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Judiciary Committee  
February 25, 2009

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[LB253 LB345 LB356 LB414 LB596]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, February 25, 2009, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB356, LB253, LB345, LB414, and LB596. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Mark Christensen; Colby Coash; Brenda Council; Scott Lautenbaugh; Amanda McGill; and Kent Rogert. Senators absent: None. [LB356]

SENATOR ASHFORD: Why don't we get started now, if we could. Welcome to the Ernie Chambers Judiciary Committee Hearing Room, and we have four bills. My name is Brad Ashford, I'm Chair of the committee and I'm going to introduce the other members in a moment, but let me just suggest some protocol here. We have two bills dealing generally with children and health issues, behavioral health issues, one introduced by Senator Dubas, LB356, and then LB253. LB253 is a bill that I introduced after the safe haven issue. That bill is not going to be advanced to the full Legislature. I'm going to ask the committee not advance it. So really, Senator Dubas' bill becomes the important bill here. Therefore, what we're going to...and I don't...and I'm going to limit the comments on LB253 at this point. I'm anticipating over the summer that we'll look at LB253 in a more...in a broader way with some hearings and that sort of thing, so if we could try to limit our, as much as possible, our discussion to LB356. Then Senator Gay has an issue involving truancy, LB345, and then there are two bills that are Supreme Court bills that we'll finish up with. With that, and LB356 and LB253 we'll hear together so if there are comments on LB253, but let's try to make those brief because we're not going to take any action. Senator Dubas, would you like to introduce LB356? While Senator Dubas is coming up, I'd like to introduce my colleagues here on the committee: Senator Coash from Lincoln; Senator Christensen, Mark Christensen, from Imperial; Senator Lautenbaugh from Omaha, Blair area; Senator Rogert (laugh), Senator...it's an inside joke; Senator Lathrop from Omaha; Senator McGill from Lincoln; of course Senator Council from Omaha; Stacey Trout is legal counsel for the committee; and Christina Case is the clerk of the committee. Welcome, Senator Dubas, and I want to, before you get started, I want to really just commend you on the work you did on the safe haven matter. And I assume most of you know, who are in this room, realize how much work Senator Dubas put in on that issue. She volunteered her fall, really, certainly the last 90 days of her fall, to come to Lincoln from Fullerton and to be involved...and to Omaha. And Senator Dubas has been a significant leader on this issue, so I don't want to raise the bar too far, Senator Dubas, but I do want to congratulate, thank you for your efforts. And with that, Senator Dubas. []

SENATOR DUBAS: (Exhibit 1) Well, thank you very much, Senator Ashford, and thank you for those kind words. It was a joint effort on the part of many people but I appreciate those kind words. My name is Senator Annette Dubas, it's A-n-n-e-t-t-e D-u-b-a-s, and I represent the 34th Legislative District. The safe haven issue of 2008 underscored the

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clear need for behavioral health services for children. We know that health and mental health are strongly correlated. Many mental health symptoms are a result of a serious medical condition. Currently, there are 186,000 uninsured Nebraskans. Eighty percent of those uninsured are the working poor, and twelve percent are children. As unemployment rises in Nebraska and nationwide, the uninsured rate is also expected to rise. The fiscal note on this legislation provides an important point, that the bill before you today shows the somewhat disturbing monetary amount necessary for funding behavioral health services for children. You may also remember that during the special session I introduced LB3, as an attempt to fund services, on which this committee so graciously allowed me a hearing. At that time, I wanted a fiscal note. I wanted a projection from the department on the services that they would depict to be needed. I could not get that information, which is now before you today in the form of a fiscal note. No one could give me a figure about the money needed to fund behavioral health services for children because the reality is we are all really just guessing. But today the fiscal note before you, if it is accurate, portrays a much more serious problem than I ever imagined. The fiscal note before you is a request from the executive branch for the amount that they see necessary to fund this proposal. There is a recent New York Times article by Judith Warner talking about this very issue and her article, "Domestic Disturbances," was in the February 19 edition of The New York Times. Judith Warner wrote: Remember the Nebraska law meant to keep desperate new mothers from abandoning their babies in dumpsters by offering them the possibility of legal drop-off points at safe havens like hospitals? As was widely reported last year, the law neglected to set an age limit for dropped-off children, and eventually led to 36 children--mostly between the ages of 13 and 17--being left with state authorities. Most of these children had serious mental issues. Some were handed over to the state by relatives who had no other way of securing for them the heavy-duty psychiatric care they needed. And just recently in the Omaha World-Herald they acquired 10,000 pages of case files concerning these children from the state Department of Health and Human Services, Department of Health and Human Services, excuse me. They paint a portrait of desperation, of out-of-control kids, overtaxed parents and guardians, and an overstretched healthcare system that really does deserve more widespread national notice. Because even though the mentally ill safe haven children had extreme needs, they illustrate how a lack of good care early on can create much bigger problems for the family and for society in the long run. The children abandoned under safe haven in Nebraska have huge behavioral health issues. An 11-year-old boy hearing voices in his head since the 3rd grade; he punched his fist through a glass door. Other children had started fires, tortured pets, sexually abused younger siblings and children, and made murder or suicide threats. We have a problem. We have a problem with access to care and especially mental health care for children, for our children. And we really need to emphasize the fact about mental health care. These are not children who just need more discipline or better...parents that need better parenting skills. These are children that have seriously diagnosed mental health issues. The heart of LB356 is to address a fragmented and somewhat chaotic delivery system of care for children. We have seen

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through recent examples children with behavioral health issues are set up to fail through repeated trials of medication and short-term hospitalizations, until they can no longer be kept at home. Most often parents are the children's best and most ardent advocates. They need to be involved with their children's care and treatment. Christopher Bellonci, a noted child psychologist mentioned in Judith Warner's article, that children with psychiatric problems get steadily worse and eventually fail through repeated trials of medication and short-term hospitalizations until they can no longer be kept at home. Getting these children into good treatment programs requires significant advocacy on the part of parents who have to be extremely sophisticated, and the costs of these programs is so great, as was the case in Nebraska, some parents are actually forced to make their children wards of the state in order to get the child welfare system to pay for their care. He went on to say that parents who have not been abusive or neglectful are put in the untenable situation of having to surrender custody, and that is, quite frankly, criminal. Currently, the state of Nebraska is home to approximately 6,506 state wards as of the end of 2008. We were at a record level one year ago, one of the top states in the country. HHS has reduced this number over the past year; however, I have constituents in my district who have given up parental custody and made their child a ward of the state in order to receive behavioral health services. Although there is regulation through the Department of Health and Human Services that allows for a voluntary placement agreement, the legislation before you today provides for a voluntary service agreement with some very distinguishing differences from the department's policy. The biggest difference is that under LB356 children get immediate and expedited behavioral health services. As Magellan continues to close its hands to assisting these children, we as policymakers must make a statement about whether and how these children should be cared for. My bill allows for parents to ask for temporary services on a voluntary basis by creating a new juvenile petition process called the (3)(d) process. This is different from the current (3)(a) process. (3)(a) petitions are used for cases of abuse and neglect and interlinked with the Division of Children and Family Services. With the (3)(d) petition process there does not have to be criminal charges for parents to receive behavioral health services, nor does anyone have to relinquish their rights. Services will be provided through the Division of Behavioral Health. The child is assessed through an evaluation to determine behavioral health services and the duration of those services. After 90 days of temporary services and if more money is necessary, the regional administrator will ask the county to file a (3)(d) petition. This petition will create a placeholder with the court and will provide for court oversight regarding the duration of services and type of services. A court review is only necessary if any of the parties are not agreeable to extending the services. And a parent may decide to stop this process at any time. This legislation also provides for an administrative process that, when everyone is in agreement, does not require court oversight. In addition, this legislation calls for the case management to occur at the regional or local level, not at the state level. The 300 additional full-time state employees projected by HHS in the fiscal note at a cost of \$40 million is not what the bill says. That is a projection that the regions should provide because these services will be

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provided at the local level, as the language on page 1 so explicitly states. LB356 requires the Department of Health and Human Services to fund the regions that contract with private providers to provide those behavioral health services at the local level. It requires a sliding scale fee. And I do have a chart here to hand out that kind of simplifies something that's probably not really simple but kind of to show you a diagram of what the process would be deciding that sliding scale fee. And I think we'll have some testifiers who will be coming behind me also who will be able to talk to this issue better than I am able to at the moment. The committee amendment makes it clear that this funding is to be directed through the Division of Behavioral Health Services, I can't emphasize that enough, and cleans up a few technicalities, including references to voluntary placement agreement which should read voluntary services agreement. We have a statewide policy decision to make. We need to ask ourselves, whether we build a fence around the bluff in hopes that no more children will fall from the cliff, or whether we continue to fund the ambulance at the bottom of the cliff that transports the children to intensive levels of expensive services but only after they've fallen. Currently, with new Magellan requirements, which someone will be testifying about, we don't even have the funding for the gas in the ambulance. And that is the question before us today: Do we fund services? If we do not, if we choose to not fund services, we owe it to the parents and children of this state to at least be honest with them and let them know where they stand. I would like to thank those who have assisted me in crafting this legislation: Senator Gloor's staff, Judge Larry Gendler and others. Judge Gendler will be testifying; followed by Bill Dunn from Grand Island; Beth Baxter from Region 3; Louise Jacobs, a licensed mental health practitioner from Hastings; Voices for Children; and Appleseed; among others. I'd also like to take the chance to thank Senator McGill on her work with this issue. Under her leadership, the task force dedicated...was dedicated to finding a solution and it was the right thing for us to do, so I do thank her for her leadership. I have provided the committee with a list of testifiers that...who had worked with me on this bill, just to kind of give you a heads up about what's going on, and hopefully they'll be able to make the points that I've tried to outline in this opening in a clearer fashion. [LB356]

SENATOR ASHFORD: Yes. Before we get to questions, I also would like to commend Senator McGill, as Chair of the committee, and all those that I see here today who were at all of the meetings and I think you've done a great job in that regard, and it's great to see everybody back. You've brought them back again, which is...that's a very powerful statement, so... [LB356]

SENATOR DUBAS: Thank you. [LB356]

SENATOR ASHFORD: And just for the record, I'm not going to make any statement on my bill. I'm going to defer to Senator Dubas. So if anybody wants to comment at all on LB253, they may certainly do so, but I'm not going to add anything to what Senator Dubas has said. Senator Lathrop. [LB356 LB253]

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SENATOR LATHROP: I do have one question for you, Senator Dubas. I'm looking at the bill and it says this is for wraparound services and we define wraparound services to be community-based services. So if someone wants to bring their child in and they need something heavier than community-based services, will that cover hospitalizations? [LB356 LB253]

SENATOR DUBAS: Well, it's my understand... [LB356 LB253]

SENATOR LATHROP: Or is it just going to be outpatient care? [LB356 LB253]

SENATOR DUBAS: And I'm sure there's going to be people behind me who will be able to address this better, but these are services. Any services that the child needs they're presumed eligible for. [LB356 LB253]

SENATOR LATHROP: Inpatient, outpatient, whatever. [LB356 LB253]

SENATOR DUBAS: That's my understanding and I... [LB356 LB253]

SENATOR LATHROP: Okay. [LB356 LB253]

SENATOR DUBAS: ...like I said, I would be willing to be...stand corrected if I need to, but... [LB356 LB253]

SENATOR LATHROP: I'm sure you're right. I was just asking. (Laughter) All right. Thanks. [LB356 LB253]

SENATOR ASHFORD: Let me see, yes, Senator Coash. [LB356 LB253]

SENATOR COASH: Thank you, Chairman Ashford. Thank you, Senator Dubas. I just had a quick comment and then I do have a question. I worked in the child welfare system for many years and the challenge that you present is very real. I was often put in a position where the best advice I could give the family was to make their child a state ward because that would then open up the doors for the services that their child needed. So I commend you for bringing this. My question is did you look at other states? Have other states tried something of this nature? Was this modeled after anything or did we have to bring this from ground up? [LB356 LB253]

SENATOR DUBAS: I guess I don't know if this was modeled after other states. My office worked very closely with Judge Gendler, who's, in my estimation, a real expert in this field, so I don't know if this is based off of his...just his personal experience and what he was able to draw from that. And I think he would be able to address that. [LB356 LB253]

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SENATOR COASH: I'll ask him. Thank you. [LB356 LB253]

SENATOR ASHFORD: Thanks, Senator Dubas. I assume you're going to stick around,... [LB356 LB253]

SENATOR DUBAS: Yes, I am. [LB356 LB253]

SENATOR ASHFORD: ...I would guess. How many proponents? We have a list, but how many proponents do we have? Do we have any opponents? Neutral? Scot! (Scot Adams) That's all right. (Laughter) That's all right. We like you anyway. I'm going to go...let's go to 3:00 and see where we are. I'd like to kind of get this done in about an hour, an hour and ten minutes or so. Larry. [LB356 LB253]

LAWRENCE GENDLER: (Exhibit 2) For the record, my name is Larry Gendler. I'm a juvenile court judge in Sarpy County. I want to thank Senator Dubas for those kind comments. Idiot/expert sometimes can be intermixed. I want to talk briefly about the context of this because others are going to talk about some other specifics. I've been a juvenile judge for over 16 years. I was in the county attorney's office from '77 through '92. I never had a parent come into the system and request assistance because they couldn't find a wheelchair for their child. You know, we seem to be able to manage that side of the issue, but when it comes to mental health we have enormous issues. And we also have to remember that we are extraordinarily fortunate to have our mental health. People who have mental health issues deal with a curse their entire lives. Some are able to deal with it better than others. But those of us that have our mental health are extraordinarily fortunate and, for me, even in my position, it's difficult to comprehend how difficult it is for families to live with this curse and particularly with a loved one. So I think that's the context this debate has to be centered around, are those issues. From my perspective in Sarpy County, we see a lot of these youngsters anyway. Police will get a phone call saying that the parent can no longer control the child, get them out of the house. These kids will go out and commit crimes. They'll be truant from school. They'll be truant from home. So we're getting a lot of these youngsters in court now. The question is, at what stage are we getting them? And obviously, prevention works. The sooner we can get at an issue, the better off all of us are and the less expensive it becomes to fix. Now in terms of this idea, I have to confess I didn't search other states. I just thought that using the mental health regions might be a wise idea because they're already in place, we already utilize them, and they work. So that's essentially where it came from, with some discussions with some other folks. I just hope, my plea to all of you is that we keep it in that context of what it's like to live with this. These are real issues. These folks need assistance and, as a system, I feel duty-bound to help them, regardless of the method that they come before us. So I appreciate your support and particularly your interest in this concept and the issue. Be happy to answer any questions. [LB356 LB253]

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SENATOR ASHFORD: Just, Larry, just help me a bit. Let's...can we just take...can we just walk through a hypothetical of a case that you might get and how it would play out? [LB356 LB253]

LAWRENCE GENDLER: I can give you two real clear examples. One is a parent will come in and request assistance because their insurance has run out. I have a youngster right now who is currently... [LB356 LB253]

SENATOR ASHFORD: How do they come in, in the first place? [LB356 LB253]

LAWRENCE GENDLER: They'll contact a Nebraska county attorney, perhaps law enforcement, Health and Human Services. This was a youngster that came in on a mental health issue. She had been placed at three prior placements privately. Parents picked up those costs. She's been in outpatient therapy privately for a number of years, since she's been a child, and they just...their resources ran out and they came to the system seeking assistance. We also get situations where parents will call the police because the 14-year-old is too dangerous and the other kids in the house are afraid and they can no longer control the behaviors. The police will remove the child, we'll have a hearing the next morning, we'll appoint the child an attorney, we'll start the evaluation process and we'll discover then that perhaps Mom or Dad don't have insurance or don't have adequate coverage, and this has been a festering problem for months if not years. So frequently, I mean weekly we'll see a case like that. And it's very frequently we'll see a parent that will come in and say, we have exhausted our resources, can somebody help us. [LB356 LB253]

SENATOR ASHFORD: Okay. Senator Rogert. [LB356 LB253]

SENATOR ROBERT: Judge, what is your take on the cost factor that's been estimated for this? [LB356 LB253]

LAWRENCE GENDLER: Well, my perspective is primarily Sarpy. All right? I sub in Cass County, I've subbed in Otoe, I've subbed in other jurisdictions. But a lot of these kids we see; we just see them later on, and at that point they become far more expensive to address. So from my perspective, the vast majority of these cases could be handled with outpatient therapy, perhaps some brief respite for the families to discuss how they can engage the services, so maybe we'll help find a relative or a close friend where that child can reside temporarily for a week or two while these services get in place, versus removing a child, placing them in an institution and having those extraordinary costs. So from my perspective, I find it difficult to think that we're looking at these kinds of extraordinary costs. [LB356 LB253]

SENATOR ROBERT: Do you think it's a possibility that spending this money will, in the

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end, lower the costs? [LB356 LB253]

LAWRENCE GENDLER: I do. And when you get to the adult system, I just have to say this, our penitentiaries are becoming psych wards. I know my expertise is juvenile court, but when you go through the list of the offenses and the offenders who are in there, a lot of them have acute mental health issues... [LB356 LB253]

SENATOR ROBERT: Sure. [LB356 LB253]

LAWRENCE GENDLER: ...and now we're addressing them but at an extraordinary cost. [LB356 LB253]

SENATOR ROBERT: Thank you. [LB356 LB253]

SENATOR ASHFORD: Senator Council. [LB356 LB253]

SENATOR COUNCIL: Yes. Thank you, Judge Gendler. Always good to see you. I have two questions. Looking at your prepared statement, you indicate and you draw our attention to the fact the bill doesn't require counsel be appointed for the child and that we should be careful to ensure that the best interests. In that regard, under the bill as drafted, the courts don't get involved unless the 90-day period under the voluntary service agreement is drawing to a close and there's some disagreement as to whether or not it should be extended. And that's when the courts become involved. [LB356 LB253]

LAWRENCE GENDLER: Right. [LB356 LB253]

SENATOR COUNCIL: At that point in time, are the courts, as you would anticipate it, when the courts become involved would the child then be automatically eligible for appointment of, at a minimum, a GAL? [LB356 LB253]

LAWRENCE GENDLER: Well, I think that might be a wise situation. And the reason I put it in the context that way is because I have subbed in some jurisdictions where youngsters, for example, don't automatically get a lawyer. In our jurisdiction they do, just because we're more comfortable that way. So my personal habit is I want to make sure that youngster has an advocate, so... [LB356 LB253]

SENATOR COUNCIL: So it could be either a guardian ad litem or... [LB356 LB253]

LAWRENCE GENDLER: Well, it probably should be at a minimum a lawyer... [LB356 LB253]

SENATOR COUNCIL: Lawyer. [LB356 LB253]

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LAWRENCE GENDLER: ...and perhaps a guardian ad litem as well,... [LB356 LB253]

SENATOR COUNCIL: Okay. [LB356 LB253]

LAWRENCE GENDLER: ...because they serve two different roles. [LB356 LB253]

SENATOR COUNCIL: Okay. And then the other question... [LB356 LB253]

LAWRENCE GENDLER: But...oh, go ahead. I was just going to say also the circumstances may dictate, because I don't know what the request might be. If it's for another 30 days of outpatient services or 60 days, maybe we don't need to worry about some of these safeguards. But I just think you have to be careful. [LB356 LB253]

SENATOR COUNCIL: Right. And then piggybacking on a question that Senator Rogert posed with regard to the costs that are reflected in the fiscal note, and your statement that the bill was developed based upon your understanding and work with the regional health centers, a lot of the cost in the bill seems to be associated with case management. Now to the extent that we're talking about regional behavioral health centers, are we really talking about that level of case management or... [LB356 LB253]

LAWRENCE GENDLER: Well,... [LB356 LB253]

SENATOR COUNCIL: ...based on your experience? [LB356 LB253]

LAWRENCE GENDLER: No. For example, people who go privately to see somebody don't need a case manager. [LB356 LB253]

SENATOR COUNCIL: Okay. [LB356 LB253]

LAWRENCE GENDLER: They're getting their services and they successfully complete that and move on. So I think a lot of these circumstances would provide for the same opportunities. I don't see that kind of need. That's just me. [LB356 LB253]

SENATOR COUNCIL: Okay. And I'm glad...I appreciate your honesty and candor. Because when I look at the fiscal note, I mean that's the...the bulk of the expense is associated with increasing the number of case managers in the Department of Health and Human Services, and I assume on the Behavioral Health side. But it would appear to me if you're talking about these service agreements where there's some decision made by the regional behavioral health administrator that this is the service that the child needs, that it's just assigning that child or providing for that child to receive the service in that manner. And I guess I'm not understanding the need for that level of case management. But I appreciate that. Thank you. [LB356 LB253]

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LAWRENCE GENDLER: Thank you. Other questions? [LB356 LB253]

SENATOR LATHROP: Thanks, Judge. Any other questions? I do have a few for you, if you can kind of share with me your thoughts on this. It seems like the idea here is that becoming a ward of the state is something that maybe that's a good model if we're talking about people that are involved in long-term care, but if we can fix somebody, alleviate a problem in a family in a short period of time, better model allows people to come in, we don't have to engage the whole juvenile court machinery. That's essentially the idea? [LB356 LB253]

LAWRENCE GENDLER: Right. [LB356 LB253]

SENATOR LATHROP: Here's a question and that is, what if, you know, somebody does some counseling, they're doing...they're doing those things and it isn't getting to the bottom of it? Will this allow you to continue under this new provision indefinitely? Or at some point does it become a new kind of a...require the county attorney to file? [LB356 LB253]

LAWRENCE GENDLER: That's a good question and that's a big question. I think the bill allows the county attorney to come back and file if a longer, more intrusive solution is necessary, and I'm glad that opportunity is there because some families would need it. But from my perspective, the vast majority of these situations would be handled through outpatient services that wouldn't require the full gamut of juvenile court involvement. [LB356 LB253]

SENATOR LATHROP: But you think after, if it doesn't...if it doesn't resolve... [LB356 LB253]

LAWRENCE GENDLER: If it doesn't work... [LB356 LB253]

SENATOR LATHROP: ...in a short period of time, you contemplate that we go to a different chapter or a different paragraph. [LB356 LB253]

LAWRENCE GENDLER: The county attorney and others involved could always step back and say we need to do something more intrusive. [LB356 LB253]

SENATOR LATHROP: And this may be... [LB356 LB253]

LAWRENCE GENDLER: Or more complete, I should say. [LB356 LB253]

SENATOR LATHROP: ...a question with a similar answer, and that is let's say that Dad brings the son or daughter in, says, you know, I need some help, she's not going to

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school and won't listen and whatever the problems are. And they start to do an evaluation or they complete an evaluation and find out Mom is a, you know, a raging drug addict or something. That really is better suited not for this but for a different section of the juvenile code, is it not? [LB356 LB253]

LAWRENCE GENDLER: Right. It is. And also this bill does not affect the mandatory reporting requirements for abuse and neglect. So during this process, just as any other situation or circumstance, if somebody observes what they think is neglect or abuse under the code that needs to be referred, they can still do it. [LB356 LB253]

SENATOR LATHROP: In other words, if things get heavier than we expect them to when they come through the door and they say, you know, I think I just need a little counseling, just a little something to straighten out my son, and it gets bigger than that, either because of family involvement, the issue is bigger than that, or it's going to take longer, we're going to have the county attorney engaged to turn it into a different kind of a proceeding. [LB356 LB253]

LAWRENCE GENDLER: Right. Nothing prevents what we already do. [LB356 LB253]

