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Health and Human Services Committee
February 11, 2010

[LB940 LB992]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, February 11, 2010, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB992 and LB940. Senators present: Tim Gay, Chairperson; Kathy Campbell; Mike Gloor; Gwen Howard; Arnie Stuthman; and Norman Wallman. Senators absent: Dave Pankonin, Vice Chairperson.

SENATOR GAY: All right, we'll get started, it's 1:30. I'm going to cover a few things. Welcome to the Health and Human Services Committee. We've got two bills today: LB992 and LB940. In our committee we run a light system. The introducer of the bill gets as long as they want to open and close. But if you're going to testify on the bill, we have a five minute time limit. And it will be a green light up until four minutes. At four minutes a yellow light will go on. And at five minutes that red light will be on, so if you could wrap up your comments at that point it certainly helps today with only two bills, but usually we'll have four or five bills and it's just the fairest system that we've come up with on many of these issues that we deal with. If you have a cell phone, if you could quiet your cell phone also out of respect for the committee, we'd appreciate that. We have testifier sheets on both sides of the room and I think there's a few on the front desk too. But if you know you're going to be testifying either as a proponent, opponent or even neutral, if you could fill that out it certainly helps us. Hand it, put it in the box when you come up. It helps our clerk. When you come up state your name and spell it out so when they're transcribing the testimony, much later usually, they can remember what...who was speaking at that time and it certainly helps as far as spelling goes. What else? I think that's it. We've pretty much got most of our members here. There's two members, I think Senator Pankonin had a commitment today and Senator Stuthman told me, I'm not so sure they're going to be joining us. But I'm Senator Tim Gay from Papillion-La Vista, District 14. And we will introduce ourselves, starting at my right with our legal counsel.

MICHELLE CHAFFEE: I'm Michelle Chaffee.

SENATOR GLOOR: I'm Senator Mike Gloor, District 35, Grand Island.

SENATOR CAMPBELL: I'm Senator Kathy Campbell, District 25, east Lincoln and Lancaster County.

SENATOR HOWARD: Senator Gwen Howard, District 9 in Omaha.

SENATOR WALLMAN: Senator Norm Wallman, District 30.

ERIN MACK: Erin Mack, committee clerk.

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SENATOR GAY: All right, thank you. And our pages are here to assist you in any way too. They do a great job. If you need anything, if you're going to hand anything out, just hold it up, they will get it. And they will help you out in any way with any assistance they can give to you. With that, we will get started and Senator McGill is here to introduce LB992. Welcome to the committee.

SENATOR MCGILL: Yeah, my first time to be here, I think the only time this year. (Laugh) Good afternoon, Chairman Gay and members of the Health and Human Services Committee. I'm Senator Amanda McGill, that's M-c-G-i-I-I. I represent the 26th District and I'm here to introduce LB992. LB992 would allow Expedited Partner Therapy, or EPT, for the treatment of sexually transmitted disease. EPT is the practice of allowing an STD-infected patient or a public health professional to deliver oral medication or prescriptions to any exposed partners of the patient without said partners being examined. In other words, when an infected person seeks medical care for an STD the legislation would allow the provider to send home antibiotics for the infected partner or partners of the patient. This practice is currently permissible in 15 states and is highly recommended by the Centers for Disease Control and the American Medical Association. Although some medical professionals in Nebraska are currently using this as an additional method of reaching people with untreated STDs, it is not expressly permissible in our current state law. This ambiguity may deter some providers from practicing EPT. And the goal of this bill is to make it very clear that they can legally use this as an additional tool to fight the spread of STDs. It's no secret that sexually transmitted diseases are a problem in Nebraska. STD rates have been in the spotlight since 2004 when Douglas County declared an epidemic. In 2007, the Douglas County Health Department reported the chlamydia rate in Douglas County was almost 70 percent higher than the average U.S. rate. Although they have not reached an epidemic rate, Lancaster County has also tackled rising STD rates in recent years. Many STD cases are due to partners not being aware of exposure and/or being able to seek testing and treatment. Chlamydia especially is a problem because it is a silent disease with about 75 percent of infected women and 50 percent of infected man having no symptoms according to the CDC. Even if a person might suspect they are infected, many are afraid to do so or do not have the means to seek medical treatment. Obtaining an in-person exam is still the preferred option for STD treatment, however, an EPT will be permitted only if the medical professional believes the partner is unable or unwilling to seek in-person care. The practice of EPT has been in use for about 70 years and studies by the CDC have shown that it significantly reduces infection rates as well as increases the likelihood of partner notification. We have been working on this bill with the local county health boards and the STD program manager at the Department of Health and Human Services and have modeled our language from Iowa, who passed their EPT bill in 2007. A protocol for the practice of EPT has been developed by the CDC and is used across the United States. Our local health departments as well as HHS would also be guided by this protocol. One of the requirements recommended by the CDC is that in addition to the prescriptions or medications, providers would also be

