties to contract; therefore, the bill as written could present some safety challenges. Lastly, the Legislative Performance Audit Committee's recent report and recommendations directing a comprehensive needs assessment provides for a data-driven system planning process. In the meantime, the division is moving forward tactically to address emergency coordination and strengthen collaboration with all system partners. One example is a newly developed cross-division solution team to improve emergency system in all areas of the state. I would be happy to discuss others and I'm happy to address any questions you may have. [LB780]

SENATOR COASH: Okay. Thank you, Director Dawson. In your...you said there are others. And when you say there are others, are you talking about systems changes here? [LB780]

SHERI DAWSON: Yes. [LB780]

SENATOR COASH: I'm interested. What've you got? [LB780]

SHERI DAWSON: Okay. I know. First of all, I'm here to say that the system isn't perfect. I understand that there are challenges and that there are situations where there are individuals that have challenges finding a bed, finding a bed in a timely basis. But what we have done in the last several months is really begin to focus on the emergency system. So last year the Legislature appropriated some new dollars to the regional behavioral health authorities and those were indicated to be focused on emergency system redesign. We also have a strategic plan that we are carrying out for this year that looks at...we have projects working at Lincoln Regional Center, as well, in terms of the flow, because we know we have challenges there. We also have service enhancements that we talked about. You know, when individuals go into an emergency room, they may go to a medical hospital or they may go to the psych hospital. One in four individuals have a behavioral health challenge, and that means a mental illness or an addiction. When they are served in a...present in an ED, there are regulations, in terms of federal requirements for Medicare, that do require a medical screening. So if an individual is brought to that facility, that does constitute some time for that medical screening. There are hospitals that should be commended for their innovation in bringing in individuals either in the psych hospital or the vice versa where they have a service enhancement to be able to speed that process along and we

support that and the regions do fund that. We also have the Heritage Health initiative that we're working on with Medicaid. We've recently...have on board Dr. Todd Stull, who is our chief clinical officer, who was out and about already working with hospitals, working with the regional center doctors to really look at those opportunities for helping distinguish the individuals that become challenged in a state hospital and those in a community hospital. Those are just some right off the top of my head in terms of the emergency system coordination. We have variability, I will say, in terms of the regions' emergency system, in a positive way, however. There are regions that have an emergency system coordinator. All of them are available 24/7, but many of them work directly with the county attorneys and the law enforcement in the area, have multiple contracts with the, you know, the psych hospitals in the state. [LB780]

SENATOR COASH: Are you familiar with those contracts that would be between those providers like the hospitals and the regions? [LB780]

SHERI DAWSON: Um-hum. [LB780]

SENATOR COASH: Are those contracts no eject, no reject? In other words, do they allow for those providers to say, uh, no? [LB780]

SHERI DAWSON: Right now there is some language. It's not strong enough and that's actually part of the conversation that we have to have, and we're having it with Medicaid and Magellan as well, because we all fund individuals with behavioral health challenges. The capacity issue is certainly a challenge. But again, many hospitals should be commended for working to create an assessment center for individuals with behavioral health, observation centers. In the ED they have a separate track for individuals with behavioral health challenges. [LB780]

SENATOR COASH: Okay, so back to your testimony, does the division have a strategic plan on how they are attempting to deal with this emergency protective custody issues that...at least for the eight years I've been here, I've been hearing from counties and the regions point fingers. Senator Krist is right. Everybody has got a finger to point. Does the Division of Behavioral Health have a strategic plan in how they are addressing this issue, things that they're looking at, the initiatives that they're taking, the groups they're bringing together, and the direction that they're headed to try to solve this problem? [LB780]

SHERI DAWSON: Well, as you may know, we the division had a 2011 to 2015 strategic plan that sunset. And so we now have the 2016 strategic plan to get us through this year. The Legislative Performance Audit Committee directed us to do a needs assessment for the larger behavioral health system, so not just, you know, our funding. And so that is in process right now,

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working on that needs assessment. But we do have this plan that we have committed to for a year and there is sections and activities in here that do relate to the emergency system. [LB780]

SENATOR COASH: I think the committee would be interested in seeing, as it relates to this issue, what it is the department is committed to doing. And I understand it's a yearly plan. But if it's just we're going to look at this and we're going to talk about it, we're going to evaluate it, I'm guess what I'm more interested in, I'll be looking for verbs like "this is what we are going to do, this is the change we're going to make," because I think Senator Schumacher has illustrated that it's probably time...it seems to me it might be time for the Legislature to step in, like we always do, and try to fix this stuff. But if the department is already marching down the track of trying to do that, I don't want to duplicate efforts. That's why I want to see what the department is looking at. Senator Williams has a question. [LB780]

SENATOR WILLIAMS: Thank you, Senator Coash. And thank you, Director Dawson, for being here. A couple of quick questions about your testimony just...you know, you brought up what certainly could be viewed as some legitimate points. You mentioned the one-hour time frame in a state that's as geographical as ours is and you base one of your reasons for testifying in opposition on that. If that time frame was extended two hours, three hours, does your opposition change? [LB780]

SHERI DAWSON: Well, I think, you know, when I spoke with Senator Schumacher on Monday he talked about one hour and it might be somewhat flexible. I think the overall issue of we do need to have access standards, and that is in our strategic plan to develop those with our advisory committees, while the time frame is certainly an issue, it's also an issue...I think the words were this was the...an issue that's the tip of the iceberg and there's so many moving parts. It's not just individuals with EPC. And then we also talked about individuals that are in jail or Corrections. And the system has so many moving parts. We serve 31,000 individuals just from the Division of Behavioral Health, Senator Williams. And diverting money from what can already keep a majority of the individuals in the community is my larger concern. [LB780]

SENATOR WILLIAMS: Right, and I think we would agree with that. But what we're talking about is finding a way to find that money so you don't have to divert that money, so you have additional money. Your second point that struck with me was the fact of protecting public safety. When the sheriff has that person in custody we're protecting public safety. And I think you're talking about a quick hand-off to you might leave that person in a position where public safety might not be as protected as in the hands of law enforcement. So my question is, if we could figure out a way to solve that so that that hand-off, if that's the correct term to use, was done in such a way...you know, you talk about you don't have a vehicle that has this, that, you know. If those problems are solved, does that do away with a portion of your opposition? [LB780]

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SHERI DAWSON: Well, again I think...you know, I do want to go on record as indicating that a majority of the people that have mental illness or substance use disorder are not EPCed. So I want to be clear that when we put all mentally ill people in--or substance use disorder individuals--into they're all dangerous, that's a challenge. There are some that would need law enforcement. That's a smaller majority of the people. [LB780]

SENATOR WILLIAMS: But you're basing your testimony on this public safety. [LB780]

SHERI DAWSON: That's... [LB780]

SENATOR WILLIAMS: You're basing your testimony on one hour and public safety. [LB780]

SHERI DAWSON: Yeah, that's one of the challenges, I think, again, about having that...the response time as well as the public safety issue and the cost of that to really make the system not only for the EPC gaps but all of the other opportunities we need to have for the other 31,000 individuals is costly. And I don't think that right now it's just like...if I may, Senator Seiler, we have had conversation about and it was mentioned here about the Hastings Regional Center as an option. We can have additional beds but we really need to know where the system, where those opportunities are going to be. We don't want to build a system that is going to have empty beds. We want to be able to build the correct amount that will help with that system flow. And as I had talked with Senator Schumacher on Monday, because we do have some challenges, as was also recorded today, looking at a particular pilot or a demonstration project in Region 4 certainly would be a place to start, as opposed to investing all these dollars and shifting dollars from the existing system. [LB780]

SENATOR WILLIAMS: So one hour, public safety, money...is there anyone better equipped than your office to do that strategic plan and to understand this and take the responsibility that these people need? [LB780]

SHERI DAWSON: I think that we at the Division of Behavioral Health do have the expertise with a variety of partners. What I also don't want to undo, Senator Williams, is the places where things do work in Nebraska and communities and county officials and regions have identified some fixes, if you will, or ways of helping people, that that goes away at the expense of a sort of a one size fits all. So strategically, yes, I think the Division of Behavioral Health needs to do that and we are committed to do that, per the Legislative Performance Audit Committee as well, and do that overall plan and then, based on that needs assessment, be able to really move forward with solutions. [LB780]

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SENATOR WILLIAMS: Do you have a time frame on that? [LB780]

SHERI DAWSON: Um-hum, we are working with the University College of Public Health to do that, the needs assessment, this spring. And by the end of calendar year, December 31, we will have the new strategic plan. [LB780]

SENATOR WILLIAMS: Thank you. [LB780]

SHERI DAWSON: Um-hum. [LB780]

SENATOR COASH: Senator Krist. [LB780]