SENATOR LATHROP: Okay. I suppose everybody is asking about the fiscal note because it's just a whopper, and it just seems to me, your observation, that we'll be taking care of people sooner and it should be cheaper, then the only question for us is are we going to be taking care of more kids with this provision? Because if we're not taking care of more kids, all we're doing is taking care of the same kids sooner, then it shouldn't be any additional expense. [LB356 LB253]

LAWRENCE GENDLER: I think you will take care of more kids. [LB356 LB253]

SENATOR LATHROP: Pardon me? [LB356 LB253]

LAWRENCE GENDLER: I think you will take care of more kids. [LB356 LB253]

SENATOR LATHROP: All right. That's a good thing. [LB356 LB253]

LAWRENCE GENDLER: And that's what you want, I hope. [LB356 LB253]

SENATOR LATHROP: That's not a bad thing. [LB356 LB253]

LAWRENCE GENDLER: Right, absolutely. [LB356 LB253]

SENATOR LATHROP: Okay. [LB356 LB253]

SENATOR ROBERT: Can I follow that up then? [LB356 LB253]

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SENATOR LATHROP: Sure. Senator Rogert. [LB356 LB253]

SENATOR ROBERT: Well, I just want to follow that up. If we are taking care of more kids, though, we won't be taking care of them for as long. We hope to have...I assume. [LB356 LB253]

LAWRENCE GENDLER: Absolutely. [LB356 LB253]

SENATOR ROBERT: We have them in at age 7 instead of ages 12, 13, 14, 15, 16. You know, have each one for, hopefully, a vast majority is for a lot less time. [LB356 LB253]

LAWRENCE GENDLER: Right. [LB356 LB253]

SENATOR LATHROP: Any other questions from any of the members? I don't see any. [LB356 LB253]

LAWRENCE GENDLER: Thank you. [LB356 LB253]

SENATOR LATHROP: Thank you,... [LB356 LB253]

SENATOR COUNCIL: Thank you. [LB356 LB253]

SENATOR LATHROP: Not just for this...but for all... [LB356 LB253]

SENATOR ROBERT: Thanks, Judge. [LB356 LB253]

SENATOR LATHROP: ...the phone calls you take,... [LB356 LB253]

SENATOR COUNCIL: For being you. (Laugh) [LB356 LB253]

LAWRENCE GENDLER: (Laugh) My pleasure. [LB356 LB253]

SENATOR LATHROP: ...advice you give us. Anyone else here or the next person here as a proponent? You may proceed. [LB356 LB253]

BILL DUNN: (Exhibit 3) Thank you for allowing me to be here today. My name is Bill Dunn. I live in Grand Island. We have an 11-year-old child named Michael. We adopted him when he was three weeks old. From his preschool years, we knew that he needed some help. What we thought were behavioral, just some mild behavioral issues, developed into much, much more. The therapist we saw in kindergarten told us that we had to be an advocate for Michael and to get the services we need, and, boy, was she right, as any parent in this...any other parent in this room would know that has a child in

this situation. Michael had a variety of diagnosis from ADHD, hyperactivity, bipolar, and finally oppositional-defiant, and he was and still is seeking a psychiatrist for the medication and a therapist for his behavior. We got him into an individualized education program. In 2nd grade, his behavior was to the point where he needed to go to Mid-Plains Day Treatment School in Grand Island rather than his traditional elementary school. During this time, Michael was running away and being physically aggressive with others. He was a danger to himself and certainly to others. He had been hospitalized twice here in BryanLGH and also in Omaha Immanuel Hospital, and he was in severe crisis. If we couldn't get back on the track he was going to need a long-term residential program. My wife and I are both professional people. We had private insurance and...but we were not able to send him to a residential program. Our insurance would only pay for a limited time. We used up a lot of this during hospitalizations. The residential programs would require at least six to nine months, and our insurance wouldn't cover it. The only way we could get help, the help he needed according to all the professional people we talked to and who observed Michael, was to sign our parental rights over to the state of Nebraska and to put him on Medicaid, and this was an extremely frightening thought. He's our son and we do not want to turn our rights over to the state. We want to raise him. But if that was the only way we could get help for our son, we would probably have to do it. We were then told about MST, multisystemic therapy. MST is an amazing program where you have a therapist come into your room, go to the school, go to the day care. Anywhere the child goes the therapist has access and will come and go to observe Michael or observe the child and make recommendations and counsel. I desperately wanted Michael...or wanted MST for Michael because I knew we needed the help at home as the basis for helping Michael. Unfortunately, we could not get MST for Michael when he was in Mid-Plains Day Treatment. We couldn't use both services due to our funding issues. We had private insurance. We could pay for it ourselves, but we were told we still couldn't get MST. As long as Michael was at Mid-Plains, we couldn't get the help we needed. So the choice was to take him out of the school he needed to get the therapy he needed, and it just didn't make any sense and we were reaching the end of hope. At that point, we learned about the Mayo Clinic Dana Child Development and Learning Disorders Program in Rochester. It's a week-long program. We got Michael admitted after waiting for about eight months to get into the program. They take about a dozen patients a year. We got Michael admitted. We spent the week in Rochester. The program evaluated Michael from every angle and aspect. We saw a pediatrician, a neurologist, a psychologist, psychiatrist, an occupational therapist, every medical speciality needed to diagnose our son. Dr. Barbaresi was our lead physician... [LB356 LB253]

SENATOR ASHFORD: Bill. Bill, I'm going to ask you just to sum up. We have your testimony and we're not... [LB356 LB253]

BILL DUNN: Okay. Okay. I... [LB356 LB253]

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SENATOR ASHFORD: ...and you may get some questions and that way we can keep on schedule. [LB356 LB253]

BILL DUNN: Sure. Last year's news about dropping off children in hospitals was jaw-dropping to many parents but not to us. We've been in the shoes of those parents and we know how they felt, how badly they felt. We've cried their tears. We've shared the same frustrations. Other...we're fairly fortunate in that we have the means to deal with our son. A lot of families don't. LB356 is a good bill. It doesn't add additional services and there are many that are probably needed, but it does allow parents to access the services without giving up your child. Dr. Barbaresi and the other doctors at the Mayo Clinic were firm in their analysis of Nebraska, that Nebraska is one of the worst states in the Union for dealing with children's mental health and behavioral issues. [LB356 LB253]

SENATOR ASHFORD: Thanks. [LB356 LB253]

BILL DUNN: Every doctor echoed that. [LB356 LB253]

SENATOR ASHFORD: Thanks, Bill. Any questions of Bill? Senator Council. [LB356 LB253]

SENATOR COUNCIL: Yes, Mr. Dunn, I thank you for your testimony. I was reading the printed version of your testimony and, due to time, you didn't have an opportunity to address this point. But you stated that when you returned to Grand Island, you met with the Mid-Plains staff and that's the school where your son was assigned... [LB356 LB253]

BILL DUNN: Sure. [LB356 LB253]

SENATOR COUNCIL: ...as a result of his EIP...IEP? I get those... [LB356 LB253]

BILL DUNN: Yes. [LB356 LB253]

SENATOR COUNCIL: ...individualized educational program. Is that where the recommended placement was for him, at Mid-Plains, right? [LB356 LB253]

BILL DUNN: Right. Right. [LB356 LB253]

SENATOR COUNCIL: And that was a program that was available to him as a student in the Grand Island public schools, correct? [LB356 LB253]

BILL DUNN: Right. [LB356 LB253]

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SENATOR COUNCIL: But then you went on to say that the Mid-Plains...while he was at Mid-Plains you could not receive MST before you went to Mayo. [LB356 LB253]

BILL DUNN: Correct. [LB356 LB253]

SENATOR COUNCIL: Now, upon your return from Mayo, now you're eligible for MST. [LB356 LB253]

BILL DUNN: We don't know what happened. We gave them the report and suddenly Michael was eligible for MST, and I don't know if "eligible" is the word, but he was allowed to be in the program. [LB356 LB253]

SENATOR COUNCIL: Okay. And because you say... [LB356 LB253]

BILL DUNN: I don't know if it was their recommendation from the doctors, the severity of the issue in their recommendation, I don't know. [LB356 LB253]

SENATOR COUNCIL: Okay. But you say they figured out how to handle the funding. Who's "they"? [LB356 LB253]

BILL DUNN: Mid-Plains. They're funded, in the italic version of this, of the prepared document on page 2, it explains it a little bit. Mid-Plains is funded through HHS and Medicaid and it's managed by a group called Magellan. [LB356 LB253]

SENATOR COUNCIL: Okay. Okay. Thank you. [LB356 LB253]

SENATOR ASHFORD: Yes, Senator Coash. [LB356 LB253]

SENATOR COASH: Thank you, Chairman. Thank you, Mr. Dunn, for coming down and testifying. In your experience dealing...supporting your son and his needs, did you have occasion to deal directly with Magellan? [LB356 LB253]

BILL DUNN: My wife did primarily, yes. [LB356 LB253]

SENATOR COASH: Wife did. Any...just ask for your opinion on how that process went. [LB356 LB253]

BILL DUNN: Frustrating. Frustrating in the things that we were not allowed to do and that would have been so simple to do, we think. [LB356 LB253]

SENATOR COASH: Okay. Thank you. [LB356 LB253]

BILL DUNN: Sure. [LB356 LB253]

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SENATOR ASHFORD: Thank you. Thanks, Mr. Dunn. [LB356 LB253]

BILL DUNN: Thank you very much for your time. And I'd like to thank Senator Dubas and Senator Gloor and all of you for your interest. Thank you. [LB356 LB253]

SENATOR ASHFORD: You certainly have our interest. Thank you very much. Before we...I was...I have a special request from Leslie and are you ready to proceed or...? [LB356 LB253]

LESLIE BYERS: Jonah and myself and Megan Byers. She needs to leave. [LB356 LB253]

SENATOR ASHFORD: Okay, if she needs to leave that's fine. Then come on up. [LB356 LB253]

JONAH DEPPE: (Exhibit 4) Good afternoon. My name is Jonah Deppe, J-o-n-a-h D-e-p-p-e. I am representing the NAMI Nebraska, which is the National Alliance on Mental Illness, and I'm here to testify and support LB356. We really appreciate all that Senator Dubas and Senator McGill have done. And I just will make a short comment because I want to be followed by a mother and her daughter. The daughter, who has experienced the relinquishment of custody, would like to give you her information. NAMI Nebraska supports LB356 which provides for behavioral health services for children without parental relinquishment of custody. Nebraska's recent experience with children experiencing a mental illness and their families' efforts to access services for their child has brought attention to the issue of relinquishment of custody. And the safe haven issue--and I was part of the Children in Crisis Committee,--highlighted the fact that children and youth do not have a safe haven in Nebraska. HHS's contention that services are available for children has been really proven to be a fallacy. It's important for children experiencing a mental illness to receive early intervention to prevent their illness--I think you've heard that from some other people here--and keep this from becoming more serious. Early intervention provides adequate and appropriate services, also reduces the need for extensive services later in the child or youth's life, thus reducing the cost at later dates. And permitting the family to access wraparound services with a presumptive eligibility will assist in providing this early intervention. The recent mental health parity legislation at the federal level requires that mental health be seen equally with physical health. Mental illness is a brain disease and should be treated like any other chronic disease, such as diabetes. Parents are not required to relinquish custody of their child to receive treatment for any other chronic disease, so why is it necessary to do so to receive treatment for a brain disease? Nebraska should be using some of the recent federal stimulus package--I understand there's an additional \$310 million that is coming to Nebraska in Medicaid funds--to help provide services for children with a brain disease. These up-front costs will reduce the future

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costs to the juvenile justice and child welfare systems. And also services provided children and youth will reduce the services needed for adults. In addition, those children and youth who receive adequate and appropriate mental health services can become future taxpayers for the state of Nebraska. Relinquishment of custody is a very traumatic experience to parents and children and comes at a time when children need to know they can rely on their parents. Children do not understand, even children in their teens, why their parents give up custody, and it contributes to a break in the relationships at a stressful time in their lives, and that can contribute to broken relationships throughout their lives. Most parents use this avenue to access services for their child, take this action out of love for their child and the desire for needed treatment. So NAMI Nebraska is representing families with children experiencing a mental illness because of a brain disease and requests that you give this bill serious consideration and provide the needed services for children and their families. [LB356 LB253]

SENATOR ASHFORD: Thanks. Any... [LB356 LB253]

JONAH DEPPE: And I'll be followed by Leslie, who's the parent. [LB356 LB253]

SENATOR ASHFORD: Okay, but hold on. (Laugh) [LB356 LB253]

JONAH DEPPE: Okay. Oh, I'm sorry. (Laugh) [LB356 LB253]

SENATOR ASHFORD: We may have a question. I don't think so. I don't think we do, so... [LB356 LB253]

JONAH DEPPE: Okay. Thank you. [LB356 LB253]

SENATOR ASHFORD: Next, Megan is next or who's next? [LB356 LB253]

JONAH DEPPE: Leslie is next. [LB356 LB253]

SENATOR ASHFORD: Leslie is next. [LB356 LB253]

LESLIE BYERS: (Exhibit 5) Good afternoon. My name is Leslie Byers and I am testifying in support of LB356 as the mother of a former state ward, as a parent who has had to utilize or basically resort to the last option, which was custody relinquishment. My daughter has experienced severe and persistent mental illness for most of her life and I, like most other parents, work very hard to care for our family and for our children, but all that hard work can be for naught when your child exhibits symptoms of mental illness and yet the disparity between the services available due to inadequacies in private health insurance don't meet the needs to pay for the treatment at the right time, as several testifiers have already testified to the fact that there is not a focus on early detection and intervention. And so, unfortunately, it was at age 9, after many failed

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attempts, many suicide attempts, over seven inpatient hospitalizations, we maxed out on our private health insurance and so we had to utilize custody relinquishment. What I want to really focus upon is I realize that for people who don't experience this, one, count your blessings, but two, they can't understand what we go through, so I'm going to try to speak to the topic that we can all understand, and that's money. I'm not only a mother, I'm a business professional and it didn't take much on my part to understand that placing my family, when you utilize custody relinquishment, you are therefore put into the juvenile justice system. Your child is made a ward of the state so the management of your child's care is then coordinated through the juvenile justice system and, of course, this is a system that is not intended to care for those with mental illness. It's a system of typically punishment and hopefully rehabilitation. Think about that though. If my daughter had cancer, we wouldn't be forced to have the management of our care through the court system. But I also want to share with you the results of how the family members are treated when we have a child that is a state ward. First and foremost, I have a list that I won't go through because it's pretty long, but you can see I identify at least a dozen legal professionals that are involved in the, quote, case management and coordination of care for a child who simply has a mental illness or for a parent who is not neglectful or abusive. But what's even worse is the way you are treated. Because you are not a legal guardian, any time the professionals have a disagreement with your recommendation, the pat answer is you're not the legal guardian. Instead, work with the families, keep us together. Frankly, my husband and I did not need a caseworker. We didn't need a case manager. We were our daughter's case managers. So I ask you, what did Nebraska get for the 27-month care coordination when our daughter was in a residential treatment center for a child whose family...parents were willing to do anything to get her back into the home? Because they would not involve us in the care of her treatment, we believe that is one significant factor of why she was there for 27 months. And in that time... [LB356 LB253]

SENATOR ASHFORD: Leslie, I'm going to ask you to sum up. [LB356 LB253]

LESLIE BYERS: ...a dozen legal professionals were involved. So just think of the added cost that this is expending. Keep our family out of the system, use those legal costs to direct services. [LB356 LB253]

SENATOR ASHFORD: Thanks, Leslie. And any questions of Leslie? Yes, Senator McGill. [LB356 LB253]

SENATOR MCGILL: I just have a comment. I just want to thank Leslie for coming down. I know we've worked together with the Children in Crisis Task Force and you're an excellent spokesperson for families and very thoughtful, and I think you truly understand everything that takes place. And I just want to ditto what she's saying in that I've heard the same thing from almost every parent who's made their child a state ward, that it ended up being one of the biggest mistakes of their lives because of how they were

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treated and the lack of cooperation between the parents. And I think a process like this would not only save us money in all of these employees but be better for the families. [LB356 LB253]

LESLIE BYERS: Right. Right. [LB356 LB253]

SENATOR MCGILL: Thank you, Senator Ashford. [LB356 LB253]

LESLIE BYERS: I will leave my... [LB356 LB253]

SENATOR ASHFORD: You're welcome, Senator McGill. (Laugh) Thank you, Leslie. [LB356 LB253]

LESLIE BYERS: I will leave my testimony, written, as well as some additional information for your bill. [LB356 LB253]

SENATOR ASHFORD: Yeah, other stuff? Okay. Oh, okay. [LB356 LB253]

LESLIE BYERS: Okay. [LB356 LB253]

SENATOR ASHFORD: My bill may take some time. [LB356 LB253]

LESLIE BYERS: Well,... [LB356 LB253]

SENATOR ASHFORD: We'll have maybe months, months maybe. (Laugh) [LB356 LB253]

LESLIE BYERS: ...this is fine. I know it will and that's basically what I was saying. [LB356 LB253]

SENATOR ASHFORD: Maybe months. Okay, I appreciate your... [LB356 LB253]

LESLIE BYERS: Thank you very much. [LB356 LB253]

SENATOR ASHFORD: ...all your involvement, Leslie. Thank you. Megan. [LB356 LB253]

MEGAN BYERS: (Exhibit 6) My name is Megan Byers. I am 23 years old and I lived with severe and persistent mental illness for as long as I can remember. I'm here to say that I've been through custody relinquishment and felt the impact of it on myself and my parents. For example, the day I was placed in the treatment center under an emergency petition, my mom accompanied me to the facility and when she was told to leave she asked to say good-bye to me and give me a hug; was denied, my own mother. My

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mother and the other staff did not know that I could hear what was going on but I still remember the pain on her face. That night, while I was lying in bed crying for my mother, the staff told me she couldn't help me because my mother was no longer my legal guardian. I cried all night, wondering why my parents gave me away. At nine years old, I couldn't understand what was happening. It wasn't until many years later that I was able to realize that my parents were using the only option left to help me. Why not help me and help our family? Why make me fear cops? Why make me scared to go into a courthouse, even to this day? At nine years old, a child doesn't understand the system. I didn't understand why my parents were being told to shut up in court. At that point I felt like the only people on my side were my parents, and the courts continually hushed them. I trusted my parents to have my best interest at heart. Of course, they were my parents. They did nothing wrong. But it was very scary when I realized that they couldn't have a say in my treatment but these strangers who I had never met before were making plans for me. Please don't make any future children and families go through this nightmare of being torn apart when all they need most is to stay together. Help our families help ourselves. [LB356 LB253]

SENATOR ASHFORD: Thanks, Megan. [LB356 LB253]

MEGAN BYERS: Thank you. [LB356 LB253]

SENATOR ASHFORD: Thanks for your willingness to come talk to us. [LB356 LB253]

MEGAN BYERS: Thank you. [LB356 LB253]

SENATOR ASHFORD: Any questions or comments? Thank you. Thanks very much. [LB356 LB253]

MEGAN BYERS: Thank you. [LB356 LB253]

SENATOR ASHFORD: Beth, and then...yes, yes, and Kathy is next. [LB356 LB253]

BETH BAXTER: (Exhibit 7) Senator Ashford and members of the Judiciary Committee, my name is Beth Baxter, that's B-e-t-h B-a-x-t-e-r, and I serve as the regional administrator for Region 3 Behavioral Health Services. As you heard Megan testify just a minute ago, Nebraska is truly at odds with itself. Many families believe that their only option to access services is to relinquish custody of their child. The child is removed from his or her familiar environment, placed away from their family, and then we turn around and spend millions of dollars each year trying to achieve permanency for these very children and families. We know through experience that once removed from the home there are many challenges to reunite that family. Children often feel betrayed. They wonder why they've been given into the custody of the state. Too often, the parents become extremely frustrated with the many hoops that they must jump through

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and the requirements that they must comply with in order to be reunited as a family. LB356 provides a better way. LB356 reinforces the fact that children who experience behavioral health disorders should be served and supported by the behavioral health system, not necessarily the system that's designed to serve children who come into the custody of the state due to abuse, neglect, or offenses. The bill also acknowledges and supports the current behavioral health system infrastructure that's currently in place at the community level. The Nebraska behavioral health system is designed...is the designated behavioral health authority at the state level through the Division of Behavioral Health Services and through the six regional behavioral health authorities across Nebraska. The regional behavioral health authorities currently provide therapeutic case management services for children and adolescents who experience a behavioral health disorder. The Professional Partner Program has been in operation since 1995. The program has demonstrated positive outcomes for thousands of children and their families throughout the years. Through community-based provider networks, regions purchase additional services for children to address their behavioral health needs. These include outpatient therapy, intensive outpatient, multisystemic therapy, medication management, day treatment services, respite care, and others. The current challenge faced within our behavioral health system is that we don't have the adequate capacity in these services to serve the number of children who could benefit from them. Based on the national prevalence studies and what's indicated through the fiscal note of LB356, approximately 10,200 children would potentially be eligible for services under this bill the first year. I agree with that. Each year the regional behavioral health authorities serve approximately 5,000 children and adolescents through a variety of services. The current fiscal note...this accounts for nearly one-half of the potentially eligible children. The current fiscal note also does not take into account the number of children who don't need intensive levels of care. It makes the assumption that all children coming into services through this process would need high-end level services. Additionally, we know that there are many families who will be eligible for Kids Connection and other resources to help support their care. LB356 is not a totally new concept, and it's a concept that has been previously through pilot program in central Nebraska, one that's achieved positive results. In 2004, Region 3, Families CARE, and the Central Service Area of the Division of Children and Family Services developed the program entitled the Early Intensive Care Coordination Program. This was a program that came into being because the department experienced numbers of families who would come to their attention because their child needed assistance for their behavioral health needs. It was a program that we operated for 18 months. [LB356 LB253]

SENATOR ASHFORD: Beth, I'm going to ask you, because... [LB356 LB253]

BETH BAXTER: Okay. [LB356 LB253]

SENATOR ASHFORD: ...there may be some questions and I do have some and maybe you could fill in your answers, just because we're at the red light. [LB356 LB253]

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BETH BAXTER: All right. [LB356 LB253]

SENATOR ASHFORD: But does anybody...yes, Senator McGill. [LB356 LB253]

SENATOR MCGILL: I just wanted to comment that I know if I had a wad of money I'd want to put it into that Professional Partners Program, because I think that is what's effective and where we need to be putting more emphasis. But can you, you know, for clarification--I know Senator Lathrop asked Senator Dubas about this--but talk about those wraparound services and what those do. [LB356 LB253]

BETH BAXTER: Sure. The wraparound services are intended to be an individualized process based on the child's needs, utilizing the strengths and the resources that the families do have, and it's really to address the needs. It's not a cookie-cutter approach. It's a very individualized approach. It brings to bear upon the child to address their needs, both what we call formal services, treatment services, therapy, day treatment, and also informal services--those services that engage the child and the family in their community and support them in the community. [LB356 LB253]

SENATOR ASHFORD: Does the...and I agree with Senator McGill. We have had many conversations through the task force and your region has done some significant things. Just so I fully understand this, if someone has an issue, of some of the issues you've talked about, they could...Larry suggested they contact...Judge Gendler suggested they contact the county attorney. Is that how this works? No. [LB356 LB253]

BETH BAXTER: No,... [LB356 LB253]

SENATOR ASHFORD: And maybe I misunderstood. That's what happens now, I guess, but under this system what happens? How do you trigger the services? [LB356 LB253]

