

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

[LB299 LB364 LB553 LB589 LB596 LB682 LB690 LB825 LB873 LB897 LB902 LB929
LB946 LB950 LB993 LB998 LB1011 LB1036 LB1037 LB1038 LB1090 LB1096 LB1119
LR334 LR343 LR344 LR345]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the forty-first day of the One Hundred Fifth Legislature, Second Session. Our chaplain for today is Monsignor Daniel Seiker who has been assigned to service at Saint Gregory the Great Seminary in Seward, Nebraska, Senator Kolterman's district. Monsignor Seiker happens to be the brother-in-law of the presiding officer. Welcome, Monsignor Seiker. Please rise.

MONSIGNOR SEIKER: (Prayer offered.)

PRESIDENT FOLEY: Thank you, Monsignor Seiker. I call to order the forty-first day of the One Hundred Fifth Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

PRESIDENT FOLEY: Thank you, Mr. Clerk. Do you have any corrections for the Journal?

CLERK: I have no corrections.

PRESIDENT FOLEY: Thank you, sir. Any messages, reports, or announcements?

CLERK: Your Committee on Enrollment and Review reports LB1090 to Select File with Enrollment and Review amendments attached. Judiciary Committee chaired by Senator Ebke reports LB690 to General File, LB897 to General File with amendments. New resolutions: Senator Clements, LR343, will be laid over. An announcement, Mr. President: Business and Labor will have an Executive Session today at 11:15 under the north balcony. That's all that I have, Mr. President. (Legislative Journal pages 915-918.) [LB1090 LB690 LB897 LR343]

PRESIDENT FOLEY: Thank you, Mr. Clerk. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign the following Legislative Resolution,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

LR334. (Visitors introduced.) We'll now proceed to the first item on the agenda, General File, 2018 senator priority bills. Mr. Clerk. [LR334]

CLERK: Mr. President, LB998 was a bill by Senator Walz. (Read title.) The bill was introduced in January, referred to the Education Committee. Senator Walz presented her bill on Friday, March 9. Committee amendments were presented by Senator Groene, as Chair of the Education Committee. Senator Linehan had moved to amend the committee amendments with AM2333. That amendment is pending, Mr. President. (Legislative Journal page 907.) [LB998]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Walz, you opened on this the other day. There's a couple of amendments pending. Why don't you take a moment or two to refresh us on your bill and then we'll ask Senator Linehan to take a moment or two, if she cares to, to refresh us on the amendment that's pending. Senator Walz. [LB998]

SENATOR WALZ: Thank you, Mr. President. LB998 would create the Collaborative School Behavioral and Mental Health Program. The program would place a social worker in each of the state's 17 ESUs to help address a rising concern around behavioral and mental health in schools by offering preventive care. With the amendment, the first three years would need to be fully funded by private donors before the program would begin. After the first three years, the ESUs and school districts can decide to continue the program or opt out. That funding would come from any combination of private donations, ESU, or local district dollars. The program also tracks existing services to better determine what is needed in the future to make smart investments and make more progress. I am supportive of the committee amendment and the Linehan amendment. Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Walz. Senator Linehan, would you like a minute or two to refresh us? [LB998]

SENATOR LINEHAN: Yes. Thank you, Mr. President. As I mentioned on Friday, I know Senator Walz has worked really hard on this and she really believes in it. I have some concerns, which she's well aware of. My amendment, AM2333, simply states that if we're going to do this, then we...each building has to have a point person in that building for the social workers to talk to. So in other words, if you're in...I'll pick my hometown, Lewiston, Nebraska, they have one building, so there would have to be a person in that building, even though it's a K-12 school, they'd have to have somebody in that building when the social worker walks in; she knows who to go to; who to talk to; who's in charge in that building; who knows which kids in that building are in some kind of treatment or maybe need some kind of a treatment. So there's...we don't expect this one social worker to work thousands of kids all by themselves. And then if you go to a system like...a big system like Lincoln Public Schools, you would have to have a person in each

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

building. And this doesn't necessarily meet nor do I think they would need to hire any new personnel, but most schools or many schools have either a psychologist and/or nurse and/or principal...well, they all have principals, and/or counselors. So to just be certain that everybody in that building knew who to go to, person-wise, and that the social worker coming in would know who to talk to if she visits that school. Thank you. [LB998]

PRESIDENT FOLEY: Thank you, Senator Linehan. We'll now proceed to the debate on the bill and pending amendment. Senator Baker. [LB998]

SENATOR BAKER: Thank you, Mr. President. I rise in support of LB998, and I see AM2333, the Linehan amendment is...it's harmless. I am not sure it's necessary, but it does no harm. I find that the school people I talk to are generally supportive of the concept in LB988 (sic--LB998). It is not, though, as if schools have been doing nothing or are clueless with regards to dealing with emotionally disturbed children. In the district where I came from, we had what was known as a SCIP program--school, community intervention program. We had a SCIP team; when a student would be referred...a student who would be having difficulties and perhaps, you know, evidence of mental illness. Then the SCIP team would convene, examine the evidence, and decide what resources could best be directed toward solving that problem. So we had some really good people on our SCIP team. You know, it was a paid position, being SCIP team coordinator. They met before the school day, so there would be classroom teachers, guidance counselors, psychologists, you name it. I understand, though, that being in Lancaster County, we had a lot more resources available close at hand than districts that are not in the eastern third of the state. And so probably the real value of this notion of having a social worker in every service unit is for the benefit of those smaller schools or maybe the parochial schools who don't have great resources and do need a point person to help guide them toward the resources that are available. So with that, you know, I will close with, again, restating I think this is a good idea and I'll vote yes on it. Thank you. [LB998]

PRESIDENT FOLEY: Thank, Senator Baker. Senator Crawford. [LB998]

SENATOR CRAWFORD: Thank you, Lieutenant Governor, and thank you and good morning, colleagues. I stand in support of LB998 and the committee amendments and Senator Linehan's amendments. Just want to urge this body to recall again...I'm sure your experience is similar to mine, when you go door to door, when you go to meetings with educational professionals, when you go to meetings with law enforcement, when you go to meetings and talk to parents; over and over and over again, I keep hearing that teachers need help. They love teaching and they want to make sure they're reaching all students, but they need help. School administrators need help in helping their teachers. And we hear over and over and over again that parents and school administrators don't know where to turn. And, colleagues, LB998 addresses both of those issues.

Floor Debate
March 12, 2018

It provides help to the school, training, and additional support to help those teachers in the classroom and to help the administrators connect students to help; and it helps to provide options and improvement of education on options for parents so they have a better idea of where to turn. And so I urge your support of LB998. Repeat as we did before that this bill relies on private foundation funding to pilot this idea in these ESUs across the state. So this provides this assistance across the state. And in many parts of the state, the network is much sparser and much more difficult for parents to know where to turn and for school administrators to know where to turn. And this addresses that issue across the entire state. And that's very critical. It's also the case that this only goes into effect then if those private dollars are there. And so it really is an opportunity to have this help for our students at no cost to us and to be able to provide this help to our students. So again, teachers need help, parents don't know where to turn, some of our kids are falling through the cracks, and this is a critical issue that we see over and over again that needs to be addressed. And we have an opportunity to address it with private funding for at least three years. After that, it will be up to each ESU to make those decisions about whether to continue this program. As I said on Friday, there are lots of...there are multiple examples of programs that were started by the ESUs that now are no longer running. So I do not think the argument that once you start something, it never stops is a correct argument given the history of what we've seen in the ESUs. And I have a list of some of those programs that they have discontinued. And so if the program is not working or if it's determined it's not worth the expense, as has been the case in the past with other programs, it would be one that didn't continue. If it is effective and is working and is well worth the dollars, we would have had private dollars to try that out and then we will be able to make that decision ESU by ESU or make that decision here if we want to provide any support to the ESUs broadly in terms of whether or not this is something we want to invest. But we have a risk-free opportunity to provide this service to our students, to provide this service to our families all across the state for three years. And I urge you to take advantage of this opportunity, not only to decide what to do in the future, but to reach those kids. Every kid we can reach in the next three years is a kid that will not fall through the cracks that otherwise would. Thank you, Mr. Lieutenant Governor. [LB998]

PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Kuehn. [LB998]

SENATOR KUEHN: Thank you, Mr. President, and thank you, colleagues. I appreciate Senator Walz and others' attention to the issues of mental health and some of the challenges that are faced by our schools. I certainly support Senator Linehan's amendment which clarifies that we have a point person within each school. But I do have a number of questions because I'm still unclear about the funding mechanism and how this is all going to work. So I was wondering if Senator Walz would yield to a few questions. [LB998]

PRESIDENT FOLEY: Senator Walz, would you yield, please? [LB998]

Floor Debate
March 12, 2018

SENATOR WALZ: Yes. [LB998]

SENATOR KUEHN: Thank you, Senator Walz. So the initial funding is going to be by private donation; and nothing triggers, nothing happens until you reach \$3.6 million of private funds, is that correct? [LB998]

SENATOR WALZ: That's correct. [LB998]

SENATOR KUEHN: So do those funds have to be...once the program and that \$3.6 million is implemented, does that then trigger a response where each of the ESUs then has a social worker and the program begins in every ESU statewide, or what happens once we've reached that \$3.6 million threshold? [LB998]

SENATOR WALZ: Yeah, that's correct. Once we reach that threshold, a coordinator would be hired initially, and that coordinator would be responsible for hiring the 17 social workers into each ESU. [LB998]

SENATOR KUEHN: Okay. So we've got this \$3.6 million trigger; that hires a coordinator. The coordinator then hires social workers in each of the ESUs. And what kind of a time frame are you thinking about in terms of before this program becomes implemented, before that \$3.6 million is reached? [LB998]

SENATOR WALZ: Six months to a year. [LB998]

SENATOR KUEHN: And what gives you...why do you say the six months to a year for that purpose? [LB998]

SENATOR WALZ: Because we want to make sure that there are social worker...it's...there's a...seems to be a shortage of social workers. I mean, we will get this done as soon as we can, because it's something that, obviously, is urgent and needs to be done. But over the summer we talked about how soon we realistically felt we could hire social workers. [LB998]

SENATOR KUEHN: Okay, so I guess my question is how long before the \$3.6 million is obtained? [LB998]

SENATOR WALZ: I can't answer that right now. [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR KUEHN: Okay. So it could be three years before \$3.6 million is donated from private donors into the fund to trigger the establishment of the...hiring of the coordinator and the social workers in each of the ESUs? [LB998]

SENATOR WALZ: It could be three months; it could be three years. [LB998]

SENATOR KUEHN: Okay. And from the point in which the money is raised, the coordinator is hired, you anticipate a year before the individual social workers are implemented and hired in each of the ESUs. [LB998]

SENATOR WALZ: Yes. We would look at...yeah. [LB998]

SENATOR KUEHN: Okay. [LB998]

SENATOR WALZ: As soon as the social worker...the coordinator is hired, she would begin work on hiring the social workers at the ESUs. [LB998]

SENATOR KUEHN: I hope it would be possible it could be a he or a she, not just gender specific... [LB998]

SENATOR WALZ: He or a she. [LB998]

SENATOR KUEHN: Okay. With regard to then the hiring of the social workers, after you have begun the process of hiring and implementing the social workers, will each ESU have its own program that it will do reaching out to the schools or will there be consistency across the state with all of the ESUs and how they're going to operate with regard to that social worker? [LB998]

SENATOR WALZ: I think the hiring and the general responsibilities will be consistent, Senator Kuehn, but every community is different, which is one of the reasons why we wanted to hire a social worker, because the differences in communities. So I'm not going to say that every program is going to look exactly the same. A community in rural Nebraska is probably going to look a lot different than a community in Omaha or Lincoln. So there's going to be, you know, some consistency, I guess, again with responsibilities. [LB998]

PRESIDENT FOLEY: One minute. [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR KUEHN: Thank you, Mr. President. Thank you, Senator Walz. I've got a few more questions. I'll queue in again with regard to the funding mechanism. I guess one of my big concerns or questions, I guess, that I'm not certain about this is we already have a model program that's happening, as Senator Bolz talked about last week, which is, I believe, the Connections Program with Project Harmony. So there's a model program that's out there that appears to me with private funding. I'm not sure that there is anything that really impedes or prevents individual ESUs at this point or individual school districts from adopting that pilot program or model program, which has been done in the Omaha district, and implementing it to meet their specific needs. So I'm kind of questioning this mechanism of a private program or private donation for a school-based public program that then is implemented across the state and has this sunset period. Does the three years mean the three years from the passage of this legislation or does the three years mean the three years from when all of the social workers are hired? [LB998]

PRESIDENT FOLEY: Time, Senator. [LB998]

SENATOR KUEHN: Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Linehan. [LB998]

SENATOR LINEHAN: Thank you, Mr. President. Senator Kuehn was asking some very good questions, and I have some too. And I think I'll ask if Senator Crawford would yield to a question. [LB998]

PRESIDENT FOLEY: Senator Crawford, would you yield, please? [LB998]

SENATOR CRAWFORD: Yes. [LB998]

SENATOR LINEHAN: So, Senator Crawford, you and I serve on Health and Human Services Committee. [LB998]

SENATOR CRAWFORD: Yes. [LB998]

SENATOR LINEHAN: And we have spent a lot of time this year and last year in hearings about Health and Human Services and kids. [LB998]

SENATOR CRAWFORD: Correct. [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR LINEHAN: So are you aware, is this plan with the ESUs, has it been coordinated at all or some, there's been discussions with the Health and Human Services who has a lot of these children in their program? [LB998]

SENATOR CRAWFORD: So my under...thank you, Senator. My understanding is this is more about connecting children to those services. So at the same time Department of Health and Human Services is working on their system of care initiative and trying to improve the services available. This is not about those services as much as this is about connecting the schools to...and the parents to those existing services. So it's really about building that connection to what is going on in DHHS, not replacing it or integrating with it. [LB998]

SENATOR LINEHAN: Well, I guess that's my question. I know they can't replace it because we've had this conversation several times in the committee that a caseworker shouldn't have any more than 12 to 17 cases. Right? [LB998]

SENATOR CRAWFORD: A DHHS caseworker. [LB998]

SENATOR LINEHAN: Right. So this comes nowhere clear...near, excuse me, of replacing that. But since they already have programs and they provide through CHIP, I would think they're connecting kids...because aren't about half the kids in Nebraska on CHIP...or 43 percent of kids born last year were born on CHIP, something like that? [LB998]

SENATOR CRAWFORD: Well, the percent that are born with Medicaid money doesn't necessarily mean they're in the CHIP program. I don't remember what percent is in the CHIP program. [LB998]

SENATOR LINEHAN: But it's a large percentage. [LB998]

SENATOR CRAWFORD: I suppose. [LB998]

SENATOR LINEHAN: So if a child has been signed up and is on CHIP, don't they have the ability to get services? [LB998]

SENATOR CRAWFORD: They would have the ability for services to be covered. One of the issues is actually getting the connection of knowing where to go for those services and if they need them. So we don't assume that every child under CHIP would need behavioral health services. This is a model of the folks who are with those kids at school to help see when there's an issue where a child might need connected to those services, helping to connect them. Again,

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

it's not to replace the DHHS services. It's just helping make that connection between the school people and the people providing services in the private sector and the Medicaid payment that might be a part of that service. But not all kids, some of these kids are going to have private pay insurance. [LB998]

SENATOR LINEHAN: But don't you think it would be a good idea if they were going to move forward with this that they would work with HHS and the regions? Because I think, aren't the regions across the state supposed to also be focused on behavioral health? [LB998]

SENATOR CRAWFORD: The regions across the state are supposed to focus on behavioral health. Much more of their focus is on adults, so they don't have as much focus on kids because the low-income kids are more likely to have access to Medicaid. And I am certain that that is a key task for these social workers in each school, in each...ESU, excuse me, is to reach out to the regions and to reach out to DHHS to make sure that those collaborations and cooperations are strong in their ESU. Absolutely. [LB998]

SENATOR LINEHAN: But there's nothing in the legislation that asks them to do that, right? [LB998]

SENATOR CRAWFORD: No, but that would be what a social worker would know is an essential task. [LB998]

SENATOR LINEHAN: Okay, thank you very much, Senator Crawford. [LB998]

PRESIDENT FOLEY: One minute. [LB998]

SENATOR LINEHAN: Thank you. Senator Walz, you have time for just one question? [LB998]

PRESIDENT FOLEY: Senator Walz, will you yield, please? [LB998]

SENATOR WALZ: Yes. [LB998]

SENATOR LINEHAN: Have you talked to HHS or the regions about this program? Have they come to you? [LB998]

SENATOR WALZ: Last year, I don't know if you remember, but I introduced a bill regarding a connection program through HHS and the six behavioral regions. [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR LINEHAN: So where is that bill? We didn't... [LB998]

SENATOR WALZ: That bill, I did not feel would be effective enough. And I think you and I had talked about this. I just didn't feel that the area that had to be traveled from six behavioral regions to try and connect resources to kids across the state was going to be very effective. And that's why we decided over the summer to change that to a social worker in each of the 17 ESUs so they can be directly connected to those school districts. [LB998]

SENATOR LINEHAN: So you have worked with the ESUs, though? [LB998]

SENATOR WALZ: At...yes. [LB998]

SENATOR LINEHAN: And all the... [LB998]

PRESIDENT FOLEY: Time, Senators. [LB998]

SENATOR LINEHAN: Thank you. [LB998]

PRESIDENT FOLEY: Thank you, Senator Linehan and Senator Walz and Senator Crawford. (Doctor of the day and visitors introduced.) Continuing discussion, Senator Williams. [LB998]

SENATOR WILLIAMS: Thank you, Mr. President; and good morning, colleagues. And I rise also in support of LB998. Our responsibility, I believe, as a Legislature is to help our schools as much as we can. K-12 we provide a significant amount of financial aid, as we all know, and we'll be discussing that more as we go forward, but there are other things that we can do. And I would contend that schools have changed significantly over time and the demands that we put on schools and the responsibilities and the level of responsibility we hold them to has also changed. Just last week in the Gothenburg Public School, a young 17-year-old was removed for making terroristic threats and has such been charged with those events, a kid that could have been helped and his parents could have been helped had we had this legislation in place. Also you might remember last week I had fourth graders here, fourth graders from primarily the Lexington school. And one of those classes left me with 27 letters that they wanted me to have a chance to read, asking me about things. And it was quite startling to me actually, because each one of these letters displays some concerns about safety in their schools. The one letter from a Julian talks about wanting to have barbed-wire fences around the school so that people could not break in. Jonathan writes about needing stronger glass windows and stronger glass doors and concerns about the safety that they might have there. I was thinking about that and in conjunction with the pyramid of the hierarchy of needs that we all have. And at the bottom end of that scale is shelter

Floor Debate
March 12, 2018

and food. We won't do anything until we have that. But number two on that list is safety or security. And if we want our kids to thrive, if we want our kids to survive even in school, we need to provide them with a safe environment. And oftentimes our teachers and administrators are not fully equipped to be able to do that. I received an e-mail over the weekend from the principal at the Ansley school that's also in my district. And he says: In my 44 years in education, the last 14 years at Ansley, I have seen an alarming rate of the need for mental health services in our school. We have lost one student this year to suicide and two other students have lost immediate family members to suicide this school year alone. Those facts alone have caused us great concern in our school district for viable mental health services to help the students who were friends of the suicide victim and the other two students who lost family members. One was the father of one of our students. Students today are barraged by multiple concerns and some need the extra help to make it through their day and their life. I know one social worker on staff at the ESU is not going to solve the problem, but it would be a start in the right direction. Actually, a social worker on staff for our school and perhaps one or two of our other small schools close to us would be a tremendous help. I think we as a Legislature can use this as an opportunity, especially with the way that Senator Walz has provided for the... [LB998]

PRESIDENT FOLEY: One minute. [LB998]

SENATOR WILLIAMS: ...thank you, Mr. President...provided for the funding of this, to recognize that we can take one step further and help provide a higher level of safety, create that environment where our kids can thrive and benefit long term. I look forward to supporting this legislation as it goes through the process. Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Williams. Senator Erdman. [LB998]

SENATOR ERDMAN: Thank you, Lieutenant Governor Foley, and good morning. I rise today, as you may have seen in the committee statement, I voted no on LB998, and I'm still that way. I was wondering if Senator Walz would stand for a question or two. [LB998]

PRESIDENT FOLEY: Senator Walz, would you yield to a question, please? [LB998]

SENATOR WALZ: Yes. [LB998]

SENATOR ERDMAN: Senator Walz, I see in the fiscal note they talked about what happens when we get to the \$3.6 million in private funds to start the program. And it goes on to say that the bill will have a fiscal impact on the general fund of the ESUs if they opt to continue the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

program. So is it your opinion that once the private dollars are used up, it's going to go to property tax? [LB998]

SENATOR WALZ: I think, really, Senator Erdman, this is the beauty of the bill, and I talked to a lot of superintendents who really feel that this is a need for them. But after the private money is expended on ESUs in every school district that is connected to ESUs and private funding, so combination of all of those, if school districts decide to continue with the program, would share in that cost. [LB998]

SENATOR ERDMAN: Okay. Let me try to figure out what you said. It says here that the general fund of the ESUs will be affected by this. They will be responsible for this after the private funds are used up. Are you saying the private funds will continue? [LB998]

SENATOR WALZ: The general fund in the amendment was taken out of the bill. [LB998]

SENATOR ERDMAN: I'm not talking about the General Fund for the state. I'm talking about the general fund for the ESUs. That's property tax, is that correct? If the ESUs are going to support this, they get property tax to do that, right? [LB998]

SENATOR WALZ: Yes. [LB998]

SENATOR ERDMAN: Okay. So this is going to go directly to property tax. This is going to be...thank you for answering the question...this is going to be very similar to what the Learning Community does, okay? Learning Community, they get \$500,000 from us for administrative costs from the state. Their budget is about \$8.5 million a year. Their director is an employee of the University of Nebraska and he receives \$303,000, and then there's another 40 employees that work for the University of Nebraska on the Buffett Early Childhood education. And so they treat or see about 250 students. So when you figure that out, that's about \$34,000 a student. Not bad. Okay. So what happens there is Buffetts start this early childhood education, make a donation; they get it started and then once it's started and it's functioning, then their private funds run out and the taxpayer of Nebraska picks it up. And that's exactly what's going to happen here. They'll get a private donation to get this started. Once they get it started, at the end of three years, then the taxpayers will pick this up. It's a slick way to get something through in a year when the budget is tight because it has no effect on the General Fund this year. But you go down the road and the taxpayers in Nebraska are going to be picking this up. So if you have \$3.6 million and you have 17 employees that...1 at each ESU, and a director, if you divide that by 18 people total, that winds up being \$67,000 a year annually per employee. It doesn't make any sense. And Senator Linehan alluded to the fact, and if we have 39,000 students that are in need this service and we hire 17 people, that is a far cry from accomplishing their purpose. [LB998]

Floor Debate
March 12, 2018

PRESIDENT FOLEY: One minute. [LB998]

SENATOR ERDMAN: Thank you. So as I did in committee, I'm not in favor of this bill. I think there's a far better way to do it, and I'm not against treating people who have mental illness. But we need to do it in an efficient way, and I don't believe this is the way to do it. Thank you. [LB998]

PRESIDENT FOLEY: Thank you, Senator Erdman. Senator Bolz. [LB998]

SENATOR BOLZ: Thank you, Mr. President. I just wanted to add a couple of thoughts to the dialogue this morning. And I think it's good conversation. I think it's good debate and good questions. Some insight I wanted to share as an Appropriations Committee member, as it relates to funding streams, is there are a number of examples where we use public-private partnerships to achieve common goals. An example that comes to my mind is some of the resources that we have accessed from the Nebraska Game and Parks Foundation which helps our overall statewide and state-funded Game and Parks...sometimes state-funded Game and Park system. We funded it in some way; it's not fully...we've funded it through...we've increased resources for ADA compliance. Sometimes we have operations. We had some issues in front of the committee related to staffing. But I think that's a good example of how public-private partnerships can come together and achieve shared goals. Another example is the Sixpence Program, which is privately funded through an endowment and started up with support from the Appropriations Committee and now leverages local dollars to start early childhood programs. So my bottom line point is that there are any...another example is in your budget book that was handed out today, the lead abatement project, which brings together state and local matching dollars to leverage federal funds. And the bottom line point is that there are a number of ways to leverage local, state, and private dollars to achieve goals in the public good and the public interest. And I think that Senator Walz's bill is another example of that and can be crafted moving forward to achieve good things for schools for kids and leverage existing resources. Which brings me to my next point, which was dialogue that was brought up around partnerships with the Department of Health and Human Services. And I would reflect that the Connections program has...is a really good example of building relationships with the Department of Health and Human Services. So one example of this sort of thing that the Connections staff has done is help reinstate Medicaid for children who have not been on the Medicaid program but are eligible. And you may end up losing eligibility if, for example, the right paperwork isn't filled out or if your family's salary and income waxes and wanes over time. And so one of the good things that these coordinators can do is help those families overcome those challenges and overcome those hurdles to accessing assistance. Which brings me to my next point, which is there were some question about the influence of one coordinator or one liaison for a whole community of kids. And one of the things that we learned from the Connections program is that there are challenges that can be overcome with the help of the right professionals in the field. The top four challenges articulated by the

Floor Debate
March 12, 2018

Connections program preventing kids from getting the things that they need were transportation, childcare, language barriers, and service locations. So by building capacity and by building strategies to overcome those barriers, a liaison can remove those barriers, not only for the child in front of him or her, but also for the next kid who has a language barrier or the next kid who has a transportation barrier. And there were a number of creative problem-solving strategies we can point to in the Connections program. So I appreciate the dialogue and debate this morning. I continue to stand and rise in support of LB998, and I hope some of those thoughts help your thinking in terms of how this program has real potential to serve our kids and address mental and behavioral health needs for children in our state. Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Bolz. Senator Chambers. [LB998]

SENATOR CHAMBERS: Mr. President, members of the Legislature, as I've indicated, I have a following and I cannot disappoint them. However, there's no bill on the agenda that I see which allows me to ramble, as some people call it; fulminate, as I call it; educate, as others call it. But I have to say something on this bill because I've listened to the discussion, and the idea seems to be a good one. I've heard those who have concerns, and I heard Senator Erdman give his outright objection to it. The term "pilot" suggests to me a vehicle of some kind that the one with the label "pilot" is going to be in charge of maneuvering. An airplane might readily come to mind or a ship. But when you have a person called a pilot and there's no vehicle, then there is something missing. And from this it seems to be the source of money. When a date might be reached when all of the pieces are in place; in other words, when the moon is in its seventh house and Jupiter lines up with Mars, then peace will rule the planet because a worthwhile program can be put into operation. I don't really have anything much that I can add to this. The services are needed. But maybe this is one of those things where you all instead of praying every morning like you do, instead of when a person or a large number of people get killed, you say, you're in our thoughts and prayers, maybe some thoughts and prayers ought to go to this bill. But since I'm on that subject, I listen to prayers that are given, I critique some of them; and this morning I was puzzled by something that a minister said. He talked about the stars in the heavens that were forged by the fingers of God; therefore, what is man that thou art mindful of him or the son of man that thou payest attention to them. Well, you know, if...fingers have bones. And that made me think of if God has fingers, God also has toes. And if there are toe bones, they're connected to the foot bone, which are connected to the ankle bone, which are connected to the leg bone. Then the leg bone to the thigh bone, the thigh bone to the hipbone, the hipbone to the backbone, the backbone to the neck bone, neck bone to the head bone. But what need would God have of fingers, toes, or bones because God is not material, does not exist anywhere, but rather everywhere? So when these kind of things are said by those who have direct contact with God, it makes me have to say once again, I am God's surrogate. I apparently have a better, deeper understanding of God than anybody here or any of those you bring in here to talk to you, but you won't listen to me. God

Floor Debate
March 12, 2018

had a son, supposedly, and that son said, supposedly, they will not believe the one come back from the dead. You said time? [LB998]

PRESIDENT FOLEY: No, Senator, you have a minute and a half left. [LB998]

SENATOR CHAMBERS: Oh, thank you, Mr. President. So what I'm going to conclude my remarks with is this comment: Words do have meaning. Some people pay attention to words. If more care was taken in the words we use and we would do more analyzing of the words we hear, we might be a more effective, prudent, rational legislative body. Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Chambers. (Visitors introduced.) Continuing discussion, Senator Kuehn. [LB998]

SENATOR KUEHN: Thank you, Mr. President; thank you, colleagues. Again, I have a number of questions regarding...and I am not quite sure where I am at on this bill yet. And I appreciate Senator Chambers' discussion about the term "pilot," because that is ultimately one of my major concerns about this particular piece of legislation. So we'll talk a little bit about some of my concerns about the urgency and timing. As Senator Walz indicated, there is an indefinite period of time until the \$3.6 million is reached. There's 6 to 12 months following that point before the social workers are in place. And I think the case has been made that there is an immediate need. And I don't think this legislation addresses that immediate need. But with regard to the pilot, I do have a couple questions, and I know Senator Walz is walking away, so I'm going to ask if you would yield to a question again here real quick. [LB998]

PRESIDENT FOLEY: Senator Walz, would you yield, please? [LB998]

SENATOR WALZ: Yes. [LB998]

SENATOR KUEHN: I'll make this brief so you can get where you're going. Senator Walz, are there any restrictions or requirements or qualifications regarding the...who may submit funds as a private donor? [LB998]

SENATOR WALZ: I don't believe so. [LB998]

SENATOR KUEHN: And what then is the relationship between that private donor and the hiring of the coordinator and the ultimate hiring of those social workers? [LB998]

Floor Debate
March 12, 2018

SENATOR WALZ: There's no relationship between the private donor and hiring coordinators in ESUs. It's all up to the educational service unit (inaudible). [LB998]