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required to provide written materials dealing with allergy warnings, directions and general information on STD treatment and prevention. Although EPT isn't a magic solution into the increasing STD rates and should not be used in all situations, it is one more step in the right direction. LB992 ensures that private medical providers and public STD clinics are allowed to take this step. I'm open to any questions and I have some experts following behind me. [LB992]

SENATOR GAY: Thank you, Senator McGill. Are there any questions? Senator Gloor. [LB992]

SENATOR GLOOR: Thank you, Chairman Gay. Senator McGill, we're not going to open up the door on any scope of practice issues with PAs and nurse practitioners are we? [LB992]

SENATOR MCGILL: I don't believe so. I know that the other states and Iowa hasn't had a problem in terms of that. [LB992]

SENATOR GLOOR: Okay. You haven't had any feedback that leads you to believe it's... [LB992]

SENATOR MCGILL: No, I haven't gotten feedback from them in terms of lobbying is concerned or organizations. [LB992]

SENATOR GLOOR: Okay, thank you. [LB992]

SENATOR GAY: Any other questions? I've got one for you. So what are you...like what kind of drugs are you talking about? [LB992]

SENATOR MCGILL: They're the basic antibiotics. And some of the doctors behind me, they can probably help, more specifically talk about that. But I do know that we were on a conference call, my office was, just yesterday with other states, with 60 professionals from across the country. And they don't know of any cases of any sort of bad reactions to the antibiotics that have been shared with other partners. So they don't tend to have a lot of side effects. [LB992]

SENATOR GAY: Okay. We'll wait to hear more. And then you're going to stay around for any questions towards the end? [LB992]

SENATOR MCGILL: Yes, um-hum. [LB992]

SENATOR GAY: Okay. Any other questions? Thank you, Senator McGill. [LB992]

SENATOR MCGILL: All right, thanks. [LB992]

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SENATOR GAY: We'll hear from proponents, any proponents? Come on up. How many people are proponents on this bill, going to be speaking? About four. How many opponents do we have today? I don't see any. Anyone neutral testimony? Don't see any. All right. [LB992]

TIM TIMMONS: (Exhibit 1) Chairman Gay, members of the Health and Human Services Committee, I'm Tim Timmons. I'm with the Lincoln-Lancaster County Health Department, supervisor of the communicable disease program. And I'm appearing before you in support of LB992. [LB992]

SENATOR GAY: Tim, can you spell your last name, too, just to make... [LB992]

TIM TIMMONS: Yes, it's T-i-m-m-o-n-s and I'm here...you're receiving a copy of the testimony so I just want to, instead of going through it, just highlight some points. The reduction of sexually transmitted infections or STIs is a major public health challenge. The Senator talked about the rates, and they certainly are high. The most common ones that would probably be most affected by this bill is chlamydia and gonorrhea. In Lancaster County, gonorrhea...126 cases per 100,000 and for chlamydia in Lancaster County, this is 2008, is 357 cases per 100,000 population. The GC rate in Lancaster County for 2008, that 126 is higher than the national. On the chlamydia side that's somewhat lower than the national rate of chlamydia cases. Sexual partners or partners as well as the individuals infected with either chlamydia or gonorrhea in a high percentage can have no symptoms. That's what presents a challenge because when we look at the cases that are reported, those are individuals that have likely been symptomatic and they're confirmed to be infected with the STI. But for every case reported there's probably two or three other individuals who are unreported and in many cases don't even know they're infected. And the challenge is because partners, in many cases, can be without symptoms and still transmit the STI. Getting those individuals in for treatment is a challenge. So really any action that can facilitate or help in that effort to break the chain of infection by getting partners treated is a positive step in the right direction. And that's why the Lincoln-Lancaster County Health Department supports this bill. [LB992]