BETH BAXTER: Well, currently, I mean these 5,000... [LB356 LB253]

SENATOR ASHFORD: Or under Senator Dubas' bill, how would...what would be the trigger mechanism here? [LB356 LB253]

BETH BAXTER: I would see it in terms of probably different ways. They could come into the program through the local service area,... [LB356 LB253]

SENATOR ASHFORD: Okay. [LB356 LB253]

BETH BAXTER: They've come to the attention, it come through the school, through the education... [LB356 LB253]

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SENATOR ASHFORD: But there is a gate...there is a person, isn't there, under this bill? Well, I'll ask...I'll maybe ask Kathy about it more but... [LB356 LB253]

BETH BAXTER: Now what we do in... [LB356 LB253]

SENATOR ASHFORD: What you do is... [LB356 LB253]

BETH BAXTER: ...in Region 3 is we have what we call resource coordinators. [LB356 LB253]

SENATOR ASHFORD: Right. [LB356 LB253]

BETH BAXTER: ...and it really is kind of a single point of entry. [LB356 LB253]

SENATOR ASHFORD: Right. Isn't there a resource coordinator in this bill? I don't know, maybe not, but that's what you do, correct? [LB356 LB253]

BETH BAXTER: Yes, uh-huh. [LB356 LB253]

SENATOR ASHFORD: Okay. And... [LB356 LB253]

BETH BAXTER: And we have the professional partners then that provide the ongoing therapeutic case management services for those families that need that level of intervention. [LB356 LB253]

SENATOR ASHFORD: So they come to you directly at the region level. [LB356 LB253]

BETH BAXTER: Yes. [LB356 LB253]

SENATOR ASHFORD: There really is no juvenile court involvement at all. [LB356 LB253]

BETH BAXTER: No. No, and currently they're referred through mental health programs, through law enforcement, through the local faith community. [LB356 LB253]

SENATOR ASHFORD: Or maybe by a juvenile judge. [LB356 LB253]

BETH BAXTER: Yes, it could be. [LB356 LB253]

SENATOR ASHFORD: Okay. Or by your judge in the 3rd...it's not a juvenile judge, I guess, a county judge, but...and last time we met, we were talking about a Professional Partner Program and, well, I know region...Lincoln is here, but was there some additional funding that was potentially available for that program or was there a

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reallocation? Do you remember that conversation? [LB356 LB253]

BETH BAXTER: Yes,... [LB356 LB253]

SENATOR ASHFORD: How did that...could you bring us up to speed on that? [LB356 LB253]

BETH BAXTER: Sure. Our conversation on that day was around the Professional Partner Program, around the integrated care coordination unit and the progression of the Division of Children and Family Services to end the integrated care coordination unit as of December of 2009. And so our discussion centered on the available resources, trained personnel, infrastructure that is currently at the regional...at the community level that could be directed into serving children through this bill. [LB356 LB253]

SENATOR ASHFORD: So it would be a reallocation... [LB356 LB253]

BETH BAXTER: Yes. [LB356 LB253]

SENATOR ASHFORD: ...through this bill to get at the...what you're talking about. [LB356 LB253]

BETH BAXTER: Yes. And it would be a... [LB356 LB253]

SENATOR ASHFORD: How much money are you talking about in your region? [LB356 LB253]

BETH BAXTER: Our contract for the ICCU is just at \$3 million. [LB356 LB253]

SENATOR ASHFORD: And that money is not...is it going away at the end of December of 2009? [LB356 LB253]

BETH BAXTER: Yes, it will. It will... [LB356 LB253]

SENATOR ASHFORD: All? [LB356 LB253]

BETH BAXTER: ...it will be folded, those dollars will be folded into the new child welfare reform process. [LB356 LB253]

SENATOR ASHFORD: That's on the HHS level. [LB356 LB253]

BETH BAXTER: Yes, that's on the Division of Children and Family Services level. [LB356 LB253]

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SENATOR ASHFORD: So then not to the...it will not go to the regions? [LB356 LB253]

BETH BAXTER: No. [LB356 LB253]

SENATOR ASHFORD: So you...I mean this is...I think this is problematic. I mean the \$3 million...and I guess I didn't get it clear and maybe someone else can talk about it, too, because you work with it every day, but the \$3 million goes...you don't...it doesn't come to you anymore... [LB356 LB253]

BETH BAXTER: No. [LB356 LB253]

SENATOR ASHFORD: ...at the end of December. So what does...what do you do then, I mean what... [LB356 LB253]

BETH BAXTER: Well,... [LB356 LB253]

SENATOR ASHFORD: ...without the \$3 million? You work closely...closer with HHS or what are your options at that point? [LB356 LB253]

BETH BAXTER: Well, we will continue the Professional Partner Program. We'll continue serving about 5,000 children annually, collectively across Nebraska. In Region 3, our work will continue to collaborate with the Division of Children and Family Services, continue our system of care work. That doesn't go away. We... [LB356 LB253]

SENATOR ASHFORD: But what goes away? Three million is a lot of money. [LB356 LB253]

BETH BAXTER: What goes away are the resources to support the case management services... [LB356 LB253]

SENATOR ASHFORD: Right. [LB356 LB253]

BETH BAXTER: ...for children and adolescents who experience complex behavioral health. [LB356 LB253]

SENATOR ASHFORD: Behavioral mental health issues. [LB356 LB253]

BETH BAXTER: Yes, and are wards of the state. [LB356 LB253]

SENATOR ASHFORD: And how many...how many caseworkers do you have? [LB356 LB253]

BETH BAXTER: We currently have 16 caseworkers and then there are 9 additional

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Children and...state caseworkers that partner with us. [LB356 LB253]

SENATOR ASHFORD: And 16 that are with the region? [LB356 LB253]

BETH BAXTER: Yes, uh-huh. [LB356 LB253]

SENATOR ASHFORD: Would you lose...do you lose the 16 case managers then?  
[LB356 LB253]

BETH BAXTER: We would lose them to do the work in the intensive care coordination  
unit. [LB356 LB253]

SENATOR ASHFORD: What's your total budget? [LB356 LB253]

BETH BAXTER: Our total budget for which...for the region and we... [LB356 LB253]

SENATOR ASHFORD: Yeah, for your...for Region 3. How much money do you have?  
[LB356 LB253]

BETH BAXTER: Our total budget is \$12 million for behavioral health services. And  
Region 3 is not unlike the other regions. Approximately 90 percent of those dollars are  
targeted and focused towards adults' behavioral health services and 10 percent for  
children. [LB356 LB253]

SENATOR ASHFORD: Right, that's...that was the other point that came up over and  
over again in the task force was what such a small percentage of the overall. And you  
serve in Region 3 how many minor children, how many... [LB356 LB253]

BETH BAXTER: Last year... [LB356 LB253]

SENATOR ASHFORD: ...in the behavioral mental health area? [LB356 LB253]

BETH BAXTER: We served, I believe it was about, 400 children. [LB356 LB253]

SENATOR ASHFORD: Okay, 400 children. And of your \$12 million budget, about a  
million something goes to children? [LB356 LB253]

BETH BAXTER: Probably a couple of million does. [LB356 LB253]

SENATOR ASHFORD: Or a little less than that? [LB356 LB253]

BETH BAXTER: Yeah. [LB356 LB253]

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SENATOR ASHFORD: And is that...is that to pay for operations and for...just operations or...? [LB356 LB253]

BETH BAXTER: It pays for operations, the Professional Partner Program, and then we purchase services for children as well. We purchase day treatment services, mutisystemic therapy, outpatient and so forth. [LB356 LB253]

SENATOR ASHFORD: Have there been discussions with the state about carrying that Professional Partners funding over through...? [LB356 LB253]

BETH BAXTER: The Professional Partner Program, that's on the behavioral health side. I understand this can get somewhat complex. The professional partners serve on the behavioral health side so it's our work with the Division of Behavioral Health that funds the Professional Partner Program. The integrated care coordination unit, which was really modeled off of the Professional Partner Program, those are dollars...that's a contract that we've had with the Division of Children and Family Services, so it has been focused, targeted towards children and adolescents and their families, those kids who are state wards. And then we developed a program that was really targeted to serve children before. They were at...basically at imminent risk of becoming a state ward and we were able to serve them prior to that. [LB356 LB253]

SENATOR ASHFORD: All within that \$1.5 million or \$2 million? [LB356 LB253]

BETH BAXTER: Yes, uh-huh. [LB356 LB253]

SENATOR ASHFORD: You can do all that in that...and a portion of that goes away at the end of 2009. [LB356 LB253]

BETH BAXTER: Right, the Children and Family Services dollars do. [LB356 LB253]

SENATOR ASHFORD: Senator McGill. [LB356 LB253]

SENATOR MCGILL: How many kids are left then if the...when the ICCUs are taken out of your jurisdiction? How many kids then are you helping through Professional Partners and...? Because it's my understanding you're not really able to get that many kids into the Professional Partners Program because it's just not funded at a high enough level. [LB356 LB253]

BETH BAXTER: Exactly. I mean statewide the Professional Partner Program serves just under 700 children. [LB356 LB253]

SENATOR MCGILL: And there's a greater need out there than that. [LB356 LB253]

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BETH BAXTER: Yes, uh-huh. Because if you look at the prevalence study, the 10,200 children, there's a certain portion of those children that will benefit from the level of case management and wraparound services, and then there are other children that need various levels of care but not quite that intensity. [LB356 LB253]

SENATOR ASHFORD: And there are...the children have a variety of different payor situations. They're not all required...I mean they're not all wards of the court. You deal with children in all sorts of different situations financially, correct? [LB356 LB253]

BETH BAXTER: Yes. And in Region 3, and I don't think it's too much different across the state, approximately 65 percent of the individuals that we serve within the behavioral health system are indigent. They don't have...they don't have health insurance. They don't have other means. And so we serve them based on their ability to pay and as Senator Dubas was describing. [LB356 LB253]

SENATOR ASHFORD: And sometimes you...or in most of those, in most of those cases there's no reimbursement backed. [LB356 LB253]

BETH BAXTER: Yes, uh-huh. [LB356 LB253]

SENATOR ASHFORD: Or very little. Okay. Thank you. Any other questions? I took...I asked...I kind of... [LB356 LB253]

BETH BAXTER: Thank you. [LB356 LB253]

SENATOR ASHFORD: I think we're going to have to go a little beyond 3:00 because I ask too many questions. But thank you. [LB356 LB253]

BETH BAXTER: Thanks. Thank you very much. [LB356 LB253]

KATHY BIGSBY MOORE: (Exhibit 8) Thank you, Senator Ashford and committee. I'm Kathy Bigsby Moore, K-a-t-h-y B-i-g-s-b-y M-o-o-r-e, executive director of Voices for Children in Nebraska. You've got my written testimony. I'm not going to repeat that. But I want to try to illuminate just a couple of areas where I think this is very confusing. As Senator Ashford was trying to get at the financial picture here, and I think Senator Dubas passed out a flow chart, if you will, that I think articulates what needs to occur here. Leslie Byers and her daughter Megan, they had private insurance. They walked in the door. The private insurance was their key to the door for a long, long time and we the state did not have to do anything for the Byers' family. And then their insurance ran out. So in the ideal world, if we had money that this piece of legislation would establish through the regions, in the ideal world the Byers could then have walked in the region's door and said, we need a little help. On the other end of the spectrum, if the Byers lived at or below 185 percent of poverty, so if their whole household income was only about

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\$42,000, \$40,000, then the state would have provided them with Kids Connection, Medicaid coverage. So it's really these families between. And I actually took an attempt at another little flow chart here that's not working very well but at the top are the folks who maybe earn \$66,000 or more, have private coverage, can get their care. Down here you've got the Medicaid families that earn \$40,000 or less, and they can...that's a family of four, and they can get some coverage. But it's those families in the middle who need this sliding fee scale that we're talking about. So the family would walk in the door of the regional office of a hospital, of CenterPointe, of some facility and say, I need care, and CenterPointe would sit them down and say, well, how much could you pay? Well, the fee is going to be X; they could pay half of X. So then CenterPointe would begin looking at other avenues of funding. [LB356 LB253]

SENATOR ASHFORD: Without making them a ward of the court. [LB356 LB253]

KATHY BIGSBY MOORE: Exactly. Exactly. So as this describes, they might have United Way dollars that come into the agency, they might have a fund-raiser and other donor dollars, or they would be able to go to the regions and tap some of the very few dollars that would now have grown because LB356 would have passed. That is the goal. It is exactly the way the adult system works. For some reason, the state of Nebraska has done this for adults but have decided that we are not going to serve children. I don't remember Senator Ashford voting on a decision like that 10 years ago or 15 years ago, but as a state we have somehow made a decision not to provide for children what we're providing... [LB356 LB253]

SENATOR ASHFORD: Well, I thought we expanded those Medicaid dollars in 1991 and 1992, not the other way around. [LB356 LB253]

KATHY BIGSBY MOORE: I don't...I don't disagree. The Medicaid dollars for the very low-income... [LB356 LB253]

SENATOR ASHFORD: But this is the middle. I understand your...I understand. [LB356 LB253]

KATHY BIGSBY MOORE: This is the middle, yeah, and it's the middle that we continue to neglect. And so what I really am asking is that we look at the needs of these children. We are not creating some huge multimillion-dollar, complicated system. We are simply saying put resources into, as Judge Gendler said, into the existing regional system so that services can then be available localized based on the unique need of each child. [LB356 LB253]

SENATOR ASHFORD: And you can bypass the judicial system this way. [LB356 LB253]

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KATHY BIGSBY MOORE: Absolutely. And you would only...you know, one of the charts I tried to create was over here would be the behavioral health system, if we had one, and over here would be the much more complicated child welfare system. As long as the behavioral health system could meet the needs, that child would never need the court, an attorney, a county attorney. They would be able to be served over here. If as I think Judge Gendler said, if there was evidence of abuse/neglect, if the child began shoplifting, etcetera, there would then be court proceedings that would kick them over. Otherwise, we don't need that, and parents can be their children's case managers. [LB356 LB253]

SENATOR ASHFORD: And if you're Megan's family and you're in the middle and your insurance...there is no other place to go, is that definitive? I mean, there's no other place to go once your private insurance runs out except to go to...to be made a ward of the court. Is that...? [LB356 LB253]

KATHY BIGSBY MOORE: That is correct. Now there may be, if you go to a certain agency that has a grant that temporarily provides some dollars, you might be able... [LB356 LB253]

SENATOR ASHFORD: But to sustain the...the point of all this is that behavioral mental health is not a wheelchair or not a pair of crutches. It is a long-term care problem. [LB356 LB253]

KATHY BIGSBY MOORE: Right. Right. [LB356 LB253]

SENATOR ASHFORD: So, sure, there are grants and there are ways... [LB356 LB253]

KATHY BIGSBY MOORE: But nothing... [LB356 LB253]

SENATOR ASHFORD: To sustain the care. [LB356 LB253]

KATHY BIGSBY MOORE: Exactly. [LB356 LB253]

SENATOR ASHFORD: Correct? [LB356 LB253]

KATHY BIGSBY MOORE: Correct. Correct. [LB356 LB253]

SENATOR ASHFORD: And that is absolutely the way it is, that if you are in this state you have to go to the juvenile court system or some...I mean there's no other way to do it... [LB356 LB253]

KATHY BIGSBY MOORE: Correct. [LB356 LB253]

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SENATOR ASHFORD: ...to access those funds. [LB356 LB253]

KATHY BIGSBY MOORE: Correct. And I fear that as more is folded into the Children and Family Service contracts that Beth was talking about, I fear that that will become an even greater problem, that you're not... [LB356 LB253]

SENATOR ASHFORD: Why? Why? Why? Why? [LB356 LB253]

KATHY BIGSBY MOORE: Well, because if you look back to the safe haven cases, we did not see those children receiving services through the Division of Behavioral Health. We saw those children receiving services through Children and Family Services under Todd Landry. Most of them were placed out of home. Many of them had very serious problems and needed that at that time. But five years go, seven years go in their lives there were not dollars or any significant array of services under behavioral health to meet their needs there. If Beth has \$1.5 million, I think C.J. Johnson is going to speak from Lincoln later, you're going to see that we have very few dollars, maybe \$6 million, \$7 million, \$8 million in the whole state for children's behavioral health services. [LB356 LB253]

SENATOR ASHFORD: For 10,000 children or...? [LB356 LB253]

KATHY BIGSBY MOORE: Well, or however...I mean there aren't that many being served. I think Beth cited 5,000. The 10,000 is based on a national study. It's a prevalence study. It's a very legitimate number, but it's...actually on the LB542 task force in December we had asked for a survey to really get a better handle on what the needs are in Nebraska related to the capacity. That has not been done yet so we must rely on national prevalence data. [LB356 LB253]

SENATOR ASHFORD: Thanks, Kathy. Yes, Senator Council. [LB356 LB253]

SENATOR COUNCIL: And that...I'm going to follow up on that, Kathy. Again, thanks for testifying because I keep looking at the fiscal note and I'm trying to sort through this because I've heard this 10,200 child number, I've heard 5,000. I know there are currently 6,506 state wards currently. So when I look at the 10,200 number, that's based on a prevalence theory. [LB356 LB253]

KATHY BIGSBY MOORE: It's a national statistic that applies to most states. [LB356 LB253]

SENATOR COUNCIL: So of all of the children in the state of Nebraska, based upon this model, 10,200 of all of the children in the state of Nebraska would need these services. [LB356 LB253]

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KATHY BIGSBY MOORE: Uh-huh. [LB356 LB253]

SENATOR COUNCIL: So, presumably, 6,506 of them are still...are currently receiving that service or should be receiving that service. If the prevalence model is correct that of all of the children in the state of Nebraska 10,200 need these behavioral mental health services and we currently have 6,506 wards, then there's about 3,500 children out there, based...using the model. [LB356 LB253]

KATHY BIGSBY MOORE: Right. Now you might...you might adjust down by saying, of the 6,500 state wards, some of them don't have mental health problems. [LB356 LB253]

SENATOR COUNCIL: Health problems, okay. [LB356 LB253]

KATHY BIGSBY MOORE: So you might subtract... [LB356 LB253]

SENATOR COUNCIL: Might adjust it down some. [LB356 LB253]

KATHY BIGSBY MOORE: You might adjust that down. [LB356 LB253]

SENATOR COUNCIL: And the reason I'm asking these questions is because this fiscal note is like inaudible) [LB356 LB253]

KATHY BIGSBY MOORE: Yeah. (Laugh) Ah! [LB356 LB253]

SENATOR COUNCIL: Because it appears to me that the fiscal note is based upon serving...providing these services to 10,200 children. [LB356 LB253]

KATHY BIGSBY MOORE: And as I think Beth was trying to say, and providing the highest level... [LB356 LB253]

SENATOR COUNCIL: Level. [LB356 LB253]

KATHY BIGSBY MOORE: ...residential treatment for all 10,200. [LB356 LB253]

SENATOR ASHFORD: All the time. [LB356 LB253]

KATHY BIGSBY MOORE: All the time, exactly,... [LB356 LB253]

SENATOR COUNCIL: Okay. [LB356 LB253]

KATHY BIGSBY MOORE: ...which is not realistic, nor would that be reflected in the prevalence data either. [LB356 LB253]

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SENATOR COUNCIL: Okay. So if I were to ask you the question, whether you felt that the amounts set forth in the fiscal note were reasonable, I can assume your response would be not. [LB356 LB253]

KATHY BIGSBY MOORE: Absolutely not. [LB356 LB253]

SENATOR COUNCIL: Okay. And so if I were to ask you if you felt that what is sought to be achieved under LB356 could be accomplished for less than what's in the fiscal note there, I assume your answer would be yes. [LB356 LB253]

KATHY BIGSBY MOORE: Yes. [LB356 LB253]

SENATOR COUNCIL: Okay. And also this...I raised a question about case management to an earlier testifier. As you understand the types of services that would be delivered to youngsters under this program, what kind of case management are we talking about being needed? And I would assume it would become case management provided by the Division of Behavioral Health of HHS rather than the division that handles children under the current ward system. [LB356 LB253]

KATHY BIGSBY MOORE: Exactly. [LB356 LB253]

SENATOR COUNCIL: Am I correct? [LB356 LB253]

KATHY BIGSBY MOORE: Yeah, that should be. And as I read the fiscal note, it looked as though those positions were in Children and Family Services, which does not fit the intent of the bill. [LB356 LB253]

SENATOR COUNCIL: Okay. Because the intent of the bill is that the coordination of the services be between the regions and the Division of Behavioral Health Services... [LB356 LB253]

KATHY BIGSBY MOORE: Correct. [LB356 LB253]

SENATOR COUNCIL: ...of the Department of Health and Human Services. [LB356 LB253]

KATHY BIGSBY MOORE: Absolutely. And for the most part, I would not see most of those families needing case management at all. It would be the same as if I were a Medicaid client and I walked in with my Medicaid card to my physician's office. I don't need case management to do that. [LB356 LB253]

SENATOR COUNCIL: Okay. But would you expect to see, though, an increase in staff in the Division of Behavioral Health Services? [LB356 LB253]

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KATHY BIGSBY MOORE: Perhaps. [LB356 LB253]

SENATOR COUNCIL: You bet. Good. [LB356 LB253]

KATHY BIGSBY MOORE: I've always felt there needed to be... [LB356 LB253]

SENATOR COUNCIL: Okay. [LB356 LB253]

KATHY BIGSBY MOORE: ...an increase and we now have a children's behavioral health coordinator who's been in that position for about a year and there probably would be a need for some but not... [LB356 LB253]

SENATOR COUNCIL: Not 200 to 300 caseworkers. [LB356 LB253]

KATHY BIGSBY MOORE: Correct. [LB356 LB253]

SENATOR COUNCIL: Okay. [LB356 LB253]

KATHY BIGSBY MOORE: That's right. [LB356 LB253]

SENATOR COUNCIL: Okay. [LB356 LB253]

SENATOR ASHFORD: And also it doesn't take into, I mean, the consideration the fact that because we don't have these services that more cases do go into juvenile court. [LB356 LB253]

KATHY BIGSBY MOORE: Right. [LB356 LB253]

SENATOR ASHFORD: That's an expensive proposition. And by the time they get to juvenile court they may be more serious than what they need to be and that, furthermore, that we have a huge number...we have a significant fiscal responsibility on the adult side which may be significantly lessened if we deal with the children's behavioral mental health system, I mean if we can address these issues earlier in the game. Is that valid or not? [LB356 LB253]

KATHY BIGSBY MOORE: It absolutely is. The... [LB356 LB253]

SENATOR ASHFORD: Can you...can that have an impact, if we address these issues earlier in the life of this person that, this hypothetical person, that that's going to have an impact on services at a later time in their lives? [LB356 LB253]

KATHY BIGSBY MOORE: It definitely should. And you said it yourself, mental illness is

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an illness. It is a lifelong illness for many, many people so we can't pretend that we're not going to have to provide any services to these people, but we all know that any illness treated early on is much less apt to become more serious, to get out of control. And so as people learn to deal with this illness as a child, I look at Megan and would presume that she will go forward in a much more productive way than if she were still a state ward. [LB356 LB253]

SENATOR ASHFORD: And that's a great example. But the last question is, if we...can we access, under Senator Dubas' bill, can we access funds, Medicaid funds, without these individuals, without being made a ward of the court? [LB356 LB253]

KATHY BIGSBY MOORE: Yes. Yes. We... [LB356 LB253]

SENATOR ASHFORD: And how do you access those funds? [LB356 LB253]