SENATOR KUEHN: Thank you, Senator Walz. And that's all the questions I'll have for you at the moment. My concern, colleagues, is this, and that is when we start talking about private dollars, especially private donor dollars, coming into a public partnership, there's something very different and distinct from the public-private partnerships that Senator Bolz mentioned with things like Game and Parks or public-private partnerships that we see for economic development or Innovation Campus. Here we're talking about a partnership between someone or an organization or private dollars and something that is quite...how should I say...malleable in terms of opinions. So for example, could a pharmaceutical company be the source of the \$3.6 million funds or a foundation or a trade organization associated with a pharmaceutical company and that the then implicit understanding is that this serves as a mechanism for increasing access to and prescribing of pharmaceuticals for children with behavioral disorders or anxiety and depression? Maybe there isn't an implicit ask, but certainly we know that from funding of research, from funding of organizations, that there's always a...whether spoken or articulated clearly or not, an understanding between the expectations of the donor and the outcomes of the particular program. There are other groups that are involved in psychology and in social work that have social agendas. So I guess one of my questions is, if the funds were to be donated by a group of social workers who, for example, practice a version of therapy, which may not be acceptable to all, and the implicit understanding is that the social workers hired are going to have that mentality that are going to follow through on that idea, is that in the best interests of putting in each and every one of our ESUs? I don't think we can disengage from the idea of the relationship in this type of a program between the private donor and implementing a program which then would touch each and every one of our public schools. And I asked some of the supporters of this bill if \$3.6 million were to be given by a practice which... [LB998]

PRESIDENT FOLEY: One minute. [LB998]

SENATOR KUEHN: ...engaged in, for example, conversion therapy and...which a number of people identify as highly controversial, and the expectation is that that's the kind of social workers that would be placed in ESUs all across the state; is that what we're looking for? Is that what we want? I think we have to be very careful when we're talking about something as vital as extending a reach. In many cases, students in our public schools don't have voluntary control over that. They're in the public school. They're potentially being touched and influenced by the mentality and the objectives of the social worker plan put in place. And so as Senator Chambers asked the question about pilot, I think we have to ask: Who's piloting? Who's directing? And to what degree does donor intent, what degree may the source of the private funds influence how this program develops over time? And I think we would be remiss when dealing with our public

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

school system to not pay careful attention to that. And I guess I would certainly like to see some sort of restrictions or qualifications or an explicit separation... [LB998]

PRESIDENT FOLEY: Time, Senator. [LB998]

SENATOR KUEHN: ...between the source of any funds and how... [LB998]

PRESIDENT FOLEY: Time, Senator. [LB998]

SENATOR KUEHN: ...the decisions are made. Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Hughes. [LB998]

SENATOR HUGHES: Thank you, Mr. President; good morning, colleagues. Would Senator Walz be available for a question? [LB998]

PRESIDENT FOLEY: Senator Walz, are you available for a question, please? [LB998]

SENATOR WALZ: Yes. [LB998]

SENATOR HUGHES: Thank you, Senator. Just in looking over the bill, it says "social worker" everywhere. Could you expand upon that what...what you envision that social worker, what their duties are? And I apologize if we've covered this territory before. [LB998]

SENATOR WALZ: The main responsibility of the social worker would be preventive. And it would be connecting students in the school to community resources, whether that be mental health practitioners or other nonprofit organizations within that community. It's connecting children and families to those organizations. [LB998]

SENATOR HUGHES: So this is someone that would not have a degree in psychology? [LB998]

SENATOR WALZ: Not necessarily. [LB998]

SENATOR HUGHES: So that would be up to the coordinating council to...of what kind of qualifications... [LB998]

Floor Debate
March 12, 2018

SENATOR WALZ: It all depends upon what kind of needs there are in that community. [LB998]

SENATOR HUGHES: And that's...you're leaving that up to the ESU to determine that. [LB998]

SENATOR WALZ: Absolutely. Yes. The ESU in conjunction with the school districts that are attached to that ESU. [LB998]

SENATOR HUGHES: Okay. Are there any school districts that have these social workers in place currently? [LB998]

SENATOR WALZ: There are. And I can't tell you who they are; I don't know for sure. I do know that there are social workers in some schools. [LB998]

SENATOR HUGHES: That are currently providing this service. [LB998]

SENATOR WALZ: That type of service, possibly. [LB998]

SENATOR HUGHES: Okay, thank you, Senator Walz. Well, you know, ladies and gentlemen, I am always concerned when we start a program; and there's no question that something like this probably needs to be done in some of our school districts. My heartburn is that we are beginning a program with private dollars, and then in three years it will be rolled into property tax dollars that will be used to fund this. And that is one of the key words that make my antenna go up. Currently, the property tax situation, especially in more rural districts, is very challenging. And creating another mandate or creating another program that was begun correctly enough or a need was filled and there were private donors that felt it was an important enough to give their dollars to that, I think it would behoove us to make sure that the program continued in that direction. There's a lot of different needs in our schools; and if there are individuals who are willing to give those dollars, you know, I think we should allow them. The question is...Senator Linehan, would you respond to a question, please? [LB998]

SENATOR LINEHAN: Yes. [LB998]

SENATOR HUGHES: Thank you. Is it your understanding that ESUs can do this now? They could accept these private-fund dollars without creating a whole new program and implement something like this? [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR LINEHAN: I would think so. As the schools could...I really don't know why the Legislature has to have this legislation for this program to go forth because ESUs have their own, as we all know, elected boards. They have their own taxing authority. They have their own little...I mean they...they are under some jurisdiction from the Department of Ed and ultimately under us, but I know of no reason why they could not accept this money, nor do I know of any reason why the schools couldn't appoint somebody in each building to be the point person without this legislation, which is a good point. Another...and the fact that it's an unfunded mandate, which usually we hear much concern about. [LB998]

SENATOR HUGHES: Thank you, Senator Linehan. I guess you made my case very well. I think...and I'm contemplating an amendment to be drafted that once we establish this program, then we can continue it if it continues with private dollars. If we get three years down the road or once the \$3.6 million is expended, if there are private individuals who are willing to continue to fund that, then let's go ahead and let them do that. But let's certainly not put that on the back of the property taxpayers. You know, that's just another...and Senator Linehan said it, another unfunded mandate. Is the need there? [LB998]

PRESIDENT FOLEY: Time, Senator. [LB998]

SENATOR HUGHES: Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Hughes. (Visitors introduced.) Continuing discussion, Senator Albrecht. [LB998]

SENATOR ALBRECHT: Thank you, President Foley; and good morning, colleagues. I received a letter and I believe this person is with the National Association of School Psychologists. She says: I'm writing to you in regard to LB998. I'm a strong proponent of mental health, early intervention, and education; but I'm also a proponent of smart, informed, and responsible decision-making, as I'm asking you to oppose this bill. Here's why and the reason is simple: It is fiscally irresponsible. The bill requires the hiring of a social worker. ESUs already hire school psychologists to train and...who is trained and capable of providing the training. There's no reason to add to this cost without first using the resources that we have in our ESUs. If the bill requires that they use social worker or school psychologists, I would support the bill, but not doing so and requiring they hire new people without first using what they currently have. It's irresponsible and uninformed. I urge you to make them go back to the drawing board and fix this bill. The taxpayer of Nebraska deserve it. Thank you, Jill Timmons. Now along with this letter, she provided some information that school psychologists are uniquely positioned to provide mental health and behavioral health in schools. Also psychologists are uniquely trained to deliver high-quality mental and behavioral health services in school settings to ensure all students have

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

the support that they need to be successful in school, at home, and throughout life. My questions would be...and again, I haven't been in the school system. I'm not a teacher. I do understand that, Senator Walz, if you would just yield to a couple quick questions. [LB998]

PRESIDENT FOLEY: Senator Walz, would you yield, please? [LB998]

SENATOR WALZ: Yes. [LB998]

SENATOR ALBRECHT: Okay, how long have school psychologists been in the ESU system? [LB998]

SENATOR WALZ: I can't answer that. [LB998]

SENATOR ALBRECHT: Okay. And I would like to know--maybe you can get this information--is there one in every ESU right now? And if so, how are they paid? And some of those questions, to me, are important because if the ESUs already provide this and they have the psychologists on staff, they're going to know where to send these children. But more importantly, if you have social workers that you're asking to put in these positions, being out in the field, if you will, myself, going to some of the different programs that they have in some of my districts, social workers are hard to come by. I mean, HHS...DHHS has a enormous number of positions that probably need to be filled throughout our state. So it concerns me that whoever is out there that can give \$3 million or more in a short period of time to be able to find these folks to be able to fill these positions would be great. I mean, maybe they know where they're hiding or maybe they have new ones that they can bring into our state and that would be wonderful. But I feel like we already have these things in place. We have school counselors to recognize when we have a problem or a situation or an issue with the children. So I'm listening to the debate, but I probably would be inclined to support the lady that sent me the letter. I just think it's a duplication of services. Thank you, President Foley. [LB998]

PRESIDENT FOLEY: Thank you, Senator Albrecht. Senator Pansing Brooks. [LB998]

SENATOR PANSING BROOKS: Question. [LB998]

PRESIDENT FOLEY: Members, as a point of reference, we've been on this amendment for about 50 minutes. We've heard from ten senators; there are five more in the queue. Do I see five hands of those who would like to call the question? I do. The question is, shall debate cease? All those in favor of ceasing debate vote aye; those opposed vote nay. Senator Bolz? [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR BOLZ: Call of the house, please, and a roll call vote. [LB998]

PRESIDENT FOLEY: Thank you, Senator Bolz. The question is, shall the house go under call? Those in favor of calling the house vote aye; those opposed vote nay. Record, please. [LB998]

CLERK: 20 ayes, 3 nays, Mr. President, to place the house under call. [LB998]

PRESIDENT FOLEY: The house is under call. Senators, return to your desks, please, and check in. The house is under call. All unexcused personnel please leave the floor. The house is under call. Senator Hilkemann, if you could check in, please. Senators Hilgers, Riepe, and Murante, if you could please return to the floor and check in, we're under call. All unexcused members are now present. The question before the body is whether or not debate should cease. There has been a request for a roll call vote. Mr. Clerk. [LB998]

CLERK: (Roll call vote taken, Legislative Journal page 919.) 24 ayes, 14 nays, Mr. President, to cease debate. [LB998]

PRESIDENT FOLEY: The motion fails, debate does not cease. I raise the call. Continuing discussion. Senator Erdman. [LB998]

SENATOR ERDMAN: Thank you, Lieutenant Governor, I appreciate it. Senator Hughes mentioned this morning about things that are happening in rural Nebraska. I received an e-mail this morning from a person back home, farm wife, and she said: Please pray for us; we're going to sell our equipment and cease farming. We had someone lined up to rent our farm, but when we went to sign the contract, they backed out. We have asked all of our neighbors; we have checked with people who may be interested. We can't seem to find anybody who wants to rent our farm. We are not the only one in this position. There are many farmers in our area that are suffering under the same consequences as we are. Colleagues, this farm crisis is serious. I talked to some people who are familiar with the farmers hot line last Friday, and they said they are getting more calls today than they got back in the '80s when the farm crisis was supposed to be terrible. We have a problem. The problem is property tax, government spending. But we spent three hours last week in the afternoon talking about gardens. Gardens. Years ago there was a basketball player by the name of Allen Iverson. And the interviewer was asking him about the season and a few things and he had attended practice and he asked him some questions about how practice went. And Allen Iverson said, practice? We're talking about practice? You're asking me about practice? Well, I'm here to tell you that the state's going to hell in a handbasket and we're talking about gardens? Community gardens? We're talking about gardens? We don't talk about things on this floor that make any sense to anybody except spending more money. We don't talk about cutting spending. We don't talk about pulling back, being concerned about the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

taxpayer. We hear all the whining from the university. They come in and whine for five hours and make \$17 million. Pretty good wages. If you go look at the audit from the University of Nebraska last year, they found \$74 million more in revenue than they thought they had. Wow. And they're worried about us taking 2 percent. It's going to be an interesting conversation in the next couple of days on the budget. We have a problem. But we want to talk about gardens. I was wondering if Senator Walz would answer a couple questions. [LB998]

PRESIDENT FOLEY: Senator Walz, will you yield, please? [LB998]

SENATOR WALZ: Yes. [LB998]

SENATOR ERDMAN: Senator Walz, so the ESU hires a social worker; and there is a young person in the school that has a problem. How does that school transfer that student and the information about that student to that social worker? [LB998]

SENATOR WALZ: How does the school...? [LB998]

SENATOR ERDMAN: How does that work? I have little Johnny in my school and he has problems, whatever they are, and the social worker works for the ESU, doesn't work for the school. How do they transfer that student from the school to the ESU and avoid all the HIPAA rules and all the things that they can't tell people? How do they do that? [LB998]

SENATOR WALZ: They would get permission from the parents to transfer that information. [LB998]

SENATOR ERDMAN: They would get permission from...and if a parent... [LB998]

SENATOR WALZ: And I know that if you would like to ask Senator Howard, she has a lot... [LB998]

SENATOR ERDMAN: I'm not asking Senator Howard; I'm asking Senator Walz. [LB998]

SENATOR WALZ: I know. I'm just saying that she has a lot more background on HIPAA than I do. [LB998]

SENATOR ERDMAN: Okay. But I'm not asking Senator Howard. [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR WALZ: Okay. I'm just saying that she has... [LB998]

SENATOR ERDMAN: Okay. I'm asking you. So how does that student get help if...what if the parents say no? Then what happens? [LB998]

SENATOR WALZ: I don't have the answer for that. Again, I'm not an expert on HIPAA. [LB998]

SENATOR ERDMAN: But as Senator...thank you very much. As Senator Hughes had pointed out, the ESUs can already do this. [LB998]

PRESIDENT FOLEY: One minute. [LB998]

SENATOR ERDMAN: And if you did...I did the numbers on that. If we had 39,000 students that need assistance and you had 17 caseworkers in the ESU, that only figures out to be 2,294 students per social worker. Not bad. I think they can probably cover that. That's absurd. So what are we doing here? We're talking about putting a program in place that has no, no chance of succeeding and accomplishing what they need to accomplish. So again, I'm opposed to all the amendments and to LB998. Thank you for your time. [LB998]

PRESIDENT FOLEY: Thank you, Senator Erdman. Senator Groene. [LB998]

SENATOR GROENE: Thank you, Mr. President. I agreed to vote this out of committee because I wanted the public to see what all I hear as Education Chairman. There is no such thing as behavior or discipline in our schools no more; it's mental health. Education bureaucracy is after one mission on top of their goal; it's mental health. I have a concern on that that the fact that education dollars are for education. The folks we hire in our schools are not mental health experts, not even close. It's not the mission of a public school. We have HHS. It's a medical condition. I happen to believe that the HHS should have an office in every school. Why do we have social workers in a building uptown drinking coffee and having doughnuts when the kid they're supervising is in the public school? They don't know if they're truant because they're not there. If they have a problem, they don't know. That's what I'd like to see done. This is a little bit of redundancy where tax dollars are paying for social workers on two different levels, but that's not unusual for government. ESUs can do this right now. Senator Hughes pointed it out. I asked that in the hearing. They can do it right now. If you read the statutes governing their mission, 79-1204, it's pretty broad. As issues come up within education, new programs, their mission is to coordinate and help the school districts, and right now special education is a big thing. So they're doing it already; they can do this already. What this would do is put it in the statutes and the ESU

Floor Debate
March 12, 2018

coordinator could start telling schools: See, it's in statute now, you have to do it, instead of you may do it. But really, this statute doesn't say you have to either. I made sure that before it came out of committee, we made sure the state was not liable for any funding of it and we also made sure that the school district wasn't tied...my example was if some wealthy individual gave \$10 million--it's not capped at \$3.6 million--gave \$100 million and it originally said it equally shared. Well, school district and the ESU had to come up with a third, \$100 million each too. Senator Walz agreed to take that out. We have a problem, yes, folks. Children are mentally ill now. They have behavioral health. They don't disobey. And if you're religious, they don't have a sin nature. They're mentally ill. I got a problem with some of the things that could happen here. You got a lot of those kids are already under social worker through the HHS, and now we're going to have another social worker in there. And by the way, the HHS social worker has all the contacts, all the agreements all lined up with the mental health professionals. Now we're going to have another social worker has to duplicate those services and find...when we already have that through HHS. It's well meaning. It's well meaning. I wanted it on the floor so the public out there listening could understand what's going on. It's not about reading. It's no longer about reading that we hear about or math or civics. It's about we got to have psychologists and social workers and health professionals in our schools. That's where we're at in public education right now. That's all I've heard since I've been Chairman of the Education Committee. I wanted the public to hear this debate. That's where we're at. More tax dollars sticking their nose, putting more individuals in between the parent, authority figure, and the child. You wonder why parents have no control over kids? Because the government keeps putting more and more authority figures between them and their children. Kids revolt. Got too many people telling them what to do. [LB998]

PRESIDENT FOLEY: One minute. [LB998]

SENATOR GROENE: I'm going to vote no on this bill. My agreement was to get it to the floor, and we've done that. It's not necessary, and a lot of gray areas in it yet. But I wanted the public to hear what's going on in education debate across this state, inside the establishment. It's not about reading, folks. Thank you. [LB998]

PRESIDENT FOLEY: Thank you, Senator Groene. Senator Bolz. [LB998]

SENATOR BOLZ: Thank you, Mr. President. I just wanted to respond to a few of the issues that have come up on the floor this morning, and I do think it's all important debate to have. I think these are issues that weigh on kids. They weigh on parents. They weigh on teachers. They weigh on administrators and school districts and educational service units and the state as a whole. And so I continue to rise in support of taking this action to show our good faith efforts to bring together resources to resolve the issues that we know weigh so heavily on a number of

Floor Debate
March 12, 2018

stakeholders in our communities. And that's one of the reasons that I think it is so important that we bring this forward legislatively. I think one of the issues that was brought up was, could they do this already? Should they do this already? And my response to that is maybe. You know, certainly the Connections program is a good model, is a good example. However, a strategic coordinated initiative that is relying on best practices, leveraging the expertise of multiple people in a community, bringing together ESUs for common interest and common good, developing the strategic plans as are required in the bill. And, importantly, the bill requires an evaluation component so that we can learn from how we've moved forward in terms of leveraging resources and implementing change strategies into the future. And I think that also shows our commitment to responding to the needs in school buildings and the needs of families in a way that is reflective of the commitment that we're asking for from the private sector. So the private sector is doing their part; and we, by moving forward legislation, are doing our part to bring stakeholders together and build a shared vision. So I appreciate the conversation, but see it a little bit differently and really see this bill as an opportunity for change. The next question was, you know, sort of a concern regarding property taxes and expenditures. And the way I see it, there is no mistaking the idea that we are already paying for the challenges of kids with mental and behavioral health needs. Those are already resources being expended, whether they're resources being expended in the school building, on a variety of instructors' or administrators' time in responding to crisis, whether that is money being spent in the child welfare system, money being spent in the juvenile justice system, and worst-case scenario, money being spent in our correctional system. And so I do think that there is a preventive analysis here that is really worth our discussion. If you look at this issue from a public health lens, you might look at it as preventive interventions. Just like our managed care systems, think about how you coordinate services and get ahead of escalating physical health issues. This kind of intervention is preventive and getting ahead of mental health issues and behavioral health issues. So that's the analysis that I would bring to some of these concerns. I also...and I appreciate Senator Groene's reflecting about the role of kids and parents in responding to some of these needs. Of course, these are challenging issue...challenging and sensitive issue areas. But I would offer that we are addressing children with needs coming from a variety of contexts. We might be addressing kids who have an undiagnosed mental illness, and the parent needs to know where to turn. We may be addressing a child who has a history of trauma... [LB998]

PRESIDENT FOLEY: One minute. [LB998]

SENATOR BOLZ: ...or has a history of abuse and whether that is the biological parent trying to manage through those challenges or maybe an adoptive parent or kinship care parent, having those resources available can really make a difference for those kids. We also have children who, in spite of a variety of supports and services, may still be at a loss as to how to move forward. They may not be in the child welfare system. They may actually be the child of parents who have private insurance that could cover the resources and needs that they're looking forward to, but the

Floor Debate
March 12, 2018

capacity isn't built yet to make sure that those kids have a place to turn, whether that's a therapist trained in best practices or a support group that's built up through the planning initiatives that Senator Walz has required in her legislation. [LB998]

PRESIDENT FOLEY: Time, Senator. [LB998]

SENATOR BOLZ: Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Bolz. Senator Kuehn, you're recognized; this is your third opportunity. [LB998]

SENATOR KUEHN: Thank you, Mr. President; and thank you, colleagues. I appreciate the discussion going on so far. As I've...not a member of the Education Committee and I have only the committee statement to go on and listening to some of the debate and the answers that have been provided to questions here on the floor, I guess I do have...my opposition to LB998 is increasing in part because the mechanism and the ability to do this and do it in a much more expeditious manner certainly is available to individual ESUs. And I think Senator Walz is correct in that individual ESUs know their locality, know the needs of their schools best, and I think that individually ESUs that see this as a need and have a mechanism or an ability to do so can solicit these funds, can apply for grants, can seek out a similar mechanism and incorporate that if they so desire. So again, I'm starting to seriously question why we even need the state to get involved, why we need the ESU Coordinating Council to get involved under direction of the state, and why we need to have one single large pot of money from a private source, but then initiates or gets this ball rolling. Certainly the overwhelming need, as we've seen demonstrated by some of the numbers that have been provided, can certainly be addressed in a very quick and local fashion. So knowing that there is already a mechanism in place and the possibility for developing these programs at each individual ESU level, it makes me question what the ultimate goal and what the ultimate motivation is with establishing this as a statewide program. And that's where I start getting concerned about an issue of donor intent. And I realize it's not something people really want to talk about, but it's one that I think is important and is gaining greater attention nationwide as we see more and more private foundation dollars entering into the government space. And that is: Government programs funded by tax dollars are subject to transparency. They are subject to principles of contracting. They are subject to fairness. When we start seeing private dollars which can be utilized anonymously, when we see the source of them that can be used to manufacture programs and develop programs subject to donor intent, I think we as public policymakers need to take a step back and we need to be careful about understanding what we're involving taxpayers, and in this case, school children truly without their permission in terms of how that program and how those dollars tend to work. So I'm unclear as to why we need to have a statewide program, a statewide pool of dollars, why individual ESUs and school districts can't

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

collaborate together, which also has me concerned, because the issue I hear every time I meet with school board members and every time I meet with local school officials is the unfunded mandates issue. Well, the state says we need to do X, Y, and Z; and yes, it may not be a mandate. It may say "may" rather than "shall"; but if we don't provide the services, then the school district across the way will and we lose teachers to that district and etcetera, etcetera. So by creating the program, by creating the mechanism, we have created a potential unfunded mandate. And as I look at a list of the unfunded mandates that often local governments talk to us about and complain about with regard to their budgets, many of them are programs like this that the local governments are asking for. So as I look down the list and I see the school psychologist association, as I see the school board association, as I see the NSEA involved, there is a lot of dollars there, that... [LB998]

PRESIDENT FOLEY: One minute. [LB998]

SENATOR KUEHN: ...these are worthwhile programs that just need a little bit of seed money to get started, jump in. There is nothing that keeps any of those organizations from doing so. If the need is there and they see it as such and there is a model program that they can look at through the Connections program in Omaha, fund it. Otherwise, what we're doing is we're creating a level of bureaucracy that is initially dependent upon private dollars, is somewhat top down in terms of a coordinator that then is going to hire social workers. I don't get from the bill that the local ESU gets to have any real influence on who that social worker is. It looks like it's the coordinator who is responsible for hiring and determining that social worker. So, again, I want us to all be cognizant of the other influences and the broader picture of what's being attempted with this bill, which I think has noble intent in terms of providing and increasing access to vital social work and psychological services to children in need. [LB998]

PRESIDENT FOLEY: Time. [LB998]

SENATOR KUEHN: Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Kuehn. Senator Pansing Brooks. [LB998]

SENATOR PANSING BROOKS: Thank you, Mr. Lieutenant Governor. First of all, I would like to remind us all to use civility when we're addressing one another. To play gotcha legislation and if Senator Walz can't quite answer a specific question but says somebody else can, to go forward and either try to show that she doesn't know something or try to embarrass or whatever does not help us to provide consistent and good legislation for our state. And as a reminder, we each represent 36,000 people. So while you may be acting as if you're attacking the person, it is also 36,000 people in our state that each person represents. So, again, I would ask us to use civility in

Floor Debate
March 12, 2018

questioning. It's important to question. It's valuable, and the tone does not have to take the uncivil tone or the manner that has been happening recently. To go on with LB998, I support Senator Linehan's bill (sic--amendment), AM2333. I support the Education Committee amendment and I support Senator Walz's bill, LB998. And I would like to just point out that there were 40, count them, 40 letters of support. There was no opposition and there was no neutral testimony on this bill. The number one issue that the schools have consistently discussed for them is mental health issues. And does this solve this? No. Are some people willing to come in and give a donation to help the ESUs to go forward and work on this problem a little bit? Yes. It...this isn't something that we have to all rise up in just total consternation about. And since Senator Walz wasn't able to answer those questions, I would like to give the rest of my time to Senator Bolz who can answer many of the HIPAA and FERPA questions. Thank you, Mr. President. Oh, Senator Howard, what did I say? Bolz? Sorry. Senator Bolz...Howard. (Laughter) Oh, my god. [LB998]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Senator Howard, 2.5 minutes. [LB998]

SENATOR HOWARD: Oh, my gosh, if I had a nickel. (Laughter) All right, so I wanted to talk a little bit about the intersection between HIPAA and FERPA because I know there are some questions about that. And FERPA is the, obviously, the guiding statute around protection for educational records, and HIPAA is, obviously, the guiding statute for records that are healthcare related. And HIPAA has a two-pronged approach. First is that you have to be a covered entity, so you have to be a HIPAA-protected provider. You have to be a healthcare provider or healthcare entity or a health plan or a hospital. And the second thing is that you have to engage in a HIPAA transaction. So on its face, LB998, it would be very rare for a social worker to engage in a HIPAA-protected transaction. A HIPAA-protected transaction is anything that is healthcare related. The only thing that I can see in the statute that would be close to a healthcare-related transaction would be that initial screening, but that would only be if it was a billable screening through a healthcare provider or an insurance agency. Now this seems really boring, but this question has come up a lot because school nurses are actually...they get the question a lot as to whether or not they're a HIPAA-protected provider because they do a lot that's healthcare related. Right? They do a lot of screenings and they do some...they work on 504s and IEPs. But if they do that inside of the educational setting and if they do that without transmitting that information electronically to a biller or another healthcare entity, then those records are exclusively covered under FERPA. The federal government felt as though it would... [LB998]

PRESIDENT FOLEY: One minute. [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR HOWARD: ...place an undue burden on educational institutions to make school nurses or social workers who are housed in their entities and only providing referrals or healthcare-related opportunities based on school requirements, then if they're done in that educational setting, then they are only covered by FERPA and not HIPAA. HIPAA only comes in when that information is transmitted. With that, Mr. President, I have my light on for a future opportunity. Thank you so much. [LB998]

PRESIDENT FOLEY: Thank you, Senator Howard. Senator Blood. [LB998]

SENATOR BLOOD: Thank you, Mr. President. Fellow senators, friends all, I want to focus back on why we're here. I stand in support of both amendments and Senator Walz's bill. And I ask that Senator Walz would please rise, yield to a question. [LB998]

PRESIDENT FOLEY: Senator Walz, would you yield, please? [LB998]

SENATOR WALZ: Yes. [LB998]

SENATOR BLOOD: Senator Walz, in a very brief sentence, why did you bring this bill forward? [LB998]

SENATOR WALZ: In a very brief sentence, I just have heard while campaigning and working on this over the summer, working on the prior bill last year, just the amount of need. Mental/behavioral health is an epidemic and it's increasing. [LB998]

SENATOR BLOOD: And would you say that mental health issues are more important than grades in small children, young children? [LB998]

SENATOR WALZ: If you don't have a healthy mind, healthy emotions, you're not going to be able to have good grades. I mean, it's just too hard to concentrate on schoolwork. [LB998]

SENATOR BLOOD: And would you say that the Nebraska School Psychologist Association were one of the premiere organizations that would have good advice in reference to what bills are important in Nebraska when it comes to a child's mental health? [LB998]

SENATOR WALZ: Yes. And I have a letter of support from the Nebraska School Psychologist Association. In fact, the lady that Senator Albrecht referred to, we had a discussion and she is...after the letter that she wrote, she was in favor of this bill. [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR BLOOD: And so it sounds like, from what I've read and what I've seen, the children that would benefit the most will actually be the ones in the rural areas who sometimes the only mental health assistance that they receive is actually through the schools. Is that correct? [LB998]

SENATOR WALZ: That is correct. [LB998]

SENATOR BLOOD: Thank you, Senator. I would now ask that Senator Groene, who was just here... [LB998]

PRESIDENT FOLEY: Senator Groene, if you're on the floor, would you yield? I do not see him, Senator Blood. Senator Erdman, would you yield? [LB998]

PRESIDENT FOLEY: Senator Erdman, if you're on the floor, would you yield? I see Senator Erdman. [LB998]

SENATOR BLOOD: I see him running. He needs to run faster. [LB998]

PRESIDENT FOLEY: Senator Erdman, would you yield, please? [LB998]

SENATOR ERDMAN: I'd be glad to. [LB998]

SENATOR BLOOD: Thank you, Senator Erdman. I have a quick question for you. [LB998]

SENATOR ERDMAN: I hope I have a quick answer. [LB998]

SENATOR BLOOD: Pardon? [LB998]

SENATOR ERDMAN: I hope I have a quick answer. [LB998]

SENATOR BLOOD: As do I because I have a very limited amount of time. So I agree with you, property tax is a huge issue, especially in rural areas we've discussed. We have a family farm and I know my family is concerned about it. And so the question I would have for you is that since that is your concern for this bill, when other bills such as a senator's priority bill that has a \$3 million fiscal note for a problem that doesn't exist, is that something that you probably would be standing against as well? [LB998]