SENATOR GAY: Thank you, Mr. Timmons. Senator Campbell. [LB992]

SENATOR CAMPBELL: Thank you, Senator Gay. Dr. Timmons, I happen to be... [LB992]

TIM TIMMONS: I'm a nurse. [LB992]

SENATOR CAMPBELL: Oh, I'm sorry. Tim, I've always called you Tim, I didn't want to...because I've known Tim for years from when I was on the county board. [LB992]

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TIM TIMMONS: Yes, we go back a ways. [LB992]

SENATOR CAMPBELL: Tim, I am allergic to penicillin and so, I mean obviously, it's in my chart and so forth. Is there any worry that we would be giving an antibiotic to somebody who might be allergic to something or are the general antibiotics being given here very few people allergic to? [LB992]

TIM TIMMONS: Well, the possibility of a reaction to an antibiotic is always there. But a couple other things. If it's provided to a local health department to take out, screening will be done of the individual to make sure they have no known allergies. If it's provided by the diagnosed partner, individual, and taken to the partner, as was mentioned, information will be provided regarding allergies and contraindications. [LB992]

SENATOR CAMPBELL: Thank you. [LB992]

SENATOR GAY: Any other questions? Senator Gloor. [LB992]

SENATOR GLOOR: Thank you, Chairman Gay. Mr. Timmons, Senator McGill said that there are instances where EPT should not be used. Can you give me a couple of examples of what might fit into that category. [LB992]

TIM TIMMONS: Well, there's certain kind of STDs that are one, for instance, viral STDs. They're not easily treated. I mean, they're not curable, HIV, human papilloma virus, herpes simplex, where this has no benefit, it's not really going to be helpful. [LB992]

SENATOR GLOOR: So it's really more a function of not treatable as opposed to you just wouldn't treat it. [LB992]

TIM TIMMONS: Right. I think, as I said, probably where it's going to have the most impact and, of course, some of the most common STDs is the chlamydia particularly and also gonorrhea. [LB992]

SENATOR GLOOR: A large portion of this narrative that we have talks about the fact that this could be done by local health departments, city, county health. But a large area of the state is not covered by health departments. How would you see this working, if we're really talking about some of our more remote outstate communities? Or is it likely not to be something that would work as well in an outstate area as in some of the more metropolitan areas who have the health departments? [LB992]

TIM TIMMONS: There are regional health departments throughout the state. So the state is covered by regional health departments now. I don't believe there are any counties within the state that are not covered by a regional health department. So that

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system is in place, public health system is in place that can be utilized. [LB992]

SENATOR GLOOR: Okay. If people...all right. There may be an access issue. But at least there is a delivery system that if accessed could be involved. [LB992]

TIM TIMMONS: Right. Under this there's two systems, one is the diagnosed individual delivering, taking out the antibiotics and the other system is through the public health system. [LB992]

SENATOR GLOOR: Yes. [LB992]

SENATOR GAY: Any other questions? I've got one for you, Mr. Timmons. If a person, obviously, I can see where...if they're not seeking treatment, though, and then you're going to give them a prescription, how long does it take to cure the disease itself? Because if they haven't come in seeking treatment, I understand the confidentiality and a little bit, it's a touchy issue, obviously. But if they don't come in, how do you know, are you just hoping that they're going to take this regimen? How long does it take to cure the situation? So let's say somebody gives something to a partner they know. Is it a two-week deal a two-day deal? [LB992]