SENATOR KRIST: So part of your testimony and part of the answers, questions and answers between Senator Williams and you, Sheri--thank you for coming, by the way, before I begin--have to do with capability versus capacity. Seven years I've been hearing capability versus capacity. We know where we need capability and we know what that capacity would be, I would argue. I would argue that the things that are working usually are happening in large population bases where there is nonprofits and support and lots of psychiatrists and lots of law enforcement and you don't have to transport someone miles and distances in an eight-hour shift. So that argument for me, again, is falling on deaf ears. Second thing I'll bring up is that your fiscal note--and I'll go item by item--first of all, I'd like to make a request from the Chair that the testimony that was an exchange of Ms. Dawson and from our other hearing in the fall be added to this as a matter of permanent record so we don't have to go through all those things again. Speaking specifically though in regard to this fiscal note, you're asking for 76 FTEs. "For front-line staff approximately 70 Child and Family Service Specialist level employees would be needed." What about the rest of the employees in the Department of Health and Human Services? You're suggesting that this is a silo of people that are only going to be dealing with people who are EPCed. And to your point, you don't even know how many people should really be EPCed because you don't have the capacity or the capability to take care of what the county attorneys are telling us they would EPC because that's an avenue that they can't get to. "In order for the Department of Health and Human Services to accept custody as required by the bill," the "staff must travel to the facility," I'm not tracking that one because you have an assessment...you're saying that we need an assessment and that that transportation--in the next paragraph--would be provided by contract for law enforcement to bring it to you. So why are we sending somebody from the Department of Health and Human Services to them and starting this process all over again? That's reinventing the wheel. And again I would say, where are the capabilities that already exist? Because the fiscal note doesn't address those additional people yet you're not utilizing the folks, I think, that are already in the department. Last point on the fiscal note is "LB780 removes financial responsibility from the counties and places the costs for emergency

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protective care to the State of Nebraska." I made that argument earlier. I think there has to be some negotiation in terms of what the county are still required to do in terms of taking care of county citizens as well as the state's citizenry. So on that note I'd say negotiating a fiscal note in terms of both handling the situation is going to require more than just the silo called the behavioral and mental health. You're welcome to comment on all of those, but I think that what we're looking at now is, again, a new strategic plan that's going to deal with the same discussions on capability and capacity that we've been having on multiple levels with the Corrections system on the induction or the input into the Corrections system, the common evaluation and the assessment of whether that person needs mental and behavioral health or whether they need to go to the prison. And again, we're sticking more people in prison because we're not fixing the front end. The front end is the discussion on this one and I would...my last comment--last, last of my last comments--will be the regional...the regions need to be accountable for their funds. We fund them to go out and do their thing and there's no accountability for the funds once they get out there. They can spend it any way they want to. They better start listening to some of the problems or I'll introduce a bill next year that says you don't get any funding, it goes through behavioral and mental health. I'm not sure that's a good idea either but it might be a discussion we need to have. [LB780]

SHERI DAWSON: Okay. [LB780]

SENATOR KRIST: So I've taken enough of the committee's time. If you'd like to comment on any of those briefly... [LB780]

SHERI DAWSON: I would like to... [LB780]

SENATOR KRIST: ...I'd appreciate it. [LB780]

SHERI DAWSON: I would like to respond. In regards to your opportunity for urban versus rural, we do have rural regions in the state that have worked with their local law enforcement and their hospitals and do have the ability to be responsive. Twenty...two thousand seven hundred and ninety-six EPCs is what we have the ability to count for people that are funded by us. We serve 31,000 individuals and, of those 2,796, only about 13 percent, or 386 people, actually go to Mental Health Board. [LB780]

SENATOR KRIST: So you're... [LB780]

SHERI DAWSON: So I am... [LB780]

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SENATOR KRIST: So you're...you've heard the testimony though and you've heard county attorneys across the state say the same thing: I'm not going to start out doing what I think I need to do, an EPC. So that EPC number you're discussing with me is arbitrarily low in terms of what we need across the state. Can I get that agreement? [LB780]

SHERI DAWSON: We have what we have reported to us, yes. [LB780]

SENATOR KRIST: So what's reported to you is far less than the number that actually would come in if we were serving the citizens of Nebraska, allowing the EPC to be put in place on the front side. [LB780]

SHERI DAWSON: Well, and I want to be cautious about our system in terms of the consumers we serve, and least restrictive. What I wouldn't want to see happen is because we have a statute that will change the way we do business to increase or elevate EPCs because we always... [LB780]

SENATOR KRIST: That's not what I'm talking about. I'm talking about the proper assessment of a mental or a behavioral health problem at the point of origin. And if you need to EPC him, you need to EPC him and we need to deal with the real number. So again my question is that's an arbitrarily low number. We've heard that over and over again because county attorneys can't do what they need to do in the EPC process. Senator Coash's questioning of witnesses or the testifier tells us that that's a fact. [LB780]

SHERI DAWSON: I do think that there are individuals that do get assessed, is my point, that they all don't have to be EPCed. There's crisis response teams. There's crisis assessment that happens in ED that people are not... [LB780]

SENATOR KRIST: Okay, we're not going to get to a consensus on this point. [LB780]

SHERI DAWSON: Okay. [LB780]

SENATOR KRIST: I think the point has been made. Go ahead. [LB780]

SHERI DAWSON: In response to the staffing on the fiscal note, we did look at the opportunity to have individuals do other things during that 8:00 to 5:00 time and then have people on call, so these aren't just extra individuals that would have to not...in other words, we're not going to have a person on every single shift that the person is working. They have to be able to respond in an hour and hand that off. And we worked this fiscal note many times, Senator Krist, to get it as

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lean as we believed that we could get it. Now I do want to say that there is complexity in the funding. You mentioned the county share and what that might look like in terms of the fiscal note. Our system now does have county match dollars. The counties also pay for the EPC costs and the transportation costs right now. Then there's the regional dollars that are actually state dollars that go through there, and we also have some federal dollars. So in trying to untangle and make it just as clean and crisp as you can on, you know, what the county would be, that is going to take some additional discussion if that's where you're at on trying to braid, if you will, funding. [LB780]

SENATOR KRIST: No, specifically where I'm at is that you referenced that you're going to need front line staff, approximately 70 child and family service specialists. And I'll note--and maybe I'm wrong--but I'll note that this fiscal note comes from your division. Was there any coordination with family and human services or other services within... [LB780]

SHERI DAWSON: Yes, we work within DHHS. We review the fiscal note as a department. It's not just the Division of Behavioral Health. Those are reviewed with our leadership team. [LB780]

SENATOR KRIST: So are you implying that this is in addition to all of the other services that we have out there that service family, children and family services? [LB780]

SHERI DAWSON: Yes. [LB780]

SENATOR KRIST: Wow. Okay. [LB780]

SHERI DAWSON: Yes. The other opportunity I did want to talk about, Senator Krist, is I think you and I had a conversation about trying to get out on the front end and you talked about the front end. The front end isn't EPC. The front end for our system is really to get out so that individuals have services and have diversion of crisis. And so we want to make sure that that system has capacity to be able to push that existing services on the front end. The EPC isn't the front end and it's not always bed capacity. We talked about some options and opportunities, which I tried to say to Senator Coash, that do put some things on that front end so it doesn't have to be about a bed and it doesn't have to be about additional EPCs. [LB780]

SENATOR KRIST: Thank you. [LB780]

SENATOR COASH: Senator Williams. [LB780]

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SENATOR WILLIAMS: Thank you again. One additional question, you mentioned in your testimony that all of the regions are not experiencing the same level of problem in this issue. I happen to come from a region where I've talked to the regional director, the county attorney, and the county sheriff, and they are not experiencing the same level of issue as we heard testimony before. From your perspective and your knowledge in this area, why are regions different in their assessment and handling of this problem? [LB780]

SHERI DAWSON: Sure. Well, first of all, I think you noticed the nature. Again, there's the rural and the urban issues certainly make things either... [LB780]

SENATOR WILLIAMS: I'm talking two rural areas. [LB780]

SHERI DAWSON: Okay. I think there can be a difference in terms of other services that are being provided and where dollars are allocated. Maybe they're more on the front end instead of the emergency end. It could be, again, just the opportunity that the governing board seizes where they choose to, you know, spend their dollars. I think leadership is, you know, obviously very important. And not holding the regions accountable, I've heard that a couple of times and I believe that we do have conversations, contractual things, and just recently from a very rural area have had hours of conversation with their regional governing board in regards to some concerns and I believe that governing board has taken some action and as well as working with the regional administrator to turn things around. [LB780]

SENATOR WILLIAMS: Okay, thank you. [LB780]

SENATOR COASH: I don't see any other questions. Thank you, Director Dawson. [LB780]

SHERI DAWSON: Thank you. [LB780]

SENATOR COASH: Is there anyone else here to testify in opposition of LB780? Welcome. [LB780]

PATTI JURJEVICH: (Exhibit 2) Thank you. Good afternoon, Chairman Seiler and members of the Judiciary Committee. My name is Patti Jurjevich, P-a-t-t-i J-u-r-j-e-v-i-c-h, and I am the regional administrator for Region 6 Behavioral Healthcare. I appear today on behalf of the Nebraska Association of Regional Administrators in opposition of LB780. The Nebraska Association of Regional Administrators is a coalition of the six regional administrators for behavioral health across the state of Nebraska. LB780 proposes to change some of the provisions of the Nebraska Mental Health Commitment Act pertaining to individuals placed under

emergency protective custody. LB780 will require that custody of these individuals be immediately transferred to the Division of Behavioral Health or the division's designee for placement at an appropriate facility and allows one hour for the transference of legal and physical custody to occur. I want to just...you have my testimony. I just want to briefly talk about the concerns because they're probably quite similar to what you just discussed with Director Dawson. Obviously the logistics of the size of the state and the distance to travel certainly complicates that one-hour time frame and will require the division to create an infrastructure in addition to personnel to be able to meet that one-hour requirement. There is also concern about the availability of hospitals in the rural areas that have the capacity to serve individuals with emergency psychiatric needs. The behavioral health regions contract with community-based hospitals that contain psychiatric units to serve EPCs; however, these hospitals are only in a few communities statewide. The second concern has to do with the dollars and the potential shift of funding from that regional system in order to create this infrastructure and the staffing and pay for the transportation. The third concern is the public safety. Certainly if law enforcement declines to contract with the division for transporting individuals, that may then require some other arrangements be made with non...less secure transportation. So there's safety concerns for everyone involved with that. I want to speak specifically about Region 6. We have a number of system improvement initiatives underway. One of it is looking at the redesign of our psychiatric emergency system, which was a priority identified in the recent TriWest study, and a change in the EPC process is...in this legislation is not compatible with the model that we're...is under consideration. We do indicate...we do believe that this legislation is premature and an overcorrection to the behavioral health system, particularly when you look at the Legislative Performance Audit Committee's Task Force on Behavioral and Mental Health that will begin its work as outlined in LR413, as well as Senator Bolz's LB911 looking at system of care. I do, with the time I have left, which is none... [LB780]