Floor Debate
March 12, 2018

SENATOR ERDMAN: If someone has a \$3 million fiscal note? [LB998]

SENATOR BLOOD: Right. [LB998]

SENATOR ERDMAN: \$3 million? Probably. [LB998]

SENATOR BLOOD: Okay. Thank you. I just want to point out that there are a lot of concerns on this floor. One of the concerns I have that Senator Groene is not here to answer is that we had very clear instructions from our Speaker who said that you should not vote a bill out of committee unless you're in favor of it because it's a short session. And now he has voted it out and stands against it, and I take issue with that. The other thing I take issue with is that we tend to be a peanut gallery on issues that are really not our areas of expertise. And I know we definitely have the job of creating legislation that pertains to issues that we may or may not understand. But that does not mean that we should stand on the floor and pretend we're psychologists, because we are not. And to my knowledge, I don't believe we actually have any psychologists in the body right now. We have a lot of experts like Senator Bolz and Senator Howard who give us really good information on how the system works... [LB998]

PRESIDENT FOLEY: One minute. [LB998]

SENATOR BLOOD: ...Senator Crawford, who is a professor. I mean, we have a lot of expertise, but this is not one area that we are experts. But yet the experts are telling us to move forward, and because of that and because Senator Walz has gone out of her way to find a creative way to fund this, I stand in support. And for those of you that may not be voting, I suggest you change your vote to green because Senator Walz needs your support. Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Blood. Senator Howard. [LB998]

SENATOR HOWARD: Thank you, Mr. President. So Senator Pansing Brooks had wanted me to talk about HIPAA, but I'll rise in support of LB998 in general. I was a little bit late getting to the floor today because I was chatting it up with my mom about a variety of things, what we're having for Sunday dinner and other stuff like that. And then I said, Mom, you were here when we put social workers in schools. And she was like, uh, honey, not only was I there, but I was the one who did it. And I was like, that's so interesting. So tell me a little bit about the opposition at the time because I'm really trying to wrap my arms around the opposition to something that doesn't use the General Funds, that assists in mental health services. Sure, it doesn't go far enough, but what ever does? And she said the opposition at the time was exclusively related to funding. And she worked with Theresa Barron-McKeagney, and...who is at the university; and

Floor Debate
March 12, 2018

she worked with Dr. Mackiel, who used to be the superintendent at OPS. And Dr. Mackiel actually opposed it vociferously, putting social workers in schools, because he thought it would utilize resources that he didn't actually feel as though he had. They ended up getting to a point where...of agreement when they agreed that social workers could do some things that helped them with their status reports in terms of how kids were doing inside of the schools. And the efficacy of knowing how a kid is doing holistically has been really significant in our state. That being said, there are a few things that I would love to clarify just for a moment. When we talk about the social workers at Health and Human Services being involved with these kids, they would need to be involved because there has been a filing. A filing means that there is abuse and neglect or truancy. These kids that we're talking about maybe just need connection to a service provider that's very specific. Maybe they need a therapist outside of the school. But without a filing, the Department of Health and Human Services social workers cannot intervene. Without a suggestion of abuse and neglect, without a call to the hot line, there will be no initial assessment worker who steps in with that family. And so when we hear from teachers who are saying, oh, my gosh, you know, DHHS is not involved, they're not involved because there has been no filing. There has been nothing that rises to the level of abuse and neglect for the department to step in and consider a removal or consider ongoing services and supports. Often when we see what is coming to social workers in schools, because of my mother's bill, it's really about a connection to services. And that's really what Senator Walz's bill does is it says, okay, we've got social workers in schools; maybe we've got one and they're there once a week, but maybe in these rural areas, they also need a little bit more attention. And this would give them that opportunity to be connected to those services. One of the things that Senator Groene said was so interesting to me, and that was having an HHS office in every school because what we're talking about is connecting families to services, connecting kids to services. And so I think what Senator Groene was thinking about was Child Protective Services, which...okay, maybe you have that in schools, but not every school has a kid with a filing and not every school needs a full-on Department of Health and Human Services, Child Protective Services agency on premises. However, the Department of Health and Human Services also coordinates all of our service applications through our economic assistance and our Medicaid and Long-Term Care. And so if Senator Groene would like to work on that with me, thinking of innovative ways to make sure that eligibility and application processes are inserted into our school system, I would welcome that. But right now, our school social workers are doing that type of work. And presumably these ESU social workers would be doing this type of work. [LB998]

PRESIDENT FOLEY: One minute. [LB998]

SENATOR HOWARD: Oh, thank you. And so just going back because I want to make sure that I was very clear on the intersection between HIPAA and FERPA, there may be a question about, well, so a school nurse is covered under FERPA but not HIPAA unless she transmits the information and then it's covered under HIPAA. And the question would be around things like

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

school-based health centers because school-based health centers are essentially a doctor's office in a school. It's a mini doctor's office in a school. Those are considered HIPAA protected, because they do not share their records with the school. And their...the offerings that they give are billed out. And so those become HIPAA protected the minute that those are transferred or billed to another covered entity for HIPAA. The real area of concern is something like student athletes, right, when they get hurt. The question is whether an athletic trainer is covered by HIPAA. And the statutes are actually silent on something like that. But I do hope that clarifies the HIPAA-FERPA relationship. This bill in particular really wouldn't intersect with HIPAA. And if there are concerns in that area, it would be very easy to address by stating that in the legislation that there is no intention for that intersection. [LB998]

PRESIDENT FOLEY: Time, Senator. [LB998]

SENATOR HOWARD: Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Howard. Senator Linehan, you're recognized. This is your third opportunity. [LB998]

SENATOR LINEHAN: Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: I'm sorry. I'm sorry. I'm corrected; this is your second opportunity today. [LB998]

SENATOR LINEHAN: Thank you, Mr. President. Okay. I've been listening very intently this morning, which I don't always do. I'll admit that. But the longer I listen, the more confused I'm becoming. So would Senator Howard yield for a question, please? [LB998]

PRESIDENT FOLEY: Senator Howard, would you yield, please? [LB998]

SENATOR HOWARD: Yes, I will. [LB998]

SENATOR LINEHAN: So your mother, the previous Senator Howard,... [LB998]

SENATOR HOWARD: Senator Howard the first. [LB998]

SENATOR LINEHAN: ...Senator Howard the first, had legislation...worked on legislation and got it passed, signed by the Governor, to put social workers in schools. [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR HOWARD: Yes. At the time they weren't allowed to be in schools. There was a prohibition. [LB998]

SENATOR LINEHAN: So was it a mandate or it just allowed them to do it? [LB998]

SENATOR HOWARD: It was an opportunity. It wasn't a mandate. I don't believe so. She may text me and tell me I'm wrong, but I believe it was an opportunity. [LB998]

SENATOR LINEHAN: So previous to that legislation, there couldn't be social workers in schools. [LB998]

SENATOR HOWARD: To my knowledge, yes. [LB998]

SENATOR LINEHAN: That seems odd considering I thought schools could kind of...but okay. That would be good if we could clarify that. [LB998]

SENATOR HOWARD: Sure. [LB998]

SENATOR LINEHAN: So currently today, schools can hire and have in place social workers inside the schools. [LB998]

SENATOR HOWARD: Yes. [LB998]

SENATOR LINEHAN: And they can have counselors inside the schools. [LB998]

SENATOR HOWARD: Yes. [LB998]

SENATOR LINEHAN: And they can have psychologists inside the schools. [LB998]

SENATOR HOWARD: Yes. [LB998]

SENATOR LINEHAN: So...and I think you just said they can have doctors' offices or health clinics inside the schools. [LB998]

SENATOR HOWARD: School-based health centers, yes. [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR LINEHAN: So...and these school-based health centers cannot share that information with the school. [LB998]

SENATOR HOWARD: No. [LB998]

SENATOR LINEHAN: So when the social worker comes from the ESU and she goes to that school, is she going to be able to get information from the school-based clinic? [LB998]

SENATOR HOWARD: No. [LB998]

SENATOR LINEHAN: So we'll have a social worker that's in the school, but she won't be able to talk to the health professionals that are in that school. [LB998]

SENATOR HOWARD: So if the health professional were a nurse living inside of that school, like the school nurse, then yes. She would be able to work with them. [LB998]

SENATOR LINEHAN: Even though there's HIPAA rules. [LB998]

SENATOR HOWARD: So HIPAA would apply...maybe I misled you. A school-based health center is a completely separate entity. We have a few in Omaha, but they're not statewide. Essentially, they are a mini doctor's office in a school, they partner with a federally qualified health center and the health center essentially runs them. When we're talking about a school nurse or a social worker embedded inside of the school, the school nurse and the social worker embedded inside of the school would be under FERPA, not HIPAA. [LB998]

SENATOR LINEHAN: Okay, so that school nurse or that social worker can't talk to the clinic either. [LB998]

SENATOR HOWARD: I mean, they could refer to the clinic, but there wouldn't be a sharing of records. [LB998]

SENATOR LINEHAN: Okay. Thank you, Senator Howard. [LB998]

SENATOR HOWARD: Sure. [LB998]

SENATOR LINEHAN: Is Senator Wayne available for a question? [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

PRESIDENT FOLEY: Senator Wayne, are you on the floor, please, for a question? [LB998]

SENATOR WAYNE: Yes. [LB998]

SENATOR LINEHAN: Senator Wayne, are you familiar with...are there social workers in Omaha Public Schools? [LB998]

SENATOR WAYNE: Yes. In 2016, Omaha Public Schools entered into an agreement with Sherwood Foundation and our ESUs to provide social workers at all elementary and middle schools. [LB998]

SENATOR LINEHAN: So is part of the reason to have social workers and behavioral and mental health in these schools, which I understand, this is a...I don't know if I want to call it a crisis, but it is definitely a concern that's spread across the state. So part of the reason is to try to keep kids in school, right? [LB998]

SENATOR WAYNE: Correct. We were told on the board not just about the mental health, but also a way to dealing with some of the discipline issues in our schools. [LB998]

SENATOR LINEHAN: Discipline issues being also referred to as "behavioral health." So this program has been...it's in its third year or second year? [LB998]

SENATOR WAYNE: This will be 2016, so it started in 2017. This would be the third full year. [LB998]

SENATOR LINEHAN: So has the number of suspensions decreased since these programs were implemented in Omaha Public Schools? [LB998]

SENATOR WAYNE: No. They've actually increased last year significantly, kindergarten through sixth grade, to a tune of about 55 percent. [LB998]

SENATOR LINEHAN: So since the program was put in place, suspensions in Omaha Public Schools are up 55 percent. [LB998]

SENATOR WAYNE: Correct. [LB998]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR LINEHAN: Thank you, Senator Wayne. I don't have great heartburn about this bill because, well, first of all, pass it or don't pass it, the ESUs can do this right now. The schools can do this. The schools can hire their own social workers. The ESUs certainly can hire their own social workers. So I don't really even understand why we need this legislation. [LB998]

PRESIDENT FOLEY: Time, Senator. [LB998]

SENATOR LINEHAN: Not that it's not a good idea. It's a good idea. [LB998]

PRESIDENT FOLEY: That's time, Senator. [LB998]

SENATOR LINEHAN: Oh, thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Linehan. Senator Williams. [LB998]

SENATOR WILLIAMS: Thank you, Mr. President; and good morning again, colleagues. Again, I stand in support of this amendment and also the underlying bill. And the question was just raised, do we need things like this? And again, I pointed out on my first time on the mike the 17-year-old student that was removed from the school last week. That student happened to be a student of my daughter's. And she had worked with him very closely all year, and he was actually doing very well academically in school but has a very difficult home situation. And his parents could have benefited significantly from some help and direction on where and how they could have received some services. As was mentioned earlier, budget, budget, budget. We're going to talk a lot about that. We're going to have some interesting and spirited debate on that and we also...every time that comes up, we talk about unfunded mandates and what we believe those are and aren't. I would tell you my bigger concern for our K-12 education system is what I call "unfunded expectations" rather than "unfunded mandates." What my parents expected of the school is different than what my wife and I expected of our school. And it's certainly different than what my children expect the school to provide for their grandchildren today. It just simply has changed. There was no thought when I was a student or my kids were a student of having before- and after-school programs. It wasn't deemed necessary. It wouldn't change a lot of things. We were doing a good job. We also didn't have the thought at that point in time of what we could do and how much difference we could make if we had early childhood education. That now has become an expectation of our parents that are putting their kids in our K-12 system. And also the reason we're here today talking about this is what has happened in the area of mental health. And I would say today we have as parents, grandparents, and community people an expectation upon our school to watch over and take care of those mental health issues that they face every day that are different today than they used to be. And helping them by giving extra services, not just to the student, but having the ability to help connect the family, the parents, a brother, whoever, to a

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

connection for mental health help can make all the difference in the world in these situations that we recognize are so desperate and so necessary in our schools. As I mentioned earlier, if we want our kids to feel safe in school, there are some of these things we need to do. And if they do not feel safe in our schools, they will not be concentrating on the things they need to concentrate on, which is learning. They will be lower on Maslow's pyramid of needs than the portion where they're really, really learning. As was also mentioned, none of us except for a few very special people... [LB998]

PRESIDENT FOLEY: One minute. [LB998]

SENATOR WILLIAMS: ...in this group are trained psychologists or social workers. One of those is Senator Bolz. Senator Bolz, would you yield for a question? [LB998]

PRESIDENT FOLEY: Senator Bolz, would you yield, please? [LB998]

SENATOR BOLZ: Sure. [LB998]

SENATOR WILLIAMS: Thank you. As a social worker and having thought about this legislation, what would you see this doing? What could be done by a social worker working for an ESU in a school? [LB998]

SENATOR BOLZ: Sure. So I'm not a licensed clinical social worker, but I do have a social work degree. And some of the things that social workers can and have done in schools, based on their training and professional background, are helping school professionals train them to identify mental health needs and identify the right resources. Some of the things also include helping children...recognize when trauma is driving a child's behavior. School social workers have helped to... [LB998]

PRESIDENT FOLEY: Time, Senators. [LB998]

SENATOR BOLZ: Thank you, Mr. President. [LB998]

PRESIDENT FOLEY: Thank you, Senator Williams and Senator Bolz. Senator Brasch. [LB998]

SENATOR BRASCH: Thank you, Mr. President; and thank you, colleagues. I keep listening and reading and looking into why we should or why we should not support LB998 and the underlying amendments. And we realize in our schools and teachers and families that things

Floor Debate
March 12, 2018

have changed over multiple generations, not overnight, but has slowly changed. And it makes me wonder as I'm hearing that we already have the ability to have many professionals within our schools addressing behavioral health already in place. And I also believe that we also have roles of counselors in our schools; and part of their credentialing, as I review documents, do include many of the issues we're talking about. We also have very sophisticated software and tools to identify response to intervention or an RTI program. We have IEPs, individual education plans. We also enacted legislation during my time here for early childhood programs, the First Five. And the breadth and depth of what we are attempting to do is to build stronger individuals, children, families, and is that done by a social worker or a professional, or is that done within our families? I have in the past also looked at legislation that protects parents' rights. And the list goes on as we're looking for who is responsible. And we are responsible. Individuals are responsible. Communities are responsible for identifying children at risk, individuals at risk. And yet we seem to hear case after case of failure. I also wanted to address the fact that activities are good for building individuals and families. And since I did hear criticism of the community gardening, I did want to say that the intent of that program is to help build that kinship with individuals who are non-farm to those who are farm. The bill itself went three hours because of the water issue of how to help these already existing community gardens feasibly bring some infrastructure to some of these gardens that are shared that may be very sizable and not connected to a residence directly. Again, to build that kinship, because I think we need it. We need it in the Department of Agriculture; we need that kinship here on the floor of this Legislature, that we realize that we are one community and one state that needs to work together when a certain group is in duress. I also have a bill in the Education Committee that looks at America and civics, good old-fashioned constitutional ideals that this country had when we formed a nation. [LB998]

PRESIDENT FOLEY: One minute. [LB998]

SENATOR BRASCH: All is not lost when we discussed subjects of what builds character, what builds integrity. And I believe that that's where our focus needs to come back into our schools and to our families and to how our children are raised with that sense of community, that we are individuals and that this bill of hiring professionals or not is not the solution to what we hope. I believe that those elements are in place very thoroughly, and that is what we need to focus on, is what we have in place and how to make it work. Thank you, Mr. President, and thank you, colleagues. [LB998]

PRESIDENT FOLEY: Thank you, Senator Brasch. Senator Kolowski. [LB998]

SENATOR KOLOWSKI: Thank you, Mr. Chairman. I stand in support of LB998 and the two amendments that are connected to that at this present time. I would ask us to look back and try to

Floor Debate
March 12, 2018

do some glimpse of history just in the last decade. From 2008, 2009 to the present time, if you have not talked to your districts, if you have not seen the difficulties they've been living with and under as far as the financial impact upon them, then you don't have any clue why we've had some overrides and taking those overrides to the people of the districts to continue the good programs that are in place in a number of districts around our state. These are going to increase because of the financial burden that we find ourselves in and the difficulties that we're trying to bring forward resources to meet some of the needs that we are seeing growing as this topic has been discussed as far as mental health within our schools. Last week I talked about adviser-advisee programs within the high schools and the role they can play and do play in a number of our schools and school districts. That aspect of doing the training and having every teacher working with a small group of students in their daily home room is essential for a middle school, for a high school as you move out of the elementary grades. Yet we don't have a great deal of discussion about that or direction to help make that happen in our schools across the state. I hope we can get beyond what we've had this morning, some magical math being done by certain senators and comments about how bad it is and "ain't it awfuls" about school districts and schools. Those aren't the schools I know. Those aren't the schools I see. Those are not the schools that I know are successful and doing the things correctly. But there are challenging...there are great challenges that are taking place as far as the behavior of certain students and the difficulties they're having in certain places. ESUs are extremely important within this context, and I thank Senator Bolz for this bill and what she is talking about as far as putting together, over time, the answers that can work for different districts in different ways throughout our state. I ask you again, be cognizant, be aware of what your districts are living with, the challenges they have had in the last eight or nine years financially to meet the needs of the districts in the broadest ways possible. That's the conversation we're not having. That's the...those are the facts that are not being talked about--not fake facts, not fake math, not other things that are distorting and taking us away from truly looking at the issue that is before us and how we can get additional assistance to the students in need and families in need in our communities. And with that, I'll give the remainder of my time to Senator Walz. Thank you. [LB998]

PRESIDENT FOLEY: Thank you, Senator Kolowski. Senator Walz, about 1:15. [LB998]

SENATOR WALZ: Thank you. I just want to let you know that when I was out campaigning I talked with a lot of people, a lot of families at the door; and so many of them were struggling to get help for their kids. A lot of the times when something happened at school, these kids were just kicked out of school, and it didn't get anybody anywhere. What every parent told me was that they needed some type of intervention not only for their kids, but also for the families so they could work together and solve problems at school and at home. A social worker connection from school can find resources needed in the community for students and families to access, whether it be mental health professionals or other community organizations. This is a great step

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

in connecting schools, students, families, and resources by collaborating and bringing all players to the table to make sure that kids are being successful in school. Every single senator in this Chamber has somebody who wrote me a letter or an e-mail talking about the urgency and importance of getting some help in the schools. Every single senator... [LB998]

PRESIDENT FOLEY: Time, Senator. Thank you, Senator Walz. Items for the record, Mr. Clerk. [LB998]

CLERK: Mr. President, an amendment to be printed: Senator Chambers to LB946. And a confirmation report from the Transportation and Telecommunications Committee. Mr. President, name adds: Senator Murante to LB553. An announcement: Transportation Committee will have an Executive Session at 1:30 under the south balcony; Transportation at 1:30. (Legislative Journal pages 919-920.) [LB946 LB553]

Mr. President, Senator Bostelman would move to recess the body until 1:30 p.m.

PRESIDENT FOLEY: Members, you heard the motion to recess until 1:30. Those in favor say aye. Those opposed say nay. We are in recess.

RECESS

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

CLERK: I have a quorum present, Mr. President.

PRESIDENT FOLEY: Thank you, Mr. Clerk. Do you have any items for the record?

CLERK: Mr. President, two amendments to be printed: Senator Hughes to LB998 and Senator Groene to LB596. An announcement: Education Committee will have an Exec today, Executive Session today at 2:30 in Room 2022. That's all that I have, Mr. President. (Legislative Journal pages 921-926.) [LB998 LB596]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

PRESIDENT FOLEY: Thank you, Mr. Clerk. Speaker Scheer, you're recognized for an announcement regarding the agenda.

SPEAKER SCHEER: Thank you, Mr. Lieutenant Governor. We will move past the current item on time restriction and move to the next item on the agenda.

PRESIDENT FOLEY: Thank you, Mr. Speaker. Mr. Clerk, next bill, please.

CLERK: LB1119, a bill by Senator Riepe. (Read title.) Introduced on January 18 of this year; at that time referred to the Government, Military and Veterans Affairs Committee. The bill was advanced to General File. I have no amendments to the bill at this time. [LB1119]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Riepe, you're recognized to open on LB1119. [LB1119]

SENATOR RIEPE: Thank you, Mr. President, colleagues, and Nebraskans. I also want to thank Senator Hilgers for designation of the Direct Primary Care Pilot as his priority bill. Thank you, Senator. Direct primary care is a medical care delivery model between the patient and primary care practitioner. Under a direct primary care agreement, the patient pays a monthly retainer for unlimited consultations and an annual physical. This model of care enhances the patient-practitioner relationship, improves access of care, and reduces cost. In 2016, I introduced LB817 to adopt the Direct Primary Care Agreement Act. I would like to thank all of my colleagues for their overwhelming support for the original DPC legislation, voting 48-0 for its passage. LB817 was then approved by Governor Ricketts on March 30 of 2016. As of October 2017, Nebraska was 1 of 23 states which had enacted direct primary care legislation. Recently, the state of New Jersey began a voluntary direct primary care pilot program where it enjoyed strong support from all parties, including organized labor. This program will evaluate quality, cost, utilization, and outcomes to demonstrate direct primary care's positive impact on healthcare. LB1119 would implement a Direct Primary Care Pilot Program within the State Insurance Program. This is a healthcare program that is voluntary. This would be a three-year pilot beginning in fiscal year 2019-20 and continuing through fiscal year 2021-22. I am looking to expand the pilot to four years on Select to address contracting concerns from the state employee union. Pursuant to the pilot, the Department of Administrative Services would provide at least two different direct primary care health plans for participation of state employees, one with a low and one with a high deductible. The department would also provide annual reports evaluating the clinical and financial performance of the program. The pilot program proposed by LB1119 would allow the state of Nebraska to evaluate the impact of direct primary care and apply program findings to make improvements to healthcare in the state. I would also note we are currently working with stakeholders on an amendment which will be...another amendment which will be presented on

Floor Debate
March 12, 2018

Select File. I again would like thank Senator Hilgers for prioritizing LB1119. This legislation received overwhelming support in the Government, Military and Veterans Affairs Committee. The committee heard no opposing testimony and voted unanimously to advance the bill. I ask you for your green vote on LB1119. Thank you, Mr. President. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Riepe. Senator Hilgers. [LB1119]

SENATOR HILGERS: Thank you, Mr. President. Good afternoon, colleagues. I rise in strong support of LB1119. I want to thank Senator Riepe for bringing this legislation. I want to thank him for his leadership in the area of healthcare access and cost reduction. I certainly am proud and honored to make this my priority bill this year. I rise just briefly to emphasize two points. One is a point that I think is almost, if not universal amongst all of us and our constituents, it's one that's...impacts almost everyone in this state, which is the rising care of health...the rising cost, excuse me, of healthcare. That is an issue that probably is a close second to property taxes, is of concern of families in my district, for employers in my district, and for those around the state of Nebraska. The second point is that Senator Riepe, through the initial Direct Primary Care Program, through that bill, the Legislature has helped make a small dent, and I think...but a meaningful dent in both the cost of care as well as the ultimate access to healthcare and the qual...the healthcare outcomes. When we were in the committee hearing on LB1119, we heard some pretty powerful testimony in my view of the early returns on the data for direct primary care. There are not...we have not had the program in place to have enough providers yet to have a significant...and we haven't had enough time to have a significant peer review study. But the data that we heard was pretty significant. One of the data points that we heard was increased utilization. Because you now have...there are no copays for your primary doctor visit, employees who are utilizing direct primary care would go to their doctor more often. What that would lead to was less anxiety, as I think Senator Riepe has put it before, for people who get to the end of the month and they only have \$100 for groceries or for the doctor. Under direct primary care, they can do both. So they're going to their primary care doctor; they're getting that sort of early intervention. The healthcare outcomes are improved because they are not waiting until there's an acute issue that forces them to go to an emergency room. They're catching things. It also, we heard, the initial return is very promising on reducing the number of emergency room visits and reducing the number of urgent care visits. I think it was almost by a factor of 14, the reduction of those types of visits for at least the one data set that we heard in the committee. The last thing that we heard, which I think was pretty powerful, maybe not...maybe a little bit not anticipated, was the increased quality of life for the primary care physicians themselves. When we talk about doctor shortages in this country, one of the areas we face those shortages is in the area of primary care physicians. The stress is high, the dealing with insurance is pretty...can be very, very difficult. And we are seeing a shortage of those doctors. What we heard...the testimony we heard from doctors in this area was that their job satisfaction was much better in a direct primary care environment than in a previous pay-for-service environment. And so it's really one of those bills

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

that is win-win-win-win, and I think that's why we didn't have any opposition in the hearing on this particular bill. This is another step forward in the direct primary care movement, and I think it's a wise use of currently allocated tax dollars to help innovate and provide a little more momentum to this effort, which I think will have significant outcomes for Nebraska families and workers around the state of Nebraska. So I would encourage you to vote green on LB1119. And again, thank you, Senator Riepe, for bringing this bill. Thank you, Mr. President. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Hilgers. Senator Kolterman. [LB1119]

SENATOR KOLTERMAN: Thank you, Mr. President. Good afternoon, colleagues. I rise in strong support of LB1119. Originally, several years ago we passed the direct primary care model, made it available in the state of Nebraska. It's just starting to be utilized. I think in Omaha we have one or two clinics. We have one clinic in Lincoln. The only problem that we have with this is people are not coming on-line fast enough. But as we phase away from the Affordable Care Act in many regards, we get away from some of the essential health benefits that might be afforded in the Affordable Care Act, I think you're going to see the insurance companies doing some wraparounds that encourage people to go out and purchase direct primary care, take care of your high blood pressure, your high cholesterol, your diabetic problems, your A1C and things of that nature, have all that done, your well-baby checks. All of those things can be done--asthma shots, allergy shots--all can be done with the...through the care of a direct primary care physician. And then from there I think you'll see some innovation in the insurance industry as they create a wraparound to take care of that major claim, which also should drive the cost of the insurance premiums down. So I think this is the future of our state. If we're going to control healthcare costs, this is one of the ways we're going to do it. I would encourage everybody to vote green on this bill. Thank you. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Kolterman. Senator Bolz. [LB1119]

SENATOR BOLZ: Thank you, Mr. President. I appreciate innovation in healthcare and certainly like thinking through the best way to get people both the mental and behavioral healthcare that they need. But I do have a couple of questions about this legislation. It is sort of referenced as a pilot project, and I was reviewing the fiscal note. And the fiscal note references that additional funding may be required to cover the start-up costs of this program. And just reading directly from the fiscal note it states: It is impossible at this time to determine what those start-up costs might be. And then there's a reference in some coverage about the bill from the Associated Press that the state portion would be 97...no sorry, 79 percent of the costs, while employees pay 21 percent. And so I was hoping Senator Riepe would yield to a question. [LB1119]

PRESIDENT FOLEY: Senator Riepe, would you yield, please? [LB1119]

Floor Debate
March 12, 2018

SENATOR RIEPE: Yes, I will. [LB1119]

SENATOR BOLZ: So, Senator, I'm just being thoughtful, particularly as an Appropriations Committee member. Do we know any more about the potential proposed costs of this legislation in the future than we did from the original fiscal note? Since this is a pilot initiative and there's concern about costs starting it up and then the ongoing 79 percent that the state has to pay, do we have any further information about how to determine those requirements? [LB1119]

SENATOR RIEPE: I think the question on terms of the fiscal note about the potential for cost was, at the risk of criticizing a fiscal note, was the fact that I think it's a lack of understanding in terms of how direct primary care actually works. The 79 percent that would be paid by the state would go to the catastrophic side, and the balance of that would go towards the primary care side. And we have to see what those numbers are so that...but there's every belief, Senator Bolz, that this is a cost savings. It's proven to be that. We just don't have the evidence in hand right at this time. If it becomes unaffordable or...in that way, the employee simply would not choose. It's a voluntary program. And if their side of it was going to cost more than they chose, they would not opt for it. [LB1119]

SENATOR BOLZ: And what about the obligations of the state? So, you know, as an Appropriations Committee member, we have those requests for...generally they've been increase in the cost of covering state employees and health insurance. If the start-up costs were more, does that mean it's possible that in the Appropriations Committee we'll see a fiscal impact as this program moves forward if the start-up costs are higher rather than lower? [LB1119]

SENATOR RIEPE: The only start-up cost that I would see, and thank you, would be primarily on the primary care side, the direct primary care, the physician side of this thing. I think the state's commitment is at 79 percent, so it would be the same for this particular option as it would for any other option of a benefit. They would not benefit the employees who selected direct primary care more than they would any other employee. [LB1119]

SENATOR BOLZ: Okay. I mean, I think just like on other bills it's important that we're discerning about the future costs of legislation; and because it's indeterminate, that caught my eye. The other question I have is that it says in this piece of coverage that John Antonich, the executive director of the Nebraska Association of Public Employees, that he was concerned that the pilot program didn't align with the union's two-year bargaining cycle and that they didn't have a position. Has the employees union since taken a position? [LB1119]

SENATOR RIEPE: We have agreed that we will amend... [LB1119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