TIM TIMMONS: Well, once they've completed the antibiotic, and usually it's a seven- to ten-day treatment... [LB992]

SENATOR GAY: So it's not an extensive thing? [LB992]

TIM TIMMONS: No, not when we're talking about chlamydia and gonorrhea. It may be different for other STIs that probably wouldn't be impacted by this. But those completing the antibiotics would take care of it. These are bacterial STIs, the chlamydia and gonorrhea. [LB992]

SENATOR GAY: Okay, thank you. Any other questions? I don't see any. Thank you. [LB992]

TIM TIMMONS: You're welcome. [LB992]

ADI POUR: (Exhibit 2) Good afternoon, Senator Gay and members of the Health and Human Services Committee. My name is Adi Pour, A-d-i P-o-u-r, and I'm the health director of the Douglas County Health Department. The Douglas County Health Department is submitting this testimony in support of LB992. Sexually transmitted diseases in Douglas County have been declared at an epidemic level in 2004, based on 2003 data. Just to give you a little bit of an idea, in 2007 we had 4,000 infections in Douglas County. That is approximately 2,800 chlamydia and the rest gonorrhea infections. As a result of that, a lot of community-based organizations and a lot of efforts

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have gone into trying to see how we can address this in our community? And I have to tell you we have done some wonderful things, nontraditional testing, trying to really get the education out to the young people. But what we are seeing is we have just about used every tool in the toolbox and now we need to look broader and say, what other issues or what other challenges can...how can we address this in our community. And one of them is this Expedited Partner Therapy. We have seen study after study that it is effective in actually breaking the transmission cycle. Because one of the things that our community said, the first thing we need to do after we have seen these results is test and treat, test and treat, that's how you are going to bring the epidemic level down. And I tell you, we are not making great advances. And the reason for it is that really we have very limited resources, even from the Center for Disease Control, nationwide the resources to treat these diseases and follow up on them has decreased. So here we are starting to really see a problem, but with decreased resources this is a way to get at that. It's not the gold standard. The gold standard is still for individuals to go into the doctor's office or into the clinic, get tested and treated. And that's still what we'll be going on. But at this time, it is not feasible for us to do what we really should do in regards to partner notification. That means when the patient sits next to you try to determine where potentially who else is infected. We know it can't be just that one, single person. In the Health Department we have two disease investigators for 4,000 cases. Not feasible, can't be done. So therefore a lot of these partners are not followed up or individuals do not provide the correct information. So it is a struggle and this has been shown to be an effective solution by the Center for Disease Control. Scientific studies have shown that actually reinfection decreases because now you have treated the person and the partner, so potentially the individual isn't going to get reinfected again. It is important that this is done as quickly as possible. And sometimes...I talked to our nurse today. She said, you know, there are many individuals who come to the STD clinics, they do not want to provide us the partners name. And they can tell you right now that the partner doesn't have a medical home, he doesn't have a physician, he's probably not going to go to a physician. Seventy percent of our cases are in the 15 to 24 year old. Now how likely do you think that an individual like that is going to go to the family doctor and say, you know, I think I have an STD. It's going to show up on the insurance form for the parent. And so I think at this time the issue is also that we get some conflicting results. Some individuals say current Nebraska statute allows for this to happen at this time. It is unclear. And I think that is the barrier that we want to overcome with this legislation. So I would encourage you to move this out of committee. Thank you. [LB992]

SENATOR GAY: Thank you. Senator Gloor. [LB992]

SENATOR GLOOR: Thank you, Chairman Gay. Thank you for your testimony, Dr. Pour. Three issues that we appear to be trying to address. One is treating the individual infected with the disease and their partner, preventing reinfection, and then stopping the spread since we're not talking about people who always have monogamous

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relationships, clearly. So in the 15 states, and Senator McGill may have made mention of this, but in the 15 states that currently have this in place do we have some statistical studies that show, research-based studies that show this really has slowed the spread of sexually transmitted diseases? [LB992]