SENATOR COASH: If you have a final comment, we'd be glad to hear it. [LB780]

PATTI JURJEVICH: I just...I clearly hear the concerns and frustrations that have been identified earlier by the deputy county attorney and law enforcement. I clearly hear that frustration and I do agree it is about helping people who are in need for psychiatric care. I will say that things, when you hear about how things work differently in different regions, it works differently in Region 6. We have a very different approach to getting folks access to the care that they need that does not tie up law enforcement for long periods of time and hopefully gets people in for that evaluation in a timely manner and then, the next step, to get them into their acute care if that's what's warranted. We have regular conversations with...we have a task force meeting every other month and law enforcement, county attorneys, hospital folks are all invited to come in and talk about the problems that are going on. And when we are made aware of issues, we deal with it. We get people around the table and we figure out what the problem is and we find solutions. So with that, I'll stop and certainly try to answer any questions that you may have. [LB780]

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SENATOR COASH: Senator Krist. [LB780]

SENATOR KRIST: Thanks for coming. And I just have a few very quick ones for the record and for people who don't understand the regional setup. What is Region 6? [LB780]

PATTI JURJEVICH: Region 6 is comprised of five counties in eastern Nebraska: Cass, Dodge, Douglas, Sarpy, and Washington. [LB780]

SENATOR KRIST: Would you characterize that Region 6 is blessed with the amount of services and the population base that you have and that makes your job a little more difficult because there's a lot more people or less difficult because there's a lot of services available? How would you characterize that? [LB780]

PATTI JURJEVICH: I would say, you know, we have over 40 percent of the population that resides in those five counties. I think, based on demand, I think we sometimes are challenged. We, I think, find ourself challenged. Do we have enough resources to meet all the needs? Generally we do not but we do the best we can with what we have available. So, you know, geographically we're smaller than some of the other larger regions that have more rural and frontier areas in them. So, you know, it's kind of six of one, half dozen of the other. I have a smaller size but I have a much greater population and a challenge to be able to meet those needs and demands based on that larger population. [LB780]

SENATOR KRIST: Do we need to look at more accountability for the money that's being appropriated to the regions or do we need to look at restructuring the regional process so that we get more accountability across the board for both actions and for appropriations? [LB780]

PATTI JURJEVICH: I'm not sure when you talk about concern about accountability. I feel that there is accountability built into the system. I prepare an annual budget. I have a review process that includes an advisory committee and a governing board. I report every month on how expenditures are going and how those dollars are placed, and we can justify how it is that we've placed those dollars where we have in order to try to meet those needs. [LB780]

SENATOR KRIST: So to expand on Senator Williams then, to add to that question, can you-- Senator Williams asked a question before--compare two rural communities and one has a problem and one doesn't? And I'm looking at your community which is...I wouldn't call rural in... [LB780]

PATTI JURJEVICH: We have some more rural areas but relatively... [LB780]

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SENATOR KRIST: Yeah, I call Bennington rural, too, but that's okay (laughter), but just an assessment of why some do better than others. Is there enough exchange between the regions and (inaudible) conversations about how to serve the population base? [LB780]

PATTI JURJEVICH: You know, I think there probably could be more of that. I think when it comes to the specific situation that we've heard about today, I don't know the details of that and I can't tell you, I can't speak specifically to what has been done or not done in regard to that within that community. [LB780]

SENATOR KRIST: And how do you represent the regions? You said you were... [LB780]

PATTI JURJEVICH: How do I...I am here speaking on behalf of the Nebraska Association of Regional Administrators. [LB780]

SENATOR KRIST: Okay. I'd love to see an assessment of how the county that we're...the Platte would compare to Senator Williams', which would be which counties? [LB780]

SENATOR WILLIAMS: Well, in particular, Dawson would be your district, too, which... [LB780]

PATTI JURJEVICH: Oh, Region II? Okay, um-hum. [LB780]

SENATOR WILLIAMS: ...Region II, which includes North Platte, all of that area. [LB780]

SENATOR KRIST: Yeah. So if we compare those two regions within leadership in the region system, I would love to see an assessment of why somebody is doing much better than others and maybe there's a standard of care that can be talked about. [LB780]

PATTI JURJEVICH: Okay. [LB780]

SENATOR COASH: Thank you, Senator Krist. Seeing no other questions, appreciate your testimony. [LB780]

PATTI JURJEVICH: Thank you very much. [LB780]

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SENATOR COASH: We'll take the next testifier in opposition. Seeing none, is there anyone here to testify in a neutral capacity on LB780? Seeing none, Senator Schumacher, you're welcome to close if you'd like. [LB780]

SENATOR SCHUMACHER: Thank you, and thank you for your indulgence this afternoon. If we were to talk about region and the part of this iceberg that's under the water, we'd be here all day and I'll refrain from doing that. But this is a very narrow issue. And it's not an issue of who drives the car from the place of apprehension to the location for treatment and for things to begin to insert to the mental health system. We can easily handle that. You could require the local law enforcement body to enter into a contract. You could even make it the responsibility of the local law enforcement officer to drive the car. I think the testimony is, and it's probably very accurate, if those agreements between the department and the law enforcement agency could be pretty easily come by. But regardless, that's not what we're talking about, who drives the car. We're talking about a place to drive the car to. That's the problem. And behind all this is, well, we don't have the money for it, we got, instead of the 2,000, we got to serve the, whatever it was, 38,000 or 29,000. You got to serve them all. And this is the most acute of the problem. Gets any more acute and they're in the penitentiary at a whole lot more expense than what we're looking at here--and that figure is incredibly inflated. But the bottom line is we don't have the problem being addressed. And it is not the responsibility of the local policeman or the local county attorney to be the mental health hospital. And for years this has gone unattended. There's been studies and strategic plans and all that and it's a rash of words that means we aren't going to spend any money. And that's where the Legislature, I'm afraid, is going to have to step in and this is one very narrow thing. DHHS, regions, for all your complexity, give the police a place to send the mentally ill and dangerous to for emergency treatment. That's all this bill is about. We lose focus on that, we'll drown in a sea of words by administrators, by defensive agencies, all that. This is a very narrow issue. Should we leave it the responsibility of the police and the county attorney and their only option jail? Or do we say, look, that responsibility rests with the department, department, regions, get going on this, find a place for the cop to drive to? And I'll be happy to take any questions. [LB780]

SENATOR COASH: Seeing none, thank you, Senator Schumacher. You stay right there... [LB780]

SENATOR SCHUMACHER: Hey. I can. [LB1103]

SENATOR COASH: ...because you're welcome to open on LB1103. [LB1103]

SENATOR SCHUMACHER: I am just all...or first of all, my name is Paul Schumacher, senator from District 22, S-c-h-u-m-a-c-h-e-r, and I'm just full of good news today (laughter). This,

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LB1103, represents something that I'm sure we'd all just as soon not talk about. It is a firstling of a coming generation of great difficulty and it is brought about by a change in medicine, a change in culture, a change in our financial world that we're going to have to live with. You know, it used to be folks who get their seven days and their ticker give out, they'd get pneumonia, an infection or something, and they'd check out. And those that didn't, the kids would take care of Grandma or Aunt Nellie or whoever and it would only be for a short period of time before they slipped and broke their hip and got an infection, a blood clot, whatever, and died. And if you wanted to prepare for your old age, just in case you figured that you need a nursing home, you could, for a pretty reasonable rate, buy an insurance policy to insure yourself. And you could put some money aside in the local bank in a CD that paid 5 percent interest or so and watch your savings grow. Now all that's changed because you can't do those things anymore. Get next to zero interest on your savings. Aunt Nellie and Grandma or maybe Grandpa in some cases are living well into their 80s, sometimes with years of Alzheimer's, in nursing home facilities that are equipped because the heirs or the kids can't equip a home to deal with that type of age situation. But the cost--\$4,000, \$5,000, \$6,000, \$7,000 a month--you really have an old attitude that comes with you from Europe that your heirs should be able to inherit what you've built during your life, they have a right to inherit it, pass on your farm or your business or your acreage or whatnot, and that's what's focused here. It's a fundamental question that the Legislature began to answer last year in LB72. And LB72 made it very difficult for these things called revocable trusts to transfer assets to the heirs without accounting and squaring up with DHHS on an unpaid nursing home bill that was advanced by the state. It expanded the definition of Medicaid to use the federal language that was permissible for ten years but for some reason Nebraska never got around to adopting it. We seem to complain about Medicaid a lot, but on this thing we had a bleeding sieve and it expanded that. Out of that bill was deleted certain, in order to get it passed last year, certain provisions that dealt with things called life estates, that dealt with how do we recoup the money from the heirs or before it gets to the heirs if other vehicles besides a trust were used. And so we left with a job partially done. I spent time through the summer with several senators and speaking with the department, getting a little of a crossways with some estate planning attorneys, trying to figure out how we address this particular situation. And what this bill does is it begins to impose a lien on property that's transferred to heirs; it instructs that the department is to make serious inquiry before it lets people on to Medicaid in the first place. I was shocked when in discussions with the department I learned what is apparently their procedure, and it apparently works really well. I didn't know--I'll probably use it if we don't pass this bill. But you have a situation where the parent owns quite a bit of land and rents it to an heir at way below market level, enough maybe just to pay the property taxes, puts it in what they call a life estate, where the person grants it to his heirs but keeps back the right to keep the income. And the reason you do that, rather than just give it outright, is because you get, when you die, a stepped-up basis by doing it that way. That means that when your land started out at \$500 an acre and now it's worth \$10,000 an acre, if you die with it in this mechanism, you get a stepped-up basis. And so you pay no, if it's under \$10 million estate, no inheritance tax...or no