KATHY BIGSBY MOORE: Well, and again, C.J. is following me, I think some of...when somebody walks in a service provider's door, Topher Hansen has a mix of clients that are Medicaid clients, that are private pay... [LB356 LB253]

SENATOR ASHFORD: Right. [LB356 LB253]

KATHY BIGSBY MOORE: ...insured clients, and so any... [LB356 LB253]

SENATOR ASHFORD: Well, what about the middle clients that don't have any...? How did we get...enable...? [LB356 LB253]

KATHY BIGSBY MOORE: That's the sliding fee scale. [LB356 LB253]

SENATOR ASHFORD: Okay. But how do we enable them to get access to other funds, government funds? Is there no government money for them? [LB356 LB253]

KATHY BIGSBY MOORE: No, there would only be the money that's generated through the regional dollars, which would be specifically for these middle income. [LB356 LB253]

SENATOR ASHFORD: But when we're talking about providing...if they're not...in order to get the funds, they have to be made wards of the court today. [LB356 LB253]

KATHY BIGSBY MOORE: Yes, but we...but under this new bill they would not have to be. They would... [LB356 LB253]

SENATOR ASHFORD: They get the same funds that they would get if they were made wards of the court? [LB356 LB253]

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KATHY BIGSBY MOORE: It comes from a different...no, it's not IV-E money. It's not Medicaid. It's regional money. It's the regional... [LB356 LB253]

SENATOR ASHFORD: State money. [LB356 LB253]

KATHY BIGSBY MOORE: State money. The... [LB356 LB253]

SENATOR ASHFORD: It comes out of the state General Fund. [LB356 LB253]

KATHY BIGSBY MOORE: Correct. [LB356 LB253]

SENATOR ASHFORD: It's not matched. [LB356 LB253]

KATHY BIGSBY MOORE: Correct. [LB356 LB253]

SENATOR ASHFORD: That's where some of the cost comes in. [LB356 LB253]

KATHY BIGSBY MOORE: Correct. Yes. [LB356 LB253]

SENATOR ASHFORD: There's no Medicaid money available to match any of that without them being made wards of the court. [LB356 LB253]

KATHY BIGSBY MOORE: Correct. [LB356 LB253]

SENATOR ASHFORD: So is the...or maybe that's not exactly right, but... [LB356 LB253]

KATHY BIGSBY MOORE: Right. [LB356 LB253]

SENATOR ASHFORD: ...but I...but...without belaboring that point, but if so, we're spending more state dollars to address issues at an earlier stage in the process to avoid...well, to take care of these people, first of all. That's our number one priority. But then to lessen the costs going forward in the future, is that what we're...? [LB356 LB253]

SENATOR ASHFORD: Is that the theory? [LB356 LB253]

KATHY BIGSBY MOORE: Yes. Yes. And.. [LB356 LB253]

SENATOR ASHFORD: When they would be accessing federal funds... [LB356 LB253]

KATHY BIGSBY MOORE: To some degree. [LB356 LB253]

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SENATOR ASHFORD: ...and matching state dollars. [LB356 LB253]

KATHY BIGSBY MOORE: To some degree, and there will...if a child is made a state ward, they still have to meet certain income level criteria to draw down Medicaid dollars at certain proportion. So... [LB356 LB253]

SENATOR ASHFORD: Okay. And to become...and a state ward does...does a state ward always mean that they're taken from their families? [LB356 LB253]

KATHY BIGSBY MOORE: No. No. But even if a state ward lives in their family's home, their family is still not the full decision maker for that child's care. [LB356 LB253]

SENATOR ASHFORD: Okay. I know this is a complex issue and I'm curious. [LB356 LB253]

SENATOR COUNCIL: Real quickly. [LB356 LB253]

SENATOR ASHFORD: Yes, Senator Council. [LB356 LB253]

SENATOR COUNCIL: Because I think that may have confused...maybe it just confused me, but... [LB356 LB253]

KATHY BIGSBY MOORE: (Laugh) It might have confused me. [LB356 LB253]

SENATOR COUNCIL: But...but if...if... [LB356 LB253]

SENATOR ASHFORD: Sorry. [LB356 LB253]

SENATOR COUNCIL: ...if a family who is Kids Connection eligible comes and requests the regional administrator for a voluntary service agreement, won't Medicaid funds be used to provide those services? [LB356 LB253]

KATHY BIGSBY MOORE: Yes. [LB356 LB253]

SENATOR COUNCIL: Okay. [LB356 LB253]

KATHY BIGSBY MOORE: If they are already...yes. [LB356 LB253]

SENATOR COUNCIL: If they are already Kids Connection... [LB356 LB253]

KATHY BIGSBY MOORE: Yes. [LB356 LB253]

SENATOR ASHFORD: But I'm worried about the ones that aren't. [LB356 LB253]

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SENATOR COUNCIL: Okay. But that's...but... [LB356 LB253]

KATHY BIGSBY MOORE: Right. [LB356 LB253]

SENATOR ASHFORD: And the ones that aren't eligible, that's what I'm trying to figure out. [LB356 LB253]

SENATOR COUNCIL: But, okay, but if they're not eligible, then that's where the state fund... [LB356 LB253]

KATHY BIGSBY MOORE: That's where this... [LB356 LB253]

SENATOR COUNCIL: ...that's where this money... [LB356 LB253]

KATHY BIGSBY MOORE: ...that's where the state funds... [LB356 LB253]

SENATOR COUNCIL: ...the state funding comes in. [LB356 LB253]

KATHY BIGSBY MOORE: And when you hear...when you hear the statistic, when Mr. Dunn was talking about Mayo Clinic saying Nebraska is the worst place to live if you have mental illness, it is because Nebraska has not put General Fund money towards... [LB356 LB253]

SENATOR COUNCIL: Mental health. [LB356 LB253]

KATHY BIGSBY MOORE: ...mental health at the same level most other states, and absolutely not toward children's mental health. So to some degree... [LB356 LB253]

SENATOR ASHFORD: Are we the...are we 50th or something or...? [LB356 LB253]

KATHY BIGSBY MOORE: That...oh, it changes from time to time. I would say bottom to bottom ten is probably as definitive as I would want to be today. [LB356 LB253]

SENATOR ASHFORD: Okay. All right. Thanks, Kathy. [LB356 LB253]

KATHY BIGSBY MOORE: Uh-huh. Okay, thank you. [LB356 LB253]

TOPHER HANSEN: (Exhibit 9) Senator Ashford, members of the committee, I'm Topher Hansen. I'm the president of the Nebraska Association for Behavioral Health Organizations. I'm also executive director of CenterPointe, which is a treatment facility for both youth and adults who have a co-occurring mental illness and addiction, and we operate here in Lincoln and Lancaster County. You know, somebody said once that a

measure of a civilized society is the extent to which we take care of our own, and if there are 10,200 children out there waiting for services then we have a big job to do and it commands all of us, not just you but all of us, to gain a vision on how to solve this problem. And it won't come easy and it's not a simple solution. In fact, the simple solutions are the ones to be most leery about because they will provide a remedy for disaster that will hurt people down the road. A good system is a complex system that adapts to the needs of the individual. Just as each of you has an individual need should you go into any kind of mental health therapy, you know, family, marital, individual counseling, whatever it is, that a therapist will tailor what happens with you in that session according to who you are, what your experiences are, what your background is, what your income is, and we need to do the same in our kids system. And our kids system right now is brought down to a very simplified level where much of it exists under the Medicaid. What this bill does is begin to open the doors to other avenues. It begins to be the solution, not the final solution, but it begins to be the solution for the safe haven crisis we experienced not too long ago. In the families who were standing out crying as one of those 10,200 children to increase the following year to 13,700 children, the families who need that help standing in the cold while we build our coffers, they will have an opportunity to access services in a less traumatic, easier fashion that will begin to intervene and interrupt some of the problems the child and the family are experiencing. No question what was said earlier--the earlier you intervene, identify, and begin to solve the problem the less impactful that issue will be in the person's life. We have to get at it when the problem arises. That's one of the truths of treatment. Any academic institution or therapist will tell you that. The sooner you can get to it, the sooner you can get the right remedy then the more likely you'll have an earlier successful outcome. So I urge you to begin this and to establish our vision. We have passed a law, I'm sorry, we have introduced a law, a bill over in the Health and Human Services Committee, which is a hot line, a 24/7 hot line. That hot line does not necessarily connect to a service. This is the service. [LB356 LB253]

SENATOR ASHFORD: Is this the service or is this the other access to the service? [LB356 LB253]

TOPHER HANSEN: This is the other access, but this is the place that people can be connected to then have that nexus between crisis and solution. The crisis line now provides a moment and an ear and no nexus. This is the nexus. And if... [LB356 LB253]

SENATOR ASHFORD: This is the linkage that we talked about for two months. [LB356 LB253]

TOPHER HANSEN: Yes. And I was, as several know, I was a part of the Children in Crisis Task Force and what we heard over and over and over and over again was I can't get in to services. I hear from hospitals and jails and places like that call me up and say, do you have any room at the inn? And I say, yes, we do. We can get you in within a

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week or two and they said, I can't. I don't know how. How do we get our kids in there? And I said, I don't know. They come to us the same way they come to everyone else through a gauntlet through the managed care entity and it's a system that is not functional for even those that operate in it day in and day out. [LB356 LB253]

SENATOR ASHFORD: And I guess just how would you budget for it? I mean would the regions then make a request? Would they budget based on their experience level? Would they then request funds from the state? How would this work? How... [LB356 LB253]

TOPHER HANSEN: Yes. I think the regional level provides the best opportunity to gauge the funding in that they can have a sensitivity to the client demographic in their area and know what kind of resources they're going to need to do this. This is not very accurate funding connected to the service in my mind. I don't have any argument with the numbers of children, but the budget numbers that go with this either we're getting the Taj Mahal or this is the plumber that doesn't want the job is how I look at it. [LB356 LB253]

SENATOR ASHFORD: Good. I mean that's a good metaphor. Any other...just saying I was thinking the plumber and the job thing. Okay, good. [LB356 LB253]

TOPHER HANSEN: I didn't say Joe the Plumber. [LB356 LB253]

SENATOR ASHFORD: Topher, thanks for all your help on the...yeah. Where did that guy go by the way? Anyway, thank you. Yeah, thank you. Yes, Senator Coash. Topher, one more, Senator Coash has a question. [LB356 LB253]

SENATOR COASH: Thank you, Chairman. Thank you for coming down today, Mr. Hansen. You work with Magellan much in your? [LB356 LB253]

TOPHER HANSEN: Oh, every day. [LB356 LB253]

SENATOR COASH: Care to venture an opinion on how well, I mean, the state pays a lot of money for them to manage our services. Are they doing an adequate job? Are they doing what we ask them to do? [LB356 LB253]

TOPHER HANSEN: It's very dynamic I think would be the term I would use. There are things that they are pointed toward which I think are the right ideas, they just implemented some quality improvement processes. But so the right ideas are beginning to bubble up, but they've got a long way to go I think. We run into problems every day. I can't even begin to get into the system because you go an inch deep and it hits a mile wide very quickly. But their systems are very complicated. I think our business office has to be one of the more complicated places I've ever been because of all the different

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managed care requirements that we have. And part of that is just the way it's designed. Part of it is how they operate it and so on. So I couldn't give one answer to that. I think they're pointed in the right direction on some things. I think they're in trouble in other areas and struggling. It's a complicated answer so I wouldn't give them all one or the other. [LB356 LB253]

SENATOR COASH: Fair enough. Thank you. [LB356 LB253]

SENATOR ASHFORD: Thanks, Topher. [LB356]

TOPHER HANSEN: Yep. [LB356 LB253]

SENATOR ASHFORD: How many other proponents do we have left? A couple three, okay, good. Are you...no, okay. [LB356 LB253]

SCOT ADAMS: I'm doing neutral. [LB356 LB253]

SENATOR ASHFORD: Oh, you're doing neutral, okay. So three or four more. We're going to go to about 3:30 so. We have to give Scot his time. Okay. [LB356 LB253]

LOUISE JACOBS: (Exhibit 10) Good afternoon. My name is Louise Jacobs. I am a licensed clinical social worker. My undergraduate degree is in child development. I'm speaking from the perspective of a private practitioner and I'm testifying in favor of LB356 on behalf of the Nebraska Chapter of the National Association of Social Workers. Children can come to a need for mental health services through a lot of reasons. They may have a genetic predisposition. They may have experienced natural disaster, death or loss of a parent, abuse, neglect, and sometimes medical or developmental problems. I think safe haven revealed some significant concerns in that 34 out of 36 children who were dropped off have received mental health services. And I agree that this does elucidate the problems with inadequacy. Senator Ashford, I'm appreciative of what you're trying to accomplish with LB253, and I appreciate your understanding of the early intervention pieces. Senator McGill, I know some very appreciative parents for your compassion and support and I thank you for that. And I second everything Senator Dubas said in her introduction, and that is why I support the intent of LB356 which does provide for direct behavioral health services. We have a shortage of mental health providers in Nebraska. That shortage is growing as providers leave the state in frustration because of restrictive Medicare and managed...Medicaid and managed care policies. That's my opinion about Magellan. Just last week we were informed as private providers that they were implementing policies that will effectively provide a lifetime cap of 75 sessions per client. Authorizations for individual and family therapy can no longer be used interchangeably. So if we have a client come in with unknown needs that we have not anticipated, it will make it much more difficult for us to serve them. They are monitoring individual clinicians and consumers for cost intensiveness, which is a serious

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concern to me. So the end result of this will be providers closing their doors, private providers. [LB356 LB253]

SENATOR ASHFORD: And that was what I was going to ask Topher. I mean when do the providers go away? I mean I don't...then what happens? [LB356 LB253]

LOUISE JACOBS: In the small town that I live in of 25,000, we've had two psychologists leave since August and a third will be leaving as soon as he is credentialed for work in another state. I am the business office in my practice, and I can't spend that time out of session doing that complicated stuff. [LB356 LB253]

SENATOR ASHFORD: How many of you are there in Hastings? [LB356 LB253]

LOUISE JACOBS: Mental health providers? [LB356 LB253]

SENATOR ASHFORD: Uh-huh. [LB356 LB253]

LOUISE JACOBS: I couldn't give you a census for that. I know that Medicaid is about half my practice. So in a small rural area where private providers sometimes are the most specialized providers, we don't have access to sliding fee scales for our clients. And then we're at risk for insurance fraud from the commercial insurers if we try to reduce fees or to accommodate clients in other ways. So when you talk about early intervention, Medicaid managed care has a policy they will not authorize individual therapy for children under the age of four years, nine months. When the brain is most plastic and can be most receptive to change, for children in that age range they will only authorize half the number of sessions for family therapy. And there's a very restrictive definition of family therapy which I have included as part of my testimony. [LB356 LB253]

SENATOR ASHFORD: How many sessions for family therapy? [LB356 LB253]

LOUISE JACOBS: For a child under the age of 4 years, 9 months, initially six sessions. [LB356 LB253]

SENATOR ASHFORD: Okay. Thanks, Louise. Next proponent. [LB356 LB253]

PEGGY ADAIR: (Exhibit 11) Senator Ashford and members of the committee, for the record my name is Peggy Adair, A-d-a-i-r. I am a registered lobbyist with the League of Women Voters of Nebraska and CASA for Douglas County. Today I am speaking on my own behalf, and I look at this from a little different perspective. I retired last November after serving 20 years as a court-appointed special advocate. It's hard to condense 20 years of experience serving in the trenches of the child welfare system into three minutes, so I will cut to the chase. If you do not pass a bill that allows parents to obtain

desperately needed mental health services for their children without relinquishing custody of their children to the state, nothing else you do matters. This bill is the linchpin, and without it, the wheel will continue to fall off the bus and children will continue to be thrown under again and again. There have been plenty of people here today who have told you why this bill is necessary to stop the bleeding. I'm going to tell you how to pay for it, and that is to keep the children out of the foster care system who should not have been there in the first place. Nebraska has the highest number of children in out-of-home placement per capita in the United States. Children in out-of-home care in Nebraska cost taxpayers over \$13 million every month just for room and board. I had a case that started when a refugee mom left her three children home alone for 45 minutes. The children were removed and placed in foster care. Once children are removed from their home in Nebraska, the road home is long and winding. This case went on for five years, twisting and turning through the juvenile justice system. During that five years, there were eight different guardians ad litem on the case, seven county attorneys, seven foster placements, six caseworkers, four attorneys for the mom, three attorneys for the dad, two juvenile court judges, and me. I was the only constant in that case for five years. Five years of foster care alone cost the state of Nebraska \$72,000 just for that one family. Add up all the attorney fees for the 22 attorneys who were on this case from one time to another and you're talking serious money. Children are unnecessarily removed from home in Nebraska for three main reasons: parents are not afforded due process; the statutory language allowing emergency removal is vague; and issues of poverty are misconstrued as issues of neglect. For the last year statistics are available, 65 percent of children in foster care were removed for neglect. Some neglect cases are extremely serious and warrant removal, but many neglect cases arise because there's no food in the house and no money to buy food. Or there's no heat and no money to get the utilities turned back on. These are cases of poverty, not neglect. The solution is to get these families back on their feet, not to take their children from them. Keep the children out of foster care who should not be there in the first place. The money we save can then be used to help the children who so desperately need their help without relinquishment of parental custody. [LB356 LB253]

SENATOR ASHFORD: Senator Lathrop. [LB356 LB253]

SENATOR LATHROP: What did you say the number is that we spend on foster care kids a month? Did you say \$15 million? [LB356 LB253]

PEGGY ADAIR: Out-of-home care costs \$13 million every month. [LB356 LB253]

SENATOR LATHROP: That's what I thought you said. [LB356 LB253]

PEGGY ADAIR: And that is the low end. That's just to no... [LB356 LB253]

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SENATOR ASHFORD: An average month. [LB356 LB253]

PEGGY ADAIR: And that's not counting any kind of therapy, any kind of other services, clothing... [LB356 LB253]

SENATOR ASHFORD: That's room and board. [LB356 LB253]

PEGGY ADAIR: Yeah, yeah. [LB356 LB253]

SENATOR LATHROP: Do you have an estimate of how much we can save with this bill? How many...if we're spending \$13 million a month and you're suggesting to us that we can pay for this with savings from that \$13 million a month, do you have a reasoned estimate as to how much of that \$13 million we can spend somewhere else? [LB356 LB253]

PEGGY ADAIR: I would say in my opinion from my experience, anywhere between 10 percent and 30 percent of the children who are in foster care could be served at home. [LB356 LB253]

SENATOR LATHROP: Okay. That's what I was looking for. [LB356 LB253]

SENATOR COUNCIL: With wraparound services. [LB356 LB253]

PEGGY ADAIR: Yes. [LB356 LB253]

SENATOR ASHFORD: And early, early wraparound services without juvenile court intervention, without 30 lawyers. Just actually... [LB356 LB253]

PEGGY ADAIR: Yes. It was only 22. [LB356 LB253]

SENATOR ASHFORD: Or 22 and actually just taking care of the children, that kind of deal, which is what we used to do. [LB356 LB253]

SENATOR LATHROP: This might be a follow-up question and that is if they're poverty issues, these people aren't necessarily going to take advantage of this, though, are they? [LB356 LB253]

PEGGY ADAIR: Are you talking about the behavioral health? Again the behavioral health services and... [LB356 LB253]

SENATOR LATHROP: Well, you suggested that part of the \$13 million we're spending on poverty issues. [LB356 LB253]

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PEGGY ADAIR: Correct. [LB356 LB253]

SENATOR LATHROP: And that they shouldn't be in foster care in the first place, but that's not a group of people that will necessarily say, gee, I'd better go down there to juvenile court and get myself some services. [LB356 LB253]

PEGGY ADAIR: Well, what I'm saying is the behavioral health services are a different animal than juvenile court. And as was alluded earlier, juvenile court is extremely expensive and extremely complex. And if we can keep families out of that and keep these children home, even if they do need access to juvenile court services, they don't necessarily need to be removed from their home to get those services. [LB356 LB253]

SENATOR LATHROP: Okay. Fair enough. That's fair. [LB356 LB253]

SENATOR ASHFORD: And what struck me about, as we were working on what is a massive bill, obviously, LB253 was the family need of services idea. And that to me was striking and powerful. But of those children you're talking about, the \$13 million, not all of them need mental health services. [LB356 LB253]

PEGGY ADAIR: Correct. [LB356 LB253]

SENATOR ASHFORD: But you suggest 30 percent possibly, that's what you... [LB356 LB253]

PEGGY ADAIR: Yes. And you must realize that putting children into the foster care system is a trauma. We can create... [LB356 LB253]

SENATOR ASHFORD: I can't imagine it's not. [LB356 LB253]

PEGGY ADAIR: We can create a problem where there might not have been one to start with. [LB356 LB253]

SENATOR ASHFORD: I mean I can't...I don't know if there's any more...a bigger priority than what Senator Dubas...this is the linkage we talked about at the...okay. Thank you. [LB356 LB253]

PEGGY ADAIR: Absolutely. You're welcome. [LB356 LB253]

SENATOR ASHFORD: Okay. Yes. And then we're going to go to...is anybody else proponents here? We're going to go to Scot and then how many neutral testifiers are there? Okay. Two. [LB356 LB253]

SARAH HELVEY: (Exhibit 12) Hi. Good afternoon. My name is Sarah Helvey, It's

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S-a-r-a-h, last name H-e-l-v-e-y, and I'm a staff attorney and director of the child welfare program at Nebraska Appleseed. We support this bill because we think it addresses many of the issues that were brought to light by the safe heaven law. And I just want to say again, for the last time perhaps, that this bill provides for children to receive voluntary, immediate, expedited services without requiring the caregiver to relinquish custody of the child or become entangled in the foster care or juvenile justice system. There is not currently a process for that and we need a process. I just want to mention a couple of other provisions that have only been briefly touched on today that we support. We think this bill does it right. Specifically, we're in support of the provisions providing for judicial review. As a lawyer, I think that that's really important. Hopefully, a lot of these cases could avoid being involved in the court process, but we think it is important there's something there to provide families an avenue if needed to address and raise concerns about the duration, scope, or appropriateness of services. So I think that that is really important that's included. In addition, we support provisions, and I don't think this has been mentioned, requiring extension petitions in the court to be accompanied by an evaluation, an assessment, recommended services and placement for the child, a treatment plan that specifies goals, services, and recommended duration of services. This is just excellent so in that situation all parties would have the necessary information at hand to make the decision that's in the best interest of the child. I guess in conclusion, I just want to reiterate something that Kathy said later. We're essentially asking for the same services for children that currently exist for adults in the state, and this is desperately needed. We recognize that the country is currently facing difficult economic times. But it's at these times that it's most important that we assess our priorities and we know that timely access to quality behavioral health services and healthcare services in general directly affects children's well being and their long-term success. So we must invest in children on the front end, otherwise, as others have said, we're paying for it on the back end. And with that, I also want to just mention with regard to LB253, and I actually have testimony on that. We have a staff attorney... [LB356 LB253]

SENATOR ASHFORD: Oh, that's okay. Oh, no, you can give it out. [LB356 LB253]

SARAH HELVEY: (Exhibit 13) Well, I'm not going to get...I just want to provide it because we have a staff attorney, LaShawn Young, who did a great analysis of all 320 pages of your bill. [LB356 LB253]

SENATOR ASHFORD: I know. [LB356 LB253]

SARAH HELVEY: And the testimony provides some of our concerns... [LB356 LB253]