ADI POUR: Correct. There is a multi study that has been done that actually has shown that the decrease of reinfection, reinfection specifically has decreased in those states. There is an interesting study that a researcher has done with modeling and saying if just 10 percent of the partners would receive this medication we actually would, over time, see a potential decrease of 50 percent of the infection. This is modeling. I think the programs in many states are still too new to really give us accurate results. But there is a lot of interest. And I have to tell you as of today there are 22 states who allow this. And there are more states every day who get on. This is really starting to become part of best practice. [LB992]

SENATOR GLOOR: Thank you. [LB992]

SENATOR GAY: Dr. Pour, I've got a question for you. When Senator McGill was testifying on her opening, I kind of wrote down a note too. Currently, using this method, so it's not illegal at the present. You just want to clarify that it is legal. But can you...you touched on that on your very end. Give me some examples what you're running up against. Because I'm sure the public health agencies can already do this and the word gets out. But where has the conflict been? [LB992]

ADI POUR: The conflict is actually in the public health clinics, in the STD clinics because we don't have physicians there. We have nurse practitioners. Nurse practitioners can provide actually a prescription, but they could not hand out at this time an antibiotic to a patient to bring back to a partner. So there is the issue, there is kind of the interpretation that is not clear at this time. [LB992]

SENATOR GAY: Okay, thank you. Any other questions? I don't see any. Thank you, Doctor. [LB992]

DAVID FILIPI: (Exhibit 3) Good afternoon. I'm Dr. David Filipi. I'm president of the Nebraska Medical Association from Omaha, Nebraska and I'm a family physician. As a family physician and as president of the Nebraska Medical Association, I am testifying in favor of this bill. As a practicing family physician in the past, I have treated patients and treated their sexual partners without being seen. That's a common practice among family physicians, it's antibiotics. And although there is some risk with giving antibiotics and allergic reactions, we take on that risk particularly if we can't get that patient in. So that's a common practice. We are a little bit concerned about the increasing liability to clinicians who prescribe these antibiotics to patients who they don't know, and say they do have an allergic reaction to those antibiotics or an untoward reaction, I, as a

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physician, have not had an opportunity to examine the patient to get the patient's history and yet this person has a reaction, that could create a malpractice liability problem. At the same time, there are other physicians who would say, I don't feel comfortable giving an antibiotic to someone who I don't know, I think they need to be seen. We don't want to make...we want to make sure that we don't develop a practice standard that we can't live with. Because I think again that's up to the individual to determine what sort of risk they take on. The state of Maine has developed a good statute, and I'll share that with you, that provides some degree of protection, saying that, number one, if you're a physician that gives a third party an antibiotic and they have a reaction, there's no legal recourse against that initial physician, unless there was some compensation involved, number one. Number two, that if the physician refuses to treat this third party, that doesn't create a failure to treat situation whereby you could have a malpractice suit against you. So basically, we're in favor of this resolution with a little bit of tweaking. And I'll give your those amendments. If you have any questions, I'm open to answering them to you. [LB992]

SENATOR GAY: Thank you, Doctor. Any questions? I don't see any. In the bill it says, "may prescribe," so I assume they don't have to if they don't want to, it's not "shall," so...and then on the liability issue, I guess, what you're saying is the idea that somebody would sue because they didn't get it? I mean, I guess you can do that. [LB992]

DAVID FILIPI: Well, there's two situations. Number one, where you would give it to a third party, that person was allergic to penicillin and they have a bad reaction and then they have an action against the initial prescribing doctor. The physician, of course, did not know and in good faith prescribed this medicine. [LB992]

SENATOR GAY: Okay, thank you. I don't see any other questions. Thank you. [LB992]

DAVID FILIPI: Thank you. [LB992]

SENATOR GAY: Any other proponents? [LB992]