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estate tax, no state estate tax, and no income tax on that profit. You pay a little-bitty county inheritance tax of 1 percent that goes to the property tax relief, but basically that's why it's done that way. Well, person does that, puts it in his kid's name, holds back a life estate so they get the stepped-up basis, rents it to the kid for the value of not much more than the property taxes and, thus, has no income. Well, she shows up at the DHHS desk and says, I'd like to have you pick up my nursing home insurance. Now at that point I would think that somebody would say, wait a minute, something looks wrong here. Well, they don't even ask the question to know that there's something wrong. And if they do and then somebody doesn't answer it right, so what's the consequence? It's really, really a slick operation, so tries to deal with that, tries to bring some penalties in as to what happens if you are not straightforward with the department, what things they can go after. It doesn't make much sense to have an insurance policy all paid up. The old person pays it up, lets it sit there, person dies, heirs get a death certificate, head on down to the insurance company, get \$100,000 policy paid off while the state is sitting on \$250,000 nursing home bills--tries to intercept that money and it pushes the envelope on some of the ambiguities in federal law. It might even cause a lawsuit as to get a federal judge to define those limits as they sit in the context of Nebraska state law. It is something that states are doing increasingly because they all see the handwriting on the wall of a great amount of exposure as baby boomers age and what do you do with folks that need this expensive nursing home care? Along the way, of course, there comes the question, well, does some of the mechanisms that the bill initially suggested trip across legitimate needs of commerce, needs to borrow money against land, needs to have clear title when you transfer title from one person to another? Who is an heir? Who is not an heir? How can we make this work without unduly encumbering people who are not abusing the system or transactions that do not exist or last with heirs? And I'm very thankful for the folks in the title business, folks in the banking industry, folks in the legal business, even though some of them are a little raw about it because it's kind of going after their lunch basket, but most of them are really responsible in knowing that this is a problem that it's time to address. And how can we try to take this initial legislation, which you have before you as LB1103, and take off the rough edges where perhaps it digs into the issues of mortgage priority or future advances on mortgages or leaving uncertainties in some areas of title? How can we take those off? And I am pleased to report today that we've gone a long way since the initial draft of this bill, probably would have had another draft today except for the storm and that Bill Drafters didn't get to it. But as one of the parties to this negotiations, and try...and I won't only say negotiation because that almost...sense of there's two sides of it. I think there's one side to this. It's just a matter of how we work it out, said we're inside the ten-yard line at this point on it. And I hope that within a very short period of time, certainly before I have to choose a priority, that we have it ironed out so that it is as good as it's going to get. And it'll probably have to be revisited again because there are obviously things that are not going to be foreseen and are going to have to be adjusted for. But it is a bill that we have to pass if we carry through with what seemed to be a philosophical decision last year that your estate first goes to pay your nursing home bill and, only when that is paid, does it go to the heirs. That's a tough and painful thing, but unless we're willing to enter

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into a policy where the state is going to provide nursing home care for everybody for free or buy everybody a nursing home insurance policy, it's a bullet we're going to have to bite. If we don't bite it, the folks sitting in our chairs ten years from now are going to have a much more difficult time with their jobs. I'll be happy to answer any questions and I think that I am happy to report that we will be able to have something before the committee as an amendment that will take off some of the rough edges of what's in there now. [LB1103]

SENATOR COASH: Very good. Thank you, Senator Schumacher. Did a good job--no questions. Senator Williams. [LB1103]

SENATOR WILLIAMS: I do have a question. Thank you. And, Senator Schumacher, thank you for bringing this. And for the other members of the committee that have not experienced this, you are hitting on what has been a real frustration of mine for a long time, being in the banking industry and watching these circumstances happen and, not just watching them happen here and there, but watching them happen somewhat regularly and the dilemma, the ethical dilemma that many practicing lawyers get into in this issue in advising clients to do things that are legal but maybe not ethical: the transfer of property to cause other taxpayers to have to support these people for these extended periods of time. So I applaud you in that. I am hopeful that we can cover those issues that you have talked about and I'm sure we're going to hear some testimony from some of those other people that have an interest in those mortgages, being sure that commerce continues, that banks can be protected, that people can use normal planning processes that they have used for years. So I guess I couldn't find a question in there anywhere. Thank you. [LB1103]

SENATOR SCHUMACHER: Well, since I know you wanted me to respond,... [LB1103]

SENATOR WILLIAMS: Yes, I did. [LB1103]

SENATOR SCHUMACHER: ...I will say this: It is a real ethical pickle because you've got a client who you've worked on family work for, and probably pretty cheap, for a long time because a lot of rural lawyers make their money off the estate. That's when there's a lot of money moving and people don't complain too much about a fee being taken. And the client comes in and says, I don't want it to go to the nursing home, I don't want the nursing home to take my property. You say, well, you know, your bills should be paid first by you at the nursing home rather than the taxpayers. Well, can you help me on this or not? Because if you can't, I understand Joe down the street can help me and has just helped my neighbors doing it. And my neighbor, if he just lays low for five years and does it five years ahead of time--which was the old rule--he's going to come out of this scot-free and the kids are going to get the property and the nursing home he doesn't have to worry about because the state will pick it up. Well, there goes your client and

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you're caught in a real whipsaw. And that's why I think so many people within the bar have been really, really pleased with this legislation, because it will help them out of that ethical dilemma of do I help them do something which is legal--lawyers aren't priests, they're lawyers--(laughter) but is also something that really gives you a stomachache when you do it? And so I think we're going to make this work. We've had real good discussions with the financial industry and they're concerned about titles, states of title, title opinions and insurance and mortgages and things like that. And hopefully we make a real good second step with this particular bill. [LB1103]

SENATOR COASH: Thank you, Senator Schumacher. Okay, we will start testimony on LB1103 and we'll start with the proponents. Anybody here to speak in favor of the bill? Okay, we'll move to opponents of LB1103. [LB1103]

FRANK HEINISCH: (Exhibits 1 and 2) Well, I guess I'm going to lead it off. [LB1103]

SENATOR COASH: Welcome. [LB1103]

FRANK HEINISCH: Good afternoon. My name is Frank Heinisch, H-e-i-n-i-s-c-h. I am an attorney in Geneva, Nebraska. I am speaking on behalf of myself. I have practiced law, oh, 48 years, 44 of those years in a rural community. I'm well experienced in the estate planning arena and specialize a great deal in that. I have had the opportunity of dealing with my clients in a lot of the things that has been discussed here previously, and those are very difficult. First, I agree that we need to get the reimbursement of Medicaid under control. I don't differ with that at all. I think that's very appropriate and I hope our Legislature can tackle that. What I am opposed to is overbearing, putting my work into a difficult position of how to deal with my clients on a lot of the areas when somebody dies. And only thing I have to work with right now is LB1103 as it stands now. I have not participated in the negotiation. Some of the areas that have been negotiated I think are some good solutions and I'm really not speaking against the negotiations, except that's not what we have to work with--or I have to work with--right now. What I have to work with is something that is saying that every time you make a gift to the family you're creating a lien. Every time you have a lien, so you want to put a house into joint tenancy or a farm in joint tenancy with your son, that is a completed gift and there is a lien on that property and then you're not going to be able to borrow against that property. Why: because the amount of the lien is indeterminable. You don't know how much it's going to be; you don't know when it's going to come up. Okay, that I think creates a very difficult situation for the economics of the farmers. The rural Nebraska, we're not trying to beat the Medicaid reimbursement, we're trying to transfer the land to the next generation. This will make it very difficult to give the son a quarter section of land or a piece of land and then later on the son says, I'm going to the bank because I need to finance my new farming operation, and the bank says, no, you've got a lien against it. Okay, those are real issues that how we're going to work our traditional going forward

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with the future generations of our farmers. I think there are some things that need to be done that are only going to be done by focusing on the application for Medicaid and those that are participating in the Medicaid situation. Those people should be dealt with. But to say everyone that's going to make a gift of land or, even more interesting, a gift of an entity that owns land under this bill, what that means is, is I put my land into an LLC or a corporation, then I give shares of stock to the LLC or corporation. Now what am I supposed to do? I'm supposed to file a notice with the register of deeds every time I give an interest in that land? Now that's an invasion of my privacy as to what gifts I am making to my children, completely unworkable, untenable to say that just because I have incorporated land into my...into a corporation. So that's where I'm coming from is that we are going way beyond what is necessary. We need to focus on the application process. We need to focus on those who are receiving benefits and not focus on the arena of all the estate planning that goes on. So for that, I will take questions. [LB1103]

SENATOR COASH: Okay, thank you, Mr. Heinisch. Senator Williams. [LB1103]

SENATOR WILLIAMS: Thank you, Senator Coash. And thank you for being here, appreciate your years of service and your input on this. This is an issue that you see in your practice. [LB1103]