SENATOR ASHFORD: And I deeply appreciate it. [LB356 LB253]

SARAH HELVEY: Yeah, so we don't want it to go for naught. And hopefully as you

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undertake study of that, that can be helpful to really identify some concerns and some positive aspects, and we would just also provide ourselves as a resource during that process. We think that that's important to provide time to look at those issues, and we'd be happy to be involved in that process. [LB356 LB253]

SENATOR ASHFORD: And, Sarah, thank you for all your help in this from the beginning. Any questions of Sarah? Thank you. [LB356 LB253]

SARAH HELVEY: Thanks. [LB356 LB253]

SENATOR ASHFORD: Scot, opponents. We'll give you 3.5 minutes since you...(laughter). [LB356 LB253]

SCOT ADAMS: (Exhibit 14) Actually, I think I'll be very brief and I'm not even going to read all of my testimony because you can read that yourself and so some of the key points you can go through. But good afternoon, Senator Ashford. It's good to see you again and other members of the committee. My name is Scot Adams, S-c-o-t A-d-a-m-s. I am the director of the Division of Behavioral Health for the Department of Health and Human Services, and I'm here today testifying in opposition to LB356. Also will welcome the opportunity to work with you later, as you indicated there could be that opportunity, sir. This proposed legislation calls for the establishment of a voluntary service agreement process available for families of youth who are experiencing a behavioral health disorder. The primary concern with this bill is that it creates a scenario where youth whose parent, guardian, or custodian has requested voluntary service would automatically fall into the jurisdiction of the juvenile court--page 11 of the bill--and could experience court involvement seems contradictory to the term of a voluntary agreement. The bill proposes that an agreement may be voluntary for 90 days, after which time if the involved parties do not agree on the extension of services, then the county attorney must file a petition for review with the juvenile court. It also states that subsequent reviews may be conducted by the department automatically requiring these families to have involvement with the department when many of these families might not otherwise have done so. There are a number of concerns that we have with the bill with regard to some of the lack of specificity and definition. I detailed some of those in my testimony in the next several bullets as you can see. We talk about qualifiers that are not defined. There's lack of clarity about some of the service definitions, other kinds of things. But in summary, this bill expands government intrusion into families by bringing more families into the court system, contrary to the direction outlined in the department's Children's Behavioral Health Implementation Plan of January 2008. This bill could cause undue court involvement for families seeking services for their youth when there is no safety issue at hand to warrant court involvement and does not create an environment that respects the voice of the families, perhaps and could cost the state millions of dollars in services, potentially clogging the juvenile court system. I'd be happy to respond to questions. [LB356 LB253]

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SENATOR ASHFORD: Senator Lathrop. [LB356 LB253]

SENATOR LATHROP: I...if the family voluntarily comes to the court and says we'd like some voluntary services, how is that an intrusion into the family? [LB356 LB253]

SCOT ADAMS: On Section, well, let's go page 10 and 11 it begins with "the jurisdiction of the juvenile court." And this places this clearly under the jurisdiction of the juvenile court. Secondly... [LB356 LB253]

SENATOR LATHROP: But they've asked for it voluntarily. And one of your reasons for not supporting it is when you said it was an intrusion. I'm having trouble with that. If the family comes and says we need some help, juvenile court, they say it to Judge Gendler, I need some help. My daughter is causing me fits. She knows she needs help. I know she needs help. Where do we go? Give us some help. And he says, I'll set it up for you. How is that an intrusion because that seems to be the classic scenario this bill was intended to provide for. [LB356 LB253]

SCOT ADAMS: Well, a couple of responses to your point. [LB356 LB253]

SENATOR LATHROP: Sure. [LB356 LB253]

SCOT ADAMS: One, if the parties do not agree, one side or the other or some other party, then there is involvement by the court automatically by filing in this. Secondly, by being identified as under the jurisdiction of the juvenile court, the juvenile court may well be one of those interested parties that the bill speaks to. Having had no previous involvement perhaps at that point, they may disagree with the way things are going. My point is the vagueness about that. My second point is with regard to the opportunity for services, those people can work that out today. You heard the good testimony that came from Beth in Region 3 would be the ability to go to the regions. And Kathy did a good job of explaining sort of the lower side and the middle and the top side with regard to generally the funding process with regard to that. Folks can do that today. [LB356 LB253]

SENATOR LATHROP: You expressed about four reasons, and I tried to listen to them and I thought I'll ask this question. How about we accommodate all your concerns. Do you still want to provide these services to the 10,200 kids that we just talked about today that need services? Or is the problem you'd be providing services to too many people and you don't want to do that? Because it seems like you're picking around the edges and picking at the substance of the bill and not telling us, yeah, we want to provide these services, but we just think Dubas' bill needs to be tweaked a little bit to take care of a couple of things. So you came in...I have a serious problem with Health and Human Services and I run into it and I'm going to run into it in a half hour when I go

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over there on my bill, when...I don't understand the mission statement. I don't know if you guys have one that really is consistent with what the people expect from Health and Human Services. But I know that during safe haven we had a crisis. It illustrated a crisis that's been brewing silently in this state which is caring, providing mental healthcare for these kids, and we're looking for a real solution. And I can tell you, and I can't speak for the entire Legislature, but I can tell you where I'm at and that is I want to make sure that the services are available to these families so that something gets done. And to say, well--because I listened to this during safe haven--they're not an immediate risk. And I'm listening to the stories in Judiciary Committee that these people told about what was happening to their families and what they were told by Health and Human Services and the state was, you know what, call Lutheran Family Services, call Catholic Family Services, call anybody, call the United Way, but don't call us because you're not an immediate threat of a serious injury or death. And I'm thinking, should that be the standard? I don't think it should. And I think that what Senator Dubas brought to us is an opportunity for us to say as a body we're moving past that. And this really isn't a question I guess except to express my frustration with the fact that when I listened to those people who tried to get help, those people that tried to work the system that became evident during safe haven, and what I heard from not you but your counterpart dealing with juvenile services was, well, they weren't an immediate risk of dying or serious injury. And, no, I suppose until they have a gun to their forehead or until they're on the ledge of a building if that's the standard, then we can cut the budget seriously. And, you know, I think it will be expensive, but I can tell you that if you have suggestions to improve on the idea that Judge Gendler has and that came to us through Senator Dubas, I'd get us those suggestions because I think this is moving. I think it's moving. And Health and Human Services is going to be providing these services to these families so that because philosophically I agree that we can deal with these people when it's a small problem. And the idea that we can ignore it and pretty soon we're filling up the prisons and we sit in this committee and listen to testifier after testifier tell us that our prisons are full of people that might not have been there with decent medical help and decent psych help to start with. And I'd say if you have suggestions for improving the bill, we're all ears and we'll listen to them respectfully. But if the idea is that you want to dodge this care then by calling it an intrusion, I disagree with that. And I think I probably...well, I don't know if I represent the sentiment of most senators, but I'm guessing that there are a lot of people after that special session that are determined to do something about this care. [LB356 LB253]

SCOT ADAMS: Senator, first of all, let me say thank you for your passion for the interest of the people at hand that we're talking about. I appreciate that and value that. Secondly, I think the fullness of my testimony offers about seven or eight particular suggestions for improvement of the bill. Thirdly, though we still oppose that, I think those kinds of ideas are things that could be worked with to perhaps improve it in some fashion. Thirdly, I think we would point to LB346 as this year's suggestion for moving the system forward as a point of improvement, not only... [LB356 LB253]

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SENATOR LATHROP: Is LB346 the hot line? [LB356 LB253]

SENATOR MCGILL: Yeah, it's the Governor's bill. [LB356 LB253]

SCOT ADAMS: It is not simply a hot line and that's why I think that's a very significant point. It is a hot line. It is also peer-to-peer services to help people resonate and resolve problems early on in the process at the point of the call and within a short period of time. And also with a particular group of people in the postadoption, postguardianship area where we know as a result of data that there are particular problems with that group of folks. So that would be yet another alternative for a positive suggestion for resolution. [LB356 LB253]

SENATOR LATHROP: Okay. Thanks. [LB356 LB253]

SENATOR ASHFORD: Senator McGill. [LB356 LB253]

SENATOR MCGILL: But you and I both know that that bill doesn't go far enough towards solving this problem. There are people not getting services early enough to truly help them. That's why we're spending so much money on the back end of things helping people in these crisis situations. We are not spending enough money early enough on. And where I get frustrated, as I know Senator Lathrop is, is when the department comes in and testifies so opposed to a policy decision that is our job to craft and create. It's your job to follow through with what we find to be the best options moving forward. And, you know, constructive thoughts are really great, and I'm sure we will be taking your thoughts into consideration here. But it's just very frustrating to us as...I know you know there's a problem out there, whether you can say it or not right now. But... [LB356 LB253]

SCOT ADAMS: And, Senator, again what I would say is we, of course, appreciate the opportunity for the executive and legislative branch to work together on policy concerns. And I think with LB346 it's a great example in recent times where that's happened. I think today also is an example of that happening and hopefully pointing out things like expedited services. Stop for a moment on that one. Why would someone coming through with a piece of paper called a voluntary service agreement require jumping to the head of the line from others who didn't know about this and didn't get that piece of paper? That's just confusing. And so I hope that these ideas are valid and reasonable reasons for... [LB356 LB253]

SENATOR MCGILL: Are fleshed out. [LB356 LB253]

SCOT ADAMS: Yeah, yeah. [LB356 LB253]

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SENATOR ASHFORD: Senator Council. [LB356 LB253]

SENATOR COUNCIL: Yes. Just a couple of quick comments, Scot, with regard to at least two of the points raised. And you directed the committee's attention to page 11 of the bill and the addition of the language with regard to the jurisdiction of the juvenile court. And I think that that's...we do need to clarify what the intent of that addition is. As we sit today, if I enter into a voluntarily service agreement and recognizing that none exist today, if I enter into a voluntary service agreement and 90 days has elapsed and I believe my child needs 90 more days of service, currently the juvenile court would have no jurisdiction to entertain my request because a voluntary service agreement doesn't fall within the stated jurisdiction of the juvenile court. Now someone correct me if I'm wrong, as I understand that addition is on page 10: The juvenile court in each county as herein provided shall have jurisdiction over the following matters. And one of them is any juvenile who is homeless or destitute or by reason of being wayward or habitually disobedient or who is mentally ill, and now we're adding a third, I mean a fourth category, or whose parents have entered into a service agreement. All that does is provide the court with the jurisdiction that if you get to the point where 90 days have expired and there's a need for 90 more days that the court has...no one could challenge whether the court has jurisdiction to hear that. I don't think that that language automatically brings a person, a family that enters into a service agreement within the jurisdiction of the juvenile court. [LB356 LB253]

SCOT ADAMS: Well, two points. Clearly you've just spent a few minutes talking about it being within the jurisdiction of the juvenile court so I can't argue that part. It is within the jurisdiction of the juvenile court. Also if you note at line (c) right above it, persons who are mentally ill. [LB356 LB253]

SENATOR COUNCIL: But mentally ill and dangerous as defined in Section 71-908, which is a different standard than what we're talking about here in terms of... [LB356 LB253]

SCOT ADAMS: It's a much broader standard, I would agree with that. [LB356 LB253]

SENATOR COUNCIL: It's a much, much broader standard. [LB356 LB253]

SCOT ADAMS: And I think the original code was intended for safety issues and concerns. [LB356 LB253]

SENATOR COUNCIL: Exactly. [LB356 LB253]

SCOT ADAMS: And so this is a fundamental breadth of... [LB356 LB253]

SENATOR COUNCIL: So this is a fundamental change, and it is an area over which the

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juvenile courts, prior to this bill, had no express jurisdiction to handle because the only jurisdiction they had to handle is if there's a petition filed under abuse or neglect or a status offense. [LB356 LB253]

SCOT ADAMS: And 3A cases are those cases that are nobody's fault. [LB356 LB253]

SENATOR COUNCIL: Right. [LB356 LB253]

SCOT ADAMS: And that's about 1 percent of the department's caseload, about 1, and I think that's about the number that might be available for redistribution. [LB356 LB253]

SENATOR COUNCIL: Okay. And the second point that you made is with regard to review, subsequent reviews being conducted by the department automatically require these families to have involvement with the department. I guess you need to reference me to that point because on page 3 there is an opportunity after the court does become involved to request a review of a placement, but it says "may be conducted and any party may object to such an administrative review and have the review conducted by the court." So the parties don't have to submit themselves to the department. [LB356 LB253]

SCOT ADAMS: I believe I'm on page 3, lines 1-8. And on page 3 in line..."and one or more parties are not agreeable to extending the voluntary service, then the regional administrator, behavioral health region for the child, shall notify the county attorney who shall file a petition." [LB356 LB253]

SENATOR COUNCIL: Right. But that's in the situation where there is the issue of whether there's more than 90 days... [LB356 LB253]

SCOT ADAMS: Right. [LB356 LB253]

SENATOR COUNCIL: ...and one of the parties is not agreeable to extending. And then the regional administrator of the behavioral health region, not of the department... [LB356 LB253]

SCOT ADAMS: Right, yeah. [LB356 LB253]

SENATOR COUNCIL: So it's not the Division of Behavioral Services of DHHS, it's the regional administrator of the behavioral health region. [LB356 LB253]

SCOT ADAMS: That's correct, ma'am. And our intention was simply to say that this looks to us to be much less voluntary than it speaks to. [LB356 LB253]

SENATOR ASHFORD: Well, Scot, the problem with that is obviously there's got to be

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an avenue for the region to intervene at some point. I mean you can't...if we left that out and if there was an issue that needed to be addressed and one of the parties objected, there has to be some...I mean that would be negligent. That would be derelict if we just said we're not going to...let me...and I get your point. Let me just...I get the point that you're making and let me say this. I will guarantee you this bill is going to go on to the floor, if I have any say in this matter at all. That we spent...and I have one vote so I overspoke, I underspoke, I sidespoke, I don't know what I did. But along with, this year, along with the issues that we've dealt with throughout the summer and fall in this committee, this is a serious committee. We do serious work here and you know that. And we get stuff out that needs to get out and we get it out there. And we have additional hearings even after stuff goes out. I mean we're a unique (laughter)...we're a unique...we never give up on an issue. (Laughter) [LB356 LB253]

SCOT ADAMS: We know that, Senator. [LB356 LB253]

SENATOR ASHFORD: And let me just...and let me just say on the other side of this that there is nobody more skilled in this state than you in knowing these issues. And I've known you for a long time and I know that and I am confident in that. And I don't know how much time this committee will take to look at this, but it will not be a lot of time. And I'm hoping that it is a priority bill by somebody or somehow. And then so we need to have your commitment or I do, I guess, to say let's work on this for the next week because that's probably about as much time as it's going to stay here, and let's get a bill together that you can stand up and say this is a collaborative effort. And let's get this thing out here. This is clearly a gap. I mean you would have to not have gone to those sessions, the three sessions or two sessions we had at Boys Town and one in Lincoln, one in Boys Town, and then not say that there is a significant linkage gap that the other bill, LB346, starts to address in the global sense. But when it comes down to the day-to-day, on the ground, in the regions, the work you did at Catholic Charities, that's missing. That's missing. That gap must...we have a huge obligation as a Legislature not to order you around or say you're wrong, but as Senator McGill suggests, make some policy here because...and you've got to be part of that because you know this. You've been in the nonprofit sector. I know you know this I mean I just absolutely know it. You don't have to admit you know it, but I know you know it. (Laughter) And...but we need to get a bill out. We need to get a bill out, and we need to get a bill out fast on this issue. It is a huge priority. So I guess let's work together. The issues you raise are not inconsequential. They're important issues. Let's get a bill out soon. My staff, which is doing 17,000 other things, will be committed to doing this. I'm sure Senator Dubas' staff, Senator McGill's staff, everybody. Okay. [LB356 LB253]

SENATOR LATHROP: One last comment from me which is I don't mean to, and I hope that...I appreciate that sometimes you come down here and you deliver a message that you didn't necessarily formulate. I agree with Senator Ashford, you know, you do a good service and a great service for the state of Nebraska. And I guess (inaudible) and I

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appreciate what you do for the state in your capacity as the director. But this is something I think we feel strongly about and maybe that's the message that I got carried away with. [LB356 LB253]

SCOT ADAMS: And we know and I appreciate that. And let me just say in summary, first of all, I appreciate very much your comments, Senator Ashford, and all of your...I appreciate the support and encouragement. I think that the department certainly understands that there are some issues and some challenges that face us. This is also an issue, as was noted earlier, faced with enormous complexity, enormous complexity. I mean, listening to Kathy with the thing, who's doing a pretty good job, and I think she would also admit she left out all the whole Medicaid side and all the child welfare side to try to keep it simple and it got that complicated. So there's enormous complexity and great passion and energy on this one. And so I look forward to doing what we can to move the state forward with you. [LB356 LB253]

SENATOR ASHFORD: You know, yeah, go ahead. [LB356 LB253]

SENATOR LATHROP: I was just going to say maybe it would help if we understood what...it seems to be--and this is something that I picked up when I was listening to...during the safe haven debate in the special session--we had a hearing, Judiciary Committee did on that bill, and it seems to me that there is an attempt to create a line. And the line is we don't have any responsibility until it gets to this point where it's this bad. Otherwise, people should just find their own way through services out in the community. And the line, I think you guys have your own idea what that line should be. That seems to me to be a policy decision. But no one has told us what it is. I divine it only from listening to different people testify. And it seems to me to be the line is if someone is in immediate danger of death or serious injury. And if that's the line, that's a policy issue we ought to talk about it. But it seems like you've come down here, not you but I mean Health and Human Services comes into different hearings and they talk about who should and shouldn't and, you know, oppose or you support something, depending on what side on that line, and we never talk about where you put the line at or where you think it ought to be and whether we agree with you as policymakers. [LB356 LB253]

SCOT ADAMS: You know, again, what I think I would respond by saying in some cases I think the line is a very clear issue around safety. Now as you get close to that line on either side, it can get blurry. I think... [LB356 LB253]

SENATOR ASHFORD: And we've had that discussion, Scot. [LB356 LB253]

SCOT ADAMS: Yes, right. [LB356 LB253]

SENATOR ASHFORD: And I think those are legitimate points, and I think it gets to how

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do you manage these issues and manage through them? I think that's legitimate, but we need to have that discussion really fast about the blurring because we've talked about it too much. Now is the time to put it on the floor. One last thing that I would say is I keep coming back to this, Citibank is too big, you know. And maybe HHS is too big and that's not a criticism of anybody in it. I mean, you know, I did not support this in the eighties and the early nineties because I thought that public health should be separate and behavioral and mental health because it's such an incredibly important issue. And maybe organizations get too big for the sake of trying to organize them, they get too big, and then the parts like Smith Barney, as part of Citibank, is a very profitable part of Citibank, but Citibank is selling for less than \$2 a share. So at some point organizations, for the sake of efficiency, become too big. It's been going on a long time. That's not Governor Heineman's fault. That's not your fault. I'm just saying maybe we ought to, not today, but relook at the whole thing. This thing is huge, huge. And we need to get a resolution to the body, we are obligated to get a resolution of this to the body as soon as humanly possible. And we really need your help to get it there so thanks, Scot. [LB356 LB253]

SCOT ADAMS: Thank you. [LB356 LB253]

SENATOR ASHFORD: Are we still going on this? Okay, one more. Come on up. [LB356 LB253]

C.J. JOHNSON: Are we in neutral? [LB356 LB253]

SENATOR ASHFORD: We're in neutral, one neutral so...it's going to be good, I know so. [LB356 LB253]

C.J. JOHNSON: (Exhibit 15) And I will do my best to be brief and neutral. Senator Ashford and members of the Judiciary Committee, my name is C.J. Johnson, C.-J. J-o-h-n-s-o-n. I'm the regional administrator for Region V Systems, one of the behavioral health regions. I'm also a licensed clinical social worker that has focused on children and families throughout my career. I'm also the clinical director of Region V's professional partner program. And I've been involved in the behavioral health system in the state of Nebraska for over 30 years, including 11 years as a state employee. I'm providing this testimony in a neutral position regarding LB356, and obviously there's questions about how to fund some of the activities or the activities found in LB356. I'd like to take this opportunity to present some facts and figures that I believe should be considered when looking at the funding to support the activities outlined in LB356. And I would like to point out that they are doing just what Senator Dubas suggested in her opening remarks, that it's looking at the funding that we're currently using for the ambulance and trying to divert it to the fence at the top of the cliff. I'm not going to go through all the facts and figures. I'm just going to cut to the chase. In December 2008 in a RFQ release from the Division of Children and Family Services, it was reported that

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from April 2006 to September 2008 there was a reduction in the total number of state wards from 7,803 to 6,649. The division also reported that it is currently working with approximately 268 non-court adjudicated families at any given time. Taking both numbers into account, the 6,649 and 268, and I should point out that this number is now actually lower than when it was released in December, this represents a total reduction of 886 families within the Division of Children and Family Services. Using the support services cost for Region 1, and previously I outlined this in a chart so I can explain this more if you have any questions, of \$1,036 per family per month mentioned above, this would mean a cost savings in the Division of Children and Family Services of approximately \$11 million annually. Using support service costs for Region 6, which is \$1,465 per family per month, this would mean a cost savings of approximately \$15,500,000 annually. As I've indicated, the cost savings that I believe has already existed within the Division of Children and Family Services with the reduction of state wards over the last couple of years should be between \$11 million and \$15 million. And I'd like to quickly take this time to point out that we've been looking at the issues related in LB356 and truly believe that this amount alone would, if taken...brought from the Division of Children and Family Services and moved into the behavioral health regions, would be able to increase the capacity of the professional partner programs to the point where at any given time well over 1,000 families could be worked with at any given time. And I just want to point out in Region V, which is the second largest region by population in the state, we currently only have funding for 58 families at any given time. So we're talking about a multifold increase in the ability to work with them. [LB356 LB253]

SENATOR ASHFORD: Is that 1,000 statewide? Is that what you're saying, or 1,000... [LB356 LB253]

C.J. JOHNSON: The 1,000 I came up with? [LB356 LB253]

SENATOR ASHFORD: Yeah. [LB356 LB253]

C.J. JOHNSON: It would be well over 1,000 statewide, whereas right now... [LB356 LB253]

SENATOR ASHFORD: It would serve 1,000 statewide. [LB356 LB253]

C.J. JOHNSON: At any given time, at any given time. [LB356 LB253]

SENATOR ASHFORD: And I think that's the number we've been talking about for a few months when we've gotten together is the \$10 million to \$15 million. Okay. [LB356 LB253]

C.J. JOHNSON: Yeah. In addition, DHHS representatives have reported that \$5 million

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to \$7 million of state General Funds have been spent annually on behavioral health services for parents of state wards by the Division of Children and Family Services. However, the Division of Children and Family Services is no longer paying for these services, thus, this should also result in an additional \$5 million to \$7 million in annual cost savings. In summary, I would like to remind you that two years ago the Department of Health and Human Services publicly announced that there was only \$3.7 million remaining to be transferred in regards to LB1083, the Nebraska Behavioral Health Services Act. Through my own and a couple of other individuals' persistence, last year DHHS acknowledged that. In fact, there was over \$17 million remaining to be transferred. I share this with you for two reasons. The first, I hope, is that the Judiciary Committee is not... [LB356 LB253]

SENATOR ASHFORD: Now you're going to have to sum up because these people are going to shoot me that are on these other bills. [LB356 LB253]