JORDAN DELMUNDO: (Exhibit 4) Good afternoon, Chairman Gay and senators of the Health and Human Services Committee. My name is Jordan Delmundo, that's J-o-r-d-a-n D-e-l-m-u-n-d-o. I am the public policy manager at Nebraska AIDS Project and Nebraska AIDS Project is submitting testimony in support of LB992. As the only AIDS service organization in the state of Nebraska, Nebraska AIDS Project is familiar with the STD epidemic. And since 1984, we continue to provide information and innovative support to those that need it. In recognition of the STD epidemic, Nebraska AIDS Project has incorporated confidential STD testing into our services beginning in 2008. In the 15 months of testing, we have seen an overall 8 to 10 percent positivity rate. As a key component of our testing services NAP provides a counseling session to assist those people to manage their fear of testing, educate them on risk reduction, and

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encourage them to lead safe and healthy lives. In those 15 months, participants have touched on three consistent themes during those counseling sessions. The first being the anxiety of getting tested, the second the fear of testing positive, and third the dread of telling their partner that they need to acquire treatment as well. Numerous reports and studies, such as those by the Centers for Disease Control, the Institute of Medicine and the Institute of Rural Health Research at the University of Alabama, cite fear and stigma of STD testing as a key element of the epidemic. This fear and stigma often prevents people from getting treatment or getting it sooner. STDs, as has been said before, may be carried for months without any signs of symptoms. In many cases, those persons testing positive for STDs indicate not having any symptoms. Passage of this bill will reduce further transmission by initiating treatment faster. While this bill makes the process of approaching a partner about STDs no less complicated, it does carry the goal of a state less affected by STDs and an innovative yet simple approach to achieving that goal. We have witnessed persons test positive and receive treatment. Of those who we have tested positive, we have seen many of them take advantage of the opportunity to bring their partners in to get treatment. We strongly believe that this bill will be greatly advantageous to the state of Nebraska. We fully appreciate your consideration and thank you for your time. I'll take any questions if you have any. [LB992]

SENATOR GAY: Thank you. Are there any questions? Senator Wallman. [LB992]

SENATOR WALLMAN: Yes, Doctor, thanks for testing...I mean, for showing up. [LB992]

JORDAN DELMUNDO: Yeah, absolutely. [LB992]

SENATOR WALLMAN: As far as testing for STDs and AIDS is that the same test? [LB992]

JORDAN DELMUNDO: No, two different things. We do a urine test for gonorrhea and chlamydia. The HIV test is a totally different test. [LB992]

SENATOR WALLMAN: And a huge difference in cost, I presume. [LB992]

JORDAN DELMUNDO: What was that? [LB992]

SENATOR WALLMAN: A huge difference in cost? [LB992]

JORDAN DELMUNDO: I'm not aware of a huge difference. I don't have the numbers with me right now. [LB992]

SENATOR WALLMAN: That's fine, thanks. [LB992]

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JORDAN DELMUNDO: Absolutely. [LB992]

SENATOR GAY: Any other questions? I don't see any. Thank you, Jordan. [LB992]

JORDAN DELMUNDO: No problem. Thank you. [LB992]

SENATOR GAY: Any other proponents who would like to speak? Any opponents who would like to speak on this? Anyone neutral? Senator McGill, you want to close? [LB992]

SENATOR MCGILL: (Exhibits 5-7) Just real quick. And I have a couple of letters that I forgot to pass out in support, at the beginning, from Friends of Public Health in Nebraska and the Public Health Association in Nebraska. Just real quick. A lot of states, as we're learning about these sorts of laws, every state has unique language. We just decided to start with Iowa's. We're aware of Maine and their liability language. In Iowa they don't have more specific language because their Attorney General felt that this language did cover the liability issues dealing with doctors and giving drugs to a third party. But that's something we're very open to working with the committee on to craft language that would be appropriate for the circumstances and the interests here in Nebraska. The STD, STI problem has been really highlighted in the press a lot, but I don't feel like it's something that we've addressed here in the Legislature to the best of our ability. And I think encouraging this practice is something that would be beneficial to our state. [LB992]

SENATOR GAY: Thank you, Senator McGill. Any last questions? I might have...Senator Wallman has a question. [LB992]

SENATOR WALLMAN: Yeah, thank you, Chairman Gay. Thanks for being here too. And this would put the pharmacies also...plug them in liability wise? [LB992]