FRANK HEINISCH: Oh, absolutely,... [LB1103]

SENATOR WILLIAMS: Yeah. [LB1103]

FRANK HEINISCH: ...weekly. [LB1103]

SENATOR WILLIAMS: And you talk about the application to Medicaid. Does the fact that we have a 60...or have used a 60-month look back, that has prevented some issues. But do you have a suggestion of how that could...the application process to Medicaid could be changed to take care of this issue? [LB1103]

FRANK HEINISCH: Well, first of all, a 60 month, I think--I call it 61 months because there is a transition issue--but that look back I think is very appropriate. There are not a lot of people that are saying, well, I'm going to give it all away and tomorrow I want to go on Medicaid. It just doesn't work that way. I am confused with the lack of language that's in here on the bill as to the 60-month look back. I believe that's a federal restriction. The supremacy law, we're going to have somebody (inaudible) that's going to (inaudible) try that case as to how the supremacy act works with the 60 months in Nebraska. I'm not sure if we've got a 60 month or not. I assume so, but that's going to be an interesting question. What would I do different on the application process? I

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don't think it's all that bad if people are honest. And the question is, have you given property away within 60 months? And if you have, that probably is a fair statement to say, well, yes, I've given my son a quarter section of land. I don't think we want to stop the giving of property to the next generation. I think that's got to be done. Remember, Medicaid, you've got only \$4,000 of resources, a house, and a car. And if you can't live in the house or drive the car, those are gone. To tell somebody, Mom, I'm going to impoverish you so you only have \$4,000 worth of assets, that's pretty serious business. And most people, when they get down to it, are not going to want to impoverish themselves. They will sell or borrow against their land to pay their nursing home expenses. I just don't see it as that much of a problem as it's being put out here. I don't think people are going to be in nursing homes...you've always got somebody that's, you know, years in a nursing home, but a great deal, greater proportion of them are probably less than two or three years. I don't envision it nearly as great a problem as being attacked at this time. [LB1103]

SENATOR WILLIAMS: Thank you. [LB1103]

SENATOR COASH: Senator Seiler. [LB1103]

SENATOR SEILER: Senator Schumacher kind of said, well, we'll make the gift of a life estate, and then we won't charge them their regular going rate for a lease or a payback. Isn't that...doesn't that complicate the gifting program as well as an income tax problem when you don't charge fair and reasonable? [LB1103]

FRANK HEINISCH: And he's got some interesting language in this bill suggesting reasonable rent. Reasonableness is in the eye of the beholder, very difficult to deal with. [LB1103]

SENATOR SEILER: Yeah, but when you're talking income tax and gift tax, it's in the eye of the IRS. [LB1103]

FRANK HEINISCH: Yes, I have happened to have served with the IRS as a state tax examiner. I am experienced in a lot of those issues. Personally I've not seen or we've not dealt with that ploy of cutting the income down. I can see where that's a gimmick that can be done. I think those type of things can be successfully attacked. Rental rates, University of Nebraska has rental rates income up with what's reasonable, probably within 10-20 percent arena. But so I don't, again, I don't see that as major of an issue. Theoretically it's a fun one to talk about, but as a practical matter we've just not dealt with...we deal a lot with life estates, and I think that's a reasonable thing to say, well, the income that you have off the farm should pay your health expenses and your nursing home expenses. If that doesn't cover it all, then Medicaid may pick up the difference depending on how long you're going to be in the nursing home. First of all, you've got to be able to live 60 months before you're going to be able to be...and be impoverished at that

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stage. That's a real difficult thing. It's not that, you know, we're going to say that you just give it away and go into the nursing home. That's not the way it works. I think the 60 months is a very good leveler. [LB1103]

SENATOR SEILER: Thank you. [LB1103]

SENATOR COASH: I don't see any other questions. Thank you, Mr. Heinisch. [LB1103]

FRANK HEINISCH: Thank you. [LB1103]

SENATOR COASH: Is there anyone else here to testify in opposition of LB1103? Come on up. Welcome. [LB1103]

CHRISTIN LOVEGROVE: I'm Christin Lovegrove, C-h-r-i-s-t-i-n; last name is L-o-v-e-g-r-o-v-e. I, too, am an attorney in Geneva, representing myself in this hearing. I guess Mr. Heinisch hit on quite a few issues that we see. Getting reimbursement for Medicaid, it's good. It's not a bad thing. I don't think anybody is out here saying that people should essentially able to give away millions and millions of dollars and assets and not pay for their medical care. My biggest concern with this bill is the complete invasion of privacy we are having with clients who 95 to 99 percent of them will never qualify for Medicaid and have no intention for qualifying for Medicaid. And now essentially what we're doing is we are putting their estate planning practices, their family business, everything that they are doing to help with their business transition to the next generation in the public record, being filed in the courthouse and, for anybody in rural Nebraska, what's well known as the "poop sheet" that comes out weekly that they like to talk about that lists all the county court proceedings, all the real estate transactions that come through. So in Fillmore County, once a week we get a nice little two- to three-page paper of every single deed, every single notice that was filed. So essentially what we're doing is we're taking these family farmers or these family businesses that are incorporated, that have any type of real estate, and we're saying, guess what, it's now time to publicly disclose everything that you are doing to transition this business to the next generation. But if you are smart enough to put all your investments, not including real estate, in an LLC, you can give away whatever you want and you can still qualify for Medicaid because there's no lien there. So essentially what I feel this bill does is it really puts an attack on rural families, and it's attacking rural businesses. And these farmers that are doing whatever they can to help with that transition, with no intent and with a \$4,000 resource limit...really, slim likelihood they would ever qualify for Medicaid with lifetime gifting when essentially we're letting the people in Lincoln and Omaha give away hundreds of thousands of dollars in cash filing gift tax returns. And we're saying we don't care because that's cash, so go forth. I don't think this is a good approach that we want to put out to the people in rural Nebraska. [LB1103]

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SENATOR COASH: (Exhibit 4) Appreciate your testimony. I don't see any questions. Thanks for coming down from Geneva. Is there anyone else here to testify in opposition of LB1103? Seeing none, is there anyone here to testify in a neutral capacity? While you're coming up to testify, we'll read into the record a letter from DHHS in a neutral capacity--can't wait to read that one. Welcome. [LB1103]

RAMZI HYNEK: Thank you. Thank you for the opportunity to speak with you today. My name is Ramzi Hynek, R-a-m-z-i H-y-n-e-k. I am a partner at the law firm of Rembolt Ludtke here in Lincoln and today I am appearing before you as a representative of the State Bar Association of Nebraska. The governing body of the state bar initially voted to oppose LB1103 as it was introduced. This was due to concerns that this legislation would unduly impede the administration of justice. However, Senator Schumacher has graciously since agreed to meet with the members of the bar and, on several occasions, he has not only heard our concerns but he has largely agreed to incorporate most of our proposed changes into the bill. In particular, we understand that the senator intends to amend LB1103 to apply only prospectively to transfers of real and personal property, thereby allowing an opportunity for Nebraskans to be put on notice of the effect and potential implications of their gifts. Additionally, many members of the bar were rightfully concerned that this legislation would negatively affect a great number of transfers between family members in situations where Medicaid was not anticipated and, in fact, ultimately ended up not being applicable. With Senator Schumacher's anticipated amendment this concern has largely been addressed. If LB1103 is amended as indicated by the senator, the bar's position with respect to this legislation would, in fact, be neutral. In short, we appreciate the direction that this bill is going. I would probably say we're about at the 20-yard line, within the red zone at least. As can be expected with any attorneys, we're still desirous of modification, but we will continue our conversation with Senator Schumacher and he's indicated a willingness to continue to work with us. At that point, we feel that the decision before this committee is largely that of a policy, and policy decisions are best left to our elected representatives. The Legislature is best suited to determine how aggressive the Department of Health and Human Services should be in the recovery of assets after the death of a Medicaid recipient. Thank you, and I would take any questions. [LB1103]

SENATOR COASH: All right, thank you, Ms. Hynek, for your testimony. I don't see any questions. [LB1103]

RAMZI HYNEK: Thank you. [LB1103]

SENATOR COASH: Thanks for hanging out today. Take the next testifier in a neutral capacity. Welcome. [LB1103]

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JENNIFER STRAND: (Exhibit 3) Good afternoon. My name is Jennifer Strand, J-e-n-n-i-f-e-r S-t-r-a-n-d, and I'm the president and general counsel for Nebraska Title Company and I'm here today on behalf of the Nebraska Land Title Association. The Nebraska Land Title Association is a nonprofit organization of land title professionals who work directly with and depend on the local records in creating title assurance products that protect the property rights of individuals involved in real estate transactions and whose interest is in the reliability, the accuracy, and the integrity of those real estate records. As taxpayers, we appreciate the intention of the bill is to reduce the taxpayer obligation for the support of Medicaid. However, the bill in its original form presents a host of problems in maintaining the integrity of real property records and protecting the rights of bona fide purchasers. The testimony that has been distributed to all of you includes the specific concerns that we had with the bill. But as has been mentioned, together with the Bankers Association and the bar association, we are working with Senator Schumacher and believe that or are hopeful that most of our concerns will be addressed. In addition, too, I will say that I believe LB72, which created the Medicaid lien that went into effect in September, did create some, maybe, unintended consequences. It has made it difficult since September to pass clear title, to ensure the marketability of title. We are very familiar with clearing title and dealing with liens. I think as a title industry we collect millions, I would guess, of dollars on behalf of county, state, and federal government. We clear judgment liens. We clear past due child support, spousal support, tax liens. So as an industry, you know, we are partners in collecting a lot of those obligations, but there are very clear parameters and procedures for doing so. And we have had difficulty working with DHHS since September, quite honestly, in order to find a way to deal with this lien so that we can ensure the transfer of property, we can ensure someone's mortgage when they want to refinance. And so I think that's something that we are working towards fixing to give some certainty to the duration of this lien, the look back of the...there are very many issues that I believe we're confident or we're hopeful will be addressed in the final bill. So we are appearing today as neutral. [LB1103]