PRESIDENT FOLEY: One minute. [LB1119]

SENATOR RIEPE: I believe on Select File we're going to, in the interest of cooperating with the state union, that we will make it up to the...correlate with their bargaining time, which would be the four years. And I believe, I don't want to quote him, but I believe that that has satisfied them. [LB1119]

SENATOR BOLZ: So you have an amendment on Select File that would sync up the dates? Is that what you're telling me? [LB1119]

SENATOR RIEPE: It would take it to the four years that they have requested so that it's in their negotiation period. [LB1119]

SENATOR BOLZ: And so the bill as it stands has not resolved that discordance with the union bargaining cycle. So the bill as it stands, would the union have to negotiate without having those cycles linked up if we don't pass your amendment that's pending on Select File? [LB1119]

SENATOR RIEPE: I think under the current bill if we passed it, yes, they would. But we have every intention then to believe that we will be successful in syncing and aligning those dates. [LB1119]

SENATOR BOLZ: Uh-huh. So but the bill as it stands would be out of sync with the alliance? [LB1119]

PRESIDENT FOLEY: Time, Senators. [LB1119]

SENATOR BOLZ: Thank you, Mr. President. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Bolz and Senator Riepe. Senator Briese. [LB1119]

SENATOR BRIESE: Thank you, Mr. President. And good afternoon, colleagues. I rise in support of LB1119. I would like to thank Senator Riepe for bringing us LB1119, and I would like to thank Senator Hilgers for prioritizing this bill. For me, I have always felt that one of the greatest threats to our economic stability of our country and our state and all of our way of life are the ever-increasing cost of healthcare. Data indicates U.S. healthcare costs are approximately 100 percent higher than the average of 11 other OECD so-called wealthy countries. And according to Social Security Administration data, in the last 20 years, U.S. wages have increased

Floor Debate
March 12, 2018

at an average rate of 3.55 percent per year. But at the same time, healthcare cost increases per person have increased at an average of 4.95 percent per year or essentially 40 percent faster than wages have increased. And, colleagues, the relationship between these two wages and healthcare increase does not present a sustainable trend. Something will ultimately give. And healthcare costs are a burden on taxpayers in other ways also. Take, for example, our local school districts where 75 to 85 percent of the General Fund budget is dedicated towards payroll, and healthcare costs comprise a substantial percentage of payroll. And what about state government, state employees? Here, health insurance for state of Nebraska employees was over \$247 million in 2017, which was roughly 15 percent more than the state of Nebraska spent on employee healthcare the previous year. So the point is healthcare costs for public employees is a sizable expense for our already burdened state and local taxpayers. So anything we can do to help control healthcare costs is a win for Nebraskans. And all indications are that direct primary care can help us do that. Several at the hearing on LB1113 (sic--LB1119) testified to the cost savings associated with direct primary care, although some were unsure of the magnitude of the savings. You know, firm numbers in this regard are somewhat elusive. But in testimony at the hearing, Cliff Robertson, CEO of CHI, estimated overall healthcare savings attributable to direct primary care running between 5 and 15 percent. Plus he noted that employees like direct primary care. There was other testimony at the hearing, including someone referencing some North Carolina data which indicated that county employees enrolled in direct primary care had medical expenses 23 percent less than those that didn't enroll in the direct primary care program and a 36 percent savings in prescription expenses. And I do note that in that particular situation three-fourths of the enrollees reported significant improvement in their overall health. So I could go on here speaking about some of the great attributes of direct primary care, but I think others have covered that fairly well. But for me, this bill boils down to piloting an innovative approach to healthcare, an approach that's highly regarded by those that currently utilize this model. But perhaps more importantly, it's a model that can help us in our efforts to rein in the ever-escalating cost of healthcare in this country. I would urge your support of LB1119. Thank you, Mr. President. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Briese. (Visitors introduced.) Continuing debate, Senator Kolterman. [LB1119]

SENATOR KOLTERMAN: Thank you again, Mr. President. I understand the concerns of the Appropriations Committee and what this could do to us in the future. I want to read to you a little bit about what this really does because I think once you understand it, you'll appreciate it a lot more. These direct primary care doctors, as an example, will have a patient load of approximately 600 people, compared to a traditional practice of 2,000. It opens up their schedule to allow them to see people as they need to be seen. And this is the intriguing part: They do not accept insurance. But don't let that alarm you, because most of their patients actually save money because if they have a problem that they can't deal with, they set up arrangements with some of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

the people to take care of some of the major problems. I think that the interesting part about this whole thing is this: To give you an example of what kind of costs we're talking about, children 0 to 19, \$10 a month; adults 20 to 44, \$50 a month. That's \$600 a year. If you got a young man or young woman that doesn't have healthcare, they can at least get their major...or their direct primary care, their basic functions taken care of for \$600 a year. Now that doesn't take...they have no deductibles; they have no insurance to file. They call up the doctor, they go make an arrangement to see them, and boom, they're taken care of. For an adult 65 and over, it's \$100. Now they're covered typically by Medicare, but they have to buy a supplement. I couldn't buy a supplement for that kind of money. And then if they do need something where they can't handle it, to keep you out of the emergency room, they have a \$150 fee that they can charge for more specialized types of medicine, and they can arrange that. That comes directly off the Web page of the people that are promoting this product. It's a tremendous opportunity for us. We really need to get behind it. I've referred a lot of people to this particular clinic simply because they can't afford health insurance. So if we get this thing established in our state, and I realize it's not going to move out to rural Nebraska anytime very quick or very soon, but I think that if we once get it established in eastern Nebraska we'll start to see a trend; and I think we will be able to take care of the people all over our state. So again, I would encourage you to support this bill and thank Senator Riepe and Senator Hilgers for making it a priority. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Kolterman. Senator Krist. [LB1119]

SENATOR KRIST: Thank you, Mr. President. Good afternoon, colleagues and Nebraska. I wondered if Senator Riepe would yield to a couple of questions. [LB1119]

PRESIDENT FOLEY: Senator Riepe, would you yield, please? [LB1119]

SENATOR RIEPE: Yes, I will. [LB1119]

SENATOR KRIST: Do you believe in this program? [LB1119]

SENATOR RIEPE: Oh, absolutely. I'm a big believer in reform, and I think this is part of it. [LB1119]

SENATOR KRIST: And do you believe that it would be an incredible savings for the state employees once it's put into place? [LB1119]

SENATOR RIEPE: Well, it would take...Senator, I appreciate that. It would take a certain number, but I think that it will be a savings. And I think along with that, and I won't eat up your

Floor Debate
March 12, 2018

time, I think they will be very satisfied with the program because they get more time with their doctor. [LB1119]

SENATOR KRIST: If that's the case, Senator, then why is the state insurance program excluding the university, the University of Nebraska, the state colleges, and the community colleges from participating? [LB1119]

SENATOR RIEPE: Well, the intent there was to try to keep this narrowed down so that they could make sure that they do some follow-up in terms of how it's performing for quality and reporting and everything else. They're trying to keep it down to a manageable piece. If there's a big demand, next session maybe things will change. [LB1119]

SENATOR KRIST: Well, it seems to me that with all the talk and rhetoric about the university spending too much money and what we're going to be dealing with in the budget in the next few days, that the university system and colleges, would be...will be advantageous. But that's all the questions I have for you, thank you. I have a huge concern with a fiscal note that is not determining what is going to cost us during this budget cycle and subsequent budget cycles. I believe that with the collective knowledge of the insurance industry in this state, the Department of Insurance; CHI; Methodist Children's Hospital; and the former administrator, Senator Riepe, that we should have some idea what this costs. And I think it could be the best thing since sliced bread. I think it could be the concierge service of the future. I think it could be, again, great preventive medicine. But if we don't know what it costs, how can we vote for this? That question is not a question that I can answer right now. It's a question I put to all of you. All the fiscal conservatives in here that are going to pick apart this budget in the next few days are going to say, what about that, what about that, what about that? What did this leadership team forget to cut? I'll have a lot to say about that in the next few days, but I just don't know how you support a movement forward without having some kind of a fiscal note. That's all I have. Thank you, Mr. President. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Bolz. [LB1119]

SENATOR BOLZ: Thank you, Mr. President. I did just kind of want to finish my train of thought from the previous time on the mike. I do appreciate all the hard work that has been done to put this pilot concept together and to think through how this will best serve Nebraskans, and particularly Nebraska employees. I am committed to trying to understand further all of the fiscal implications for this piece of legislation between General and Select. And I'm hopeful that the issues with the union will be analyzed between General and Select. And so I am willing to give this pilot initiative an opportunity to proceed, give the stakeholders the...senator who prioritized

Floor Debate
March 12, 2018

this bill and the introducer an opportunity to work on those pieces. I did have one question, one further question for Senator Riepe, if he would yield. [LB1119]

PRESIDENT FOLEY: Senator Riepe, would you yield, please? [LB1119]

SENATOR RIEPE: Yes, I will. [LB1119]

SENATOR BOLZ: Senator, I noticed in the summary of this legislation that Section 8 establishes minimum standard care quality and patient satisfaction measurements, and I think that's important. I think making sure that we're doing that cross-check on minimum standards and measurements is important. Can you tell me just a little bit more about how you arrived at this list? [LB1119]

SENATOR RIEPE: We actually arrived at that list in concert with the providers of the administrative organization, which is UnitedHealthcare, and with the providers of...the manager, Dr. Joel Bessmer, who is the owner of Strada and is very engaged and in terms of developing those quality standards, which would not be unduly onerous (sic) to the providers, if you will. [LB1119]

SENATOR BOLZ: Okay. That's very helpful. And so this list, and I realize the measurements must include but are not limited to, but you're comfortable in and confident with this list as a good standard for minimum measurements and quality, is that right? [LB1119]

SENATOR RIEPE: That's right. Plus this is a voluntary program. If the patient is not satisfied, which is the ultimate, they can simply walk. [LB1119]

SENATOR BOLZ: Great. That's really helpful. I just wanted to read out loud some of the things that are on this list because I think they're very important too. And, you know, both in terms of talking about this as a policy perspective but also creating a record, I wanted to list some of the things that are identified as priorities: completed a health-risk assessment; completed a face-to-face visit with the patient's personal primary care physician; refrain from visiting other fee-for-service providers in the community or for primary care; prevention measurement, which is appropriate for screening for age and gender. And that prevention includes screening for breast, cervical, colon, lung, and prostate cancer; sexually transmitted diseases; latent tuberculosis; hepatitis and HIV screenings; tobacco cessation; and then chronic disease management, including diabetic and hypertensive. So I concur completely. I think that these are very important services that people need ongoing access to. I appreciate the care that was put into that. I'll continue to monitor this piece of legislation, and I will walk down to Legislative Fiscal and have

Floor Debate
March 12, 2018

some conversations about the potential fiscal impact into the future. Thank you, Mr. President. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Bolz. Senator McCollister. [LB1119]

SENATOR MCCOLLISTER: Afternoon, Mr. Lieutenant Governor. Good afternoon, colleagues. I support this bill, at least in its initial stage from General to Select. I think it's a good, promising bill. I think we need to recognize in the scheme of things this country spends 18 percent, 18 percent on healthcare, and that's higher than any other developed country. So we need to be looking at innovative ways for us to bend the cost curve, and direct primary care could very well do that. We also need to be looking at end-of-life care. You know, this country also spends an inordinate amount of money for those people at the end of their lives, and that's another area of concern that we need to study. Finally, the fiscal note kind of bothers me on this bill as well. It's undetermined. And as we have seen with so many fiscal notes in this...this year, the department sometimes come out with fairly generous fiscal notes and other times hardly anything at all. So it's...I'm anxious to see what progress is made determining the fiscal note on this bill as it moves from General to Select. Thank you, Mr. Lieutenant Governor. [LB1119]

PRESIDENT FOLEY: Thank you, Senator McCollister. Senator Morfeld. [LB1119]

SENATOR MORFELD: Thank you, Mr. President. Colleagues, I rise in support of this legislation, but I also rise to talk a little bit about how this actually solves a very small portion of the problems that we're having with our healthcare system and how the introducer of this bill in particular has passed up the opportunity time and time again to provide a more comprehensive solution to this issue. And also so that those 90,000 Nebraskans can actually avail themselves of direct primary care. I think it's important to note that you cannot have direct primary care unless you have health insurance, and currently we have 90,000 Nebraskans who do not have health insurance. So I think this is a good opportunity, in case you missed it in the news and in case you missed the press conference in the Rotunda, to note that, fortunately, since we have failed as a body year after year for the last six years to actually expand Medicaid so that people can take care of awesome programs like direct primary care that we're launching our ballot initiative. We're going to collect the signatures, we're going to get it on the ballot, and we're going to do what this body has failed to do for the last six or seven years with no good reason and only excuses. Meanwhile, people are going bankrupt, people are not getting the healthcare that they need, our premiums are going up because of uncovered costs and expenses in the emergency room. And in many cases, in our districts all over the state, people are dying. I personally don't think that there's any more important issue that we can discuss in this body than healthcare and the affordability of it. Because it's hampering our ability to be effective as a state in terms of work force; it's likely going to lead to the closure of a lot of hospitals, particularly in the rural

Floor Debate
March 12, 2018

communities that we all talk about and care about; and it makes it so that programs like direct primary care can't even be utilized. I'll also note that when the people pass this in November, the Affordable Care Act that is, the expansion of Medicaid, we're going to have to figure out how to pay for it, which is true. But it's also going to bring in a significant amount of revenue, billions of dollars over the course of ten years. Colleagues, I think that LB1119 is a good bill. I think it's a good pilot program. I'm going to support it. But it does very little to address the actual health insurance problem. And so I think it's great we can pat ourselves on the back, but don't go home and sleep a little better at night because the problem still exists, and we haven't actually addressed it. We must be more aggressive in the way that we address the affordability of healthcare, whether it be expanding Medicaid, which as I noted, it's going to be on the ballot now; or actually coming up with Nebraska-based solutions, which we tried to do with Medicaid expansion over the course of six or seven years but failed to do repeatedly. Direct primary care is a good thing, but it's only something that can be utilized if you have health insurance. And right now, 90,000 Nebraskans do not have health insurance that could have health insurance had we just simply acted. And so, colleagues, I implore you to keep that in mind. I've told you the stories time and time...time after time on this floor and I'm going to continue to do that. And fortunately, there's a very high probability that the people are going to decide in the end, and I think that they're going to make the right choice, the choice that many of us in this body did not have the political courage to do ourselves and should have. Thank you, Mr. President. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Schumacher. [LB1119]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. I'm scratching my head a little bit and I'm going to seek some knowledge hopefully from the folks that are sponsoring this legislation to see how in two-and-a-half pages all these wonderful things will happen and what makes them happen. As I read the green copy, page 2, Section 3 is the meat of it, and that just says that there is a program established, and the program shall include direct primary health plans. And "Direct primary health plan" in line 5, page 2, "means a health plan which includes...services provided by a participating provider." And then I try to see what all that means and how it works, because there's just not a whole lot in here beyond that. The plan administrator, I guess this is the state administrator, shall coordinate this program with the real-time claims data for state employees. The participants will monitor and measure; the direct provider--doesn't say anything about plan--shall provide primary care, which I guess is preventive care and also the care you would get on a first exposure to a provider or when you go in to seek care, coordinate care, oversee transactions, and minimize the risk of gaps in care. Now where the rest of this comes in, I'm going to try and find out. Will Senator Riepe answer some questions, please? [LB1119]

PRESIDENT FOLEY: Senator Riepe, would you yield, please? [LB1119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR RIEPE: Yes, I will. [LB1119]

SENATOR SCHUMACHER: Okay, Senator, what are the things that one of these primary care doctors or nurses has got to do for you? [LB1119]

SENATOR RIEPE: Well, in the direct primary care, which is not insurance, it's a direct relationship, and they will provide all of the primary care services, including an annual physical. And they do that without a copay or a deductible. [LB1119]

SENATOR SCHUMACHER: How much? When do they say, hey, enough is enough? You're too sick for me; go see somebody else? [LB1119]

SENATOR RIEPE: Well, they shouldn't do that. [LB1119]

SENATOR SCHUMACHER: So they're on the hook for cancer treatment, for brain scans, for... [LB1119]

SENATOR RIEPE: Well, cancer...anything of that magnitude is going to go to the catastrophic side. And the thing that's the partner with direct primary care is a catastrophic health plan. It's just sized down. [LB1119]

SENATOR SCHUMACHER: Where does it say that there is a catastrophic health plan? [LB1119]

SENATOR RIEPE: Well, it talks in there...the plan, which would be through the...currently the plan administrator, and it talks about a low-deductible and a high-deductible plan. That's not with the primary care; that's with the catastrophic side of it. [LB1119]

SENATOR SCHUMACHER: So the primary care guy, we don't know for sure where his responsibilities stop and the catastrophic guy's pick up. Who pays the primary care guy? [LB1119]

SENATOR RIEPE: The primary care guy is between the doctor and the patient. For most adults, as Senator Kolterman pointed out, and at least with Strada, it's \$99 a month. And anything that's designated as primary care falls under that category. [LB1119]

SENATOR SCHUMACHER: Who sets the rate at \$99 a month? [LB1119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR RIEPE: The physician. [LB1119]

SENATOR SCHUMACHER: So if he wanted to, he could set it at \$99,000 a month. [LB1119]

SENATOR RIEPE: Or he could set it at \$50. [LB1119]

SENATOR SCHUMACHER: Or \$50, right. So it's completely discretionary. [LB1119]

SENATOR RIEPE: But it's voluntary. [LB1119]

SENATOR SCHUMACHER: Right. So what does this bill do? What does it deliver? What does it...I mean, does it just...does the state dedicate some money that would want somebody to be under this thing? [LB1119]

PRESIDENT FOLEY: One minute. [LB1119]

SENATOR SCHUMACHER: How does it work? [LB1119]

SENATOR RIEPE: The way that it works is it affords a model to the employee who would pick this, who would have a direct primary care relationship with unlimited visits, no copays, no deductibles; and so...and with that comes generally more satisfaction, if you will. [LB1119]

SENATOR SCHUMACHER: Thank you, Senator. [LB1119]

SENATOR RIEPE: And it's all voluntary. [LB1119]

SENATOR SCHUMACHER: Thank you, Senator Riepe. I'm running out of time. But nowhere in here does it say that this is unlimited. Nowhere do we know what it's going to cost. I still don't see the connection between this green piece of paper and all the wonderful things that we heard this is going to do. I'll continue to listen. Thank you. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Schumacher and Senator Riepe. Senator Hilkemann. [LB1119]

SENATOR HILKEMANN: Thank you, Mr. Lieutenant Governor. Senator Riepe, would you be available for a couple of questions? [LB1119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

PRESIDENT FOLEY: Senator Riepe, would you yield, please? [LB1119]

SENATOR RIEPE: Yes, sir, I would. [LB1119]

SENATOR HILKEMANN: Senator, you passed primary care I think your first or your second year here in this body. Am I correct of the ability to do that? [LB1119]

SENATOR RIEPE: Yes. We...in 2016, direct primary care was allowable within the state of Nebraska. [LB1119]

SENATOR HILKEMANN: Okay. So tell me how this varies from what you did in 2016. [LB1119]

SENATOR RIEPE: This simply sets up something with a pilot group with state employees that would afford them to not only connect with direct primary care, but would also provide a catastrophic health component on a voluntary basis. [LB1119]

SENATOR HILKEMANN: All right. Just a couple of questions. Will this care be provided by the physician or will it be provided by nurse practitioners or PAs? [LB1119]

SENATOR RIEPE: It will be provided by practitioners, which would include the clinical...independent clinical nurse practitioner if the patient so chooses. [LB1119]

SENATOR HILKEMANN: Okay. Now how many physicians right now in the state of Nebraska are utilizing this to practice primary care? [LB1119]

SENATOR RIEPE: I don't have an exact number, but I know that in Omaha Strada Healthcare-- and it has three different offices; they also have an office in Gretna and they have an office in Kearney for direct primary care. They have also talked that if successful, and if the demand is there, they would open up an office here in Lincoln to match the demand. And I have been told that they can match the demand. [LB1119]

SENATOR HILKEMANN: So this program is simply we are going to try to help to see if we can get more physicians to do the direct primary care. Is that a little bit what this is about? [LB1119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR RIEPE: This would follow the demand from the enrollees of the state employees who would enroll in it. We would, you know, we would leave this to the free market to move up to that level. [LB1119]

SENATOR HILKEMANN: Okay. One of the...on the handout that you provided it says, "What about Medicare" coverage on it. You said the direct primary can continue to see Medicare provided they aren't getting those services already covered by Medicare. What sort of services are you talking...would this be provided? [LB1119]

SENATOR RIEPE: Okay. I think what that was is when we looked at direct primary care the last thing we wanted to do is to go to some communities where they had one doctor and to, in those maybe smaller communities, where they would have a number of Medicare recipients, we did not want to make that doctor unavailable to Medicare patients. So we were pushing for a hybrid model. We wouldn't control that; that's free market. But that's what we wanted. [LB1119]

SENATOR HILKEMANN: So they...so I just want to understand. So if I'm a Medicare provider or if I'm a Medicare recipient, could...I could go to the direct primary care physician for anything that is not done by Medicare. Is that correct? [LB1119]

SENATOR RIEPE: You could, but that's not part of this program. I mean, if they wanted to, as was pointed out, if you want to do that in lieu of your supplement, as I think Senator Kolterman pointed out, they could use that. It's totally up to the individual. Instead of having a Medicare supplement, they could do direct primary care. [LB1119]

SENATOR HILKEMANN: So there are three, there are presently three clinics, you said, that are doing this in the state of Nebraska. [LB1119]

SENATOR RIEPE: No, no, no. There are three within the Omaha area,... [LB1119]

PRESIDENT FOLEY: One minute. [LB1119]

SENATOR RIEPE: ...one in Gretna, one in Kearney. They were talking about opening additional offices. In my last conversation I think there was some...Dr. Bessmer told me that he has something like 20,000 lives signed up in the greater Omaha area. [LB1119]

SENATOR HILKEMANN: And this is being...and all the...they're setting up these but the people who are actually delivering the care are PAs and medical or nurse practitioners. Is that the bulk of the care that is being provided? [LB1119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR RIEPE: I would say no. The bulk of it is being provided by physicians, medical doctors, doctors of ophthalmology...not ophthalmology. [LB1119]

SENATOR HILKEMANN: Osteopathy. [LB1119]

SENATOR RIEPE: Thank you, I get turned around on that "o." Most of these are physicians, MDs or...and DOs. [LB1119]

SENATOR HILKEMANN: Okay. Thank you very much, Senator Riepe. [LB1119]

SENATOR RIEPE: This is not intended to be a low-scale or a low-quality program by any means. [LB1119]

PRESIDENT FOLEY: Thank you, Senators Hilkemann and Riepe. Senator Chambers. [LB1119]

SENATOR CHAMBERS: Thank you, Mr. President. I've listened to the questions, and they generated some in my mind. I'd like to ask Senator Riepe a few questions. [LB1119]

PRESIDENT FOLEY: Senator Riepe, would you yield, please? [LB1119]

SENATOR RIEPE: Yes, I would. [LB1119]

SENATOR CHAMBERS: Senator Riepe, if any question I ask you is not clear, I won't be offended if you ask me to clarify. [LB1119]

SENATOR RIEPE: You would be? Okay. [LB1119]

SENATOR CHAMBERS: How many doctors right now have been talked to and they've agreed to participate in this program, if you know? [LB1119]

SENATOR RIEPE: I do not know. I have left that up to the Strada and to the other providers and some of them that we had show up and testify at the committee. [LB1119]

SENATOR CHAMBERS: If the demand outstrips the supply of physicians, what happens to the overage? [LB1119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR RIEPE: At the time, you would simply say we have no more billets, if you will, little army talk there. We would have no more billets that we can fill, so we're going to...we would not be able to have those volunteer state employees participate at this time until we got more practitioners. [LB1119]

SENATOR CHAMBERS: So to put it in parlance that I can understand, if there's no room in the inn there might be some room in the stable? [LB1119]

SENATOR RIEPE: Well, I think that the demand will drive the supply. [LB1119]

SENATOR CHAMBERS: And are the ones who will be affected by this program employees only? [LB1119]

SENATOR RIEPE: Yes, sir. [LB1119]

SENATOR CHAMBERS: Okay. That's all that I would ask you. Thank you. [LB1119]

SENATOR RIEPE: Thank you. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Chambers and Senator Riepe. Senator McCollister. [LB1119]

SENATOR McCOLLISTER: Thank you, Mr. Lieutenant Governor. I wonder if Senator Riepe would stand for a few questions. [LB1119]

PRESIDENT FOLEY: Senator Riepe, would you yield, please? [LB1119]

SENATOR RIEPE: Yes, sir, I will. [LB1119]

SENATOR McCOLLISTER: Senator Riepe, I've been reading the bill itself; and according to the bill, the proposal you submitted indicates that you'll have two providers. Is that correct? [LB1119]

SENATOR RIEPE: We will have two plans. We'll have a low-deductible and high-deductible on the catastrophic end of it. We will not have two doctors. [LB1119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR McCOLLISTER: Okay. Well, I thought that as I read the bill it looked like two healthcare insurers that were going to participate in the plan. [LB1119]

SENATOR RIEPE: This would all be through...currently UnitedHealthcare is the ASO, and all of this would be whoever has the contract--and that comes up for negotiations--under the RFP they would be required to provide this as another plan. They might have a, b, and c, and this might be the d plan, and people can then select it. And in that...within that there has to be a low and high deductible. [LB1119]

SENATOR McCOLLISTER: I understand. Would those two plans both have standards as set up by the Obamacare standards, the minimum standards? [LB1119]

SENATOR RIEPE: Well, my understanding, the Affordable Care Act is the law of the land and so that, yes, they would have to comply as long as it is the law. [LB1119]

SENATOR McCOLLISTER: I see. [LB1119]

SENATOR RIEPE: But that would be through the UnitedHealthcare at this time. [LB1119]

SENATOR McCOLLISTER: Let's talk about the limitations. The bill also indicates that you would limit the number of folks who could be enrolled. Any idea what that number might be, or is that something that the department will establish later on? [LB1119]

SENATOR RIEPE: I think we're going to have to wait and see how much demand and interest. It's going to take some education. It is change, so it will be different. But those that are enrolled are generally...it's well received. So we might have a big rush. But we cannot let the demand override our ability to provide a quality product. [LB1119]

SENATOR McCOLLISTER: Has UnitedHealthcare indicated they'll support this thing if it's passed? [LB1119]

SENATOR RIEPE: Yes. [LB1119]

SENATOR McCOLLISTER: Thank you, Senator Riepe. I yield the balance of my time to the Chair. [LB1119]

Floor Debate
March 12, 2018

PRESIDENT FOLEY: Thank you, Senator McCollister and Senator Riepe. Senator Kolterman. This is your third opportunity, Senator. [LB1119]

SENATOR KOLTERMAN: Thank you very much. I wanted to talk a little bit about trials, some of the trials that have taken place in this body over the last four or five years, even prior to that. Quite a few years ago, Senator Gloor was a past hospital administrator from Grand Island, and he piloted a program called patient-centered medical home, very similar to this type of approach, where you would line up a patient up with a doctor. And that doctor then in turn would take care of the patient. They would work on their A1C. They would work on their obesity, their weight. They would work on things like routine immunizations. And they would be aligned specifically with a doctor. That project was very successful, and it started in Lexington, Nebraska. Several years ago, as I indicated earlier, we authorized the ability to use direct primary care. While it hasn't caught on to the extent that we maybe liked, it has started to develop into a nice program in the state of Nebraska. I believe there's three or four physicians already doing it. It's very similar to the concierge type of medicine except it's capitated. And so each doctor that gets into this program only has about 600 patients to deal with. But I read to you a few minutes ago the cost associated with it. And for those people that don't have any health insurance, this is at least a good alternative, at least gets the routine exams, and it helps people get their routine medicines under control. As I understand it, they'll do the Pap smears; they'll do the mammograms and things like that all under this monthly fee. Where can you go and get all of your routine things taken care of per child at \$10 per month? But again, they're capitating it at 600 individuals per clinic or per doctor. If...and that's one of the models that's out there. If you just type in "direct primary care in Lincoln" or "direct primary care in Omaha," it will take you to a Web site that shows you the different options that are available. We have to look at ways to get healthcare under control. This is one of the ways we can do it. And all we're doing is wanting to try a pilot project. It's going to take some time to get it up and running. The two plans that we're talking about inside this are direct primary care, which is the actual basic underlying coverage, and then a wraparound major medical, which will take care of anything that's not covered under the direct primary care. So the employee that gets into a program like this I think will find this very, very helpful, especially if they've got an ongoing health concern like a diabetes or an obesity or if you have got somebody that maybe is got a specialty problem with allergies. So I like the concept. I have seen it. My daughter and her family have been on this concept for years up in Minnesota. I first looked at it when I saw what she was doing, and it's just a great concept. I would encourage you to at least let us try it. And if there is concerns, Senator Riepe has agreed to work those out on Select. But let's move this forward, and then let's see how we can potentially long term save the state a lot of money. Thank you very much. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Kolterman. Senator Riepe, you're recognized to close on the advance of the bill. [LB1119]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR RIEPE: Thank you, Mr. President and colleagues. I appreciate the discussion. I think it's always healthy. And it is a new concept and, therefore, it can be of concern to some parties, I guess. One of the things that impressed me the most is when we held our hearing we had groups; we had a major hospital group, which is CHI, that came in, in strong support. We had the Nebraska Academy of Family Physicians, we had the Nebraska Medical Association, we had Blue Cross and Blue Shield, we had the pharmacists, we had (inaudible) those groups coming together to say, this has merit, this needs to move forward. Through this legislation we can provide employees of the state with the opportunity to observe the benefits of its strengthened patient-practitioner relationship. It is my intent that this will align with the next RFP cycle, and with that we will be able to understand more of the potential savings. I would also like to note that we are currently working with the stakeholders on an amendment, as I mentioned earlier, which will be presented on Select File. I would ask you to give this opportunity to move this particular legislation to allow us to pilot direct primary care and seek some new reform opportunities within the state of Nebraska, within the delivery of healthcare. Thank you, Mr. President. [LB1119]