SENATOR MCGILL: Um-hum. That's something we can work out. I know that they currently have concerns similar to what we've already discussed on the floor this year. When I brought those concerns to some of the other states we've been talking to, they didn't have that reaction from their pharmacists associations. So it's part of maybe some unique language to Nebraska to fit our situation and the interested parties here. [LB992]

SENATOR WALLMAN: Okay, thanks. [LB992]

SENATOR GAY: (Exhibit 8) Senator McGill, I'm going have a question or so for you then. There was no opposition, but I did get this letter, I'm glancing at, from the pharmacist. [LB992]

SENATOR MCGILL: Um-hum. Yes, yes. [LB992]

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SENATOR GAY: She was trying to talk to me earlier, I assume, that's probably what this was about. [LB992]

SENATOR MCGILL: Um-hum. [LB992]

SENATOR GAY: But, I guess, on this then Dr. Pour mentioned it can be done and it's being done now. But the doctors are prescribing, the way I understood what she's saying, and then a nurse practitioner or registered nurse, and I'm just glancing at this. But, I guess, when we ran... [LB992]

SENATOR MCGILL: Yes, and I haven't seen that letter yet. [LB992]

SENATOR GAY: ...we ran onto this, we don't have to get to the solution today probably right now. But the idea was, well, we don't want anyone else prescribing except proper procedures. And this is just the proverbial camel's nose under the tent. It scares people. [LB992]

SENATOR MCGILL: Um-hum. [LB992]

SENATOR GAY: But, I guess, on that then if it's being...why should we not do that when we talk about tuberculosis and all those drugs, which is a much bigger regimen, by the way, and harder to cure than this. [LB992]

SENATOR MCGILL: Yes. [LB992]

SENATOR GAY: But we didn't allow that. But then why this then? [LB992]

SENATOR MCGILL: I guess it's all part of the debate. And I would have, I supported the tuberculosis bill. [LB992]

SENATOR GAY: No, I understand. But I was just saying the body, in general, did not. [LB992]

SENATOR MCGILL: Oh, exactly, exactly. I think that, you know, the STI issue is...I mean there are a lot more cases in Nebraska, it affects...I mean, the Douglas County situation with it being an epidemic and we basically sat here and have not provided any new additional tools or encouraged new additional ways to deal with that issue. And, you know, what she was saying about the reinfection rate is...you know, you have a woman, say, come in and get treated. But if her partner doesn't get treated then she's going back to that partner and ending up back getting treatment again and a third time and a fourth time. And those are resources that are being used over and over again then in our system. And this is a way that we can be nipping it in the rear so that that

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person isn't coming back over and over again. And there are other philosophical differences about what we discussed earlier this session. But I feel with the number of people infected that it's a worthy cause. [LB992]

SENATOR GAY: I've got another question then for you. I was in Douglas County and I've talked to people about this issue as well, probably all of us have. But, I guess, on this you know we had talked about, and here is my thing, the fear and stigma of it. We're talking about people who don't want to come in or whatever. But then we're talking also younger people. Now if I was...other members of the Legislature may have a question about, are you then, by saying this is so easy to get cured, you're in some way kind of condoning to do this because don't worry about it, we can take care of this. I mean, where is...and I think that's a legitimate concern of some people. [LB992]

SENATOR MCGILL: The fact that there is a lot of reinfection... [LB992]

SENATOR GAY: But would be going that route, you think, or... [LB992]

SENATOR MCGILL: Oh, I don't think so. The fact that there is so much reinfection, you know, even with people knowing they can get an STI shows that people are people with human drives and desires and...I don't think that this at all is something that is encouraging a behavior that isn't taking place or any more than it already is. And we should want our population to be healthy regardless. If they are making choices to have sex, then we should help them be healthy about it and so they're not contracting a disease. [LB992]

SENATOR GAY: Well, but I guess on the...so the younger population though, from what I've heard, we're talking kids as young as 12 and 13 coming in and... [LB992]