SENATOR COASH: Okay. Thank you, Ms. Strand. I don't see any questions. Thanks for your testimony. [LB1103]

JENNIFER STRAND: Okay, thank you. [LB1103]

SENATOR COASH: Next testifier. [LB1103]

WILLIAM LINDSAY: I'm William Lindsay, W-i-l-l-i-a-m L-i-n-d-s-a-y. I'm appearing on behalf of the State Bar Association. As Ramzi Hynek told you, we are neutral because of the changes we've negotiated with Senator Schumacher. We want to thank Senator Schumacher for his courtesy. He's spent quite a bit of time with us working through these materials and we do appreciate that. Just need to make certain that we understand what we're talking about. There's

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two parts that are involved in this bill: front end and the back end. The front end is the application process. That's the best time to deal with this situation, before you spend the money, rather than trying to recover the money. As every lawyer knows, it's a lot harder to recover money than it is to not spend it in the first place. So Section 4 of the bill deals with the application process and deals with what Senator Schumacher talked about, the low lease value on the farm. The remainder of the bill deals with the estate recovery process. The estate recovery process is not bound by the 60-month time period. That's an application rule on the application process on the front end. We just want to make certain that the Legislature understands that it's a policy choice the Legislature needs to make. Life estates have been used for hundreds of years in passing real estate. It is very common in the farm areas to do this as someone wants to try to preserve the income from the farm. It is a way of passing the farm without giving up all of the income, so there are non-Medicaid avoidance reasons for life estates. So it becomes a policy decision on the Legislature whether it basically wants to take away the ability to do a life estate if somewhere down the line Medicaid applies. Thank you. If you have any questions, I'd be happy to answer them. [LB1103]

SENATOR COASH: Okay, thank you, Mr. Lindsay. Senator Seiler has a question. [LB1103]

SENATOR SEILER: Life estates many times are used to designate a piece of real estate to a certain child. Is that correct? [LB1103]

WILLIAM LINDSAY: Yes, that's one way of doing it. [LB1103]

SENATOR SEILER: Rather than running it through a trust or a will? [LB1103]

WILLIAM LINDSAY: Correct. [LB1103]

SENATOR SEILER: Okay, thank you. [LB1103]

WILLIAM LINDSAY: Thank you. [LB1103]

SENATOR COASH: I don't see any other questions. Thank you. Welcome. [LB1103]

ROBERT HALLSTROM: Senator Coash, members of the committee, my name is Robert J. Hallstrom, H-a-l-l-s-t-r-o-m. I appear before you today as registered lobbyist for the Nebraska Bankers Association in a neutral capacity on LB1103. I, too, would echo the comments of those who have preceded me that we appreciate greatly the efforts of Senator Schumacher in working towards a consensus on this bill. I'm not sure whether we're in the red zone or inside the ten-yard

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line, but I would suggest we started out inside the ten-yard line but we were at the other end of the field and in fear of being sacked for a safety if we went much further backwards with respect to the banking industry. What our primary concern is, is making sure that we do have the stream of commerce that's going forward both in terms of the ability to transfer clear title to real estate and in terms of being able to finance those various transactions. With LB1103 in its green copy form, the department would be authorized to file a notice of lien at the time that they are notified of a transfer, as others have suggested, many, many years in advance of any prospect of filing for Medicaid benefits or for the state to have to pay out benefits. The amendments that are being proposed by Senator Schumacher would instead indicate that at the time of filing the Medicaid application is when you would have the ability to file that notice of lien. The notice of lien is important, so we have record notice that there is a competing lien out there and that will satisfy that particular aspect. We have put into the bill at this time a provision that if a mortgage or a trust deed is filed prior to the notice of lien being filed of record, that it will obviously have priority and that future advances, either optional future advances or future advances necessary to protect the security, will also maintain that first lien position even if they are advanced after the notice of lien has been filed, unless the notice of lien, written notice of that notice of lien has been provided to the first mortgage holder. And that's much in line with the provisions of 76-1002 and 76-238 regarding cutting off the priority of optional future advances by providing written notice of competing lien. With that, I'd be happy to address any questions that the committee may have. [LB1103]

SENATOR COASH: I don't see any. Thank you. [LB1103]

BOB HALLSTROM: Thank you. [LB1103]

SENATOR COASH: We'll take the next testifier in a neutral capacity. Seeing none, Senator Schumacher, you're welcome to close if you'd like to. [LB1103]

SENATOR SCHUMACHER: I just want to thank the committee for your indulgence on this particular bill and also extend my real appreciation to the various folks--the bankers, the attorneys, the title companies--for their assistance in putting this together. It's a fairly complex piece of legislation. What I did is I started out and made sure that I was near the other end of the field and I've given up a lot of territory. But hopefully it's territory that is in the public interest and that when we get done with the process, hopefully in the next week or so, we will have a bill that will serve the people of Nebraska without unduly impeding honest people and people who don't end up on Medicaid. It's a problem we're going to have to address sooner now than later, and I thank you for your time. I'll be happy to answer any questions. [LB1103]

SENATOR COASH: I don't see any. Thanks for joining us in Judiciary today. [LB1103]

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SENATOR SCHUMACHER: Thank you. [LB1103]

SENATOR SEILER: In case any of you want to know, at 2:00 they opened I-80. [LB1103]

\_\_\_\_\_ : Thank you. [LB1103]

SENATOR SEILER: Okay. I'm sorry I'm going to miss out on all the litigation on this since I retired. Senator Coash, you may open. [LB934]

SENATOR COASH: (Exhibits 1 and 2) Thank you. Good afternoon, Chairman Seiler, members of the committee. I am Colby Coash, C-o-a-s-h, and I represent the 27th District right here in Lincoln, here today to introduce LB934, which is a bill to update the Public Guardianship Act and its powers and duties and change provisions relating to the number of appointments the public guardian can accept. Two years ago this Legislature unanimously passed LB920 to create the Office of Public Guardian in Nebraska under the jurisdiction of the Supreme Court, and it became the last state in the country to have such an office. I've always said it was the goodwill of the citizens that allowed our state to hold out for so long, as we relied on volunteers to serve as guardians and conservators. However, over the last several years, those in need of a guardian or conservator reached a tipping point and judges had no choice but to appoint and assign multiple wards to guardians from all over the state. An audit in 2014 by then-State Auditor Foley revealed the dire need for an Office of Public Guardian when the report exposed the financial exploitation of Judith Widener of Scottsbluff, a public guardian to over 600 wards in over 60 counties across the state. She deliberately mishandled her wards' finances and was charged with embezzling over \$600,000 of their funds by spreading it out over more than 40 bank accounts. Her appointment over 600 times was a result of a judge having no other option when appointing a guardian or a conservator. LB920 created the office and Michelle Chaffee was hired as the director, and she is here today. It also authorized a deputy director and up to 12 associate guardians. The office was tasked with four main duties, and I have a handout for the committee that outlines those duties, two handouts here: (1) offering community and service support to people who have no one else to serve, to care for them; (2) recruit and train members of the community willing to serve as guardians and conservators; (3) educate and support private guardians and conservators with resource information and skill development; and (4) locate individual community members with diverse backgrounds who are willing to serve as volunteer court visitors. With the first main duty of offering community services to support individuals with no one else to care for them, the office is capped at an average of 40 individuals per associate guardian, or 480 for the office, and any wards needing a guardian are put on a wait list. The newly appointed guardians and conservators are given the tools needed to maximize the level of independence best suited to their individual wards. After extensive training, the staff began taking clients last fall. In that time they have served individuals with multiple medical, mental health, and societal challenges

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which are already stretching the resources available to the public guardian. Initially, we expected the office to take some tough cases, along with some easy ones to balance out the workload. What the office is finding out, however, is that they are able to find volunteers to oversee easier cases that do not require much time or visitation. The wards that are being assigned to the office are increasingly very time-consuming cases where the individuals suffer from extreme mental health needs, homelessness, and other challenges. The Office of Public Guardian 2015 Annual Report, page 48, which I have also handed out to you, was the end of the year client workload and projected future workload projections for direct guardianship and conservatorship duties. As the report indicates, the office oversaw 23 clients last year for an average of 3.6 hours per week per client. Based on these initial projections--each of the 12 associate guardians and the director and deputy director have an average of 40 clients and a total of 480 clients--then 480 clients times that 3.6 hours per client equals 1,728 hours per week. Divided by the 14 staff, each staff member would have to work an average of 123 hours per week. And those hours are only for representing the clients, or duty number one, as I mentioned. It would not include other duties which include their outreach, recruitment, education, support, and training of visitor volunteer recruits that the office is mandated to do under LB920. The office is directed to provide education and information and support to 10,000 people, individuals who serve as guardians in Nebraska. LB934 removes the provision that the office hire up to 12 associate guardians and replaces it with a multidisciplinary team of professionals and support staff that are hired by the director. The office shall provide appropriate and high-quality care and support to all public wards served by the Office of the Public Guardian. LB934 caps the office at 20 individuals per multidisciplinary team members up to 480. This is based on the recommendation of a large study which we used to craft the original bill, of Teaster. Teaster extensively studied public guardians in all 50 states and wrote a best-practice book which was carefully considered when we did LB920. Initially we had data from the Supreme Court suggesting that each associate member could handle up to 40 wards. But now that the office is open and taking on clients, the cases that the office is overseeing are very time-consuming and it's not practical that they can best serve the needs of the individuals. Their resources will be stretched too thin and the last thing we want is for anyone not to be able to receive the appropriate attention they deserve by the office. Since the inception of LB920, the office has found that they need more attorneys as part of their staff in order to file motions for their wards. LB934 requires legal representation provided by the Public Guardian's Office to be limited to the duties and responsibilities of the office. LB934 also requires the director and the deputy director to have an attorney license to practice law in Nebraska. In two months of 45 cases, the Office of Public Guardian has received approximately 230 documents from the courts and filed about 255 documents. If you increase that workload by 10, since that would be 480 cases, you can see the need for more attorneys in the office. On January 21 of this year, during the State of the Judiciary Address before the Legislature, Chief Heavican spoke to the state of the Office of Public Guardian and commented that, and I quote the Chief, "updates to the Public Guardianship Act will be necessary to address the challenges encountered in this first year of implementation." This bill addresses those challenges. Several