PRESIDENT FOLEY: Thank you, Senator Riepe. Members, you heard the debate on LB1119. The question before the body is the advance of the bill to E&R Initial. Those in favor vote aye; those opposed vote nay. Have you all voted who care to? Record, please. [LB1119]

CLERK: 30 ayes, 0 nays on the advancement of the bill. [LB1119]

PRESIDENT FOLEY: LB1119 advances. Proceeding to LB589. Mr. Clerk. [LB1119 LB589]

CLERK: Mr. President, LB589, a bill introduced by Senator Crawford. (Read title.) Introduced on January 18 of last year. Senator Crawford has presented her bill, Mr. President, in January of this year. I do have Judiciary Committee amendments pending. (AM438, Legislative Journal page 695, First Session, 2017.) [LB589]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Senator Crawford, you're recognized to open on LB589. [LB589]

SENATOR CRAWFORD: Thank you, Mr. Lieutenant Governor. And good afternoon, colleagues. Colleagues, when I think of what I am most proud of, my time in the year so far in this very room, one of the things that I'm most proud of are the bills we've passed that provide opportunities for our children and protections for our children. This includes several bills to improve early childhood education. It includes bills to protect and reform juveniles in our juvenile justice system, to make sure we treat kids as kids. It includes efforts to try to protect our minors from sex trafficking, including just recently many of you in this room have passed a bill

Floor Debate
March 12, 2018

to make sure we're also protecting our 16-, 17-, and 18-year-old youth from sex trafficking. As a state and as a body, we have had a commitment to a team approach to victims and witnesses, when they're children in particular, to reduce trauma and try to get at truth and justice in these cases. Colleagues, an important part of that process has been a commitment since 1996 to our Child Advocacy Centers as a key partner in this process. They were created in 1996 by the Legislature. In 2004, 2006, and 2007, we reaffirmed our commitment to Child Advocacy Centers and working for our youth who find themselves as victims of sex abuse or violent crimes or witnesses to sex abuse or violent crimes. In 2012, we extended the Child Advocacy Center services to those up to and including 18-year-olds. So again, we as a body affirmed that we felt it was critical to protect our 16-, 17-, and 18-year-olds, as well as our children under those ages. In 2015, we expanded the Child Advocacy Centers to our rural areas to make sure we had statewide outreach so they can serve our children all across the state. Colleagues, an important part of this service is the forensic interview that occurs immediately after we discover from a child that they allege that they've been a victim or a witness to a violent event. The forensic interview is designed to happen as soon as possible after the child reveals the event to reduce the amount of possible intervention and coaching. It's designed to be age appropriate. It's conducted by nationally accredited interviewers who are trained and have continuing education training. And it's designed to replace the police interview, to replace the DHHS interview, and designed to be one time when we try to get as much information as possible from that child in as child-friendly and trained atmosphere as possible to try to make sure we get the best information we can get from that child in one setting as much as possible. And so we're trying to reduce the multiple times that a child might have to talk to police or social services and try to make sure we get as much information as possible at one time. And one of our questions is what is the role of that information that's gathered and how it can be used in the process to make sure that we're trying to reduce revictimization and trauma for our children. Colleagues, our vision with the Child Advocacy Centers and I believe the vision that we share is to reduce trauma for children who are victims and witnesses and to get at truth and justice in these criminal cases where there's a child witness or a child victim. We know from science how even a very small number of critical childhood...excuse me, of critical adverse childhood experiences impact the future of a child as they turn into an adult. Even a very small number of traumatic experiences dramatically increases the chance of substance abuse, dramatically increases the chance of an inability of a child to move into adulthood and to be a productive member of society. These adverse childhood experiences, these traumatic experiences in childhood, clearly shape the future of our children; and they're very important and need to be taken very seriously. We also know from research the critical risk of adultification of minors and how this in particularly harms minority children when they're treated as adults when they're not yet adults. We know trauma at times can prevent cases from moving forward. And we know that discovery depositions that are part of the process in our state and are the focus of this bill are particularly...can be particularly traumatic parts of that experience. The deposition is during discovery; it takes place prior to the trial, and these discovery depositions are only allowed in a handful of states. And one state that moved in 2009

Floor Debate
March 12, 2018

to make it more difficult to have these discovery depositions required a study then a year later in terms of what difference it made when they restricted access to these depositions for children. And this a quote from that study. "Prior to the rule, we had..." excuse me, "we had meritorious cases that we had to dismiss simply because the child could not endure the trauma of a deposition, as being interrogated by a defense lawyer in a closed room without the judge's 'protection' was often more traumatic for the children than testifying in open court. We have not had to dismiss a single meritorious case since the rule went into effect. The children also fare much better emotionally without having to do depositions. Having to gear up for a traumatic deposition and then gear up again for trial is more than many children can handle." And then he talks about the fact that the kids often start regressing in their school and in their therapy when they happens. And then he says at the end, concludes, "And, since most cases resolve without a trial," even after they restricted access, most cases resolve without a trial, "the no-deposition rule means that, in most cases, the child never has to endure the trauma of reliving the event for strangers. The no-deposition rule allows these children to get on with their lives and engage in the healing process." Colleagues, the solution LB589 doesn't go as far...as amended doesn't go as far as this bill in Vermont. But it's important that you see what difference it makes when there is attention to this involvement of children in the deposition process, and it's important that we have a solution to reduce trauma and get to truth and justice in these cases. What LB589 does as amended is it recognizes that discovery depositions are at the discretion of the judge. That's currently the case; that's also what is the case with LB589 as amended. It also recognizes that we have forensic interviews by trained forensic interviewers that are and can be a part of the discovery of this process. As amended by AM1682, we recognize that a deposition of a child may not be necessary since this interview exists. But we do not, as amended, put in a burden of proof. If a deposition is done with a child who has been through this forensic interview, been through these traumatic events, we ask protections be put in place to protect the children and to protect the process. And, colleagues, these protections are consistent with the American Bar Association's standards for criminal justice administration. And that's also on the handout that I provided for you at your desk, is what those standards are. And you'll notice they're very consistent with the standards that we have in place. The focus of LB589 now is protections for the child witness and victims. These protections not only protect children from added trauma, but serve justice by seeking a setting where truth can be pursued. Justice is not served when children recant or get confused under unnecessary intimidation. An important basic protection that you see on the American Bar Association recommendations and also part of AM...excuse me, a part of LB589 is the importance of keeping the alleged perpetrator out of the room. Again, this is also consistent with ABA recommendations. We also have been told that this is standard practice in Douglas and Sarpy Counties, so this will not be a major change in those places. Colleagues, all parties who work with these children... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR CRAWFORD: Thank you. All parties who work with these children except defense attorneys support this bill. And you have a list of many of those parties on your handout. The legislation to reduce the occurrence of child depositions is also a recommendation of the Nebraska Strategic Plan for victims and survivors of crime. Colleagues, defense attorneys, it's their job to attack this bill because depositions are a tool in their toolbox. And it's their job to vigorously defend any encroachment on that tool. But I urge you to listen to the discussion today and I urge you to recognize that all we're doing is recognizing that there are some situations where the forensic interview should be recognized and a deposition may not be possible, even though we are not putting a burden of proof. And if we do a deposition on a youth 18 years or under, we should be making sure that we're telling the judges, we want you to put protections in place. [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

SENATOR CRAWFORD: Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Crawford. As the Clerk indicated, there are amendments from the Judiciary Committee. Senator Ebke, you're recognized to open on the Judiciary Committee amendments. [LB589]

SENATOR EBKE: Thank you, Mr. President. AM438 to LB589 is a minor amendment to the bill brought to Senator Crawford and the committee by advocates for the legislation. The amendment would add a reference to a court-appointed special advocate in the list of examples a judge's protective order might address. The amendment also adds to the list of examples for such protective orders the possibility that a judge might allow the child's deposition to be taken with a service or therapy animal present. A number of advocates testified on behalf of the bill, including the Nebraska Alliance of Child Advocacy Centers, Project Harmony, and the CASA Association. The Criminal Defense Attorneys Association testified in opposition to the bill. The bill advanced from the Judiciary Committee on a vote of 5-1, with 2 members present and not voting. On behalf of the committee, I ask for your green vote on AM438 to LB589. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Ebke. Debate is now open on LB589 and the pending committee amendments. Senator Vargas. [LB589]

SENATOR VARGAS: Thank you very much, Mr. President. Colleagues, I have not gone on the mike to talk about this subject and this bill, and I wanted to begin a conversation about purpose and the problem. The first question I have is just what problem are we trying to solve? I think we generally understand the intent that there are traumatic experiences that are being referenced,

Floor Debate
March 12, 2018

and what I'm trying to get a better understanding of is how often are we making these decisions in this body based on data versus circumstances? And when are we referencing these data points to help inform legislation? And in this instance, I have asked the question of the Child Advocacy Centers. I still don't have answer points specific to Nebraska on, one, what is the problem that we're trying to solve with this legislation? And two, in terms of the data points, where are we seeing issues of trauma; how often is this happening? So I would love to ask Senator Crawford a few questions, if she would yield. [LB589]

PRESIDENT FOLEY: Senator Crawford, would you yield, please? [LB589]

SENATOR CRAWFORD: Yes. [LB589]

SENATOR VARGAS: Senator Crawford, can you tell me some of the data points that lead you to believe that trauma...how often trauma is happening in these scenarios for children or for youth under the age of 18? [LB589]

SENATOR CRAWFORD: Well, in this case, as in many cases, I turn to the professionals in the field. And the fact that the American Bar Association considers reducing access to depositions as critical I think surely is based on sound legal advice and evidence. In the case of the state of Nebraska, we had numerous people testify about situations from multiple places, a few of those places...a few of those counties included Madison County, Scotts Bluff County, Sarpy County, Buffalo County, Merrick County. Those were a few of the places where people talked about the challenges that had been faced by children and added trauma to their...in terms of the process. [LB589]

SENATOR VARGAS: So do we have numbers from these counties, just the...so that there's a question of, one, yes, there are professionals in the field that are informing this legislation. There are professionals on both sides. We have...there's prosecutors and then there's defense attorneys and defense attorneys have been against this bill. So it's clear that...it's not as clear-cut that for all professionals in the field to have the same opinion on this bill legislation. But what numbers are we referencing in these counties? Can you tell me about, you know, trauma numbers that we have? [LB589]

SENATOR CRAWFORD: We do not have a set number of cases where someone has been studying this to indicate this counts as a trauma-induced case that didn't go to trial, this is not a trauma-induced case that went to trial. I don't know if there's any way in which those numbers get traced. The latest...what I was looking through, the Nebraska 2015 to 2020 Strategic Plan for victims and survivors of crime has some data in it about the number of allegations versus the number of cases that actually get processed or get taken all the way to solution. So that is

Floor Debate
March 12, 2018

measured, but in terms of what happens along the way, I don't know that there's any body in our state that is keeping track of that. [LB589]

SENATOR VARGAS: The reason why I ask this question, colleagues, is that normally, or more often than not, we try to make decision to solve a problem. If we're not getting data that's telling us there's a problem to solve, are we actually providing the appropriate policy solution to address the inherent problem? So first, if we really need to start collecting data, then that might be where we need to start. Because inherently making a decision to potentially move due process in the way that we're going forward with cases for youth under the age of 18, if we are making assumptions that the professionals in the field are not doing their job or not inherently trying to protect the child when that is their job is to try to inherently protect the child... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR VARGAS: Protecting the means for attorneys to adequately represent their clients is not the same as not protecting children. So I have a little bit of an issue when we don't have data telling us that there's a problem in the space. I'm hearing that it's in our strategic plan of some sort, but these are anecdotal; these are qualitative instances. I'm also hearing that there are professionals in the field that are also Bar Association members on both sides that would have differing views on whether or not this is needed. And inherently we still don't have a problem we're trying to solve. So why are we bringing forward something that's going to detrimentally and change the way that we approach due process in the field? That is inherently one of the questions that I have. How much time do I have left? [LB589]

PRESIDENT FOLEY: Nine seconds. [LB589]

SENATOR VARGAS: Okay, I'll put my light on in a second. [LB589]

PRESIDENT FOLEY: Thank you, Senator Vargas. Senator Krist. [LB589]

SENATOR KRIST: Thank you, Mr. President. Good morning...or good afternoon, colleagues and Nebraska. I stand firm in my opposition to LB589. If you look at the committee statement, I was present not voting. I had some apprehension at the time, and it's even grown even further. I had an extensive conversation with Tom Riley in Douglas County. So when you hear that Douglas County is in support of this, having spent some time on Judiciary Committee, I can tell you and warn you very thoroughly, one side of the legal profession may be in support of almost anything, while the other side may be in opposition with that same subject matter. And I think you have to weigh out the two of them in the prosecution and the defense side. I agree with

Floor Debate
March 12, 2018

Senator Vargas. I think this is a solution in search of a problem. I don't believe we have enough data to say that this is a problem. One of the situations that Mr. Riley and I talked about extensively was the crime as it happens, and the child being whisked away to Project Harmony, where there's an interrogation or a record made of an issue, and then the defense attorney not being able to again talk to the child in this case. The other thing I think I mentioned on the mike when we talked about this subject matter before, is as all of you know, and I'm very proud to have a child who has special needs; and when that person, when that child who is interrogated or is...a deposition is taken, depending upon the cognitive abilities of the child and how they're talked to can manifest itself in different ways. So a repetitive deposition or at least an additional questioning of that child may be extremely appropriate. This bill seems to draw a line, does draw a line, and purports to draw a line between trying to not to cause any more trauma within the child's already trauma-filled life, as the event might have just happened. And moreover, I think that you also have to look at the other side of this, which is the defense attorney side, which is the defense in itself to say, I have a person who is being charged with a particular crime, whether it be sexual abuse of a child or any number of other things. If I, as a defense attorney, want to properly defend that person and give them the benefit of the doubt--and remember in the society in which we live you are innocent until proven guilty--then I have to maybe go the extra measure. And I quite frankly don't think that that is demonic in any way. I think that the support of and the care for our children is well represented in our court system as it exists today, at least from my 10 years of being here and my exposure to the court system. I'm obviously not a practicing attorney and I've never practiced in this area, consequently, but my time on the...as the cochair of the Juvenile Detention Alternatives that we have been so successful with in the past few years tells me, again, this is not an issue, not a problem that we can document and necessarily take action on. So for all those reasons, I would invite us to take a deep breath, slow down, and potentially back away from this issue, gather some data, let the folks in... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR KRIST: ...the Detention Alternative...thank you, Mr. President...Detention Alternative issues along with all those providers of care, which do a great job. I'm not saying that they're not. But maybe there's more data that we can gather on this particular issue. For those reasons, I will not support AM438 or LB589. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Krist. Senator Crawford. [LB589]

SENATOR CRAWFORD: Thank you, Mr. President. And I would like to pick up the conversation and just respond a bit in terms of the need for more research or the need for more data. Colleagues, this recommendation, again, is consistent with the recommendation of the American Bar Association, Standards for Criminal Justice Administration. It is also something

Floor Debate
March 12, 2018

that our Nebraska group that pulled together to pull together the research and experience of people who work with victims and survivors of crime. Their strategic plan, they had focus groups, and this was the importance of recognizing attention to the use of children in a pretrial deposition was one of their issues that they raised. And they talked about the fact that when children are involved in testimony, the importance of preventing the children from being revictimized through the legal process, and that it was particularly true in sexual assault cases. And in some parts of the state, programs reported that the county attorney may drop cases to prevent a child from testifying, or the inability of a child to testify forces the prosecuting attorney to drop the case. And I heard this from multiple actors who were telling me how important this bill was. We also heard from the children; now many of them are adults, but they were children when they were going through this process. There's a particular telling letter that I believe Senator Morfeld will be reading as part of our discussion today as well, that this made so it much more difficult to be a part of the process. And many of the people, the children or they were children at the time who went through the process, said the deposition was much worse than the trial. And that's again what we heard from people reporting on what happened in Vermont as well, that we don't need to have a certain number of children who have been traumatized to know that this can be a very traumatizing situation. And that it is not just one bad actor or a small number; that it is by nature, by nature, it is a process where it is contested, and by nature is going to be intimidating. I think one of the compelling parts of the testimony we had Senator...excuse me, Dr. Lazarus, who is a child abuse expert, talk, and he was talking about the fact that he's a nationally recognized child abuse expert, and one of the reasons he decided to get out of that line of work was because as an adult he found these depositions extremely traumatic and found out he had to go the bathroom and throw up multiple times before giving a deposition, because as a child abuse expert that was part of his job to be a part of these pretrial depositions. It was so traumatic to him as an adult and an expert in this field that he had to actually got...he actually physically got sick. And I thought that was very compelling evidence. And these are children we're talking about in that setting, how traumatic it must be for them. They're not just miniature adults, they don't understand the process, and there is no one in that room often to take their side or to say, no, that's not an appropriate question. No one is on their side in that room. The prosecutor represents the state and the defense attorney represents their client. That's their job; they're supposed to be adamantly defending their child...excuse me, defending their client. It is not the prosecutor's job, nor is it the defense attorney's job, to watch out for the interests of the child. Colleagues, that's our job, to watch out for the interests of the child. And putting some protections in place is in no way an obstruction of justice. It is simply a small, small, incremental step to try to protect the kids that find themselves in this process. Whether...and whether they have alleged something that's not true or whether they're true victims or witnesses, these protections are... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR CRAWFORD: ...not an obstruction to justice. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Wayne. [LB589]

SENATOR WAYNE: Thank you, colleagues. I am not going to spend a lot of time on this bill. (Microphone shocks him.) Ooh! I was trying to stay away from it, because I always shock myself when I get next to this. But I just want to make people understand the process. The process for a deposition is very simple. I file a notice that I'm going to depose somebody. That notice goes to the county attorney. Oftentimes, nine out of ten times, the county attorney will issue a subpoena commanding that person to be there. So the court does know about it, because they're the ones who issue the subpoena commanding that person to be there at the deposition. But also that prosecutor can object to any deposition and ask for a hearing. Most likely it's "frutile" because there's a constitutional right to kind of know what is going on. At the deposition, and I've done this in plenty of depositions, I can get up and walk out and say, I'll see you in court. If I feel that deposition is getting out of line and I have a client, or in this case sometimes it's a child who is not a client, but it's indirectly because, say, it's a divorce case, not directly my client, I will still get up and say, we're done with this deposition, or you're going to change your line of questioning or I'll see you in court. Let's go to court; let's have a judge find me in contempt of getting up out of a deposition when your questions are that far out of line. There are plenty of opportunities to make sure that whatever is being cited as abuses do not happen. If it does happen, it will happen regardless of whether this bill is in place. If that defense counsel wants to be super aggressive and go after the child, it will happen regardless of whether this is in place and whether there is a law saying that I have to first file a motion. So there are plenty of due processes. But the reason I rise in opposition is to...last week I was in court, last Friday before I got here, and I had three female public defenders stop me, and they said their biggest concern about this bill is because now I have to go to trial. Or I have to have a deposition in front of a judge. These three female public defenders say that they always get a female court reporter and they sit down with these female, in this case victims of sexual abuse allegations, and after that deposition either they plead or it goes away because the prosecutor and the defense counsel gets to see that witness, their credibility, and how they'll interact before a judge or before a jury. That's nine out of ten cases that we deal with. To prolong this process is going to draw out a lot of the due process requirements that are needed in criminal investigations and civil. I want to remind you, this bill does not limit it just to criminal. If a child is interviewed, now every civil case, the way it reads is that it's simply any deposition. Any deposition, including divorces, custody battles, when the state is involved in parenting issues on when they're on Medicaid and they have to file for child support, any deposition would fall underneath this law that you would have to have an extra hearing on. That's more money that clients have to pay. And if I misspoke, Ms. Crawford or Senator Crawford, I will definitely correct myself. But that's how I read the bill last time. And I could be wrong; I sometimes am. But regardless, the issue is there are plenty of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

due process procedures right now within the current law that allows for the protection of children. And this would be an undue burden to the process. Thank you. [LB589]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: Thank you, Senator Wayne. Waiting in the queue to speak: Senator Chambers, Williams, Vargas, and others. Senator Chambers, you're recognized. [LB589]

SENATOR CHAMBERS: Mr. President, members of the Legislature, I hate to do things like this to say that I love children. But I do. People thought that once I got my law degree I would try to become a judge because they thought from what they observed in me I could be fair, even to somebody whom I did not like. Not only am I looking at a child who might testify or give a deposition; I'm looking at the person accused of what could be one of the most horrendous things that could be done. I believe Jack the Ripper is entitled to a defense. That's what lawyers are supposed to do, and if lawyers do not zealously represent their clients then this adversarial system of justice that exists in America, that does not exist everywhere in the world, will collapse. A deposition consists of questions and answers. Every word of that deposition is recorded and transcribed. It's written. If I am a defense attorney, what I did and said, the way I comported myself in conducting that deposition, will be spread on the record. If that record shows that I badgered, that I intimidated, that I hounded a child, not only may I be hurting my client's case, but I am casting a shadow over my own professionalism. I believe that Senator Crawford is as sincere as a summer day is long, but sincerity does not take the place of facts and reality. These various advocacy groups do a good job, but they are not learned in the law. Prosecutors are not the ones that I trust. I spent a considerable amount of time reading the other day about the top prosecutor in the Attorney General's Office who was admonished by judges of the Supreme Court in open court about his possible unprofessional conduct. You won't hear people on this floor criticize these prosecutors, but they want to invoke them. I do not trust them. There are instances where a murder might be committed by a juvenile; other juveniles are witnesses. This language covers witnesses. If a deposition is taken and I'm the defense lawyer, this is what I would do, and I don't practice law. I would, at the preliminary hearing stage, I would subpoena the deposition and I would subpoena the child who gave the deposition, and that child could then be questioned in court, in front of the judge and everybody else. Is that what they want? I don't think they even thought about that. I am not going to support this bill, and if people think that my failure to support a bad bill indicates something about my attitude toward children, their attitude toward me means nothing whatsoever. [LB589]

SPEAKER SCHEER: One minute. [LB589]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR CHAMBERS: Actions speak louder than words. If somebody in fact committed a crime against a child, to me that's one of the worst things that can be done. But if somebody is falsely accused and falsely convicted, that is even more horrendous because of the stigma, the loss of freedom, the loss of standing and status in the community, the rejection by family and friends. Far more is at stake here than the success of this Project Harmony and some of these other advocacy groups. There are realities which a lot of people on this floor have no concept of. And all that Senator Crawford can do, and she's doing it well, is to quote what other people tell her. What are these focus groups? Somebody gets a bunch of people together and they talk. They don't necessarily know anything. They give their opinions. [LB589]

SPEAKER SCHEER: Time, Senator. [LB589]

SENATOR CHAMBERS: Did you say time? [LB589]

SPEAKER SCHEER: Yes, Senator. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. [LB589]

SPEAKER SCHEER: Thank you, Senator Chambers. Senator Williams, you're recognized. [LB589]

SENATOR WILLIAMS: Thank you, Mr. President. And good afternoon, colleagues. And I, like Senator Chambers and Senator Wayne, have great concern about LB589 and the amendment. And we all are here trying to create the correct protections for people that are important, but we can't discriminate in that protection. And there are Sixth Amendment rights which give protections to the accused in these cases also. And rather than try to paraphrase, I'm going to read an e-mail from a person that spends his entire life defending people in criminal court in many of the courts that Senator Crawford listed in Douglas County and Madison County and all of these. And his comments go like this: My main concern lies with the trimming of the Sixth Amendment fabric for my future clients. This LB actually creates unintended consequences that parallel exactly what it aims to defeat. In trying to do away with the ability to depose minor witnesses, the likelihood of each case going to trial increases "expotentially" (sic-- exponentially), and then at trial the minor witness will then be cross-examined in a court of law in front of the 12-person jury, judge, prosecutor, defense attorney, defendant, and the general public in order for the defense to present its case and derive information from that party. LB589 seeks to limit the taking of depositions of witnesses under the age of 18. As a law practitioner, depositions of any and all witness are important discovery tool. Currently there are existing protections and protocols in place for the benefit of child deponents. The safety of the child and protection of the sensitive case-related documents are of utmost importance. Certainly the vast

Floor Debate
March 12, 2018

majority of my contemporaries, if not all, do not depose children with the intent to harass, intimidate, or threaten them. The depositions in question are always preceded by some type of video-recorded forensic interview, usually at Project Harmony, of the minor party. It is worth noting that the video forensic interview is not organically a fact-finding interview. Rather, they have become interviews to support the potential prosecution of the suspect. Depositions are not the scary monsters that the zealots would have you believe. Depositions are typically performed in private settings, usually in the county attorney's office, with only the prosecutor, witness advocate, court reporter, and defense attorney present. The defendant is not present. The questioning is done at the alleged child victim's pace. Breaks are taken as the alleged child victim desires. Although subject matter is unsavory, most times a deposition is far less stressful than an alleged child victim anticipates. Following a deposition, in the vast majority of the cases, a plea agreement is then reached among the parties. However, if the defense counsel's only access to question an alleged child victim is at jury trial, then the defendant will have no option but to proceed to trial. Therefore, LB589 actually creates the unintended consequence that parallel exactly what it aims to defeat, all while trimming a little fat off the edge of the Sixth Amendment. I think we have to be careful what we're doing here and who we are protecting and recognizing, as was brought up,... [LB589]

SPEAKER SCHEER: One minute. [LB589]

SENATOR WILLIAMS: ...how big a problem do we have here and what do we need to solve with these protections. Thank you, Mr. President. [LB589]

SPEAKER SCHEER: Thank you, Senator Williams. Senator Vargas, you're recognized. [LB589]

SENATOR VARGAS: Thank you very much, President. Colleagues, I want to thank Senator Williams. He took some of the things I was going to say. The first is words matter a tremendous amount. And so I'll preface this: I have a tremendous amount of respect for Senator Crawford. And I believe the intentions of what we're trying to accomplish and what problems we're trying to solve are fair and...but at times we need to make sure we're collecting the right data and information to ensure we're actually solving the right problem. The reason why I say words matter is because we're using the word "protection," and I worry how we're using that word, because that word carries a tremendous amount of weight. Sometimes we use that word intending to protect a juvenile and we make assumptions on what is in the best interest in protecting someone. And I believe that that is less important when we think about the more fundamental protection that needs to be considered, which is the protection of due process. Now, at times they can come into conflict with one another. When we're really trying to solve an issue, if we're not inherently trying to protect the due process and we don't believe that doing that is also going to protect the individuals that are being accused or the accuser, that's why the system

Floor Debate
March 12, 2018

exists. In addition, I think it's very dangerous when we make assumptions that the actors that are playing a role in a process in a deposition, that there are individuals in those roles that are either causing harm intentionally, causing trauma intentionally, or somehow trying to protect something and disregarding the fact that the intention really is to try to ensure that due process exists for all those that are involved. And so when I'm looking at some of the understanding of this bill and I'm trying to wrap my head around it, I still have this question as to whether or not this is...there are statutes and there's latitude for the courts to provide some level of change in regulating the scope of a deposition or the conditions of a deposition. My understanding is there already exists some of these latitudes, that there is already a system in place that is trying to protect and giving some latitude to the courts to do this. And so if there already is that happening, then why are we trying to impose additional regulations, sanctions on this process that's going to remove more due process from this whole entire entity? The other question or issue I have is around, what are we really trying to limit? And so I do have a question for Senator Crawford if she would yield. [LB589]

PRESIDENT FOLEY PRESIDING

PRESIDENT FOLEY: Senator Crawford, would you yield, please? [LB589]

SENATOR CRAWFORD: Yes. [LB589]

SENATOR VARGAS: In regards to the...how this may or may not limit interviews, let's say with a child, does this bill limit any...how many times a prosecutor or law enforcement officer interviews a child? [LB589]

SENATOR CRAWFORD: This bill is about depositions, so it is about...and so that is solely what it is about. And so it does not have a number. It just says that if you're going to have a deposition, should consider whether or not a forensic interview has be done. And if you do a deposition you should...the judge shall consider what protections ought to be put in place. So any... [LB589]

SENATOR VARGAS: Yes, and... [LB589]

SENATOR CRAWFORD: ...any party that wants a deposition, so if a prosecutor needed a deposition in order to talk to the child because the parents didn't want the victim or witness talking to the prosecution, then they could file a deposition. It's not just... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR CRAWFORD: ...about defense attorneys, but it's anybody who needs a... [LB589]

SENATOR VARGAS: Uh-huh. [LB589]

SENATOR CRAWFORD: ...pretrial discovery deposition has to follow these standards. [LB589]

SENATOR VARGAS: And in some of these Child Advocacy Centers where there is law enforcement that exists in the building, do they have more or less access to children in terms of the deposition or the ability to interview? [LB589]

SENATOR CRAWFORD: All of the questions must be asked by the forensic interviewer. So it is the case, again, it replaces the police interview. And police are sometimes present and watching. They can suggest things to be asked, but it must be asked by the forensic interview (sic-- interviewer). And a forensic interviewer will reject or is supposed to reject any questions that are inappropriate. [LB589]

SENATOR VARGAS: And the forensic interview (sic--interviewer) is employed by who? [LB589]

SENATOR CRAWFORD: Forensic interviewer, I believe, is employed by the Child Advocacy Center. [LB589]

SENATOR VARGAS: Okay. This gets me back to part of this question on who is the...are we creating a system that creates some infallibility? And if we're saying that these individuals that are working at the Child Advocacy Centers are infallible... [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

SENATOR VARGAS: ...and we're putting...thank you very much. [LB589]

PRESIDENT FOLEY: Thank you, Senator Vargas, Senator Crawford. (Visitors introduced.) Continuing discussion, Senator Crawford. [LB589]