C.J. JOHNSON: Okay, I'm right there, I'm right there. That the Judiciary Committee is not dissuaded by the enormous fiscal bill that has been attached to LB356, as I believe programs can be developed for significantly less and can serve well over 1,000 families at any given time in the state of Nebraska. Secondly, I would ask that the committee not easily dismiss any objections that you may receive from the Department of Health and Human Services that they may present to the above outlined cost savings as I have suggested. I have only suggested two areas of cost savings in this testimony. However, I could easily suggest several other areas of cost savings in the Division of Children and Family Services that would total an additional \$5 million to \$10 million annually. [LB356 LB253]

SENATOR ASHFORD: Okay, that I'm going to. [LB356 LB253]

C.J. JOHNSON: That's it, that's it. I'm done. [LB356 LB253]

SENATOR ASHFORD: It just keeps on coming. [LB356 LB253]

C.J. JOHNSON: You got me right to the end. [LB356 LB253]

SENATOR ASHFORD: Senator Council. [LB356 LB253]

SENATOR COUNCIL: One quick question. Thank you, C.J., for appearing and testifying. I appreciate the amount of work that went into preparing this document. So I'm going to ask you point blank, we've got the fiscal note that's telling us this is going to cost anywhere from \$124 million to \$164 million. What do you think it will cost to do what LB356 is proposing to do on an annual basis? [LB356 LB253]

C.J. JOHNSON: Well, what I am proposing is to take anywhere between \$10 million and

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\$15 million, and again, I believe that's already been saved within the Division of Children and Family Services, put that into the regions, allow the professional partner programs to expand. And quite frankly, they should expand into the current ICCUs that are soon to go away because there's the staff already there, they're trained, the infrastructure is already there... [LB356 LB253]

SENATOR ASHFORD: And how many people in Lincoln, by the way, on that you told me they were going to go away and you've trained them over the last--they're gone? [LB356 LB253]

C.J. JOHNSON: Fifty-five. There's 5 individuals--40. Forty trained individuals will be gone as of April 1 at this time. [LB356 LB253]

SENATOR ASHFORD: And how long have they been there, I mean? [LB356 LB253]

C.J. JOHNSON: Oh, some for years, seven, eight years. [LB356 LB253]

SENATOR COUNCIL: So those people could be reallocated to the... [LB356 LB253]

C.J. JOHNSON: They could do the professional partner work quite... [LB356 LB253]

SENATOR COUNCIL: ...the professional partnership work, right, okay. [LB356 LB253]

C.J. JOHNSON: Yes. And so with that said, the amount of money that we're talking about, like I said, could easily between 1,200 families at any given time up to possibly 2,000 families at any given time across the state. Currently the ICCUs themselves are contracted for a little over 1,100 families, plus there's an additional 250 families that are currently funded through the professional partner programs across the state. [LB356 LB253]

SENATOR ASHFORD: So it's the same families in essence, the same number. [LB356 LB253]

C.J. JOHNSON: Yeah. [LB356 LB253]

SENATOR COUNCIL: Thank you. [LB356 LB253]

SENATOR ASHFORD: Thank you and that...well, Senator Dubas, I'm sorry, can you come up here. [LB356 LB253]

SENATOR DUBAS: Thank you so much, Senator Ashford and members of the committee, for your serious attention to this very, very serious issue. I'll make my closing brief and to the point. It is a policy question that we have to ask us today--should

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the state make behavioral health services for children a priority? Despite the budget, despite the economic fears that we are facing, when do we address this problem? There's always a reason. There's always an excuse for us to put it back. During the special session of 2008, I, along with many of my colleagues, were promised a policy debate on this issue; and I say that now is the time. And I think today was the starting point for that. I think you can see today by the testimony our regions are doing an exceptional job. And we continue to talk about community-based care, whether it's for the residents at Beatrice or whether it's for our children or just a plethora of topics. Our regions are doing the job they were designed to do. Now we need to give them the resources to continue doing that job and build on their successes. As you stated, Senator Ashford, maybe HHS is too big and maybe we need to break this down into chunks so that the services are delivered where the people live and where there is some accountability and success. We need navigators. The Governor's package is a part of this. I mean you can't have just bits and pieces of it. We need those navigators. But those navigators need a destination and this bill creates that destination. And I would be more than happy to work with all of the vested parties. I agree with you, Senator Ashford. This is something that we need to get out. I accept your challenge very willingly to... [LB356 LB253]

SENATOR ASHFORD: Do you think it will be a priority bill? [LB356 LB253]

SENATOR DUBAS: There's that strong possibility. [LB356 LB253]

SENATOR ASHFORD: If that's a priority bill and you're willing to work on it, which you have not done so far, so I believe you, let's get this thing going and give it a week or so and then let's revisit this and see what we got. And get Scot together and let's get this baby rolling. [LB356 LB253]

SENATOR DUBAS: I'm ready to go to work. [LB356 LB253]

SENATOR ASHFORD: Okay, good. Thanks. [LB356 LB253]

SENATOR DUBAS: Thank you. (See also Exhibits 23-26) [LB356 LB253]

SENATOR ASHFORD: All right. Is Senator Gay around? No, we know you. [LB345]

LISA JOHNS: You can track me down. [LB345]

SENATOR ASHFORD: But you'll have to...or we know Senator Gay and we know you, so. [LB345]

LISA JOHNS: (Exhibit 16) Okay. All right. Good afternoon, Senator Ashford, members of the Judiciary Committee. For the record, my name is Lisa Johns, J-o-h-n-s. I'm the

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legislative aide for Senator Tim Gay who represents the 14th Legislative District. He apologizes for not being here personally. He is stuck in the Health Committee right now. Everything converged at once, so I get the honor of introducing LB345. LB345 would eliminate habitual truancy as the sole reason for adjudication of a youth for placement in state custody. I believe a lot of the testimony on these previous issues was how it is better to keep a child at home and out of the court system. This bill attempts to do that. We do realize there's a lot of concern with respect to this bill, and the senator and I have visited with members of the court system and the public school system regarding those concerns. The primary message we received from those conversations is that by removing truancy as a status offense we will eliminate the hammer, basically, to compel kids to go to school, and we also could hinder children and families from getting the services they need because truancy usually is a symptom of another problem. However, if there is another problem associated with truancy, for instance, if a youth is also partaking in criminal activity, if the child lacks proper parental care, or if the youth is deemed ungovernable, the juvenile court still retains jurisdiction. LB345 does not change this at all. When you are considering this issue, we ask that you please ask yourselves if habitual truancy warrants removing a child from his or her home. If a youth simply will not go to school, no matter what effort the school or the parents make, will placing a child potentially in foster care or a group home solve that problem? Does yanking the child out of his home suddenly make that child a model student? At a time when our state has been making efforts to reduce the number of children in foster care and to find permanency for our youth, some jurisdictions seem to be taking action that is contrary to this goal. The Department of Health and Human Services estimates that as many as 20 kids a month enter state custody as status offenders due to truancy, alone. There are no other underlying issues. I have passed out a newspaper article that Senator Gay wanted you to see regarding Lancaster County's use of the court system to address truancy. Even that county's public defender does not agree with what is described as the aggressive use of courts to try to solve truancy problems. Lancaster County Public Defender Dennis Keefe is quoted in that article as saying, "We as a community appear to be more ready to use the emergency room for a cold sometimes." Education is very important and it is generally in the child's best interest to go to school. However, should this issue be tackled by such a drastic measure as making a child a ward of the state? The rate of truancy no doubt increased when the Legislature raised the compulsory attendance age from 16 to 18, but that compulsory attendance law also requires the school districts to have a policy regarding excessive absenteeism. It requires the school district to provide counseling to determine if there's an alternative educational program that would better serve the child; it requires an evaluation to find out if there are other issues contributing to the truancy problem; and it requires that the school social worker determine if services are needed for the youth and for the family. Senator Gay believes that the school is the appropriate place to address truancy. What if after all these steps are taken and the truant behavior still continues? You kind of have to wonder if the traditional educational setting is truly the appropriate place for a particular youth. There are some kids who just don't do well in school; however, they

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eventually get their GEDs, enter the work force, and become productive members of society. Removing these youth from their homes could actually be detrimental and cause more harm. And the interesting thing of me having the opportunity to introduce this bill is on a personal note. I came from a very loving, very supportive family, six children; and one of those children, it wasn't me, did not want to go to school no matter what my parents tried: punishments, rewards, family counseling. He was just pretty sure school was not for him. Eventually they gave up. They allowed him to drop out. He took his GED. Went on to a special business college and is now married, a family man owning a home. And I told him about this bill and he said...I said I couldn't imagine how detrimental it would have been and devastating to our family had he been removed from the home if that were an option. He said he would probably be dead and in the gutter by now. So as I mentioned, Senator Gay has visited with a number of people about their concerns with this bill and recognizes that there are some people who would like the courts to at least retain the ability to order a participation and diversion program or order probation for a habitual truant. And he would be more than willing to work with the committee to draft this language that would achieve that goal while still ensuring that truancy in itself does not result in a child being placed in state custody and removed from their home. And any questions? [LB345]

SENATOR ASHFORD: Any questions? Senator Council [LB345]

LISA JOHNS: Yes. [LB345]

SENATOR COUNCIL: Maybe my experience has been different from others in juvenile court, and they're much more experienced people, but for a youngster to come in to the juvenile court system as a result of excessive truancy doesn't necessarily result in out-of-home placement. [LB345]

LISA JOHNS: Not necessarily. It's my understanding, though, that there have been some and you'll have to talk to HHS about that. [LB345]

SENATOR COUNCIL: And but in those instances there's been some other determination made with regard...it's not just the truancy alone that results in out-of-home placement. [LB345]

LISA JOHNS: Correct. And that is still...this bill does not...that is still available. If there is another issue the courts still have jurisdiction and there still is that method of getting services or removing the child from their home due to safety issues. But truancy in itself, just truancy alone, there's no other underlying issue, that's what this bill seeks to avoid. [LB345]

SENATOR COUNCIL: Well, regrettably--and I've scanned the article--regrettably, sometimes the truancy status offense is the only avenue that some parents have to get

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the support that they need--like I say, it doesn't necessarily result in out-of-home placement--but to get the support they need and--I hate to use the term but--the hammer they need to keep children in school. And I want to tell you, I have a concern, because truancy is a gateway. I mean, if we want to talk about gateways, truancy is clearly a gateway. And we have some situations where we have some youngsters...hopefully, you're right. You know, maybe later on, they--and many do--later on realize that, boy, I screwed up by not going to school. But I'm concerned about what happens in the intervening period of time before they come to that realization. So I appreciate it. I guess I just didn't realize that that was such a problem with the number of youngsters. And I know it's not appropriate but I would love to hear Judge Gendler's views on this. [LB345]

LISA JOHNS: I think you may. [LB345]

SENATOR ASHFORD: Well, I...and I...Senator Lautenbaugh. And how many people do we...before we go on, how many people are testifying on this bill? Okay. How many proponents and how many opponents? Okay. Senator Lautenbaugh. [LB345]

SENATOR LAUTENBAUGH: Since there are other proponents coming I'll wait. [LB345]

LISA JOHNS: There's one. [LB345]

SENATOR LAUTENBAUGH: Okay. I'll wait for him then. How's that? [LB345]

SENATOR ASHFORD: Okay. Todd, I saw you as one of the proponents, so...or the proponent. [LB345]

SENATOR COUNCIL: I think he's the only...the... [LB345]

TODD LANDRY: (Exhibit 17) Well, good afternoon, Senator Ashford and members of the Judiciary Committee. My name is Todd Landry, T-o-d-d L-a-n-d-r-y. I'm the director of the Division of Children and Family Services for the Department of Health and Human Services. We'd like to thank Senator Gay for introducing LB345 on behalf of DHHS, and I am here today to testify in support. As you've heard, this bill will provide for the elimination of habitual truancy as a status offense, and therefore, as a singular, sole reason to place the child in the custody of HHS. We believe that responsibility for the education of children rests directly with parents and local school districts. Parents are and should be responsible and accountable to ensure that their children receive an education. That education may be private, public, or home school, but it is the right of each and every child to have a free and public education provided to them. Parents who do not attend to their children's educational rights can and should be held accountable. Responsibility for the education of children also falls to local school districts. We pride ourselves in Nebraska on the local control of our educational system. This local control

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can and should extend to efforts to work with the child's parent or parents to address the habitual truancy of a child who should be receiving their education in that school district. Today it is true that some children are placed in the custody of the state due solely to truancy issues. The placement of youth in the custody of the state solely due to truancy takes needed resources away from abused and neglected children who require a level of expertise and intensive service provision to address the safety of that child, or for youth adjudicated as delinquent who require the state's attention to assure community safety. Truancy is an important issue but, as a singular factor, it is not a safety issue. Diverting resources from children who are unsafe in their family or who provide a safety concern for their community is unwise. This bill reinforces that truancy issues, like all educational issues, should continue to be addressed at the local community level. At this level the school and family can work together with community supports for the family and child such as faith-based organizations or youth centers. There are other reasons why we believe this bill is important but, given my time limitation, I'll leave that for my written testimony that's been provided to you. I would like to point out though that during federal fiscal year 2008, 948 status offender-only youth were served; 474 of those entered state custody or about 40 per month. But the actual number of youth with a status offense related solely to truancy is estimated at 50 percent of that, or 20 of the 40 youth per month. So that's the specific number that we're referring to. We are aware that the fiscal impact statement prepared by the Legislative Fiscal Office questions the department's estimate of the fiscal impact of LB345. The Fiscal Office disagrees with the department's estimate that 65 percent of the 20 youth per month placed in our care would be placed in out-of-home care. However, we believe that our historical data is clear and shows that department's custody of these kids are, in fact, being placed in out-of-home care. The fact of the matter is that they are being placed in out-of-home care and that they are placed in out-of-home care more often than not. I thank you for your time. I'd be happy to answer your questions. [LB345]

SENATOR MCGILL: Thank you, Todd. Are there any questions? Senator Lautenbaugh. [LB345]

SENATOR LAUTENBAUGH: Thank you, Chairman McGill. Thank you for coming today, Mr. Landry. My concern here is, does the bill actually do anything if we still can talk about habitually disobedient kids or someone who deports themselves to endanger seriously the morals or health of themselves, couldn't the judge still get at truancy anyway even if the statute no longer says truancy? [LB345]

TODD LANDRY: Well, keep in mind we're talking about a number that we estimate to be 20 kids per month. We're not talking about the hundreds of kids that may come into a court's discretion or attention for a variety or combination of other factors. You know, relating to, I believe, an earlier question, you know, we still have the aspect of a ruling that is still and we propose remain in statute for a finding of uncontrollable youth, for example. Or if there's a safety issue or a delinquency issue, those issues are still on the

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table. The judges can still rule that the child shall be made in the custody of the state because of those other reasons. We just believe that for a sole truancy issue for approximately 20 kids per month--we're not talking about hundreds or thousands--for 20 kids per month that they should not be coming into care. And as I already indicated many of those kids are then either initially or ultimately placed in out-of-home care because despite being in the state's custody, that in and of itself is no magic pill, so to speak, to make the kid all of the sudden want to go to school. And so many of those kids, the judges finally get...I think some courts get tired of dealing with it and they say, fine, we're going to stick you into a group home as a way of punishing the kid. And we just don't think that's appropriate. [LB345]

SENATOR LAUTENBAUGH: Okay. [LB345]

SENATOR MCGILL: Any other questions for Mr. Landry? I have one kind of admittedly tangential question, but as I've been talking to families, you know I've talked to some or one in particular who had a child that wouldn't go to school and ended up...I assume they went through this process. But she ended up on the child abuse and neglect registry simply because she couldn't get her child to go to school. I mean, is that something that is happening? I mean, in this case he had an antisocial disorder that was preventing him from wanting to go to school, but are you familiar with cases like that? [LB345]

TODD LANDRY: In status offense-only cases I do not believe that is happening. [LB345]

SENATOR MCGILL: Okay. [LB345]

TODD LANDRY: Usually when that happens it's because there's a status offense as well as a child abuse/neglect finding that either the court substantiates or the agency substantiates. But for status offense only, I'm not aware that that is happening. [LB345]

SENATOR MCGILL: Okay. Thank you. Colby...or Senator Coash. [LB345]

SENATOR COASH: Thank you, Senator McGill. Todd, do you see any problem with...I've worked with families that just struggle with this and sometimes they look at a...a kid will see the judge, you know, and that may be the thing that snaps them. Would you see any problem with a parent...I mean, if this bill were to pass, maybe putting something in here that would say, you know, maybe a parent could request that if a parent feels like that might be the best way to snap their kid out of it? Because I agree, it doesn't need to be a hammer every time, but for some kids I've seen it work where that threat or just the thought of a judge saying I'm going to take you...you're not going to stay with Mom and Dad anymore because of this, and sometimes...and I've seen...I've had...I've worked with parents who say, you know, I don't want to get that

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involved with the court system, but John won't listen to me but he'll listen to Judge So-and-so. I think...what's your opinion on that? [LB345]

TODD LANDRY: You know, I thank you for that question and I value your opinion on that, and one of the things that I believe that Lisa mentioned and certainly that we're committed to is there may be an option here and may be a possibility, and we're willing to work with the committee and with Senator Gay to craft the language such that...and there will probably need to be some obvious tweaks in what the bill has proposed right now. But in order to allow for some type of mandatory or court-ordered diversion or probation, absent the child coming into the custody of the state, for certain of those cases. And we're certainly willing to work with the committee and with Senator Gay in order to craft that kind of language if it's in the interest of the senators to do so. [LB345]

SENATOR COASH: Thank you. [LB345]

SENATOR MCGILL: Any other questions? Thank you, Mr. Landry, and for your willingness to work on this bill. [LB345]

TODD LANDRY: Thank you. [LB345]

SENATOR MCGILL: Just in case, any other proponents? All right, let's start with the opposition. Welcome back. [LB345]

LAWRENCE GENDLER: Thank you. For the record, Larry Gendler, juvenile court judge in Sarpy County. I'm not sure where to begin but I'll just start with this. I'm absolutely concerned that if you remove this provision from the code we won't be able to order kids to go to school because that's no longer permissible. Our authority comes from the juvenile code. We're not a plenary court. And I want to talk a little bit about the context, too, of where things have gone for judges--juvenile court judges. You know, I was around when Governor Kerrey, the initiative was that the state would take over county welfare agencies. There would be more things for the state, more resources for the courts, counties wouldn't be involved. Then Governor Orr came in and said, you know what, we can't have judges spending this money wildly because some judges may be abusing the authority. So we established a three-judge panel, and as part of the establishment of a three-judge panel, case plans are presumed to be valid. So that's in place. Then we decide that, well, we've got to work with the delinquency population; we'll do Office of Juvenile Services. So we create this office. But we then put in this provision for judges. You have three choices: in home, out of home, Kearney or Geneva. If you place them out of the home, OJS decides everything. They decide the location, they decide the source of the services, they decide everything. Under the statute we only decide if they're out of the house. Then you have managed healthcare. Now it's Magellan that comes in. And again, that dictates to us what resources may be available. Now you have privatization. Part of it took place last July 1, some of it takes

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place this July 1. Again, more restraints on the court system. And my plea to you here, the alarm is our toolbox is getting pretty empty. You take this out, you're going to see further issues, further problems that as a system we cannot address. And I can guarantee you that kids aren't...from our jurisdiction, they're not going into the department's custody because they're not going to school. That's not the only issue. And again I don't think any privilege should be abused that a court system has to work with families and their...because of their resources, the limited resources and limited funds. I appreciate all those issues, but to suggest that we can remove truancy and help kids, I think is folly. And I'm here to tell you that we need it and we need it as we've had it. I'd be happy to answer any of your questions. [LB345]

SENATOR MCGILL: Thank you. Senator Lautenbaugh. [LB345]

SENATOR LAUTENBAUGH: Thank you. Judge, am I reading this wrong or even if we take this word out is it still possibly covered under other things listed here? [LB345]

LAWRENCE GENDLER: I don't see truancy mentioned anywhere else in the code. [LB345]

SENATOR LAUTENBAUGH: Habitually disobedient. Does that cover it? [LB345]

LAWRENCE GENDLER: I don't think so. School truancy, when you take it out, you're specifically taking out school truancy. That's the legislative history that I have to comply with, and I think if you take it out, I can't order it. [LB345]

SENATOR LAUTENBAUGH: That's fair. Okay. I don't know the answer, that's why I'm asking. I don't have an opinion. [LB345]

SENATOR MCGILL: Senator Coash. [LB345]

SENATOR COASH: Thank you, Senator McGill. Judge, have you ever removed a kid for truancy only or were there always other issues? [LB345]

LAWRENCE GENDLER: There's always other contributing factors. [LB345]

SENATOR COASH: So the 20 a month... [LB345]

LAWRENCE GENDLER: I can't comment on those because I haven't seen those cases but... [LB345]

SENATOR COASH: Fair enough. But in your experience you've never said, you can't stay at home anymore simply because you're not going to school. [LB345]

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LAWRENCE GENDLER: Right. [LB345]

SENATOR COASH: Okay. Thank you. [LB345]

SENATOR MCGILL: Judge, I've heard that this may be possibly being abused, though, in Lancaster County. Do you know anything about the number of cases down there? And I heard that might be what provoked this bill. [LB345]

LAWRENCE GENDLER: You know, I'm sorry, I don't. But just speaking for Sarpy, we have an alternative school, we have some resources, so we'll obviously try those resources that we have in-house first before we look to the state for assistance. So we have a lot of truancy cases that don't involve the state, but the ones that do are complicated because they involve issues beyond just truancy. And truancy is frequently a symptom of a greater issue. And I don't want to give up on any of these kids. I just don't want to do it. [LB345]

SENATOR MCGILL: Senator Council. [LB345]

SENATOR COUNCIL: Because that was the question I was going to ask, Judge Gendler. You have a kid come into your jurisdiction through the truancy only. There is nothing that mandates that you make that child a ward of the state. [LB345]

LAWRENCE GENDLER: Right. [LB345]

SENATOR COUNCIL: You can enter an order that sends them to some diversion program. And I know in Douglas County they've developed some program where they use--I don't know what the term of these gentlemen of large build are but (laughter)-- but they're assigned to work with youngsters who are habitually truant. But I think that's the point. I think there's this impression that that automatically means a child becomes a...just because they come within the jurisdiction of the juvenile court doesn't automatically make them a ward of the state. The court has other remedies available. [LB345]

LAWRENCE GENDLER: That's right. And we will also, in our county, if we've utilized the department and at some point we don't need them anymore, then we can go back and utilize probation to continue the supervision of the child for whatever period we need, and relieve the department of those responsibilities. Just because I've made somebody a state ward doesn't mean that case remains such until they age out of the system. We don't have to do that either. [LB345]

SENATOR COUNCIL: Thank you. [LB345]

SENATOR MCGILL: All right. Any other questions? I don't see any. Thank you, Judge.