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times when discussing LB920 last year, I committed to ensuring that the Office of Public Guardian would receive the full support of this Legislature to safeguard it that we do not encounter the same problems that we've faced with ACCESSNebraska, Corrections, and BSDC. I want to thank the director of the office for being proactive with alerting us to the needs of changes before it becomes too late to right the ship. We need to make these changes identified in LB934 to ensure that our most vulnerable citizens have the care and support they need. Thank you, and I'll be happy to answer any questions. [LB934]

SENATOR SEILER: Any questions? Just to clarify for the record, these expenditures will be coming out of our General Fund and they'll be under the budget of the judiciary, is that correct? [LB934]

SENATOR COASH: That's correct. [LB934]

SENATOR SEILER: Okay. Any further questions? Thank you. [LB934]

SENATOR COASH: We'll have some testimony following me that can kind of explain where we were and where we need to go through this bill. [LB934]

SENATOR SEILER: Proponent. [LB934]

MICHELLE CHAFFEE: (Exhibits 3 and 4) Good afternoon. My name is Michelle Chaffee, M-i-c-h-e-l-l-e C-h-a-f-f-e-e, and I am the Director of the Office of Public Guardian and also with the Administrative Office of the Courts, and I'm here in support of...for testimony in LB934. And I am passing around my written testimony. It includes a number of attachments, but I would like to just highlight a few of the issues in regards to LB934. The Public Guardianship Act created the Nebraska Office of Public Guardian and the duties that are required. And as Senator Coash passed out some information, too, we've kind of duplicated. But as you look on the initial pages of the attachment, on page 7 and 8 you can see the responsibilities for the Office of Public Guardian. In addition, on pages following, in regards to the attachment, there is also information regarding, as Senator Coash has identified, the amount of time that has been spent in regards to associate public guardians serving the individuals that we care for. And the caseload average of 40 wards to each APG at this point in regards to our office is simply unrealistic and potentially catastrophic given the complexity of the public guardianship direct case management cases. We deal with severe and pervasive mental health, we deal with individuals who are homeless, they have co-occurring chronic medical needs, including also dementia, they have poverty, and we have high needs with difficult populations, including individuals who are sex offenders or addicts or criminal offenders, individuals who are noncompliant with their medication and medical care and unable actually to cooperate and sometimes absolutely openly hostile to having a guardian

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conservator. And in regards to that population then, the standard, as I've passed out, as far as the accreditation, as an attachment also, has indicated that nationally it's 1:20, so 20 individuals that are wards of public guardians per each APG. And in regards to the fiscal note, I just want to highlight a few things. I also included PowerPoint slides that outline four different studies that have been done in regards to the cost-effectiveness of public guardianships, and they were in Florida, New York, Virginia, and Washington State. And they do highlight that public guardianships, because they are able to help assist with appropriate services to individuals who do not have the capacity to make decisions for themselves, actually do save money in regards to Medicaid and healthcare coverage and higher level of care that's potentially required. And we found that even within the last few months in the pilot program that we've dealt with as we've had...of the 41 cases that we've had through January 31, seven of those individuals were in the hospital and we were able to assist with five of them getting out of the hospital into lower care and be able to provide their care. [LB934]

SENATOR SEILER: Excuse me, your red light is on. [LB934]

MICHELLE CHAFFEE: All right. [LB934]

SENATOR SEILER: But I'd ask you if got just a short... [LB934]

MICHELLE CHAFFEE: Sure. I'm...that's the only thing I wanted to identify. [LB934]

SENATOR SEILER: Okay. [LB934]

MICHELLE CHAFFEE: So that is 71 percent of the individuals that were hospitalized, when we came into their service, we were actually able to get them into a lower level of care. [LB934]

SENATOR SEILER: Any questions? Thank you for your testimony. [LB934]

MICHELLE CHAFFEE: Thank you so much. [LB934]

SENATOR SEILER: Any further proponent? [LB934]

WILLIAM LINDSAY: My name is William Lindsay, W-i-l-l-i-a-m L-i-n-d-s-a-y. I'm chair of the protection of vulnerable adults subcommittee of the Nebraska Supreme Court Commission on Guardianships and Conservatorships. I'm here to support LB934. Two main things that I want to point out is: the multidisciplinary team, I've been...as part of the subcommittee, we've been

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looking at all sorts of issues with regard to vulnerable adults and the need for a multidisciplinary team I think is very apparent. The second is having attorneys on staff who can appear in court makes much sense because they're the ones who are going to be familiar with the issues and it would make sense for them to be able to appear in court. So if there are any questions, I'd be happy to address them. [LB934]

SENATOR SEILER: Seeing none, thank you. [LB934]

WILLIAM LINDSAY: Thank you. [LB934]

SENATOR SEILER: Next proponent. [LB934]

SUSAN BAZIS: Chairman, members of the Judiciary, my name is Susan Bazis, S-u-s-a-n B-a-z-i-s. I am the chairperson of the Advisory Council on Public Guardianship and I'm here on the advisory council's behalf. The advisory council supports LB934. The advisory council has been meeting with the Public Guardian almost every month for the last year to set up the policies and procedures of the office. The policies and procedures that are in place ensure that the public guardian is the last resort. This legislative bill provides for a multidisciplinary team of professionals which will maximize the resources that the public guardian has to work with. This bill also changes the ratio to 20 individuals per associate public guardian. This is the national standard and best practices. When the law was originally passed, the discussion was and the thought was that a lot of people that the public guardian may be serving may be in nursing homes, so the associate public guardian could see a number of people within one location. However, this is not the majority of the cases that the Public Guardian is currently getting. Due to the types of cases that the Public Guardian is getting, the time these cases take, the requirement that the associate public guardian see their wards once a month, and the travel time for some of the associate public guardians, the current 40 wards per associate is not realistic. In order for wards to receive the best care from the associate public guardians, the associate public guardians not only need to see their wards, but also monitor their cases. This needs to be done properly because in the end it will save the state money, which is what Michelle was just talking to you about. This bill also provides for the Public Guardian and/or her staff to provide legal services to carry out the duties of the Public Guardianship Office. This is important so quick resolutions can be accomplished, for example, when a guardianship needs to be terminated or there is a lesser alternative than guardianship or conservatorships. Due to the legal issues involved with guardianships and conservatorship cases, having staff that can quickly address these issues is important, as well as the Public Guardian and Deputy Public Guardian being an attorney. This is also important so no one is practicing law without a license. This legislative bill helps to better protect the vulnerable adults and address the issues the public guardian has

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incurred or will incur going forward. Thank you for your time. If you have any questions, I'd be happy to answer those. [LB934]

SENATOR SEILER: Seeing none, thank you for your testimony. [LB934]

SUSAN BAZIS: Thank you. [LB934]

SENATOR SEILER: Next proponent. [LB934]

BRIAN CRAIG: (Exhibit 5) Chairman Seiler, members of the committee, my name is Brian Craig and I'm a staff attorney at Disability Rights Nebraska; that's spelled B-r-i-a-n C-r-a-i-g. I'm testifying today in support of LB934. In my work I regularly represent individuals with disabilities in guardianship proceedings, and I also monitor facilities where individuals that have guardians live. Imposition of a guardianship is a civil rights matter. It takes away the liberty of one person and then places that into the hands of another, which is why lesser restrictive alternatives must be considered by the court before full guardianship is put in place. Unfortunately, that's not how the courts actually work. Full guardianships are put in place when lesser restrictive alternatives are available, and a full guardianship then increases the responsibilities the guardian has to the ward. Many of these guardians have dozens and dozens of wards and are unable to provide sufficient time necessary to address the needs of each of these wards. And this results in abuse and neglect, as was seen with Judith Widener, and we--my office--continues to see with many guardians. I often hear the same complaints from my clients. I hear that: my guardian doesn't return my calls, my guardian doesn't listen to me, he or she won't let me work, they've taken all of my money, I've never met my guardian, and I don't know who my guardian is. A guardian has a legal duty to act in the best interest of the ward. Many of these guardians don't meet that statutory requirement though. Either they have too many wards or they're acting in an exploitative manner to gain...for financial gain. In either event the guardians have a pecuniary interest in maintaining a full guardianship. As such, the guardians are left without...or the wards are left without a voice and have decisions imposed upon them without any sort of relationship with the guardian. A guardian can't fulfill his or her duties when they haven't met the ward or when they don't visit the ward. The Office of Public Guardian is supposed to be different though. Among its duties is to model the highest standard of practice for guardians and conservators to improve the performance of all guardians and conservators in the state. The current ratio of 40:1 would not allow the office to fulfill its statutory duties. The 20:1 ratio, however, would allow each associate public guardian not to only regularly meet with the wards, but also to determine what he or she needs, what sorts of supports and services are available, and to get those supports and services and to determine what are the best interests of the ward and to act in that capacity. Because the office is the guardian of last resort, the wards and prospective wards are among Nebraska's most vulnerable citizens. These individuals are