SENATOR CRAWFORD: Thank you, Mr. Lieutenant Governor. And thank you, colleagues, for the great questions and comments. This is an important bill and I appreciate the dialogue and discussion. One thing I want to assure everyone, I know you may have been getting some e-mails from defense attorneys, similar to the one that Senator Williams got. And when he read it, it was

Floor Debate
March 12, 2018

assuming that LB589 does away with the right to this deposition, and that's simply not true. Let me repeat that again. LB589, especially as amended by AM...excuse me, by the amendment that you'll be seeing, we'll be discussing in a moment, does not do away with these pretrial depositions, even of children. So that's very important. It does not do away with them. But LB589 says it's...when you're deciding whether or not to offer it, and there was a question about what are those standards, those standards are in the amendment. They're also in the original LB589. It may be material and relevant to the case. Those standards are in the copy around the bill. So if you're interested in what those standards are you can read them. None of those are changing. It does say when a child has been interviewed pursuant to Section 28-728 that that forensic interview is considered, can be considered, may be considered in assessing whether or not a deposition takes place. It does not take away child depositions. And, colleagues, even in Vermont, which is a sample case that recently changed its rule to actually make it much tougher to get a deposition, they did not see more cases going to trial. And so that's an important piece of evidence we have. One of the great things about our democracy, our federalism, is we have these examples and we can see what happens in other states. I also want to clarify that there is actually no constitutional right to a pretrial deposition, and that has been held up in Nebraska Supreme Court twice. Once in 2012, State v. Collins, and in 1991 in State v. Tuttle. While you do have a constitutional right to face your accuser at trial, this is pretrial discovery, and there is no constitutional right to that. We are not putting any constitutional rights at risk with this. There are 37 other states that don't have this pretrial process, and so they still have due process in those states. There are other tools of discovery that can be used besides the pretrial deposition with a minor. And so what we're doing, though, is we're still saying...we're still saying you can do it. We're just saying, if you're going to do it, then make sure that the...we're asking the judge to put some protections in place for that child. Some of those protections are already being offered in some of the counties, and so...because another fact that was in that letter that was read by Senator Williams that is not what we hear in other counties is...the letter he read said the defendants are not present. Well, that's true in some counties, not true in other counties. One of the rural county attorneys said how much she wished that were true, but then in her county it is the case that the actual alleged perpetrator is in that deposition. Now, I know, I've heard in Sarpy and in Douglas that's not the case, and that's great. So those two counties are already putting two of these key protections in place. And so if LB589 passes, they're already well on their way. And they might just consider what other protections might be needed based on the age or intellectual development of the child. In Sarpy County there's a whole set of protections that they put in place, and they call it, you know, just standard protections. And so it doesn't take a long time; they don't debate about it. [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CRAWFORD: In those cases where it's a minor, they put those protections in place and they can move forward. If it's a particularly vulnerable minor, then there might be

Floor Debate
March 12, 2018

conversations. I also want to say that it should not be the case that you have to be in contempt of court to quash a deposition or to not be treated in a deposition unfairly. And so it's really critical that we have an opportunity to ask this question, and it's very important that when a child, when a minor, is deposed that these protections are put in place. And that's the focus on the bill now, really, is putting these protections in place. Whether or not a prosecutor...excuse me, a defense attorney intends to be intimidating or not, it's an intimidating process. And some protections in place do not obstruct justice, especially those protections that are outlined in LB589. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Crawford. Items for the record, please? [LB589]

CLERK: Thank you, Mr. President. Enrollment and Review reports LB993 to Select File. Government Committee reports LB902, LB1036, LB1038 to General File, and LB364, LB682, LB825, LB929, LB1037 to General File with amendments. Business and Labor reports LB950 and LB1096 to General File with amendments. And a hearing notice from the Health Committee, Mr. President. That's all that I have. Thank you. (Legislative Journal pages 926-930.) [LB993 LB902 LB1036 LB1038 LB364 LB682 LB825 LB929 LB1037 LB950 LB1096]

PRESIDENT FOLEY: Thank you, Mr. Clerk. Continuing discussion, Senator Morfeld. [LB589]

SENATOR MORFELD: Thank you, Mr. President. Colleagues, I've been listening to the debate, and this is an issue where I can certainly see Senator Chambers' point of view, Senator Vargas' point of view, and Senator Williams' point of view. And I think it's a balancing act. And I've chosen to support LB589 because I put the balance weighing in the favor of some of these youth in particular that have to experience this. But I do know that there are serious constitutional implications, and I respect both sides of the argument and debate. I do want to share a story that a young woman who actually goes to school in my district shared with me, and some of this is put in the first person. I'm trying to put it into the third person, but I may get it wrong from time to time. But I want to make it clear that this is Bailey's story. She's 21, and she attends the university. Bailey came to the Child Advocacy Center in February of 2014, at the age of 17, after having been raped and sexually abused by her coach for three years. Her coach was in his 50s and had been grooming her since she was seven years old. The abuse began when Bailey was a freshman in high school. After finding the strength to come forward and stop the abuse, Bailey was interviewed by the Child Advocacy Center by a trained forensic interviewer, where she provided a detailed account of her abuse in a videotaped recorded statement. Then the horribly long court process began. It wasn't until August that her coach was charged, and he was only charged in one of two counties. He was charged with first-degree sexual assault of a minor and two counts of first-degree sexual assault. Bailey took part in a two-hour-long deposition, a quick 414 hearing, and she testified on the stand at trial for a grueling six hours. After four hours of

Floor Debate
March 12, 2018

deliberation, the jury acquitted her coach on all charges. He walks free today and still coaches young girls. Bailey wants to put this in perspective. During the six hours that she sat...she stood...she sat on the stand at trial, the defense attorney treated her as though--and these are her words--"a worthless piece of trash." For example, he actually stood over her with a belt and asked her to demonstrate to him how she was strangled with it. As heartless and emotionally tolling as the trial was, she can confidently say that the deposition was worse. At least at the trial there was a substantial amount of space between her and the coach, as well as a judge to tell the defense attorney he was pushing too far, which he did on multiple occasions. The deposition took place at the Attorney General's Office in December of 2014, the week before her first set of college finals. She was 18. In her words, it was "barbarous." The deposition was essentially a two-hour argument with raised voices in multiple instances in which she was accused of seducing her coach. The defense attorney approached the deposition with the intent of proving consent. The same defense attorney then came to trial with quite a different approach. She sat next to the prosecutor at what seemed like a kitchen table with the defense attorney and her coach right across. It was the first time that she had to face him, and she had to do it...do so very closely. She was literally less than five feet away from him. As she answered every question, he stared into me the entire time. It was the most intimidating situation she had ever been in since the abuse finally ended, and she was terrified. Multiple questions that were asked to her, asked in the two to three different times in different ways in order to confuse her in the deposition. It seemed as if the defense attorney's primary goals were to ask questions in as many different ways as possible to trick her into changing her account of what happened and giving him a chance to discredit her. I was accused of being a liar...excuse me, Bailey was accused... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR MORFELD: Thank you, Mr. President,...of being a liar multiple times throughout the deposition. The defense attorney also fought to keep Bailey's advocate out of the deposition room, depriving her of having anyone there to support me and to feel somewhat safe. But this was not the case. The deposition was recorded via typewriter, so no emotions were portrayed in the script. This gave the defense attorney the power to treat Bailey in any manner he so chose, and the prosecutor in the room was unable to stop the relentless attack. The questions were asked in very condescending ways, eyes were rolled, hands were tossed up, and the entire time Bailey could see the eyes of the man that had brutally raped her glaring at her. At one point, Bailey was literally thrown an envelope and told to open it. Inside were naked photographs of a 14-year-old her. I was accused of gifting these photos to my coach to seduce him. [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

SENATOR MORFELD: Thank you, Mr. President. I'll continue this. [LB589]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Chambers. [LB589]

SENATOR CHAMBERS: Mr. President, members of the Legislature, what Senator Morfeld is reading is the flip side of what they've been complaining about. I think, although I don't practice law, I think I have more people come to me accused of offenses who have been mistreated by the police. I had children and their parents coming to me against this white teacher at Nathan Hale who is making sexual remarks to young black girls, putting his hands on them, having them put their hands on him, and I constantly wrote articles about it in the Omaha Star. That circulated in the black community; some white people read it. At that time I had a public television program on Cox; I talked about it. I talked about the Omaha Public School then school board, who would take no action; Superintendent Mackiel, who was trying to cover for the teacher. Then I talked to Don Kleine, the prosecutor, and he knew the law, but I brought it to his attention that when somebody suspects that there has been abuse of a child--I'm paraphrasing--they are to immediately give notification. And these teachers knew, but they wouldn't say anything. And I asked him, why wouldn't he put them on the stand? He said, well, they have said they would not testify, that they would take the Fifth. I said, fine, what does it show the community, that teachers are going to take the Fifth in a case involving one of their colleagues molesting these black girls? He wound up ultimately being convicted. But the teachers were complicit. So when people come to me telling me about teachers, I don't want to hear it. I've seen too many times when teachers themselves were the abusers. So I get to see the topside of the garment; I get to see the underside of the carpet. I still do not want to see a system twisted. And you're getting an emotional appeal. I'm kind of surprised of Senator Morfeld's approach, but he voted for this bill in committee. I did not just arrive at this position; I have never supported this bill. I believe in systems. That doesn't mean I think they are always right, but a system should be that process by which justice will be done, even if there's not somebody like me to hound, harangue, embarrass judges and prosecutors. I'm not going to be here all the time. We have to build into the system, to the extent that we can, the possibility, I would like to say the probability and likelihood, that objective justice is going to be delivered. I could give you some tear-jerking stories about things that the county attorneys have done. That's not the way I want us to make laws. You probably are going to support this bill. Now, if I adopt the attitude toward the other bills that are going to come before us that you all are adopting on this one, you wouldn't get a thing done the rest of the session. We're hearing anecdotes, we're hearing what-ifs, supposes, and yet it's a system that has been in place...when I say eons I'm exaggerating. I'm using a superlative, like the President, to make a point. The system is in place. Not every defense lawyer is what he or she should be... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CHAMBERS: ...not every prosecutor, not every minister. How many of you all are condemning the Catholic Church because of the vast number of documented cases of child abuse

Floor Debate
March 12, 2018

at the hands of Catholic priests? Why don't you do away with the confession? Why don't you do away with the altar boys? Why don't you do away with all of those things where children are being hurt and you all don't talk about it? Then you're going to come in here with a bill like this and you're going to look down your nose and say, well, this, that, and the other. But you don't show that uniform concern for children. If the ones that you are afraid to condemn are doing it, you don't want to hear it. But you're going to hear it from me. And you can't stop me from saying it. Now, the World-Herald and the Lincoln Journal Star are not covering the trial of Cardinal Pell in Australia, so I'm going to have to find some other news outlets to keep me posted on what that scoundrel has done. Bernard Law had so much complicit... [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Crawford, you're recognized. I believe this is your third opportunity, Senator. [LB589]

SENATOR CRAWFORD: Thank you. Thank you, Lieutenant Governor. And thank you, colleagues, for this conversation. I want to come back to a few of the comments that have been made and again just want to clear up what LB589, particularly with the amendment that's going to be coming after we address the committee amendment, does. LB589 as amended focuses on putting protections in place when we do depose a child. And this is a tough case. Again, we want to both protect the children and we want to protect truth and justice, and putting protections in place when a child is deposed is a good middle ground to try to make sure that we're doing this. Again, LB589, as amended with the amendment I'll be having coming up in a minute, does not prevent a defense attorney from having a deposition with a child. It does not. Depositions of any witness are already discretionary, but it's the case in our system that they're pretty much asked for and offered without opposition. And it has been very rare, one of the county attorneys that I talked to said she had only seen two cases, where a motion to quash a deposition for a child had been allowed. So they're routinely asked for, routinely granted. This focus as we have in LB589, particularly as amended, is an example of a middle ground that also is supported by a Wisconsin law journal that, again, I talked to people on both sides. They have a nice article that lays out both sides in terms of the concerns of the defense, the concerns of the prosecutor, and says that providing protections like having the defendant not present, having time limits on the deposition, and having questions and some limit on scope of questions are important protections in that case. Another important piece of evidence that we can look at is evidence that we have from exonerations. So, colleagues, if it was the case that some protections in place or restrictions on this deposition process led to false justice, then those states that put some kind of protections in place or restrictions in place should have higher rates of exonerations. They should get it wrong

Floor Debate
March 12, 2018

more often and have to reverse. But in fact that has not been the case. So in this recent study it talks about the fact that statistics--we've been asking for numbers, so I've been looking for additional statistics to help you feel more comfortable with this important protection that we need to put in place--and it talks about a report published by the National Registry of Exonerations showed that between 1989 and 2012, 21 people were exonerated in Wisconsin. And then it also talks about patterns in states and it says the importance of taking this middle ground. This notion is supported by statistics that show that eight states that allow criminal depositions, of those eight states only one state appears to be in the list of ten states with the most exonerations. So there is no pattern, really, when we're seeing exonerations in terms of restrictions on pretrial depositions. And so I think that's an important piece. And, again, what LB589 does now with the amendment that's coming is focus on those protections. And if you look at the language, there was one comment saying it was also about civil trials. If you look at the language, it's very clear. There's a statutory reference as to when forensic interviews are conducted pursuant... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CRAWFORD: Thank you, Mr. President,...to section 28-728. And if you look up that statutory reference, you're going to see that that is about these criminal trials, not about civil prosecution, civil cases in those cases. So again, I urge you to recognize that the emphasis of LB589 is to strike a middle ground to put in protections to make sure that we're trying to have a setting where a child can be treated as a child but the truth can be pursued and there can be protections like having the defendant not in the room. We don't specify what every county has to do. We leave some discretion, so no doubt some counties will be more aggressive in protecting...in putting these protections in place than others. That will help us learn in terms of what works and what maybe isn't as protective. And I do hope there will be social scientists, criminologists who study this and help us learn and make sure we're continuing to both... [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

SENATOR CRAWFORD: ...pursue justice and protect the children from an added trauma. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Morfeld. [LB589]

SENATOR MORFELD: Thank you, Mr. President. I'm going to continue on with Bailey's story. Just to give some context: the questions that were asked in very condescending ways, eyes were rolled, hands were tossed up, and the entire time she had the eyes of the man that brutally raped

Floor Debate
March 12, 2018

her glaring at her. At one point she was literally thrown an envelope and told to open it. Inside were naked photographs of a then 14-year-old Bailey. I was accused of gifting these photos to my coach to try to seduce him. She was then forced to look at each and every picture and explain to the defense attorney why she would gift these photos to her coach, when this was obviously not the situation. She was forced to give her coach these photos when she was 15, and they were by no means a gift. She is now 21, a senior biochemistry major at UNL, and will be attending dental school in the fall to fulfill her dream of becoming a dentist. She finds her strength through putting her efforts into helping current and future victims. She would be lying if she said that the court process gave her closure. The only reason that she does not regret coming forward was because the abuse stopped, and had a chance to help future victims. The possibility of helping others is the only thing that keeps her going. If she would have known that she'd been treated so cruelly by the defense attorney and put in positions of allowing him to do so, she's confident that she would have not proceeded with the court process. It is difficult for her to encourage other girls and boys to disclose their abuse when she knows how much extra suffering can come from the court process. She asked that you support the bill. She was only...she was 18 years old and a very strong girl when she went through this. There are children that are younger and have endured much worse, and she can't even fathom what it must feel to go through the process. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Morfeld. Senator Wayne. [LB589]

SENATOR WAYNE: Thank you. Will Senator Morfeld yield to a couple questions? [LB589]

PRESIDENT FOLEY: Senator Morfeld, would you yield, please? [LB589]

SENATOR MORFELD: Yes. [LB589]

SENATOR WAYNE: So underneath the amended version of Crawford's bill, I would file a motion as defense counsel, go before the judge, and then I would still be able to have that same deposition that you were just referencing. Correct? [LB589]

SENATOR MORFELD: Yes. [LB589]

SENATOR WAYNE: So nothing in this bill would prevent that attorney from doing what they did in your letter. [LB589]

SENATOR MORFELD: But there could be protection orders that are put into place, depending. It's one more layer of discretion for the judge to decide. So you're... [LB589]

Floor Debate
March 12, 2018

SENATOR WAYNE: But those... [LB589]

SENATOR MORFELD: ...so you're correct. [LB589]

SENATOR WAYNE: Correct. So those protection orders relate to people outside of those parties being able to see the deposition. There could be some protection orders regarding limiting the scope of what those depositions could be. But as it comes to the nature of enticement and the photos, which I would agree would probably not be appropriate for...at least I wouldn't cross-examine that way or depose somebody that way, nothing in this bill would prevent that from happening. [LB589]

SENATOR MORFELD: It would create some additional safeguards, but you're correct. In the end, nothing would prevent. [LB589]

SENATOR WAYNE: Thank you. [LB589]

SENATOR MORFELD: Thank you. [LB589]

SENATOR WAYNE: That is the fundamental issue with the bill is that those safeguards are currently in place by a prosecutor filing a motion to quash going for a hearing, and that same hearing would take place underneath this current bill that is requiring the hearing. Why is the requirement more important? Because today, colleagues, I wasn't at the budget hearing because I had court. I usually try to schedule all my courts at 8:00, 8:30, which is why I walk in here at 9:30, because they're usually 15-minute hearings. We had to continue it, and it was Judge Dougherty so you can verify this if you want to call him, and we looked for a half hour to finish this hearing, a half-hour slot. That got pushed all the way out till April 2...I mean April 12. I am now 30 days out on a custody dispute for just a small evidentiary hearing. Now imagine if I have to have a hearing. To go through all of this evidence and go through all of these factors, we're talking 60 days to 90 days. When actually last time I was here and we talked on this bill, I did call judges and say, if I wanted an hour block how far are you out? Sixty to ninety days. Juvenile court? Ninety to a hundred and twenty days. So if there's a juvenile crime and I have to have this hearing before I can depose whether or not to go forward or not, here's what happens in a criminal hearing. I have to waive Sixth Amendment rights now because the burden is no longer on the state to have a speedy trial because I can't just simply file a deposition. I have to file a motion. And while that motion sits, speedy trial doesn't run. So if I'm 90 days out before I get that hearing, my client has three more months on his six-month limitation constitutional guaranteed right. This extra hearing will require my clients to have to waive, or give up, their right to a speedy trial, at least in Douglas County, because there's no way that I could have these hearings within 30 days. By the factors that are listed right now, that is at least an hour

Floor Debate
March 12, 2018

evidentiary hearing, unless the prosecutor walks in and just agrees and says, yes, they have a right to depose them. Then we have a hearing for no reason, which is also a problem. We're wasting court's time. Again, the process is simple. And there's more to this. If it's an actual rape victim or a sexual assault victim and there's some other things going on, we have 404 hearings, we have 414 hearings before we even get to trial. All those are done in court, in court. But all that goes away when I depose... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR WAYNE: ...somebody and I say...I go back to my client and say, this a credible witness; I think you better take a plea. Or I go to the prosecutor and say, this witness didn't even hold up on these easy questions; there's no way you're going forward. You're right, Justin; we'll do a third-degree assault; we'll do a second. And we plead out. That's how it works. The more information you have up-front, the better you can serve your client. But the problem I'm having in Douglas County with this bill is I have to waive Sixth Amendment rights--the right to a speedy trial. We shouldn't have to waive Six just to get a deposition. We shouldn't have to. We can do better. We currently have a process in place. I haven't heard anybody complain about it. And I would vote...I would hope you guys would vote red. I'm not used to saying that. I'm always saying I'm voting green. Vote red on this bill. Thank you. [LB589]

PRESIDENT FOLEY: Thank you, Senator Wayne. Senator Vargas, you're recognized. This is your third opportunity. [LB589]

SENATOR VARGAS: Thank you, President. Colleagues, I think we've heard a lot of different pieces of information today. I think the first is--and I appreciate Senator Crawford starting to bring some of the data pieces--we are still not receiving data that is specific to the problem we're trying to solve, which is trauma and protections. If we don't have data that is telling us that there is a need to further protect a child in these processes, then why are we creating additional systems to then make it more difficult for fair due process to exist? The other question I have and that I'm trying to come to terms with is if there is truly a problem with trauma, what are we doing to ensure that those that are involved in every single process of a deposition, a pretrial deposition, are receiving the training that they need to ensure that they're creating an atmosphere that is making sure that a child is welcomed and safe, and that we're immediately going to the assumption that they're intentionally creating trauma and that the whole process is doing this? Colleagues, that is a very, very dangerous way to go down when we're drafting or we're creating legislation that is going to make the assumption that something is inherently wrong, that the actors in part...taking part in this process are inherently doing something wrong without information telling us that. And we're setting a precedent by putting this in that we will do whatever it takes to protect an individual without any disregard for the process that is fair and

Floor Debate
March 12, 2018

right and deserved to each individual that is in this trial. The other question I have or the concern I have is on, at what point do we stop? And I brought this up, that there's protections for juveniles. If we're going to make assumptions on what's best to protect certain individuals or youth, why are we not extending that to other different, you know, different types of instances for children or for youth under the age of 18? And unfortunately, we do, do that and there's unintended consequences. We make assumptions that we're protecting a juvenile youth, and as a result what's happening is we're actually creating more harsher sentences for them. I'm afraid of the unintended consequences that are going to come as a result of pushing this forward. If we can, one, currently still ensure that there are some protections in place, there's latitude in courts; two, there's research--we're not seeing the research concerns that are telling us this is inherently a problem, we're searching for the problem, and we don't do that here, that's not what we do; three, we're continuing to hear that, yes, there are professionals, people that have expertise in this field, that are saying, maybe the Bar Association, that there are best practices to make sure to protect the child. This may be one of them. But we also have professionals in the field, defense attorneys, who have...are members of the Bar Association who have gone through law school and are currently practicing. And those same individuals are impacted and believe that this is taking away more of the due process for the people that they're so-called trying to defend. It's not so black and white to say that one is right and the other is wrong. It's also not so right to say that one is trying to protect a tool in the toolbox or protect some piece of something they're trying to do, when in reality they're trying to protect the process. That's why they exist. That's why they're publicly funded. And I'm afraid of what we may be doing if we are going down this pathway of defining what protection is going to be without trying to think of some other alternative precursor pieces of legislation... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR VARGAS: ...that are going to improve training, potentially, for all actors that are part of this: maybe collect data and make sure that we're actually identifying problems, maybe looking at the different advocates, the different systems that are in place, and seeing where there may be a drop-off that may be inherently creating trauma or not; seeing what are some of the competencies that are leading individuals to not potentially induce trauma where we good public defenders, good defense attorneys that are actually doing what they're supposed to that are not leading to some of these outlier situations that we're hearing, because inherently we are here to try to solve the inherent problem. And I am still looking to identify that problem, and I'm afraid that we are trying to create a solution that is binding the ability for some individuals to do what is their only job, which is to defend individuals. Now, I will be looking forward, and I'm going to be... [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR VARGAS: ...keep searching... [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

SENATOR VARGAS: ...for more data points that tell me that this is a problem here,... [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

SENATOR VARGAS: ...here in our counties,... [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

SENATOR VARGAS: ...here...thank you very much. [LB589]

PRESIDENT FOLEY: Thank you, Senator Vargas. (Visitors introduced.) Senator Chambers, you're recognized. This is your third opportunity, Senator. [LB589]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I will, without reservation, acknowledge that there are bad lawyers, and these others will not acknowledge without reservation that there are bad prosecutors. I'd like to ask Senator Crawford a question or two. [LB589]

PRESIDENT FOLEY: Senator Crawford, would you yield to questions, please? Senator Crawford. [LB589]

SENATOR CRAWFORD: Yes. [LB589]

SENATOR CHAMBERS: Senator Crawford, how many public defenders did you talk to during the handling of this bill, if you can recall? [LB589]

SENATOR CRAWFORD: Sure. So when we first introduced it in the previous biennium, we had...I had conversations with some public defenders, as well as representatives of the public defenders association at that time and... [LB589]

SENATOR CHAMBERS: But so my time won't go,... [LB589]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR CRAWFORD: Sure. Sure. [LB589]

SENATOR CHAMBERS: ...most of your contact would have been with the prosecutors, the Attorney General... [LB589]

SENATOR CRAWFORD: But we did also meet...I did also meet with a representative of the defense attorney and I've talked to defense attorneys. I called Tom Riley twice this week. So I have been in conversation with them as well. [LB589]

SENATOR CHAMBERS: Did...this Project Harmony, is that a nonprofit group? [LB589]

SENATOR CRAWFORD: I think so. [LB589]

SENATOR CHAMBERS: Do they do what they do for free, or is there a fee? Are they paid when they carry out this activity? [LB589]

SENATOR CRAWFORD: I don't really know about the payments... [LB589]

SENATOR CHAMBERS: Okay. That's... [LB589]

SENATOR CRAWFORD: ...and what gets paid. [LB589]

SENATOR CHAMBERS: I don't want to grill you. I thought you might know. [LB589]

SENATOR CRAWFORD: We fund them some, so there's some government funding to them as well. [LB589]

SENATOR CHAMBERS: Okay. Members of the Legislature, the cops can be there, the prosecutors can be there. They can feed questions to the one asking the child. It's tilted that way. You all think it's all right. That's because you all don't think bad things happen. I know they happen, but you don't believe me. You know when you believe me? When you're in trouble and you need somebody who will look at your issue, take time and study it. Then what I say carries weight because you need it. Other than that, what I say is like talking to that wall, and I know it, but I'm going to put it on the record anyway. You all, if you had problems, would want to make sure that systems, when they're built, they're going to be administered by human beings. And the system really, in the final analysis, is no better than those who administer it, just like a political system. But you try to create the system so that when better people come along they have the

Floor Debate
March 12, 2018

wherewithal to utilize it in a way that brings justice. Those things mean something to me because I'm the member of a group where justice is the exception to the rule for us. That's why I spend so much time talking about justice and the need to make sure the system, first of all, is in place, then try to get people who are going to administer the system to do so. You think I like bringing complaints against judges? I'm distracted by this complaint I'm writing against Kelch now to get his law degree. You all don't care about that, but I do. It's one seamless web to me, this concept of justice. You all take bits and pieces today, three weeks from now something else. It's on my mind all the time. You hear that song "Georgia On My Mind"? Well, in a sense what happens to black people in places like Georgia keeps Georgia on my mind all the time. You all don't think about it all the time; you rarely think about it. Then you have people scurrying in here, you scurry out there, and you're trying to get words on a paper to say a certain thing, and I look at the damage that's going to be done. But it makes you all no difference because it's not going to happen to you and it's not going to happen to yours. So I'm going to battle and I'm going to fight this bill to the extent that I can, and you all can do whatever you're going to do, and we'll just battle it out and see what the outcome is going to be. But I'll not vote... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CHAMBERS: ...yes for anything on this bill unless it's a motion to bracket or a motion to kill it. I have no interest in trying to do anything with this bill, because ultimately it's flawed. It's going to operate in a flawed way. And because I believe that, there's no way I can say I will help create a situation where they kill you softly. When the result is that you're dead, not killing softly, it doesn't matter whether they fry you or whether they boil you, if you have to die by disease, cancer or tuberculosis. I'm looking at the result, and you all are building flaws into a system. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Chambers. (Visitors introduced.) Continuing discussion, Senator Pansing Brooks. [LB589]

SENATOR PANSING BROOKS: Thank you. Thank you, Mr. Lieutenant Governor. Again, this is a very difficult bill because, of course, we all care about children, or most of us do, I think. And I'm recharacterizing that. But we also...you know, last year we passed some bills, and one of them I led, on trafficking and we have worked hard to make sure that children are protected when they have...when they're sexually assaulted or they're trafficked. We have increased some penalties, so I can't be viewed as not supportive of protecting children who are vulnerable and who are sexually abused or sexually assaulted. But on the mean...on the other hand, we have to work very, very hard to protect our constitutional protections, and I am worried that we continue to piecemeal justice. We continue to say, oh, well, we have to protect the children at all costs and we can't worry quite about the defendant, because remember, my friends, that you are innocent

Floor Debate
March 12, 2018

till proven guilty. But again, I...you know, we're talking about children, and this continuation of 67 percent of kids across the state are getting attorneys and that means that one-third don't get counsel. We have all sorts of issues. And we have now added sexual assault cases, and I just...I have a lot of issues with this because, you know, we've heard the stories on all sides. We've heard people saying, well, this is...you know, we hear terrible stories. Gosh, there's supposedly one really bad actor that was a public defender who made somebody cry. I would argue that the prosecutor should have taken that...stopped the interview at that point or the deposition and gone to the court and said this child is being bullied. And so to blame it on the public defender rather than the fact that the prosecutor didn't stop everything at that moment, to me, doesn't make any sense. So what we're doing is trying to protect the prosecutor's ability to charge and to have an easier time. We have got to watch the Sixth Amendment, the right to confront. We have to protect our kids. But, you know, when you look at it, and I've spoken with Tom Riley up in Omaha, the public defender, about the fact that, you know, Project Harmony allows multiple interviews. So I'm really not sure what we're doing. If you have multiple interviews, to presume that there is no effort to find out specific information in a specific way, it doesn't make any sense. I think our Child Advocacy Centers are really valuable and do a lot of great good in our state. But the police department is also...has people out there helping to ask the questions, and there are no public defenders out there making sure that their questions are asked as well. So we're getting one-sided information on those depositions. And then to have to go to a court or wait until the hearing or to then file a...have to have some sort of preliminary hearing, it's not...you know, we have to continue to protect... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR PANSING BROOKS: ...the fact that people are innocent until proven guilty. And this is...I appreciate that Senator Crawford has worked on an amendment. The amendment I will support because it is certainly way better than the bill, in my opinion. But again, I am concerned about the entire bill. I wish she would do an interim study. If this goes down then I would like to help work with her on an interim study over...in the summer to find out how we can best protect children but also protect people's constitutional rights. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Pansing Brooks. Mr. Clerk. [LB589]