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[LB345]

LAWRENCE GENDLER: Thank you. [LB345]

SENATOR MCGILL: We'll take the next opposition. And I'd like to remind everybody, it's almost 4:30 so if you feel the need to not testify because the case has already been made, then please, we'll take your name and submit it for the record but you don't need to get up and testify. We have two other bills after this that we also need to get through. Thank you. [LB345]

KIM HAWEKOTTE: Good afternoon, Senators. I'm Kim Hawekotte. It's spelled K-i-m, last name H-a-w-e-k-o-t-t-e. I am appearing today as part of my current position. I'm the director of the University of Nebraska-Omaha Building Bright Futures Initiative. In previous lives I have been a juvenile county attorney for eight years; head of the juvenile division there. I was also in private practice in juvenile court for 15 years. And I was the administrator of the Office of Juvenile Services for the state for two years. One thing I can definitely say, Senator Council, when truant petitions are filed, youth are not removed from home. That is something that does happen and I will acknowledge it, but it happens after other information comes available. Usually, as a county attorney, what we would see is we had no other information other than the youth wasn't going to school. Once you've filed the truancy petition you then found out what the real issues were going on within the family. That's a lot of times when you might see the removal. But, no, very rarely...in fact, I cannot in 25 years think of any youth that have been removed strictly for not going to school, at least from that standpoint. There's no question that this...that we are opposed to this bill. When you look at getting youth to attend school, all of us sitting here know the importance of education or we wouldn't be sitting here, because that's why we are where we are today. Reality is, in dealing with these youth that don't go to school, we need a broad range of services. We need the preventative services. We also need the back end of the services, which is the truancy filing with the court. Senator Coash, you brought up, I feel, a very good view from the standpoint a lot of times when I would work with youth and do work with youth, it isn't the fact that I plan on filing in the juvenile court or that I plan on doing any of these things; it's the threat of it might happen is enough to prevent that youth from doing any future action. So I would hate to lose that hammer or even the ability to say that is one of the potential outcomes through the passage of this bill. Because if this bill, if you take truancy out of juvenile court, that hammer is not there any more. What do I tell the youth that we're dealing with? You know, you don't have to go to school and if you don't go to school, okay? I can't say that. We all know how important it is. Senator Lautenbaugh, I believe you're correct and I would disagree with Judge Gendler on this one. As a county attorney, I believe I could craft language to file a petition where I could claim that a youth would be ungovernable or wayward or some other nice rationale for not going to school. So with regards to saving any money, I don't see where this would save any money because we would just come up with different ways to craft the language to get

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them under the jurisdiction of the court. If we are looking for ways to save money or looking for ways to assist in the status offense area, I always feel if I'm coming to talk before you I have to talk about some other possible solutions. A couple of things that I did think of as I was sitting here today listening to a lot of the discussions on the behavioral health, and...is that maybe with regards to status offenders, we look at a bill, especially the truants, that they cannot be placed out of home or placed in detention. I mean, one of the biggest offenses that I always had in Douglas County was that a status offender would be placed in detention. Now I have real philosophical differences...disagreement with that fact. Maybe that's something that has to be put into statute. [LB345]

SENATOR ASHFORD: And we're sort of addressing that in a bill that we've heard...and I know you've had that from a long time. [LB345]

KIM HAWEKOTTE: I know, Senator. You and I have discussed that issue for... [LB345]

SENATOR ASHFORD: Yeah. And you're the best at this, so. [LB345]

KIM HAWEKOTTE: So that would save because we all know detention costs anywhere from \$165 a day to \$235 a day. You want to save some money? These type of youth do not belong in a detention facility. Not with delinquent youth. If it comes to the out-of-home placement, you can deal with something different if we're looking at with regards to that issue. Another area that I think we could save money if we did more of a preventative approach would be to give the juvenile courts authority with these status offenders so that they could order the parent to do something. Because what happens commonly with these youth is the youth is ordered to do these services, A through B. A through Z sometimes. And the youth does do those services but the parent hasn't changed what happens within that parental home. And we have some judges out there with regards to status offenses that feel they can't order the parent to do any of these services or to participate in the youth's therapy. If you add that provision within there, you then are dealing with the whole family issue which then hopefully we will not go any further into the system. [LB345]

SENATOR ASHFORD: Kim, I'm going to have to give you a time out. Well, no I don't mean it quite that way. (Laughter) [LB345]

KIM HAWEKOTTE: That's okay. I'm used to that too. But if anybody has any further questions, I know the stoplight is on. I am here for questions. [LB345]

SENATOR ASHFORD: Any questions of Kim? And the two idea you've given us, we have vehicles to address both of those this year and so we appreciate your suggestions. And congratulations on your new work... [LB345]

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KIM HAWEKOTTE: Thank you. [LB345]

SENATOR ASHFORD: ...though you're not going to be at the county attorneys anymore... [LB345]

KIM HAWEKOTTE: Right. [LB345]

SENATOR ASHFORD: ...which was sort of too bad. But it's good that you're where you are. [LB345]

KIM HAWEKOTTE: Thank you. [LB345]

SENATOR ASHFORD: Okay. Thank you. Any other proponents...or opponents? How many other opponents do we have? Okay. [LB345]

SANDRA MARKLEY: (Exhibit 18) Good afternoon. My name is Sandra Markley and I'm a deputy Sarpy County attorney in the juvenile court. And I have the great pleasure of working in Judge Gendler's courtroom and I certainly concur with all of his comments. You certainly know the consequences of ignoring truancy so I won't belabor the fact that 70-80 percent of our prisons are filled with people who did not graduate from high school. What I'd really like to talk to you about are the unintended consequences that this bill will have. It will deprive us of our ability to prosecute these children in juvenile court. I work in Judge Gendler's courtroom, so if he says he's not going to adjudicate them on deports or uncontrollable, he's not going to adjudicate them. And I am certain he's not the only judge that would interpret it this way because this would be an affirmative step you're taking to remove truancy from the juvenile code. You know, I have not seen one child adjudicated on truancy alone that was first placed in Health and Human Services and removed from their home. That's simply misleading to say that. The first thing...the first avenue that's tried is generally probation. It's only after there are other things identified that cause us to need the services of Health and Human Services. We have children that have such severe mental health issues, such as agoraphobia and other anxiety disorders, that they need the service of Health and Human Services. That's what that agency was created, to help...to help with these children. And so it just...it befuddles me as to why they would be looking at ways to not serve those children. We've had other children...I have a...there was a case last year where there was a student that was kept home from school by her stepfather so he could sexually abuse her. Now, that's another misleading statement, that this should be left to the parents. Not all parents want to send their children to school. Not all parents consider this a priority. There are many children that need the help of Health and Human Services. It's certainly not our first avenue but it's an avenue that we use when we have it. Secondly, why would we possibly require students to wait until they've committed a crime or something else before they get the help on truancy, as Health and Human Services is proposing here? They say, well, let them deteriorate farther before

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we help them. You know, would we wait until a cancer is in Stage IV in order to treat it? By then, it's more expensive and less likely that you'll succeed. I spoke with our SCEP school administrator and she said that she has many students in their school that can't even begin to take their GED test because they're maybe 17 years old and they're reading at the second grade level. That happens. So it's not just a matter of allowing these kids to drop out and get their GED. These are kids that have slipped through the cracks for a very long time. And thirdly, it's simply not logical that we will save money by doing this. We will be spending more money on the high social cost of this. And you know, when we talk about policy decision... [LB345]

SENATOR ASHFORD: I'm going to ask you just to go ahead and...I'm sorry. [LB345]

SANDRA MARKLEY: Okay. One really quick thing. [LB345]

SENATOR ASHFORD: I mean, I was going to ask you what you really think about this, but I don't think...but. [LB345]

SENATOR COUNCIL: I just have one question. [LB345]

SENATOR ASHFORD: Yes, Senator Council. Let Senator Council ask a question. [LB345]

SENATOR COUNCIL: Thank you, Ms. Markley, for coming and testifying. I would be curious, as deputy county attorney assigned to juvenile court, how often, when you have truancy-only cases, are they brought to you by the school? [LB345]

SANDRA MARKLEY: Oh always, because Health and Human Services has a policy decision that they will not accept educational neglect. Even though that's part of our statute, they will screen out educational neglect. And what's happened then, is when we have 13-year-olds and 7-year-olds and 8-year-olds that are not going to school, they're not getting help at their earliest possible opportunity. [LB345]

SENATOR COUNCIL: Okay. And so would it be fair to say that at that point in time when you get contacted by the school, the school has basically exhausted whatever means they have to address the truancy, with the parent or whatever other program that they may have, that it's just to the point where despite their best efforts, this kid is habitually truant. [LB345]

SANDRA MARKLEY: That's right. And this...we have a very nice statute that's been crafted that spells out specifically what the schools are to do. And the schools have to do that [LB345]

SENATOR COUNCIL: Before they can come to you. [LB345]

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SANDRA MARKLEY: ...before I will file... [LB345]

SENATOR COUNCIL: Exactly. [LB345]

SANDRA MARKLEY: ...and I think before many county attorneys will file. [LB345]

SENATOR COUNCIL: Thank you. [LB345]

SENATOR ASHFORD: And this is another one of these gap situations that Senator Dubas' bill does address. And so, you know, maybe there's an avenue there to try to link that. This is another one of these first stage of the continuum issues that is not...that we need to deal with. And you very, in a very passionate way, have expressed that. So I think we get it, but... [LB345]

SANDRA MARKLEY: Thank you. [LB345]

SENATOR ASHFORD: Thank you. Two more. Kathy, you can take your first total of three minutes or not. [LB345]

KATHY BIGSBY MOORE: (Exhibit 19) Okay. I will try not to. [LB345]

SENATOR MCGILL: Please don't. [LB345]

SENATOR COUNCIL: Hint, hint. Hint, hint. [LB345]

SENATOR ASHFORD: No, I can feel free to say that with you... [LB345]

KATHY BIGSBY MOORE: That's right. And you've just gave me the perfect segue. [LB345]

SENATOR ASHFORD: ...since we've known each other since fifth grade. [LB345]

KATHY BIGSBY MOORE: (Laugh) Which was just the other day. At any rate, I think I think it's interesting that Mr. Adams indicated that he thought LB346 was the better avenue to solve the behavioral health problem than LB356. Senator McGill pointed to its deficits or weaknesses. And this bill before you right now is identified as a source of funding for LB346. So even LB346 is not drawing upon new General Fund money. I think to remove this tool from the toolbox will simply close the door to yet another handful of children. While the number might be 20 or 15 who come into out-of-home care, I think that Director Landry started with a number of 938. Well, my guess is that we would not even see those 938 children if we removed this because truancy is a first indicator. It's a first sign. So to do this I think would simply limit further, as you just said,

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the open door to behavioral health services. I think it's...Senator Lathrop is not here but he was trying, I believe, to talk about where HHS draws the line. That was the word that he used. The word safety was used by Todd Landry. That is one place where a line is drawn whether children are getting into the child welfare system, the children and family service system. Removing truancy draws that line even more narrowly. So I oppose this bill for all the reasons that have been stated. My light is still green and I will conclude and answer any questions. [LB345]

SENATOR ASHFORD: Very well done, Kathy. [LB345]

KATHY BIGSBY MOORE: Thanks. [LB345]

SENATOR ASHFORD: Any questions of Kathy? Seeing none,... [LB345]

KATHY BIGSBY MOORE: Thank you. [LB345]

SENATOR ASHFORD: Other...one, two. Other opponents? We've got two more and you would be next. [LB345]

WESLEY GALUSHA: My goal is to beat Kathy's time. I am Dr. Wesley Galusha, W-e-s-l-e-y G-a-l-u-s-h-a. I'm the coordinator of student services for the Omaha Public Schools. I have a staff of 24 that currently work with 80 percent of their time dedicated to addressing truancy and nonattending students. I wanted to share with you, first and foremost, and support what Senator Council said, that the schools have exhausted all of our toolboxes prior to making that referral. We have sent 5- and 10-day letters. We have called the parents each and every day that the student is absent. We've met on a 15-day letter, which calls the parents in to speak with my staff, particularly, to come up with a way to break down those barriers of nonschool attendance. We make a plan. We sign a contract with the student so that the student is understanding they have a part of this. And we work through Kearney interventions. Dr. Kearney was someone that we brought into the metro area and spoke with all of the metropolitan school districts, where we try and get that student in one hour a day, two hours a day, whatever it is that they think that they can be successful. Yes, we do look at alternative education, independent studies, transportation, school changes. And only after we have done all of these things do we make a referral to the court. And I will tell you that I have been in my present position for nine years, and in those nine years I have never seen a student removed from their home simply by a petition that we have filed. Thank you. [LB345]

SENATOR ASHFORD: Thanks, Dr. Galusha. Are you related to Rick? [LB345]

WESLEY GALUSHA: Little brother. [LB345]

SENATOR ASHFORD: Little brother. That's what I thought. I knew that was right but I

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wanted to get it on the record. Thanks. Next. (Laughter) [LB345]

MARTIN KLEIN: Well, thank you for having me today. I may take a little longer because I've never been here and this is a cool opportunity. Senator Ashford and members of the Judiciary Committee...see, you can tell I haven't been here. I'm with the...I'm Marty Klein, K-l-e-i-n, and I'm a deputy county attorney and I'm here on behalf of the Grand Island Public School System. In Grand Island, the school system, in collaboration with the county attorney's office, has established an attendance court program in an exhaustive effort to address the truancy issues in the schools, like the previous speaker just told you about, before they're referred to the legal system. So I would second the previous speaker's assertion that the school districts--and I've spoken with other districts outside of my own--have gone through every possible step to address these issues before they're seeking advice from the county attorneys or before they're referring these cases to the county attorney's office. And in my limited experience in this program, because it is fairly new, just starting this year, I can tell you that younger children in the school, because of the issues their parents are dealing with--substance abuse, transportation, poverty, in general--while the older children have their own issues, as well, in addition to those, you know--bullying, depression, gang membership is especially pertinent to this conversation I think, substance abuse of their own--and often the best place to address these underlying problems, after the school has tried their best to address these underlying problems, is within the juvenile court system. And this is one of the avenues, one of the tools in the toolbox I've heard today, that allows these schools to work with the county attorneys' offices to address the issues. Now there are important reasons for getting the juvenile courts, and I think we've already had enough testimony on that, but I want to say that having the children stay in school is a really important goal of the school systems. And without the truancy provision provided in (3)(b) of this 43-247(3)(b), this goal is really...it will be harder to achieve. And I agree with the judge that spoke earlier: I believe that this narrows the intent of the Legislature to specifically withdraw that ability to prosecute or...not prosecute...but to file on a child to help them, when you're taking out the language of truancy. So much like Senator Lathrop said earlier about the prisons might not have been as full if we had sought this problem out earlier and addressed it, and much like Ms. McGill said about spending money on the back end of an issue instead of front-loading it, considering all that, if you allow parents to intentionally or negligently keep their child from attending school, you are, in essence, imposing a life sentence on that child and an ongoing drain on societal resources. I appreciate your allowing me to speak today, and if you have any questions I'd be happy to answer. [LB345]

SENATOR ASHFORD: No, but I would like to...could you get us some material on your attendance court? [LB345]

MARTIN KLEIN: Sure. I'd love to. [LB345]

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SENATOR ASHFORD: Grand Island, there must be something in the water out there, because you have more innovative things going on than any place I've ever seen. [LB345]

MARTIN KLEIN: I'm blessed to be a part of it and I truly believe that the attendance court itself is doing really...we don't have our numbers yet because this is in the infancy stages, but Senator Coash, who unfortunately stepped away, he talked about being accountable to a judge or being accountable to somebody of an authority figure and having me as a deputy county attorney in that setting, in the school setting in hearing, it's a quasijudicial relationship. And I have had success...the program has had success in finding out some of the issues that these students are facing, and the parents, talking them through and helping them. [LB345]

SENATOR ASHFORD: Do you do data and then you compile some of that data, are you doing some evaluative stuff on? [LB345]

MARTIN KLEIN: We will be doing evaluation at the end of the school year. We don't...it's...we're bringing numbers together now but we will be doing some evaluation to see how we're doing in this process. [LB345]

SENATOR ASHFORD: I think that's extremely helpful and it was valuable testimony. Thank you. So if you can get us something on that, we would appreciate it. Okay. [LB345]

MARTIN KLEIN: Thank you. [LB345]

SENATOR COUNCIL: Come again sometime. [LB345]

SENATOR ASHFORD: What, Senator Council? [LB345]

SENATOR COUNCIL: He said he's never been before so I said come again sometime. [LB345]

SENATOR ASHFORD: No, no. Nevermind. [LB345]

SENATOR MCGILL: No, no, no. She said come again sometime. [LB345]

SENATOR COUNCIL: I said come again sometime. [LB345]

SENATOR ASHFORD: (See also Exhibits 27 and 28) Stop in. Yeah. We...our issues all kind of merge together. No...is there any closing? No closing. Okay. Now we're going to go to the next bill. I was going to skip around but I see the Chief Justice and I know darn well...(laugh). How many testifiers do we have on the judges pay bill, which is the

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next...? Senator Schmit. One, two, three, okay...four. Why don't we go ahead with...is that my bill? [LB345]

SENATOR MCGILL: Yes, it is, Senator Ashford, so I'll take over for the time being. We'll open the hearing on LB414. [LB414]

SENATOR ASHFORD: Thank you, Senator McGill and members of the committee. I am Brad Ashford, Legislative District 20, introducing LB414. LB414 is a bill, fairly straightforward, obviously, addressing salaries. Nebraska is a state that...where the Legislature and the Governor determine salaries of its judges. The current salary for Supreme Court judges is \$135,000-plus dollars. LB414 would increase salaries of the judges of the Nebraska Supreme Court each year for the next two years. And as we all know, the salaries of district judges and county judges are a percentage of the Supreme Court salaries, so we set the Supreme Court salaries and then the other salaries go from there. LB414 was not introduced with any specific amounts. It's our role to put the amounts in there and send the bill out and work with the Appropriations Committee. The salary increase for state employees was 2.7 percent in 2009; a 2.5 percent increase in 2010. So that's somewhat of a benchmark number for this. [LB414]

SENATOR MCGILL: All right, Senator Ashford. Any questions? No. Let's take the first proponent. No proponents. (Laugh) There's got to be some. There we go. Just fighting over who's going first. I know, I'm looking at this crowd. Do they not want a raise? (Laughter) [LB414]

SENATOR ASHFORD: I don't need any proponents. [LB414]

SENATOR ROBERT: That closes the hearing on whatever that was. [LB414]

SENATOR CHRISTENSEN: (Laugh) We'll conclude the hearing. [LB414]

LORAN SCHMIT: (Exhibit 20) Lucky I showed up, Senator. Good afternoon, ladies and gentlemen. My name is Loran Schmit, L-o-r-a-n S-c-h-m-i-t. I'm not going to take very much time. I will be very brief. I just...every time I sit before this committee I think of all of the issues that are addressed by this committee, and at one time or another they usually wind up before a judge in some court. And so I'm here today because I have a longtime interest in providing adequate compensation for the members of our judicial system. I'm pleased that Senator Ashford has introduced LB414 to address that issue. The members of this committee listen to many proposals at every hearing. Those ideas are designed to improve, correct, or in some way change our statutes to more effectively and equitably provide justice for the citizens of this state. From the courthouse to the Supreme Court, each one of those positions carry with them an awesome responsibility. Notwithstanding the best efforts of legislators, law enforcement, and attorneys, unless the judicial system is staffed by the finest minds in Nebraska, all

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of the other efforts to secure justice can be futile. We have seen improvements over the years in the compensation provided for members of the judicial system. I hope that the improved pay scale has been a factor in attracting to the judicial system many of our finest lawyers. We still have a long way to go if members of the judiciary are compensated commensurate with the income earning capacity of the legal profession. It is easy for the public to assume that the court system only addresses issues of criminal conduct. I believe that business, industry, and professions are attracted to and remain in a state where courts are staffed with highly qualified men and women. I believe that the passage of LB414 will be a positive factor in attracting excellent, highly qualified individuals to the court system. I ask you to advanced LB414 to General File. If you have any questions I'd be glad to answer them. [LB414]

SENATOR MCGILL: Thank you. Any questions? No. Thank you for your testimony. [LB414]

SENATOR ASHFORD: I would only say, Senator Schmit, you introduced this bill every two years, didn't you, in ...? Almost every two years. [LB414]

LORAN SCHMIT: Going back about 40 years. [LB414]

SENATOR ASHFORD: Yeah, okay. [LB414]

LORAN SCHMIT: We tied it together, but in the early days that was a much easier job. [LB414]

SENATOR MCGILL: Are there other proponents? [LB414]

ROBERT ENSZ: Good afternoon, Senator Ashford and members of the Judiciary Committee. My name Bob Ensz. That last name is spelled E-n-s-z. I'm a district judge. I'm one of the judges of the 7th Judicial District. That's up in northeast Nebraska, seven counties. And I am currently the president of the Nebraska District Judges Association and I appear on behalf of that association. I want to thank Senator Ashford for introducing this bill. I want to thank Senator Schmit for testifying. Many years ago I testified before the Ag Committee when he was Chairman, and it was good to see him and hear him again today. But I just want to testify in support of LB414. I think it's necessary to keep, to attract good judges, to retain good judges in this state, and I would appreciate the support of the committee and passage of this bill. I'd be happy to entertain any questions. [LB414]

SENATOR MCGILL: Thank you, Judge. Any questions? [LB414]

SENATOR ASHFORD: Your district includes Senator Rogert's, then Tecumseh and that area? [LB414]

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SENATOR ROBERT: No. We're not that close to Burt County. I get Senator Flood. [LB414]

SENATOR ASHFORD: Nevermind, nevermind. Thank you. [LB414]

SENATOR MCGILL: Tekamah. (Laugh) Oh, Brad. A question from Senator Lautenbaugh. [LB414]

SENATOR LAUTENBAUGH: Briefly, Judge, I want to thank you for the work that you do and the patience you have. [LB414]

ROBERT ENSZ: Thank you. [LB414]

SENATOR LAUTENBAUGH: Say, hypothetically speaking, someday when a young lawyer drives to Columbus to see you and realizes he's supposed to be in West Point, and you wait patiently. Lawyers appreciate that kind of thing, not that that would ever happen. [LB414]

ROBERT ENSZ: Yeah, and I probably won't be in Columbus because that's not my district. We have great patience for young lawyers. [LB414]

SENATOR ASHFORD: Where is it? You don't have Tecumseh, you don't have...no, nevermind. (Laugh) [LB414]

ROBERT ENSZ: We have seven other counties. [LB414]

SENATOR ASHFORD: Okay. [LB414]

SENATOR MUGUL: Thank you. [LB414]

ROBERT ENSZ: Thank you. [LB414]

SENATOR MCGILL: Are there any other proponents here today? [LB414]

ROBERT BARTLE: Senator Ashford, members of the committee, I'm Bob Bartle. I appear as the president-elect designate of the Nebraska State Bar Association, who fully endorses and supports this bill. There are a few pieces of legislation that the 5,000 or so active members of the Bar Association throughout the state can almost unanimously support. This is one of them. I think we've seen examples in this relatively long afternoon of judges who have articulated positions well. We need to draw the top talent of the state every time we have openings for lawyers and we need to retain lawyers. I think some recent examples come to mind. In western Nebraska, where

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we've had to redo a judicial qualifications process, we had few applicants in a northern Nebraska district, and I'm concerned that compensation is one of those issues. I note also that a couple years ago when Linda Crump was before this committee, we were in the thirty-third position throughout the 50 states, and I'm told we've slipped to about a thirty-ninth position in terms of our compensation of judges. And one final thing I want to emphasize as far as what happens to friends and colleagues of mine when they become judges, it's not only the limitation of their salary and their practice, but we put them in sort of box. I teach part-time at the Law College; I have for several years. I get a small stipend. Judges get nothing as far as any contributions they make to the Law College. They cannot sit on corporate boards. They cannot articulate other positions. And that is one of the reasons I'm here, and for that reason I fully endorse the bill. Thank you, Senator Ashford, for moving forward. I stand ready to answer any questions the committee may have. [LB414]