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most at risk of abuse or neglect by a guardian and many have already experienced that at the hands of those like Judith Widener and others that I see on a regular basis. To serve Nebraska's most vulnerable citizens and to provide the resources necessary for the office to fulfill its duties, Disability Rights Nebraska respectfully asks this committee to support LB934. And I'll take any questions if there are any. [LB934]

SENATOR SEILER: Any questions? As I understand your testimony, part of it you're talking about are the guardians that were prior to the Public Guardian neglecting their duties and not doing the job, but the public guardians are doing the best they can and are a credit. [LB934]

BRIAN CRAIG: Yes, Senator. [LB934]

SENATOR SEILER: Okay. [LB934]

BRIAN CRAIG: What we still see though--Judith Widener is not the only person--we regularly see guardians who have, like I said, dozens, sometimes over 100 wards, and the main concern that I have... [LB934]

SENATOR SEILER: Is that Public Guardian or private? [LB934]

BRIAN CRAIG: These are private guardians. [LB934]

SENATOR SEILER: Right. [LB934]

BRIAN CRAIG: Individuals, many of them, make a career out of being professional guardians. [LB934]

SENATOR SEILER: Okay. [LB934]

BRIAN CRAIG: So our primary concern is that we don't want the office to become so overburdened that the same issues that we see from these private guardians happens to the office and then the individuals are abused or neglected. [LB934]

SENATOR SEILER: Okay. Any further questions? Thank you for your testimony. [LB934]

BRIAN CRAIG: Thank you. [LB934]

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SENATOR SEILER: Any further proponents? Seeing none, I have a letter here from the Nebraska Hospital Association filed by Andy Hale, vice president of advocacy, and they are in support of LB934. Are there any opponents? Anybody in the neutral? You may close. [LB934]

SENATOR COASH: Thank you, Senator Seiler, members of the committee. Just to reiterate a couple of points, when we instituted this office a few years ago, the thought was, and one of the testifiers alluded to this, that there would be a mix of the types of wards that we might see. We might see, you know, some people who were stable, in nursing homes, some adults with disabilities whose parents had passed on, and then some of those tough cases. Well, what you've found is that, because of those other duties of the Public Guardian, they've done a pretty good job. Michelle and her office have gone out there and they've found volunteers and they've found community members and they've found court visitors who will take on those kinds of cases. And what's left after you've found the volunteers and trained the community members are those cases who...which are frankly very difficult to serve. These are people, as Michelle...Ms. Chaffee indicated, that they have chronic homelessness, chronic mental illness, chronic drug addiction. Those are things that require a lot of time, and that's who's left. So I appreciate the testimony. I appreciate this committee taking a look at it. And this is part of a bigger package of a lot of vulnerable adult things you'll see from me this year, so we'll see what we can do with it. Thank you. [LB934]

SENATOR SEILER: Thank you. Any questions? You may open on LB1008. [LB1008]

SENATOR COASH: Okay. Again, I am Colby Coash, C-o-a-s-h, of Lincoln, represent the 27th District, introducing LB1008, which is a bill to provide qualification requirements, powers, duties, and limitations for guardians ad litem in guardianship, conservatorship, and other protective proceedings. LB1008 is a bill recommended by the Nebraska Supreme Court-commissioned subcommittee of vulnerable adults, of which I am a member, Senator Williams is now a member, along with other judges, attorneys, state officials, conservators, and guardians. In a letter to the Supreme Court members dated August 19 of last year, the subcommittee recommended that legislation should be pursued to define the duties and/or role of guardians ad litem in probate proceedings because, unlike the juvenile code, no statutory parameters for guardians ad litem exist in the probate code. There is currently a huge question about what GALs can do and cannot do. This bill defines those responsibilities. LB1008 requires that GALs be attorneys, complete the training requirements as provided under Supreme Court rule, and advocate for the best interests of those of whom they represent, including defending for that person's social, economic, and safety interests. The guardian ad litem may conduct discovery, present witnesses, cross-examine witnesses, present other evidence, and file motions on behalf of the person that they were appointed for. The GAL may also enter into agreements, request medical, psychological, geriatric, or other evaluations of the person who is the subject of the guardianship or conservatorship. The GAL shall make the recommendations to the court

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regarding a temporary or permanent guardianship, conservatorship, or other protective order. LB1008 ensures that any person or entity that refuses to produce documents requested by the GAL and ordered by the court shall be subject to contempt of court or other discovery sanctions. The guardian ad litem's appointment begins immediately at the time he or she is appointed and ends when the court allows for the termination. The GAL must make contact with the person he or she is representing within two weeks of appointment and become familiar with the person's condition. The court will determine whether the county or the person...of the person who is subject of the conservatorship or guardianship pays for the GAL. There are additional representatives from the commission here that will be able to speak additionally about the necessity of this bill, but I'll try to answer any questions you might have. [LB1008]

SENATOR SEILER: Thank you. [LB1008]

SENATOR COASH: Okay. [LB1008]

SENATOR SEILER: Proponent. [LB1008]

WILLIAM LINDSAY: My name is William Lindsay, W-i-l-l-i-a-m L-i-n-d-s-a-y. I'm here as chair of the protection of vulnerable adults subcommittee of the Nebraska Supreme Court Guardianship and Conservatorship Commission. Senator Coash has been a member of this commission and has been very active in our studies trying to find ways to protect the most vulnerable among us here in Nebraska. Among the problems that we have is the appointment of a guardian ad litem sometimes has to occur. A guardian ad litem is a person who is appointed to represent the needs of a particular person either during the process of appointing a guardian or a conservator or sometimes, once one has been appointed, to investigate the actions that have been involved. That particular person currently can file a report with the court. The court, for those who are attorneys, has to look at this and hear a hearsay objection, which is likely to be granted. The guardian ad litem can take no further action. This is historically because of the Betz v. Betz decision of the Nebraska Supreme Court from 1998 which was extended to the guardianship area by In re: Guardianship of Robert D., which is a 2005 decision of the Nebraska Supreme Court. The legislative bill is designed based upon the juvenile code statutes that already deal with a guardian ad litem, so the reason that we are looking at this, you know, as for a statutory procedure, is effectively we have to reverse a Nebraska Supreme Court decision. If there are any questions, I'd be happy to answer them. [LB1008]

SENATOR SEILER: Any further questions? Thank you. [LB1008]

WILLIAM LINDSAY: Thank you. [LB1008]

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SENATOR SEILER: (Exhibit 1) Next proponent. Seeing none, we have a letter from the Nebraska Association of Social Workers in support of this bill. That will be made part of the record. Any opponent? Seeing none, you may close. [LB1008]

SENATOR COASH: We have some neutral testimony. [LB1008]

SENATOR SEILER: Oh, excuse me. Neutral. [LB1008]

SUSAN BAZIS: Chairman, members of the Judiciary, my name is Susan Bazis, S-u-s-a-n B-a-z-i-s. I am a Douglas County Court judge and I also cochair the Guardianship and Conservatorship Commission, but I am here in a neutral capacity to talk about how the bill would affect or assist the courts. Currently I can appoint a guardian ad litem but the law provides no direction as to what they can do. This is very similar to the issues that the juvenile court faced in their guardian ad litem issues and that they faced prior to changes being made. A guardian ad litem can provide valuable information as to what is going on with the ward and parties in a case while also advocating for the best interest of the ward. What the county court is currently facing is objections to the guardian ad litem report, objection to the guardian ad litem presenting any evidence at any hearings, and objections to any filings the guardian ad litem...a guardian ad litem may make. As a result, the guardian ad litem will do an investigation and they cannot do anything with the information that they have discovered. They cannot present anything to the court, which results in no one advocating for the best interest of the ward. This bill gives the guardian ad litem the tools they need to give the court the information it needs to determine what is in the ward's best interest. Thank you for your time. I'd be happy to answer any questions. [LB1008]

SENATOR SEILER: Sorry to pass over you, Judge. [LB1008]

SUSAN BAZIS: That's okay. [LB1008]

SENATOR SEILER: But I've never known a judge to be neutral. [LB1008]

SUSAN BAZIS: (Laughter) I respect separations of powers, so. [LB1008]

SENATOR SEILER: Thank you. [LB1008]

SENATOR CHAMBERS: But they're always impartial (laughter). [LB1008]

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SUSAN BAZIS: That's correct. [LB1008]

SENATOR SEILER: Right. [LB1008]

SUSAN BAZIS: That's correct. [LB1008]

SENATOR SEILER: Thank you very much for your testimony. [LB1008]

SUSAN BAZIS: Thank you. [LB1008]

SENATOR SEILER: Any further people in the neutral? Seeing none, you may close. [LB1008]

SENATOR COASH: Thank you (laughter). [LB1008]

SENATOR CHAMBERS: Excellent. [LB1008]

SENATOR SEILER: That's the politest he's ever been. Thanks, Colby. That will do it. Thank you very much. [LB1008]