CLERK: Mr. President, I have a priority motion, but if I might, some items. Senator Ebke would like to print an amendment to LB299; Senator Chambers to LB873. Senator Linehan offers LR344; that will be laid over. (Legislative Journal pages 930-937.) [LB299 LB873 LR344]

Mr. President, the priority motion is by Senator Chambers and that would be to recommit the bill to committee. [LB589]

Floor Debate
March 12, 2018

PRESIDENT FOLEY: Senator Chambers, you're recognized to open on your motion. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, what I'm doing indicates what a system makes possible. I am following the rules. There are some people who don't like what I do. They would never do what I do, but they can. What I should say is they may, they're allowed to. But they'll sit and swallow spit and grumble, but they won't get into the arena and fight. But I will. And if it's me against the world, that's just the way it's got to be. I was talking to somebody at one of the hearings and I asked this person, if I say two plus two equals four, is that wrong or right? The person said, wrong. I said, if a thousand people said that is right, does that make it right? No, it's still wrong. Those who support this bill, in my opinion, are wrong, not in a moral sense, not in an ethical sense. They are inaccurate. They are incorrect and they are not looking at the far-reaching impacts that a system will be involved in when you weaken it and corrupt it and you put a thumb on the scale for the prosecutors. You all did not even react when I read what Corey O'Brien had done in open court. Well, it was in judge's chambers in the sense of it being where they are arguing before the Supreme Court. It was not a trial. The judges of the Supreme Court were there and they pointed out how wrong Corey O'Brien had been. Then the Attorney General, from what I could gather from the article, assigned a woman to try to deal with what he had said. Women are throwaways. And then they get you all to do the dirty work for them, and it will be done. And you're not going to bring this thing to me about children. I've got four children of my own. I have grandchildren. I have more nieces and nephews than I can number. I don't even know all of them. And I also have people whose children want to say that I'm their father even though they know that I'm not. They want to say that I'm their uncle. I don't go to them and give them things and say, say this. So when it comes to children, I look at all things. You know what I look at? I look at how we have examples of these children who have these seizures, and this Legislature doesn't care about those children. Their parents tell you what they go through. They bring children here who wear helmets. They're pushed in wheelchairs. And you all will stand up here and say, do...the...the...the Attorney General wants this, Project Harmony wants this. What can we do for those children? But you all won't support cannabis. Why don't you do that? Because the Attorney General said don't do it, and you don't do it. Then you think I'm going to listen to you say I don't care about children? You're out of your mind. I get stopped in these halls by family, I don't even know who the people are. I don't know their children. They want to take pictures of me with their children. When there are groups of children in the hallways of this building, there are staff members who come out of their office because I and those children are interacting. I don't hold a gun to those children. You all don't have that happen to you but you can come here and you can style; you can pretend, and that's what it is. That's all that it is. Or you're very shortsighted, narrow-minded, and shallow. I'm talking about children who suffer pain, who have seizure after seizure after seizure. And because some man sitting in the Attorney General's Office, who's got people working for him who are unethical, so unmindful and hardened to their lack of ethics that the Supreme Court judges do what they don't ordinarily do: raise the issue in the courtroom. And then the Attorney General

Floor Debate
March 12, 2018

says he and this person hold to the highest ethical standard, and you all buy it. That Attorney General was trying to import illegal drugs into this state. You all didn't say anything and you won't say anything. You won't even be here. Look how empty this Chamber is now. But there are people out there watching. And I get letters from the people. They're glad that I'm here. And, but for me being here, there are issues that would never be discussed. And I didn't do it just this session. This is what I've been doing ever since I've been in this hellish Legislature. This is not a good place to be. This is not uplifting. This is not...does not set a higher moral tone for the people in this state. They get to watch the work of the lobbyists, the county attorney, the Attorney General, and the Governor. I also consider and have in my mind what the Governor is trying to do with Title X. You all would say, don't bring that up; that doesn't have anything to do with this. It has something to do with women and the health that they need and little girls. They're human beings. They're not human beings only when an issue that comes up and it refers to them specifically. They exist all the time. They exist now. They're going to be harmed by this, and you all will go along with it because you have a Governor who hates women. And you don't want to say that, but I judge by the conduct. You show me the way you treat somebody and I will know how you feel about them. You all are afraid, a bunch of cowards, and your conduct gives you away. You will not stand on issues that mean something. A woman cannot get healthcare because you got a Governor over there, a rich man's spoiled brat son, and he tells you what to do. The people on the Appropriations Committee going along with him. I'm going to get some figures because Senator Watermeier and some of the others indicated how many of those Nebraska is a pro-life state license plates were being sold. I want to get a report on how many of them are being sold. I haven't seen any of them but I'm sure some of them are out there. I see a lot more mountain lion plates. So does that mean people care more about mountain lions than pro-life issues? I don't go that far. I don't say that. I don't know why people do whatever they do. But if you're going to deal with statistics, you have to go by what's out there, what you can count and quantify. And then after you've quantified it, you evaluate it, you extrapolate, and then you try to draw conclusions. And most people will draw a conclusion based on whatever their political, ideological, or religious persuasion is. That's why I don't claim religion, I don't belong to a political party, I don't join organizations. I don't belong to anybody. I do what I think is right. I work with anybody who I think is doing the right thing. But I also will not do what I believe is wrong and I will not stand for wrong, and this bill is wrong. You all can ram it through, but it's not going to be done easily. I have probably fought more bills this session than I have in any other session, and obviously I'm older now than I've ever been. In a minute from now I will be older than I ever was. But age has nothing to do with it. Integrity to me is more than a word. So is relentlessness, persistence, and hardness. A hard life makes a hard man. You all will not see any give in me. And when we have these late nights, I'm going to have to disappoint you because I'm not going to wilt and fold, and I'm not going to sit down in the chair, and I'm going to talk about these kind of issues that you all would rather not hear. And you'll be in your narrow world with your narrow little issue, but you won't broaden it to include all of the people who may be

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

affected by it. How many women will be affected by what's being done with Title X? That's not even state money. That notion shouldn't even be in a... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CHAMBERS: ...an appropriation bill. You said time? [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. And I'm going to talk all my times on this. Then I might make some more motions. And you all let your system of governing be corrupted by that man in the Governor's Office. He owns you. Where is your integrity? Where is it? And whoever are in their offices, I'm talking but you all, all of you. You're cowards. And that Appropriations Committee is not worth a penny. What are they doing it for? The Catholics? Is that what it is? The Governor has got something on them? Or are they just lily-livered, spineless cowards? I think they're cowards. But we're going to have a chance to battle that, too. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Chambers. Continuing discussion, Senator Watermeier. [LB589]

SENATOR WATERMEIER: Thank you, Mr. President. Good afternoon, Nebraskans. I had my light on earlier there. I was going to call the question. I don't want to do that on the first time up on a recommit to the committee, and I'm going to be turning my time over to Senator Crawford here in a minute. I did sign on to this bill last year and, I tell you, I want a shout-out to the Judiciary Committee. I think they did a lot of hard work on this. The bill may not have been ready, but with this Judiciary amendment of AM438, I'm fully supportive of LB589 and the work that they do behind the scenes. I do care about the children and the process that they have to go through and how difficult that must be. I cannot imagine what that's like. But I would try to help that process every step of the way. And with that, I'll submit my time to Senator Crawford. [LB589]

PRESIDENT FOLEY: Thank you, Senator Watermeier. Senator Crawford, 4:15. [LB589]

SENATOR CRAWFORD: Thank you, Senator Watermeier. And thank you, Lieutenant Governor. And I want to emphasize that I understand that everyone engaged in this debate cares about the children and I'm not in any way wanting to imply that people on either side of the debate care about children more than people on any other side of the debate. We're all very...well,

Floor Debate
March 12, 2018

I hope that we're all very concerned about trying to make sure that when children go through this trauma that we do everything we can to protect them from further trauma and make sure that we're also protecting the rights of the accused. Those are both critical pieces. The rights of accused is a critical protection. Protecting Sixth Amendment rights is critically important. Colleagues, there is nothing in LB589 that restricts your constitutional right to face your accuser at trial. And what we've seen in other states that have enacted bills stricter than LB589 is that it does not cause more cases to go to trial. So it's not the case that it creates that unintended consequence. That has not been what has happened in Vermont. And actually what we heard from multiple witnesses...you heard Senator Morfeld read one story, but that's not the only witness who came forward to say the deposition is much worse than trial. So they were much more comfortable in a trial setting than in a deposition. But again, in Vermont, which enacted a stricter bill than LB589, particularly as amended, they did not see more cases go to trial. Now, I also want to say that I did meet with defense attorney, representatives of defense attorney when we started this process. We worked on a similar bill two, four years ago. We started this process. I said I did not want to carry the bill unless we had those conversations to see where we could...how far we could get in those conversations before a bill was introduced. And we started with language very similar...we started with language almost identical to the language in Vermont, and after meetings with defense attorney representatives we pulled back on some of that language in LB589. We recognize that we just...this is a case where we simply were not going to come to an agreement. And I know that's the case. I mean sometimes there are ways to compromise and get to a solution, and other times there is a situation where one party who is engaged does not...is not going to be able to, and that's...and I understand that going in. It's their job to protect this tool, and that's what they're going to do. And we knew that at the outset. Even though I knew that at the outset, I still took time to meet with them to talk about how there could be some language adjustments and the adjustments that we were willing to make from the Vermont language before we even introduced LB589. And in some of those early conversations, the area of shared agreement were those protections that are now really the meat of the bill. And those protections, as soon as we get past these motions so that we can get to my amendment, you're going to see that those protections are really the heart of LB589 now. [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CRAWFORD: And they just require the judge to consider what protections to put in place to preserve justice. What the protective orders that...orders to put in place that justice requires is what it asks them to do. And so these are protections like having the defendant not in the room for the pretrial deposition, putting time limitations on the pretrial depositions, recommendations that we've seen in multiple states across the country. This is not something that's new or unstudied. It's not something for which there's no research. It's not something that needs a lot of further study. There are certain protections that can be put in place. And it is the case that a judge could decide to put those in place. It is the case that some counties put some of

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

them in place. But it is not the case that they are regularly put in place across the state, and this says, yes, we as a legislative body, we care about you taking these protections seriously and we ask you to consider putting them in place when you have a situation where a child is deposed. [LB589]

PRESIDENT FOLEY: Time, Senator. [LB589]

SENATOR CRAWFORD: Thank you. [LB589]

PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Baker. [LB589]

SENATOR BAKER: Thank you, Mr. Lieutenant Governor. I'm sensing that about everybody here has probably made up their mind. You know, when I was a freshman I got the label of being a person who always stood up to call the question, and so now I humbly put that up to you, Mr. President. I call the question. [LB589]

PRESIDENT FOLEY: Out of order. Senator Crawford, you're recognized. [LB589]

SENATOR CRAWFORD: Question. [LB589]

PRESIDENT FOLEY: Senator Vargas, you're recognized. That's out of order. [LB589]

SENATOR VARGAS: Thank you very much. So I did have a few questions for Senator Crawford. Because I'm trying to get a better understanding, I've been looking over some of the materials. Senator Crawford, can you talk to me a little bit about the strategic plan, the 2015-2020 strategic plan for victims and survivors of crime, and elaborate? I think what I have here is legislation to reduce the occurrence of child depositions is a recommendation of the...Nebraska's strategic plan. [LB589]

SENATOR CRAWFORD: I have just a couple of pages in my stack of pages here. I do not have a full copy of the strategic plan in front of me, so it depends on what your question is. I may or may not be able to answer it. [LB589]

SENATOR VARGAS: My question is, when you're referencing that this is a recommendation of the strategic plan, was this the key recommendation of the strategic plan? Where was this in terms of priorities, given strategic plans have many different priorities, things that they're timetabling and sort of what they want to do over the next five years? [LB589]

Floor Debate
March 12, 2018

SENATOR CRAWFORD: So there's one section of the strategic plan where it is number 2, child testimony, where they talked about the focus group evidence that I talked about earlier, and talking about the concern they have about the inability of a child to testify that leads to the case being dropped. And then there's another place in the strategic plan where it specifically mentions the bill that we had on a similar topic last time by bill number and says it's an important priority. [LB589]

SENATOR VARGAS: Okay. The reason why I ask is I was trying to read as much of this as possible and find...so I just found, because you...I was trying to figure out where this lives. For this issue to...were there other recommendations that were in the strategic plan? [LB589]

SENATOR CRAWFORD: I'm sure there were. [LB589]

SENATOR VARGAS: Is there a reason why some of these other recommendations that have to do with data or have to do with training and support or have to do with larger alliances or...why weren't some of these considered as precursors to this specific piece of legislation? [LB589]

SENATOR CRAWFORD: I can't answer what might have led people to choose or not to choose to pick up some of these recommendations that's in the strategic plan. This is an issue, like I said, that we've been working on for multiple years in terms of thinking about this issue and thinking about how to strike a middle ground in this...on this issue. And so I was...I saw that it is also the case that this was an issue that was important to the strategic planning committee. [LB589]

SENATOR VARGAS: And do you...and to your knowledge, do we have a victim advocacy office? [LB589]

SENATOR CRAWFORD: I believe so. [LB589]

SENATOR VARGAS: We do? Okay. Do you know what the responsibilities of our victim advocacy office currently are? [LB589]

SENATOR CRAWFORD: No, I'm not very familiar with that office. [LB589]

SENATOR VARGAS: Okay. The reason why I ask is really to better understand. The main recommendation that we see in this report is that we begin with an overarching recommendation--I'm quoting this now--that Nebraska develop a statewide victim advocacy office with oversight of victim-focused agencies, related funding streams, associated data collection across Nebraska. And part of the reason I bring this up is because I hate to harp on the

Floor Debate
March 12, 2018

data. My colleagues on my...on the school board from back in the day, and I'm sure Senator Wayne somewhere is nodding his head, when I was on the school board I would ask these questions all the time because I'm trying to be as grounded in making a decision in that there is a problem we're trying to solve. And if we have some data collection that's coming through the victim advocacy office, why is it not at our disposal yet to then inform this decision? And if we do...if we don't have the data, then what can we be doing to make sure that this office or any other collective agencies can be collecting the data? Now the reason why I say that is because we do have our Child Advocacy Centers. They exist; we invested in them. They serve a purpose, and that's very important. And if there is an inherent problem with a stage of our Child Advocacy Centers, then we... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR VARGAS: ...probably need to identify where the drop-off is in evaluating when there is trauma occurring and when there isn't trauma occurring. And in this report, it actually goes into more detail into additional potential ways to ensure that we have...we're reducing child trauma specifically in this instance. And one of them has to do with additional training and support so that Child Advocacy Centers are working with an Attorney General, working with the state, and working with the entities to make sure there's more adequate training. I say that because I think that we immediately shouldn't be going to a place that's assuming the worst in the individuals that are taking part in this process. I don't want to get to that place. I don't think that's the intention, but that is what is essentially being one of the components of this argument is that there is trauma being...happening on behalf of one part of this equation, which is those individuals that are being the defendants. [LB589]

PRESIDENT FOLEY: Time, Senator. Time, Senator. [LB589]

SENATOR VARGAS: Thank you very much. [LB589]

PRESIDENT FOLEY: Thank you, Senator Vargas. Senator Chambers. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, I'm glad that Senator Vargas is going in the direction he's going because I can't do that. I'm too upset. See, I've been upset longer than Senator Vargas has been in the world, so he can look at me, in a way, and see what he's going to grow into because he has some sensitivity, some sensibilities, and he's going to get worn out going the same ground over and over, chewing the same cud over and over. Other people, see, they get tired and they go do something else, but I don't because the group I belong to have been going through this for generations, for centuries. None of you have, and you get tired of hearing it, don't you? We get tired of living it. And you cannot stand to hear it? And

Floor Debate
March 12, 2018

you wonder why I get upset living it? That's why I say sometimes you all are crazy, because if you were intelligent and you used your brains you would know that there's a much more intense living when you're going through something than when you read about it or talk about it when you feel like it. And then you can put it aside and go talk about something else, and it doesn't affect you. I don't have to be talking about it. I don't have to be around white people. I can't turn on the television or the radio or walk down the street without it being in my mind. I saw where a young black guy got the stuffing beat out of him for jaywalking and then he had charges brought against him. Then a video came out to show how he was thrown down, he was beaten, he was pleading, and all the lying cops told the same lie, all these white cops that you all get tired of me talking about. And I get tired of seeing these things happen to black people. And they happen more times than they happen to be shown, but if it's not shown then it doesn't happen. The young black kid who got shot 16 times in the back by the Chicago police, and the lying police lied and said he was coming toward the cop who started the shooting, and the video showed he was going away from all of them. And they shot him in the street 16 times. You all think it shouldn't be talked about. Let it happen to you and yours. The little things that happen to you all, you get upset about. You could not survive. You're white and you're privileged and you're favored, and you get upset. You have the nerve to lose your mind. You have the nerve to suffer depression, to suffer discouragement. And you've got bread buttered on both sides of each slice, and you cannot make it. Then you look at black people and wonder, well, what they upset about; it doesn't bother me. No, it doesn't bother you because you're on the top side of the blanket. You're standing on the board that's on somebody else, and it will never bother you. But it bothers me, and as long as I'm here I'm going to make an issue of it. And there was another issue that I wanted to be sure and mention. In Central Park there were five young black men falsely convicted of beating a white woman. Donald Trump called them savages, called them animals, said what should have been done to them. Some of them served the entire sentence that they were given. And they were completely innocent because the one who did it was found and he confessed. And that's what we as black people hear all the time. It doesn't happen to you all, and you don't care because it doesn't happen to you. Maybe I'd be better off if I didn't care about your children. I have not seen a black family come down here with a child who was having all of these seizures. Maybe the black families can't afford to get here. White people are the ones who show me their children, who show me their wounds, who let me see their bitter saltwater tears. And I don't turn away from them like you all turn away from us and some of your own kind. I wish Senator Watermeier hadn't made his little statement... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CHAMBERS: ...then run out of here. Is Senator Watermeier here? I'd like to ask him a question if he is. [LB589]

PRESIDENT FOLEY: Senator Watermeier, are you on the floor, please? [LB589]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR CHAMBERS: Maybe he is gone. [LB589]

PRESIDENT FOLEY: I don't see him. [LB589]

SENATOR CHAMBERS: But there was a question I wanted to ask of him based on something he said. But that's the way they do. They pop in here, do what they're going to do, then they pop out. And you wonder...here comes Senator Watermeier. You said I have a minute? [LB589]

PRESIDENT FOLEY: Twenty-seven seconds. [LB589]

SENATOR CHAMBERS: Twenty-seven minutes? (Laughter) Just trying to lighten the mood. I won't ask the question now because there's not enough time. I'll put on my light. Thank you. [LB589]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Schumacher. [LB589]

SENATOR SCHUMACHER: Thank you, Mr. President, members of the body. The kind of things, criminal cases, that we're talking about here are heavy-duty things. We keep increasing the penalties, tripling up offenses, habitual criminalizing, and put really, really mean penalties on things. And the only thing standing between an unjust imposition of one of those really, really mean penalties is our legal system and our trial system. There's some tools that are used. There's a trial. There's discovery. There's trying by both sides to dig out the truth. But the sad fact that remains is people lie. They lie for all kinds of reasons. Sometimes it's a messy divorce case, sometimes getting mad at somebody. Somebody...sometimes it's being part of the group or the clique. Sometimes it's for political gain. But people lie. And one of the most-effective ways of sorting out a lie is the deposition. Tell you a story: This was a case of police that lied. Three police officers come into the county attorney's office, when I was county attorney, with a report. They found a bag of marijuana in a vehicle that was owned by a local contractor. On the surface, open-and-shut case. But it didn't quite smell right for some reason. It didn't quite fit, was a noise that didn't fit into the background. And so defense counsel begins to take a deposition, and he senses the same noise that didn't fit, a sound that didn't fit. All day, all day we worked back and forth between those three officers separately, and more noise that didn't fit came out. Well, to make a long story short, they planted the evidence on this guy. We flipped one of the officers. He walked away and he testified. The other two ended up confessing and pleading guilty to planting evidence. One did time in the penitentiary; one, long time in the county jail. People lie. And unless you have the advantage of the deposition, unless you're able to prepare your case, we could send a very innocent person away for a long time. Well-meaning as this bill is, it has the potential for great unfairness. And absent any overwhelmingly clear evidence of repeated abuse by the system, it is not a good deal. And there is no such clear evidence of repeated abuse by the

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

system that require us to intervene at this point. If somebody is getting bad with a kid and harassing them,... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR SCHUMACHER: ...the defense attorney has every right to say, wait a minute, we're out of here; we're going to the judge and we're saying this attorney is being a real hind end and is badgering this kid and, Judge, order him to stop. And you know what the judge can do? He can say, stop it. All of it's tape-recorded or taken down by a court reporter so there's no ambiguity as to whether or not the defense attorney is being bad. But in the context of a world of extremely harsh penalties, and a good chance that somebody can lie or conspire to lie, this tool is needed for a just system. Thank you. [LB589]

PRESIDENT FOLEY: Thank you, Senator Schumacher. Senator Crawford. [LB589]

SENATOR CRAWFORD: Thank you, Lieutenant Governor, and thank you, colleagues. It is a sad fact that people lie. It's also a sad fact that sexual abuse is very underreported because people fear intimidation and victim blaming. It's also a sad fact that sexual abuse and sex trafficking are underreported because victims are groomed and told to fear anyone that wants to ask them to tell their story. Those are also sad facts. Those are also miscarriages of justice. Colleagues, LB589, especially with the amendment that I'm putting forward, soon as we get past the Judiciary amendments, it does not restrict the ability to use a deposition. It says, if you have a deposition and it's of a minor, we're asking the judge to consider putting these...some of these protections in place that we're identifying in statute as critical protections. Now, we've heard from others that they could already put some of these protections in place, but, colleagues, they are not in many cases. And we have...and we've heard on the one hand that, oh, this can all be taken care of. The judge can provide these protections. The defense attorney can come in and quash these cases. And then on the other hand we're hearing, if we adopt this bill, it's going to be the end of the judicial system and it's going to be a grave injustice. I mean you can't have it both ways. You can't argue that we can already do everything that's in LB589, and also argue that if we pass LB589 we're putting the rights of the accused at risk. Those can't both be true. You've got to pick a side. So with LB589, especially as amended, as amended it doesn't even have a burden of proof. It is already the case that depositions are at the discretion of the judge. LB589, as amended, says it's important, as you're considering a deposition, that you consider the fact a forensic interview has taken place. We don't say you have to prove anything to get that deposition still. I expect they'll probably still be offered quite regularly. The main change that I expect to happen with LB589 is that there will be more attention to these protections. And thankfully, in some counties, there's already been consideration of some of these protections. But the issue is stronger consideration, because we're saying we mean it. It's not just that you may

Floor Debate
March 12, 2018

put these protections in case...in place. We're saying when it is the case where you're going choose to depose a child victim or witness, we want you...the judge shall consider which of these protective orders to put in case...in place. So there's still discretion, but we're putting some weight behind our request that when a child is in that room that you consider what protections justice requires. That's what we're asking. It is, again, not limiting the access to depositions. It is saying, we're asking them to put in place what protections justice requires. And the current process already requires a motion and a hearing. And so, again, we're asking what protections does justice require to put in place, and those, I do not see how any of those protections that we have outlined in LB589 restrict any constitutional rights of... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CRAWFORD: ...the defendant or obstruct justice. Those are common-sense protections to protect the process and to protect integrity of the process and to make sure that more of those children who are victims and witnesses of sex abuse and sex trafficking can make it through the process; so that when a trial is required, they're able to make it through the deposition and through the trial and they don't drop out. So it's critical for the integrity of the process that we put some of these protections in place in depositions when the victim or alleged victim and witness is a minor to make sure we protect the integrity and justice of the process. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Crawford. Senator Chambers. This is your third opportunity, Senator. [LB589]

SENATOR CHAMBERS: Right. Mr. President, members of the Legislature, I hate to tell Senator Crawford but she's not going to get through these motions because I have some more prepared. I've been good today. I tried to leave this alone, but I couldn't stand what I was hearing. And again, I'm making clear that I am not condemning Senator Crawford for what she's doing. In fact, what I was going to do was my rendition of "Sherry": Come out tonight with your red dress on, come out, you know you look so fine, come out, moving nice and easy, girl, you make my lose my mind. Now, does it sound like I'm mad at Sherry? Huh? I'm me wherever I am. But here's what I want to say now back to what we're doing here. There was a female trooper, and I wish all the women will put themselves in this position where, as a condition to your getting a job, you had to have a preemployment physical. And the doctor made you lie flat on your back, bend your knees, have your feet flat on the floor, spread your legs so he can examine your vagina and your anus, supposedly looking for a hernia. And medical people have said that is not a medically approved, medically necessary activity. I'm trying to do something about it. I think the medical profession is trying to cover for this doctor. I filed a complaint against him. You all are dealing with the theoreticals. But the real things that are right here, you don't even touch them. We had a

Floor Debate
March 12, 2018

hearing where the State Patrol came before us, I believe it was the Business and Labor Committee, and the female trooper to whom it happened testified. And she looked at me and thanked me for what I'm trying to do with reference to this doctor. There was nobody else at that table she could thank. And she didn't have to thank me. Well, where is this concern about sex assault, sex trafficking? It's sitting right here in front of you, and nobody whispers, nobody raises a sound. But then when it comes to this system, changing it by making this appeal and this plea about what's happening in these depositions, if Senator Morfeld wasn't over there I wouldn't even mention him by name, but he read something for us that was kind of a tear-jerking account of what happened to somebody. But I should suspect these people to join me in trying to put some pressure on HHS and those people to do something about this doctor. I'm going to stay on his case and I'm going to start talking about it, maybe not every day, but to see if I can stir some of my colleagues up to do...into doing something. Or maybe the Governor will put his finger on that scale and say, hey, what that doctor did was wrong. Suppose it happened to your sister if you've got a sister. Why do we always say if it happened to a member of your family? Don't you care about people? Isn't that what we're supposed to be about? When you campaign are you honest enough to say, I'll look into this issue if it involves me or a member of my family or a friend? No. You're going to help everybody. Here's something put right in your lap and you don't do anything, you don't say anything. But I will, not to be thanked. You know why I say it and why I do it? Because I need that to have peace of mind. I didn't have to give an oath. I gave an affirmation anyway. I didn't have to affirm. I didn't have to run for this office. I chose to do it. And I have maybe an idealized notion,... [LB589]

PRESIDENT FOLEY: One minute. [LB589]

SENATOR CHAMBERS: ...but I have a notion of what holding this job entails in terms of discharging my duty. When we have people who are abused and mistreated and they cannot look out for their own interests, that's when we're supposed to step in and do something about it. But that's not what I see. I hear these preachers every morning. I could critique all their prayers. And they're tell...they're praying to you all, not to God. The Bible says God knows what you have need of before you even ask, but you go through that all the time. Is that how you cleanse yourself? That makes you feel like you don't have to do anything to correct the bad things going on around that we have the power to correct? Well, I can't join you all in that. I've got to do it my way, Frank Sinatra and I. Thank you, Mr. President. [LB589]

PRESIDENT FOLEY: Thank you, Senator Chambers. Senator Wayne. [LB589]

SENATOR WAYNE: Thank you, Mr. President. Colleagues, I just want to talk a little bit about the amendment that was offered. I think we're moving in the right direction. But still, requiring a hearing delays justice. A justice delayed is a justice denied. And so as we continue to delay it by

Floor Debate
March 12, 2018

having hearings I think are unnecessary. But when this bill was first brought up earlier this year, we talked heavily about the traumatization that a kid...or trauma that a kid or individual young person will experience by retelling the story and reliving the story. But I noticed that one of the provisions in the bill says: may appoint a guardian ad litem. Reason why that's important is because I think I'm probably the only person in here who is court appointed on multiple times as a guardian ad litem. Once you're appointed, the first thing you do...and so in this context they would appoint a guardian ad litem to be there in the deposition. What would happen at that point, first, is I would be appointed. I would do my own interview with that child. That means that child is going to have to tell me everything that happened, and that traumatization that we're trying to prevent would occur again when they tell me, according to what was said at the beginning of this bill in January, because I would have to know the facts of what I was walking into on a deposition. So once I knew all the facts, then I will sit down with the prosecutor and defense counsel to make sure that I knew what was all going on with this case before the deposition. I'm guessing, on average, that would be about a ten-hour bill. In Douglas County that's \$65 an hour, so you guys do the math on what I would bill the state...or it wouldn't be the state; it would be the county. So imagine how many more appointments we're going to have to do. And it says "may"; it's up to the judge's discretion. But if they're weighing the factors and say they may appoint a guardian ad litem, to me, if I was a judge, then I have to determine why I shouldn't appoint one. And nine chances out of ten, if I want to err on the side of caution, I'll appoint one. That means we're going to be billing the local county more money for guardian ad litem fees. I don't know what those will cost, but they would cost something significant, at least for the number of cases that we deal in Douglas County for that. But what also concerns me, particularly in juvenile court: We have way too many adults. So if anybody wants to come to the sixth floor when I'm there, sit in on one of my cases, you'll see we already have 10 to 12 adults sitting around all saying what's in the best interest of the kid. But we're in an adversarial setting, so not everybody agrees. But what concerns me even more when I read the amendment now is that the judge may appoint an advocate to sit in on a deposition. I've never heard of that, nor have I ever seen that. When there is a deposition, the reason why the deposition is just the child alone with the prosecutor...and in some cases they already have a guardian ad litem if it's an offense where they've been removed from the home, because maybe it's their parents or their parents should have known. But I've never had a nonattorney sit in a deposition. Now you want to talk about intimidation factors; if they advise that child that if he or she lies or misleads or gets confused, that that person may not go to jail or, more importantly, they could advise that if you mislead, then you could be charged with false reporting. I've just never heard of a nonattorney sitting inside of a deposition. I've never... [LB589]