SENATOR MCGILL: Any questions? I don't see any. Thank you very much. Other proponents? [LB414]

JOHN LINDSAY: Thank you, Senator McGill, members of the committee. For the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing as a registered lobbyist on behalf of the County Judges Association. And given the time and the fact that prior testifiers already said what I would say, I wouldn't repeat. I would just ask that the bill be advanced. [LB414]

SENATOR MCGILL: Questions? No. Thank you very much, Mr. Lindsay. Any other proponents? Mr. Chief Justice. [LB414]

MICHAEL HEAVICAN: Senator McGill, committee members, I am Mike Heavican, the Chief Justice of the Nebraska Supreme Court, also here to testify on behalf of the bill. I think you have heard a lot of good reasons from everybody else who's testified. I would simply say that our judges work very hard. They do a very good job and they deserve a decent raise, and I think this is a decent proposal. I want to thank Senator Ashford for introducing the bill and I'd be happy to entertain questions. [LB414]

SENATOR MCGILL: Do we have any questions for the Chief? I don't see any. Thank you very much for coming by. [LB414]

MICHAEL HEAVICAN: Thank you all very much. [LB414]

SENATOR MCGILL: Other proponents? I think we can move on to opposition then. Anyone here opposed? Anyone here in a neutral capacity? All right. Senator Ashford, would you like to close at all? [LB414]

SENATOR ASHFORD: No, I'd waive closing. [LB414]

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SENATOR MCGILL: Okay. Senator Ashford waives closing. That ends the hearing on LB414 and we'll go on to LB596. That is also Senator Ashford. [LB414]

SENATOR LATHROP: Welcome, Senator Ashford. [LB596]

SENATOR ASHFORD: Senator Lathrop. Thank you, Senator Lathrop and members. Brad Ashford. I'm here to--Legislative District 20--I'm here to introduce LB596. As you can see, LB596 is a court fee bill. It would increase the legal services fee by \$2, from \$5.25 to \$7.25. This fee is included in the court costs for juvenile, county, and district court cases, appeals to the Court of Appeals and Supreme Court, and actions to modify decrees of dissolution, annulment, child support, custody, and visitation cases. Small claim case filings are exempt. The fees are collected in the Legal Aid and Services Fund, which is administered by the Commission on Public Advocacy. There was \$2.5 million disbursed last year. The money is distributed through grants to nonprofit service providers of civil legal services to eligible low-income persons, including Legal Aid, the law clinics at both UNL and Creighton Law Schools, Nebraska Appleseed, Catholic Charities, Lutheran Family Services, Justice for Our Neighbors, and others. The \$2 increase would yield approximately \$600,000 annually. We should not take fee increases lightly, obviously. This is very important work. One of my persons I admired the most in my whole career was Bob Spire, and obviously we all know about him and his legacy. He was a magnificent human being and much of the work that's done by Legal Aid and Legal Services in this state is the result of the hard work of Bob Spire and those who came after him. So again, this is a fee increase but it is clearly for a wonderfully important reason. Thank you. [LB596]

SENATOR LATHROP: Thank you, Senator Ashford. Senator Council. [LB596]

SENATOR COUNCIL: Just one question, Senator Ashford, and let me preface my question because I wholeheartedly agree, but correct me. Was one of the earlier bills, LB332 or LB333, also includes an increase for the Commission on Public Advocacy? [LB596]

SENATOR ASHFORD: It's different. This is a grant program and I believe all these dollars are disbursed in the form of grants. And the other dollar, I believe... [LB596]

STACEY TROUT: Goes to Legal Aid. [LB596]

SENATOR ASHFORD: Just goes to Legal Aid. [LB596]

SENATOR COUNCIL: Okay. [LB596]

SENATOR ASHFORD: And these are to various other recipients, and there is a list and

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maybe Jim Mowbray can talk about...but they do everything from provide...well, they provide service to...legal services to immigrants, for example; that's just one thing, but lots of other issues, so. [LB596]

SENATOR LATHROP: Thank you. Proponents. [LB596]

DAVID PANTOS: (Exhibit 21) Vice Chairman Lathrop, members of the Judiciary Committee, thanks to you, Senator Ashford, for introducing this bill. I am Dave Pantos. I'm the new executive director of Legal Aid of Nebraska. [LB596]

SENATOR LATHROP: Dave, let's have you spell your last name for us. [LB596]

DAVE PANTOS: Sure. It's P-a-n-t-o-s. [LB596]

SENATOR LATHROP: Okay, thank you. [LB596]

DAVE PANTOS: Thank you. Legal Aid of Nebraska obviously supports the proposed legislative increase of the legal services fee. Legal Aid of Nebraska is the largest recipient of this fund and it accounts for almost 30 percent of our operating budget. This proposed increase will therefore directly impact Legal Aid of Nebraska's ability to provide essential legal services to low-income and elderly Nebraskans, especially those hit hardest by our current fiscal crisis. Overall, Legal Aid of Nebraska's revenue has been declining along with the current economic recession and overall budget cutbacks. In 2001, federal Legal Services Corporation funding to Legal Aid was over \$1.7 million. In 2008, it was only \$1.48 million. The current U.S. House budget resolution that will probably pass tomorrow would only raise that amount to \$1.6 million, still much less in real dollars than the 2001 figures. More recently we have seen a decline in other sources of funds. The Nebraska Lawyers Trust Account Foundation funding peaked in 2007 at \$515,000, dropped precipitously in 2008 to \$370,000, and is estimated to drop even further in 2009 to \$325,000. This is because of the interest rates with the banks and less housing activity in terms of buying and selling. With regard to the fund at issue today, administered by the Commission on Public Advocacy, our revenue has dropped over \$50,000 from 2008 to 2009. Overall revenue at Legal Aid due to these factors has dropped nearly \$1 million from 2007 to our estimated figures for 2009. That is a big drop. Nevertheless, we continue to endeavor to do more with less. In 2007, Legal Aid of Nebraska provided some level of direct legal services in cases involving over 9,800 low-income and elderly Nebraskans. In 2008, that figure was over 10,800. We are able to do this through low-cost technological innovation, as well as a determined focus to recruit and retain highly committed, passionate attorneys and advocates. These folks are in the legal trenches every day, representing victims of domestic violence, disabled veterans, and children with special needs. Even this increased number of cases only represents a fraction of the total legal need. A national report by the American Bar Association demonstrated that for every person helped by legal aid, another person is

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turned away due to lack of resources. During better times, Legal Aid prudently invested in reserve funds. In 2009, due to the aforementioned shortfalls, we are going to have to dip into those reserves. I understand my time is almost up. I just want to say that in 2010, with continued shortfalls, we're going to have to make some tough choices between cutting services, letting people go, or salary cuts. And we don't want to have to do that. If the committee acts today to move this bill forward, we won't have to do that because it will provide the necessary funds for us to at least stabilize where we're at and provide the same level of services that we did in 2008. So I hope that you will agree to move this forward and thank you very much for your time. And if you have any questions. [LB596]

SENATOR ASHFORD: Nothing other than the domestic violence issues are prevalent in the immigrant community in our state. Would you agree with that? [LB596]

DAVID PANTOS: Absolutely. [LB596]

SENATOR ASHFORD: And you are able, under federal law, to provide services to immigrant families in these areas? [LB596]

DAVID PANTOS: Absolutely. That's under the Kennedy amendment to the Violence Against Women Act. [LB596]

SENATOR ASHFORD: And that's relatively new federal legislation? [LB596]

DAVID PANTOS: Yeah, 2004, pretty near. [LB596]

SENATOR ASHFORD: Okay, thank you. [LB596]

DAVID PANTOS: Thank you, Senator. Thank you. [LB596]

ROBERT BARTLE: Robert Bartle, B-a-r-t-l-e, again appearing. Thank you, Senator Ashford, for your time. I'll be brief. I return again as the president-elect designate of the Nebraska State Bar Association in support of this legislation. The component piece that the Bar Association receives, as it were, is that a small piece of this pertains to the Volunteer Lawyers Program and is simply the administrative costs associated with things like maintaining clinics at the courthouses in Lincoln and Omaha, staffed by volunteer attorneys, assigning cases to voluntary attorneys throughout the state. There are literally thousands upon thousands of hours of voluntary attorneys coordinated by a staff position at the Nebraska State Bar Association, so we support that. And I might add, we don't take lightly...and there's always a healthy discussion at both the executive council and at the legislative branch, the house of delegates to the Bar Association, when you attach money to filing fees. We're not unmindful and our fees increase creates an access issue its own, but this is a modest increase, \$2. And when you think

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of the benefit extended throughout Legal Services as well as the volunteer legal program and other agencies like Mr. Mowbray will address, it certainly justifies the small addition to the filing fees. So we do support this as an association. That's all I have unless there are any questions. [LB596]

SENATOR ASHFORD: Thank you. [LB596]

SENATOR LAUTENBAUGH: Yes, Brad, I do. Thank you, Chairman Ashford. Thank you for coming, sir. [LB596]

SENATOR ASHFORD: That's all right. [LB596]

SENATOR LAUTENBAUGH: You mentioned on the prior bill that you pretty much have 100 percent support of the membership in raising judicial salaries. You probably don't on this bill, do you? [LB596]

ROBERT BARTLE: Well, there's no question that the executive council of the Bar Association, the house of delegates to the Bar Association has taken positions in favor. There are always questions raised by our membership and I can't say that all 5,000 active members of the Bar Association feel in the same fashion, but I can say that the great majority of lawyers, as far as I understand it and certainly through the legislative and executive process, supports this bill because we support, and our hours speak for itself, programs such as the Volunteer Lawyers Program, so I can say that. But we're a large association. There are probably folks that would rather not have anything attached to filing fees other than the cost of the filing fee. [LB596]

SENATOR LAUTENBAUGH: And you're a large mandatory organization, correct? [LB596]

ROBERT BARTLE: We are a 5,000-member organization and it is a mandatory bar. Yes. [LB596]

SENATOR LAUTENBAUGH: Do you see any problem with coming here testifying on things that your members that don't have an opt-out, may not agree with? [LB596]

ROBERT BARTLE: I don't have a problem on this particular bill because I do think the support of Legal Services in providing access for such things as domestic assistance, as landlord/tenant issues for those large constituent groups that can't afford a lawyer, I would say the great majority of the bar is in support of that. But that's why I added--and I appreciate the question, Senator--the point of there are always lawyers in the constituency I represent, whether it's the 1st District, or now the Bar Association as a whole, who have reservations. And there's always a healthy discussion when you attach something to filing fees so I am sure there are lawyers in a group as large as ours that

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would dissent. I would not take issue with you there. [LB596]

SENATOR LAUTENBAUGH: Thank you. [LB596]

ROBERT BARTLE: I suppose there are lawyers that might even dissent on judicial salaries although... [LB596]

SENATOR ASHFORD: In secret. [LB596]

ROBERT BARTLE: They would do so quietly. [LB596]

SENATOR LATHROP: Anonymously. [LB596]

ROBERT BARTLE: Yes, yes. But there would certainly be lawyers that would take different positions on all issues. Thank you. [LB596]

SENATOR LAUTENBAUGH: Thank you. [LB596]

SENATOR LATHROP: Next proponent. [LB596]

SENATOR LAUTENBAUGH: And I apologize, Chairman Lathrop. I forgot this was Senator Ashford's bill. [LB596]

SENATOR LATHROP: So did I. I was asleep at the switch. [LB596]

SENATOR ASHFORD: You could ask. I wonder how many...do we know how many proponents there are, Senator Lathrop? [LB596]

SENATOR LATHROP: Proponents? [LB596]

SENATOR ROBERT: One more. [LB596]

SENATOR ASHFORD: Okay. [LB596]

SENATOR LATHROP: One more? Jim Mowbray. Any opponents? Okay, two. All right. We're almost at the end of our day. [LB596]

ELISHA NOVAK: Good afternoon, Senator Lathrop and members of the committee. My name is Elisha Novak, N-o-v-a-k, and I am program director of Catholic Charities' immigration and legal assistance services and I'm here today to testify in support of LB596. I'd like to first express on behalf of our entire Catholic Charities organization our genuine appreciation to Chairman Ashford for his introduction of this important piece of legislation that will assist individuals that are indigent and in need of important civil legal

services. Our mission at Catholic Charities calls us to serve, empower, and advocate for individuals in need, and this initiative certainly aligns with and supports this mission. Our program receives funding through LB729. Legal Aid and Services funding. Catholic Charities' immigration and legal services are family focused. We primarily seek to provide assistance and with assistance with reunification when family members become separated because of entanglement within the federal immigration bureaucracy. This includes family members who are in the United States as either naturalized citizens or legal permanent residents and are seeking to sponsor their qualified family members. Qualified family members are usually spouses, children, parents. We continue also to serve refugees. Refugees are in the U.S. under sponsorship by a qualified refugee program. Once they are relocated to the U.S., we assist with family reunification and offer assistance to the refugee in attaining legal permanent residency. Another important aspect of our services relates to the Violence Against Women Act and U-visa applications. VAWA benefits are extended to immigrants who are married to persons of legal status. VAWA allows this class of immigrants the ability to become legal permanent residents and eventually citizens without being sponsored by their U.S.-citizen abuser. U-visa applications are available to immigrants who have been victims of violent crimes and are willing and able to assist in the prosecution of their offender. The U-visa segment of our services has increased dramatically and has evolved to become our program's specialty within the community. I think this is particularly important to note that Nebraska Legal Aid, our state's mainstream referral agency for low-cost civil legal assistance have not yet provided immigration...direct immigration services to immigrant women. Our program is currently overburdened and underfunded. The volume of calls asking for legal assistance has risen dramatically and the number of appointments being made is at an all-time high. Currently, we have over a one-month wait to have an initial consultation and this does not include our naturalization workshop that's scheduled in April that allows for 50 appointments. On average, we receive ten walk-ins and 60 phone calls per week. In order to serve our clients efficiently with quality legal services we have had to narrow our scope of representation and focus on the above mentioned case types. With additional funding we cannot only offer areas of family-based law but also increase the number of people we serve who are currently obtaining less than adequate legal advice. I want to thank the committee for the opportunity to testify and I encourage your support of LB596. Thank you and I am available for any questions. [LB596]

SENATOR LATHROP: Thank you, Ms. Novak. Any questions? I don't see any. Thank you. [LB596]

SENATOR ASHFORD: No, none. [LB596]

ELISHA NOVAK: Thank you. [LB596]

SENATOR LATHROP: Jim. [LB596]

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JAMES MOWBRAY: Senator Ashford, members of the committee, my name is Jim Mowbray, M-o-w-b-r-a-y. I'm chief counsel to the Nebraska Commission on Public Advocacy. One of our functions is to process the funds that do come into the Legal Aid and Services Fund through a grant process that we do once a year, and see that those funds pass through the agency to the recipients. I'm here primarily to answer questions but a couple things I'd like to point out. Last year...and some of the prior testimony indicated that dollars actually went down from what we gave in 2008 from what we've can give in 2009. And we were about probably a half a million short of what was requested for what we actually could afford to give out, so the need is there for a fee increase. Whether or not that will eventually become law, who knows, but the need is certainly there. The other thing is, and I actually anticipate the need to get worse. It's going to get worse before it gets better with the nature of our economy. I have the privilege of going through, quarterly, the reports that I get from the entities that do receive our funds, and I see how many people, poor people in Nebraska that these different agencies are representing in a number of different types of legal services, and that, but for this money, these people would not have these types of legal services or access to the courts. And so it certainly is, to me, the state of Nebraska gets its bang for its buck when I see how many people are served each month by these different agencies representing the poor. If there are any questions I'll be happy to answer them. [LB596]

SENATOR LATHROP: Thanks, Jim. Any questions for Mr. Mowbray? I don't see any. [LB596]

JAMES MOWBRAY: Thank you. [LB596]

SENATOR LATHROP: Thank you. I think that was all the proponents so we will take up opponents to LB596. [LB596]

JEREMIAH LUEBBE: (Exhibit 22) Thank you, Senator Lathrop, Chairman Ashford. Good evening, members of the committee. My name is Jeremiah Luebbe; that's L-u-e-b-b-e. I'm general counsel for Credit Management Services in Grand Island, Nebraska. I'm here appearing on their behalf in opposition to LB596. Right now you're getting a handout and this kind of goes to what Senator Council was discussing earlier. There are a number of bills, four actually, in front of the Unicameral this year. One, LB273 that has been referred to the Government Committee; and then three bills, LB35, LB333, and this bill, LB596, that would raise court costs. Now I believe LB35, when I prepared this table, by this time it may have been amended or...the fee in LB35 is going to taken out, but if you could take a look at that first table, the first three rows, those are the fee increases to court costs from LB333 that would raise court costs by a sum total of \$4. The Legal Services fee on footnote 2, that is this bill, LB596, which the increase from \$5.25 to \$7.25 for this fee is a \$2 increase, a 38 percent increase. The Violence

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Prevention Cash Fund, that's the one in LB35 which I think the fee has been taken out of that amount or out of that bill for that cash fund. The rest of the columns in that...or rows in this table are the fee increases that are proposed in LB273. I think it's appropriate to consider all these bills together because, as we know, these bills all have to do with raising the court costs in the state of Nebraska. Since July 2002, in that time the cost to file a lawsuit in a county court in Nebraska was \$19. As of today it's \$42. Should every one of the bills pass that's before the Unicameral this year, if you looked at the second page, the first table there is the cost to file a lawsuit against one defendant and serve that defendant by sheriff. The cost right now is \$57. Should all of these fee increases pass, you're looking at \$80 or \$81, which is a 40-42 percent increase to serve and file a lawsuit against one defendant. You can see the second table is basically self-explanatory. Two defendants served at the same address, the current cost is \$64.50. Should all these cost increase bills...fee increase bills pass, then it would go up to \$100.50. The last is an occasion where you have a lawsuit filed against two defendants, served at different addresses. The current cost to serve and file...or to file and serve, excuse me, a lawsuit against those two defendants is \$72. That would raise to \$113 or \$112 if you take out the LB35 \$1 fee increase. Now these--and I'll close. I've got about a minute left. These fees are borne equally by consumers and also by the main street businesses that my third-party collection agency does represent. You take \$1 to increase the access to the courts. That dollar is going to get that money back to the creditor. The court costs are taken out first when a judgment is granted against a civil lawsuit defendant, those costs are paid for first. The principal, the amount owed to the main street business does not get returned until all the other costs and fees are paid previously. Thank you and I'll take any questions that you might have. [LB596]

SENATOR LATHROP: Any questions? Senator Lautenbaugh. [LB596]

SENATOR LAUTENBAUGH: Thank you. Are you an attorney licensed in Nebraska? [LB596]

JEREMIAH LUEBBE: Yes, I am. [LB596]

SENATOR LAUTENBAUGH: Are you licensed in any other states? [LB596]

JEREMIAH LUEBBE: I am currently licensed in South Dakota which is the first bar I was admitted to, and also Kansas. [LB596]

SENATOR LAUTENBAUGH: You heard the state bar here testifying in favor of this bill. [LB596]

JEREMIAH LUEBBE: That's correct. [LB596]

SENATOR LAUTENBAUGH: I assume you disagree. [LB596]

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JEREMIAH LUEBBE: Well, on behalf of my client I certainly do disagree. That's my capacity to be here today. I think if you look at the cumulative effect, the increase in all of these costs, the access to the court system is funded perhaps unfairly. [LB596]

SENATOR LAUTENBAUGH: Thank you. [LB596]

SENATOR LATHROP: Can I...I'm going to ask you a question and if you know the answer to this, you may or may not, but do you know what percent of lawsuits filed in the state of Nebraska are collection cases? [LB596]

JEREMIAH LUEBBE: I do not know the answer to that question. [LB596]

SENATOR LATHROP: How about the percent of cases that are filed just in county court? [LB596]

JEREMIAH LUEBBE: I've looked in recent...in preparing to testify for not only this bill but others, I looked at the judicial branch's fact sheet. I guess I can't say the distinction... [LB596]

SENATOR LATHROP: If there's a fact sheet, we can look it up. I just thought you might know. [LB596]

JEREMIAH LUEBBE: There is a fact sheet. I don't think it distinguishes between the certain types of civil cases, just a branch category or a broad category, civil cases. [LB596]

SENATOR LATHROP: Okay. Any other questions? Seeing none, thank you for your testimony. Ed. [LB596]

ED HOFFMAN: Members of the committee, my name is Ed Hoffman. I'm an attorney here in Nebraska. I'm also licensed in the state of California in an inactive status. My last name is H-o-f-f-m-a-n. In looking at the costs, my law firm does a great deal of work in business representation. We represent a number of hospitals, medical providers, doctors' groups, dental offices, a gas company, an electric company, banks, savings and loans, governmental entities with unpaid bills like ambulance charges. The reality is, by raising the charge here, you're going to raise the bar as to what, from a business standpoint--and by the way we also represent law firms in collection matters, as well, or business representation--but it's going to raise the bar as to what can or cannot be collected. The higher the cost is for collection, the less reasonable it is for any business to pursue that collection. While the issues that were discussed by the proponents today addressed things that have a reasonable basis, unfortunately when you look at all the charges or increases that are before the Legislature in this session, it creates an

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unreasonable burden. The reality is, is that we...when we begin a collection process, once we've taken judgment and begin that process, the debtor then becomes responsible for the costs, as well. So, in essence, what we're saying is, not only is the business going to bear the brunt of this because they have to front those costs in advance, any of the business that any of us represent, but additionally, the folks are going to be, that have the judgment taken against them and that we can collect against, are going to be responsible. If you look at a collection matter, which is not the only matters that our office handles, but if you look at a collection matter, we're talking individuals that have presumably other bills that need to be paid. And so what we're talking about are individuals that are not in a capacity necessarily to have this increase. Additionally, as I said, businesses will have a lower...the ability for them to pursue these accounts will be reduced. And so I guess, as an attorney and as a member of my law firm, Cada, Froscheiser, Cada, and Hoffman, we would stand against this increase and any others, because in reality they should be together before the body so that they can be addressed in a reasonable manner and not piecemeal. [LB596]

SENATOR LATHROP: Very good. Questions? [LB596]

SENATOR LAUTENBAUGH: Yes, Mr. Chairman. Thank you. [LB596]

SENATOR LATHROP: Senator Lautenbaugh. [LB596]

SENATOR LAUTENBAUGH: Thank you, Mr. Hoffman. You're an attorney in Nebraska, as you said. You obviously don't agree with the bar's position on this bill either. [LB596]

ED HOFFMAN: No, I don't. [LB596]

SENATOR LAUTENBAUGH: You are still sending them their \$400 this year, though, didn't you? [LB596]

ED HOFFMAN: We did, for all the attorneys in our office. [LB596]

SENATOR LAUTENBAUGH: Okay. Because you have to. [LB596]

ED HOFFMAN: That's right. [LB596]

SENATOR LAUTENBAUGH: Thank you. [LB596]

SENATOR LATHROP: Any other questions? I don't see any. Thanks, Ed. [LB596]

ED HOFFMAN: Thank you. [LB596]

SENATOR LATHROP: Always a pleasure. Anyone else here in opposition? Anyone

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here in a neutral capacity? Senator Ashford, do you wish to close? He waives closing.  
That will finish our hearing on LB596. We'll close our hearings for the day. [LB596]

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Disposition of Bills:

LB356 - Placed on General File with amendments.

LB253 - Held in committee.

LB345 - Indefinitely postponed.

LB414 - Placed on General File with amendments.

LB596 - Held in committee.

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Chairperson

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Committee Clerk