SPEAKER SCHEER PRESIDING

SPEAKER SCHEER: One minute. [LB589]

Floor Debate
March 12, 2018

SENATOR WAYNE: ...I've never seen it. So to have that in a bill really concerns me, because now we have advocacy groups in there who aren't under the same ethical obligations as a member of the court. So when I'm in a deposition with a child, there are rules that I have to follow as a attorney that no advocacy group has to follow. There are ethical obligations of certain things I can and cannot do as it relates in juvenile court that a ethical...or a advocacy group does not have. They could run out and tell the press what just was said. I can't in juvenile court, because juvenile, although it's open to public, it's strict guidelines we're not supposed to talk about those cases because it deals with juveniles. So there's some concerns that I have about the advocacy part, because advocacy should not be involved when we are talking about a... [LB589]

SPEAKER SCHEER: Time, Senator. [LB589]

SENATOR WAYNE: Thank you. [LB589]

SPEAKER SCHEER: Thank you, Senator Chambers...or Senator Wayne. Senator Vargas, you're recognized. [LB589]

SENATOR VARGAS: Thank you very much, President, Speaker. Senator Wayne, would you yield to a few questions? [LB589]

SPEAKER SCHEER: Senator Wayne, would you please yield? [LB589]

SENATOR WAYNE: Yes. [LB589]

SENATOR VARGAS: Can you talk to me, in your field, what are going to be some of the consequences, if we enact these amendments and LB589, to the process, to the end game of what's going to happen to a child? Or what's more likely to happen? [LB589]

SENATOR WAYNE: Well, in my opinion and from talking to other defense attorneys, that child would have to testify in court or in front of a judge, what we call in camera, because at some point, if I'm doing my job, I'm going to make sure that child testifies under oath what occurred. So more likely trials are going to happen or, more likely, more 404 hearings will happen. [LB589]

SENATOR VARGAS: And what's a 404 hearing? [LB589]

Floor Debate
March 12, 2018

SENATOR WAYNE: A 404 and a 414 hearing is where prior bad acts, like what the victim may have done previously, different things that the victim had done, especially around sexual assaults, you have a separate hearing in court where the judge determines whether or not some of those things can come in. In a deposition, you can ask those questions ahead of time and whether or not you even want to have a hearing. And most hearings are not held because they don't go that far after a deposition. [LB589]

SENATOR VARGAS: Do you know of other training that exists for public defenders or for, you know, public advocates to ensure that there's less trauma happening if there is trauma happening? Do you know of anything to that effect, any training? [LB589]

SENATOR WAYNE: Yes. [LB589]

SENATOR VARGAS: Okay. [LB589]

SENATOR WAYNE: So we have continuing learning education where most criminal defense attorneys and juvenile attorneys go where we specifically talked about how to interact with children and how to interact with victims. Why that's important, because the stuff you see on movies are not real. So in a jury trial, how you act with that kid and how you interact with that kid plays just as important as whether your person is guilty or innocent. [LB589]

SENATOR VARGAS: So there are some pieces of training happening? Do you know, the CLEs, is this to all lawyers? Is it required of prosecutors? [LB589]

SENATOR WAYNE: All lawyers are required. And especially if you're in juvenile law in Omaha, most independent attorneys specifically have guardian ad litem training, because we take guardian ad litem training classes and they deal exactly with all of this stuff. [LB589]

SENATOR VARGAS: Okay. Colleagues, the reason why I ask is, one, there are some base-level trainings that are happening. CLEs do exist. The other reason why I ask, it sounds like there isn't more trainings that are specific to trauma that are required of all entities that are in this world of predepositions and working with children, or youth under the age of 18, more accordingly. And I think that's a good place to start. Now I've voiced my opposition to this and more pragmatically from a, if we're going to go down...if there's a problem and we need to solve it, are there other avenues to solve this problem? Sometimes we solve our problem with putting some more harsher penalties, but are there things that we could have been doing ahead of that to ensure that there is...there are fewer if there are instances? And if we do not have enough data to show those instances, how do we...how can we make sure to collect the data and assess this and oversee it to

Floor Debate
March 12, 2018

ensure that we are seeing if the problem exists and to what scale, as opposed to doing something that might have further unintended consequences? And to Senator Wayne's point, it might create more opportunities for children to be in trials, and trials can also be potentially traumatic. If we're saying that one part, the predeposition, can be just as traumatic, this other part of this process can also be traumatic. I still believe that there's something inherently we're trying to solve. And I understand... [LB589]

SPEAKER SCHEER: One minute. [LB589]

SENATOR VARGAS: ...the best of intentions, that we are trying to protect children. And I'm saying this and I've been a broken record: I want to make sure we're protecting the due process that currently exists, because we are inherently changing, making it easier or harder for due process to exist. That's my concern, not whether or not we are allowing more or less of trauma or if there's inherently a problem, but more is this the right avenue that we should be going to solve a problem we haven't yet identified? And if there is a problem that we've identified, are there other things that we can be doing that are more judicious, that are more pragmatic, that are not leading towards a more immediate consequence? So, colleagues, I hope we consider that as we're making some more data-driven decisions in this arena. Maybe we need to collect some...have some more oversight or data mechanisms to then ensure that things like this, if they are happening, that we are seeing that they're happening and then adjusting course and... [LB589]

SPEAKER SCHEER: Time, Senator. [LB589]

SENATOR VARGAS: Thank you very much. [LB589]

SPEAKER SCHEER: Thank you, Senator Vargas and Senator Wayne. Senator Crawford, you're recognized, and this is your third time at the mike. [LB589]

SENATOR CRAWFORD: Thank you, Speaker. I wonder if Senator Vargas would yield to a question. [LB589]

SENATOR VARGAS: Yes, happy to. [LB589]

SENATOR CRAWFORD: So, Senator Vargas, you have spoken multiple times about the need to have some data points and we want to know some data points about this problem. So my question to you is, how many cases of children dropping out of a case because of trauma would it take to convince you that something needs to be done? How...what is the data point you want to see? How many cases does it take to say this is a problem we should take seriously? [LB589]

Floor Debate
March 12, 2018

SENATOR VARGAS: One, I would say, how many cases are there currently where we have specifically identified the variable that trauma was...happened as a result of an individual, either the defense attorney inducing trauma, and how we are going about measuring whether or not that trauma is being induced. So I would ask how many cases do we currently have and how we're measuring trauma being induced. [LB589]

SENATOR CRAWFORD: So you would want to see a certain percentage of cases where trauma made it difficult for the child to continue with the trial. That's what you'd be looking for, a percent. [LB589]

SENATOR VARGAS: I'm looking for the number of cases. I'm looking for as many data points to help inform us that there is a problem that exists, no different than how we look at juvenile justice, and we look at a crime commission. And we're very diligent about overseeing many multiple data points for probation, for juvenile incarceration so that we can make informed decisions, policy-based decisions based on that, the data that we receive. [LB589]

SENATOR CRAWFORD: Yes. [LB589]

SENATOR VARGAS: Yes. [LB589]

SENATOR CRAWFORD: Thank you. Thank you. So, colleagues, again, one of the advantages that we have in federalism is we do have the states as laboratories of democracy. And we have scholars in all of those states studying these problems. We have opportunity to see how different states address these problems. And I want to remind you that in 37 other states there aren't pretrial depositions at all, not even for adults. And I also want to remind you that LB589 is not taking away the right to depose a child victim or witness. LB589, especially as amended, is emphasizing the protections that we're putting in place to make sure that process is one that the child can endure. And also, trying to make sure that's the case, that the child will be able to endure that, and get to the actual trial should the trial be necessary. And, colleagues, I want to repeat again what we saw in Vermont with a bill that was stricter than LB589 and much stricter than LB589 as amended, since we're going to amend out the burden of proof. What was found in Vermont is they did not see a change in the number of cases that went to trial. And both the state's attorney and sheriffs and the defense attorneys were asked to submit a report on what they saw happen in Vermont after this bill...after this law was put in place with a strict burden of proof, and the defense also said they did not see a change in the disposition of cases after that strict burden of proof was put in place. And, colleagues, we're not seeking to do that. Senator Vargas asked, is there a judicious first step? Colleagues, the judicious first step is LB589 as amended, when we're taking out any burden of proof. We're leaving the deposition in place. We're just saying put these protections in place. [LB589]

Floor Debate
March 12, 2018

SPEAKER SCHEER: One minute. [LB589]

SENATOR CRAWFORD: Thank you. And it says...I'll comment on some of those protections in a turn when I have more time. But I ask you to look at those protections and I ask you to see what of those protections do you think obstructs justice. Those are key protections in place. A hearing is already required. I talked to judges, defense attorneys, and county attorneys in multiple counties. Only one person told me that they thought this was something that wasn't already required and would add time. All the other people I talked to said there's already a hearing in place and, again, we're just acting...asking to put these protections in place. And so a more radical approach would be to allow no depositions, particularly, say, for children under 12. Another step would be to take the step that Vermont took and put a burden of proof in. But, colleagues, this is neither of those approaches. With the amendment, it is a very first-step incremental approach. Simply asks us... [LB589]

SPEAKER SCHEER: Time, Senator. [LB589]

SENATOR CRAWFORD: ...to focus on those protections. Thank you, Mr. President. [LB589]

SPEAKER SCHEER: Thank you, Senator Crawford and Senator Vargas. Senator Wayne, you're recognized. [LB589]

SENATOR WAYNE: Thank you, Mr. President. That's...so I was listening to Senator Crawford ask the question to Senator Vargas, and that's not the right question. The question is, how many, how many times has a deposition stopped trauma from happening in a trial? How many depositions have stopped a trial from occurring? Again, I can't...I can only give you my examples because I practice it every day, but if I get a deposition, sometimes we find out things in a deposition where we're asking questions. I go back and read the transcript. Better believe it, I go tell my client, we need to settle this and you need to plead out. If I don't have that in front of me, I don't know how else to get that information. And the reason why, I have a case right now where I have...in order to get the video, you have to file a motion there too. So you have to file a motion to get the video from Project Harmony, so there's already that layer of protection. I get the video. I want to ask the kid questions under oath. Why? Because under oath matters. When they change their story five or six times, I can point to one thing. If the kid moves out of state, I have a under-oath deposition that I can use now at trial. Without being able to have a deposition when there's contradictions in a kid's statement, there's no way to properly impeach them and read the substantive section. What I mean by that is, if they say under oath he didn't do it, and they say under...on the stand, he did do it, the only way I can bring in that statement for the substantive value--that means for the actual merits--is if it's under oath in a deposition. And I can put that in the record and say, look, jury, they contradicted...this kid contradicted himself. You have to

Floor Debate
March 12, 2018

believe, is he telling the truth now or was he telling the truth back then? That's important. That's an important tool. And the issue I keep saying is that we are delaying the process. By requiring a hearing and a judge having to make a fact-finding, one, we're delaying the process but, two, you're setting up me to make an appeal. Because if the judge doesn't find a proper fact-finding, then I get to appeal it based off of that. There just is more problems. I would ask to yield...Senator Crawford to yield to a question. [LB589]

SPEAKER SCHEER: Senator Crawford, would you please yield? [LB589]

SENATOR CRAWFORD: Yes. [LB589]

SENATOR WAYNE: In the states that you said other states have precovery...do not have precovery depositions in statute, do you know if they have precovery depositions in their court rules? [LB589]

SENATOR CRAWFORD: What we saw in the report was that they did not have pretrial depositions, so I assume it is not present in either. [LB589]

SENATOR WAYNE: Is it in statute or...I guess that's the big question, because each local court can have their own rules too. So Douglas County local rules have different court rules than Lancaster County. So that's why I'm asking if it's in statute underneath the rules of civil procedure, which many states have adopted, but many other jurisdictions...thank you, Senator Crawford. Many other jurisdictions have what's called court rules. Each court rule can do what's best for their state or county. So there could be court rules that have discovery depositions. [LB589]

SPEAKER SCHEER: One minute. [LB589]

SENATOR WAYNE: My point in saying all that is, discovery is an important tool. And the question isn't, will trauma go away if a child doesn't get deposed? The question is, how much trauma goes away by having a deposition in a controlled setting with people who are not as intimidating in a courtroom? Or do you want to go to trial? Because we're going to go to trial one way or another if I don't have this deposition. If I can't go back to my client and point to something the kid said or the witness said that you need to plead, it really makes my argument very hard to convince my client it's best to take a plea deal. This will result in more trials. I don't know what's going on in Vermont. I don't know the population of Vermont. I don't know if they have a Douglas County in Vermont where over 1,600 filings of felony charges are done every

Floor Debate
March 12, 2018

year. The point is, I know as a practicing attorney there will be more trials, at least from my law practice. [LB589]

SPEAKER SCHEER: Time, Senator. Thank you, Senator Wayne, Senator Crawford. Senator Chambers, you're welcome to close on your recommit to committee motion. [LB589]

SENATOR CHAMBERS: Thank you. Mr. President, members of the Legislature, I have heard several times mention made to what happens in other states. What may happen is that somebody who is either forward-looking or backward-looking got his or her legislature to pass a bill into law. Somebody else saw it and they picked it up, and it goes like that and grows. That argument is based on a monkey see, monkey do attitude. I have seen happen in this Legislature where somebody would take a law from another state, state A, then a variation of that law in state B and a third variation from state C and put them all together. And it doesn't fit. It doesn't work. And on the floor it becomes clear that this is a hodgepodge; it makes no sense. Then, because I've been here a long time, I'll ask, well, did you get this information from other states? And the answer is yes. The fact that it's done in other states does not make it right. There are a lot of bad things that happen in other states that don't happen in this state because I fight it. There was a period when the red-light traffic camera craze was sweeping the country because the manufacturer of those cameras was operating on the principle of the NRA. You'll be able to make a lot of money and you keep part of it but you pay us a part of it, too--cash register or checkbook justice. I fought against that happening in Nebraska. And you know how I stopped it from happening? There was a county...a city attorney in Omaha. I liked him as a person, but he was not as good a lawyer as I am, not from the standpoint of practicing but from the standpoint of being trained in the law. And I read the constitution. I read the statutes, and no city can enact certain provisions unless there's a state statute that authorizes the city to do it. There was no state authorization. What would happen with the money if this red-light camera scheme had been put in place, part of it would go to the camera company, part to the city, and they could do what they wanted to with it. They stopped calling it an infraction, which in fact is a crime under Nebraska statutes, and said it will be a nuisance ticket. Such a thing is not known to the law. An infraction is a crime. A crime requires certain rights to the citizen, which is to confront his or her accuser, and there is no accuser when a camera is in place. You cannot have the same act punished one way when it's detected by a camera as opposed to when it's detected by an officer. If an officer catches you, then it's an infraction. You go to court. You confront that officer. And the whole panoply of rights and privileges that you have as an accused are in play. With this camera, you are presumed to be guilty. All of those things as clear as the nose on anybody's face, that lawyer missed it. He assured the city that it would withstand challenge. They reckoned without me. I don't write the law in the sense of determining what is there. I help try to pass laws. But I go by what the law says, not what I wish it would say. And I pointed out, among other things, that a cow does not become a horse because a city attorney says that it is, and I won the case. [LB589]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SPEAKER SCHEER: One minute. [LB589]

SENATOR CHAMBERS: The city's ordinance was found to be unconstitutional. They repealed it. No city in Nebraska has red-light cameras. And now Iowa's Legislature is talking about getting rid of the red-light cameras. Other people argue that because Iowa does it, Nebraska should. I don't believe that. I have a mind. I have a brain. I don't know what the real relationship is between a brain and a mind. I don't know whether thought is a secretion of a brain. Maybe the brain is just the vehicle that holds it. But the mind is bigger than the brain, so I don't have the answer to that. If a brain is damaged in certain places, they say that there are certain functions that a person will not carry out. I don't know if that damaged part of the brain affects the mind or the ability of the person to express what is in the mind. I just don't know. But one thing... [LB589]

SPEAKER SCHEER: Time, Senator. [LB589]

SENATOR CHAMBERS: ...I know, we're going to be on this bill for a while. And, Mr. President, I would ask for a call of the house and a roll call vote on my motion. [LB589]

SPEAKER SCHEER: Thank you, Senator Chambers. There's been a request to place the house under call. The question before us is, shall the house go under call? All those in favor please vote aye; all those opposed vote nay. Please record. [LB589]

CLERK: 16 ayes, 2 nays, Mr. President, to place the house under call. [LB589]

SPEAKER SCHEER: The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber please return to the Chamber and record your presence. All unauthorized personnel please leave the floor. The house is under call. Senators Williams, Vargas, thank you, Watermeier, McCollister, Geist, Bostelman, Harr, Wayne, Linehan, McDonnell, please return to the floor. The house is under call. Senator Geist, Senator Bostelman, please return to the floor. The house is under call. We're all here and accounted for. Mr. Clerk, roll call order has been requested. [LB589]

CLERK: (Roll call vote taken, Legislative Journal pages 937-938.) 12 ayes, 25 nays, Mr. President, on the motion to recommit. [LB589]

SPEAKER SCHEER: Motion fails. [LB589]

CLERK: Mr. President, Senator Chambers would move to reconsider that vote. [LB589]

Floor Debate
March 12, 2018

SPEAKER SCHEER: Raise the call. Senator Chambers, you're welcome to open on your reconsideration motion. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. Members of the Legislature, and I see Senator Groene is still here and I'm glad to see Senator Groene. I sometimes joke with Senator Clements. He's very tall and he makes me think of a song that The Coasters sang, and I'm not going to sing it but I can tell...I can say it. This guy said: I plopped down in my easy chair, I turned on Channel 2. A fast gunslinger named Salty Sam was chasing poor Sweet Sue. He trapped her in the old sawmill and said with an evil laugh, if you don't give me the deed to your ranch I'm going to saw you all in half. So he grabbed her. He tied her up. He turned on the buzz saw. And then they say, uh-uh, and then along came Jones, tall, thin Jones, slow-walking Jones, slow-talking Jones, along came long, lean, lanky Jones. I got so bugged I turned it off and turned on another show. But there was the same old shoot-'em-up and the same old rodeo. Salty Sam was trying to put Sweet Sue in a burlap sack. He said, if you don't give me the deed to your ranch I'm going to throw you on the railroad track. So he grabbed her. He tied her up. He put her on the railroad track. The train started coming, Senator Bostelman. Uh-uh. And then along came Jones, tall, thin Jones, slow-walking Jones, slow-talking Jones, along came long, lean, lanky Jones. I got up...I got to think what he said. Anyway, this bill is one of those bills that is something like poor Sweet Sue. I'm not long, tall Jones who's going to save it. I think, as Billy Preston said in one of his songs: I'm...I got a song that ain't got no moral, where the bad guy wins every once in a while. Well, I'm the bad guy on this bill and I'm going to win this while. If this bill were not truly doing what I consider to be permanent damage to a system that has been in place from time immemorial, so to speak, I would not take this much time. If it was just a nudge here or maybe a tweak there, I would argue against it. And if I lost that, I lost it, but the system is basically intact. When you do something that goes to the essence of the system, and I think the system is working, then I will fight it as I'm doing now. The first time I bought a Honda, it was sold to me by an outfit in Lincoln. And the guy started showing me things like a walnut steering wheel. So I listened to him. He said that. Then he showed me these kind of silver-looking hubcaps. And I say, wait a minute. I said, will I get more mileage if I have a wooden steering wheel? He said, well, no. I say, well, do the wheels last longer if I get those bright shiny hubcaps? No. I said, then what are you telling me that for? I'm not buying this car for looks; I'm buying it for what it will do for me. And that Honda was a very good car. So that's the difference between looking at the exterior that everybody, even a casual observer, would see, and being aware of what's under the hood that makes the vehicle go. If Senator Crawford were talking about an ornament or maybe longer windshield wipers, then those are things that don't affect the nature of the car; they don't hinder what the car is supposed to do. But if you're going to take out some cylinders, if you're going to take out the distributor, if you are going to take out the clutch and it's a manual shift, then there is something that needs to be resisted because without those essential parts the car is a heap of junk. A car is of value. Unless it's real old or something special about it just because of what it is, it has no value as a car. You can't use it for transportation. You can't use it to haul

Floor Debate
March 12, 2018

children or anything else in. It just sits there. If all that was being done today and all that was being attempted was a little something here and there, it would be different. I'm trying to find different ways to say the same thing to make it clear why I'm fighting this bill and didn't mess with other bills today. Those that came earlier didn't do too much, and what they did was not hurtful. They did not fall exactly under the Loran Schmit maxim: It doesn't help anybody; it doesn't hurt anybody; doesn't cost anything; doesn't do anything. Those are the kind of bills I just leave alone. The world is no better or worse whether it passes or not. This bill is not trivial. This bill is not doing something which is trifling if it succeeds. Now there are others who understand this. There are others who might understand it, but they disagree with what it's doing so they want to alter it substantially. That's what Senator Crawford would do. That's what her amendment would do. I do not disagree with everything the Attorney General does or says. I don't even disagree with everything the Governor does or says. I'm able to evaluate and make a judgment. The Governor happened to have been right on that bill that Senator Waterman (sic-- Watermeier) brought, which would collect these taxes or make these other stores outside of Nebraska get enmeshed in Nebraska's tax-collecting system. The Governor was right in his position. I don't know what his rationale was. I didn't care what it was. If I'm going to be at that shootout at the O.K. Corral and Ike Clanton and his group and the other group are over here and I'm in one of those groups, I don't care why the ones who are in my group are in it. If they're there for the same thing I'm there for, then therefore we're going to be together. So the mere fact that the Governor is taking a position is not enough to turn me against it. This bill, if I could vote for a bill just because I liked the introducer, Senator Crawford would get that advantage, if it's an advantage. But the bill does too much damage to a system that I think needs to be left in place. There are no data which can establish abuses at a level which would justify altering the system in the manner this bill attempts to do. So it is my responsibility, since I see it that way, to do all I can to keep this bill from moving forward. If it had moved forward today, I would, to use the quaint language of that quaint book called the "Bible," I would have to gird up the loins of my mind, whatever that means, and be prepared to fight it at the next stage. If I can head it off at the pass, that's what I'm going to do. And I wish that sometimes on these serious bills people would look at how it's going to impact real people in the real world. If you are in jail, say, or in the lockup where juveniles are locked up and you have to sit there until there's a hearing for a disposition (sic--deposition) and there are processes put in place that are going to delay and delay,... [LB589]

SPEAKER SCHEER: One minute. [LB589]

SENATOR CHAMBERS: ...the people in the Legislature are not going to be delayed. They're not going to be separated from their family. They're not going to be sitting in the lockup all that time. But some young human beings are, and that's what I have to look at, not that facade but what's behind the scenes and what is going on. And I think this bill would be damaging; therefore, I'll fight it tooth and nail. Thank you, Mr. President. [LB589]

Floor Debate
March 12, 2018

SPEAKER SCHEER: Thank you, Senator Chambers, and you are next in the queue. Yes, you're recognized, Senator Chambers. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. I think I can take us into the roundhouse, the little train that could. Sometimes it's worthwhile to stay on an issue and talk about it rather than do what I do on occasion when I go off on tangents. I do that when the bill itself lends itself to that kind of digression, if you want to call it that by being nice. Other times I do it because the bill is not worth a penny, and anything I say, in my opinion, would be better than the whole bill. So there's not a lot of reason to debate it. Where there are serious issues that we as a Legislature ought to discuss, people should be able to watch us, should be able to listen to us and see what it is that we do that might fire the imagination of young people and cause them to want to look into the possibility of being here and doing the same thing. If they could see us enacting laws that affected the bad things that are happening to them, they would first want to know, why is something happening that has changed what has been going on? You have to do something to catch their attention. And in this Legislature, that often does not happen. We don't even hold the attention of each other. Being here for some people is an end in itself, not being here to do anything but just to be here to be here, to rub elbows with lobbyists. Even though you know they have no respect for you, you feel good while you're in their presence because they're big shots, you're a little shot. Their shadow is bigger than your shadow. But when you stand in front of them and their shadow is cast, you can make yourself believe that that shadow out there is being cast by you, and you know good and well it's not. Do these lobbyists invite you to go home with them, meet their family and their children; when they're going to an important function that means something to them, not when they're just trying to manipulate and move you around like a piece on a checkerboard, not a chessboard? Chess is a game that requires some thought, some ability to strategize, some ability to look far down the line, to anticipate moves that your opponent might make. And if your opponent moves A, B, C, D, then you're ready to counter those moves. Checkers is not like that. But checkers, believe it or not, is a game that allows strategy. But a checker master is not on a par with a chess master. So when these lobbyists are dealing with you, they're not even playing checkers but they're playing you. They know how to smile. They know how to be nice. But when you're not carrying an issue for them, you're like a transparent piece of window glass. They look right through you. What did...there was a lady, Roberta Flack: Strumming my fate (sic--pain) with his fingers, singing my life with his words. She went to hear him. Then she said, "he looked right through me as if I wasn't there." People can get that look in their eye which lets you know they're not focusing on you. That's the way lobbyists are when they don't need you on their bill. But if they think they might need you then they'll give you a nod, an acknowledgment with a tip of the head. Otherwise, you don't count. [LB589]

SPEAKER SCHEER: One minute. [LB589]

Transcript Prepared By the Clerk of the Legislature
Transcriber's Office

Floor Debate
March 12, 2018

SENATOR CHAMBERS: When I'm coming up here from the hinterlands, which is where my office is now, I can tell what kind of issue is going on. When the Rotunda is empty then I know issues that pertain to the people as a whole are being concerned...considered and the lobbyists don't care. When I see it growing thick like weeds--and that's what the lobbyists are--then I know some special interest group is governing the Legislature that day. The signs are all there. There's a certain squat beast that I mention that has a white streak down its back, and when it has been killed on the highway you'll smell it and maybe never see it, but that odor is unmistakable. There's a sharpness to it. There's a pungence to it like nothing else you smell. And what I wonder is why some enterprising person does not create "antibear" spray out of that smell. You don't have to kill the bear; just give it a little squirt. [LB589]

SPEAKER SCHEER: Time, Senator. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. [LB589]

SPEAKER SCHEER: Thank you, Senator Chambers. Senate Wayne, you're recognized. [LB589]

SENATOR WAYNE: Thank you. When I look at the amount of minutes before we are to adjourn for the whole day, I could talk for five minutes. But I think Senator Chambers probably has some more eloquent things to say, so I'll yield my time for him. [LB589]

SPEAKER SCHEER: Senator Chambers, 4:44. [LB589]

SENATOR CHAMBERS: Thank you, Mr. President. Thank you, Senator Wayne. Mr. President and members of the Legislature, to kind of take up where I left off, when I disagree with Senator Crawford, at least she has brought a bill that does have substance. She today, though, has just spoken learnedly and well on the wrong side of a question, and that can happen. And that leads me to tell you all a story of how Daniel Webster under...this happened, Daniel Webster, because he told it, underestimated an old black man that he saw sitting on the riverbank fishing. And Daniel Webster had on what they call a porkpie hat. And Daniel Webster wanted to engage this man in conversation. And because he was old, he was fishing, he was black, Daniel Webster decided that he'd have some fun with him. So Daniel Webster said, do you like this hat that I'm wearing? And the old gentleman said, Mr. Webster--because everybody knew Daniel Webster--he said, yes, Mr. Webster, I like that hat. And Daniel Webster said, I'll tell you what. We'll make any wager that you want, and if you win you get my hat; if I win I get all those fish you caught. And so the old gentleman said, all right. So Mr. Webster asked this old gentleman, what would the wager consist of? And the old gentleman said, well, Mr. Webster, I'll bet you're on the other side of the river. And Daniel Webster knew in his mind he'd got an old fool. He said, I'm on the

Floor Debate
March 12, 2018

other side of the river. And the old gentleman said, that's right, Mr. Webster. And so Daniel Webster said, now if you win you get my hat; if I win I get your fish. So the black man said, that's right, Mr. Webster. So Daniel Webster said, how can you say that I'm on the other side of the river when I'm right here beside you? The guy said, Mr. Webster, is that one side of the river? And Daniel Webster said, yes. He said, then this is the other side of the river. And Daniel Webster just took his hat off, gave it to him, knew he had underestimated somebody, and went on down the road. Sometimes judgments are made on the wrong basis. And sometimes the one who is to be the butt of the joke turns out to be the joker in the sense of the card in the deck that can trump every other card. So when good bills are brought, I will support them. When bad bills are brought, I will fight them. Believe it or not, there have been occasions when a bill was presented and I did not think it was a good bill and I fought the bill. Then, as the discussion proceeded, I began to think about what was in the bill. And I didn't like what the bill said, but I would ask the introducer, would you be willing to accept this amendment? And if the introducer said yes, then we would call that a friendly amendment. The body would accept the amendment. I would then support the bill, and it would pass. [LB589]

SPEAKER SCHEER: One minute. [LB589]

SENATOR CHAMBERS: That's how we legislate. We work together where we can. We improve those things that we must. And here's what I mean by that as far as I'm concerned. If it's a bill that's going to pass anyway and I cannot stop it, then I want to put it in the best shape that's possible, first of all, so that it says clearly what is intended so it gives the public notice of what they're allowed to do and what they're prevented or prohibited from doing. After that, it's just gravy, and I take what I can get and let it go. Thank you, Mr. President. [LB589]

SPEAKER SCHEER: Thank you, Senator Chambers. Reaching the (inaudible) time, we will move past this bill. Mr. Clerk. [LB589]

CLERK: Mr. President, your Committee on Transportation reports LB1011 to General File. Senator Linehan offers a new resolution, LR345; that will be laid over. (Legislative Journal pages 938-939.) [LB1011 LR345]

Mr. President, a priority motion: Senator Lindstrom would move to adjourn the body until Tuesday, March 13, at 9:00 a.m.

SPEAKER SCHEER: Thank you, Mr. Clerk. Colleagues, you've heard the motion to adjourn. All those in favor please say aye. All those opposed say nay. We are adjourned.