SENATOR MCGILL: In some cases. I don't know if those are the ones who are going into the public health department to get treated, but... [LB992]

SENATOR GAY: Well, but in some...well, I don't know that either. But I'm just saying, and I'm not trying to grill you here. I'm just saying if we're going to put a bill out... [LB992]

SENATOR MCGILL: Yeah. Yeah. It's certainly one of the discussions, um-hum. [LB992]

SENATOR GAY: ...these are questions that may arise. And there's not a lot of opposition. But it's something, like I say, but I think it's just something I wanted to ask you where we're at. [LB992]

SENATOR MCGILL: Um-hum, oh. [LB992]

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SENATOR GAY: Because those probably are legitimate questions that may be asked. [LB992]

SENATOR MCGILL: Oh, and I know that would definitely be part of the...I know that would absolutely end up being part of the discussion on the floor. [LB992]

SENATOR GAY: Yeah. [LB992]

SENATOR MCGILL: Again, I think that the health benefits... [LB992]

SENATOR GAY: Outweigh the risk. [LB992]

SENATOR MCGILL: Absolutely outweigh. [LB992]

SENATOR GAY: Thank you very much. [LB992]

SENATOR MCGILL: All right. [LB992]

SENATOR GAY: Any other questions? I don't see any. Thank you. [LB992]

SENATOR MCGILL: Thank you. [LB992]

SENATOR GAY: All right. Well, I see Senator Janssen is here. We'll close public testimony on LB992 and he's here to introduce LB940, a bill to amend the Welfare Reform Act to require drug screening for cash assistance benefits. Welcome, Senator Janssen. [LB992]

SENATOR JANSSEN: Thank you, Senator Gay, members of the Health and Human Services Committee. I believe this is the first time I've ever testified in front of this committee and will probably be the last time in front of you, Chairman Gay, that I do that. For the record, my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent District 15 which is Fremont and all of Dodge County. I appear today to introduce LB940. LB940 would require the Department of Health and Human Services to develop a drug testing program to screen applicants and recipients of cash assistance benefits under the Welfare Reform Act. If an applicant or recipient is declared ineligible for benefits he or she would be referred to a substance abuse treatment program by the Department of Health and Human Services Division of Behavioral Health. He or she would also be ineligible for cash assistance benefits for one year. I introduced LB940 after hearing from numerous Nebraskans, both in District 15 and throughout the state, who asked me, why they had to undergo drug testing in order to qualify for many jobs in our state but recipients of our state's Cash Assistance Program did not have to be drug-free in order to receive monetary assistance from the taxpayers. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allows states

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to test Temporary Assistance for Needy Families, TANF program. In the last year, at least 20 states introduced some form of drug testing requirement for welfare beneficiaries, including Missouri, Iowa and Kansas to name a few. Several proposals from other states included far more assistance programs than LB940 would call for. When I researched this subject over the previous interim, I made the conscious decision to limit Nebraska's drug testing proposal to the programs in which adults had children in their care who depended on them for food, shelter and support. Raising a child, as most of you are all aware, is a difficult, challenging and ultimately rewarding experience. Clouding this important responsibility with drug use is not fair to the adult or the child. I hope LB940 will encourage parents to realize and respect the high calling of being a good parent. I asked the Department of Health and Human Services for figures on how many people they estimate LB940 would impact. As of December 31, 2009, there were 25,210 total persons receiving Aid to Dependent Children, ADC, in Nebraska. Of those, 19,003 were children, that leaves 6,207 adults that could potentially be tested for drug usage. LB940 deserves serious consideration because these 19,003 children depend on the adults for their care. Drugs truly damage not only the user but also the family and friends of the user. I hope LB940 can make a difference in encouraging people to steer clear from illegal drug use. We also cannot ignore the fiscal note in our current economic climate. LB940, as written, would result in a federal fund savings that outweighs the General Funds cost. While the \$39,177 total fund savings may seem minimal, we all have seen the impact of even a \$1 fiscal note can have on the floor of the Legislature this year. I thank you for considering this proposal. And I'd be happy to entertain any questions. [LB940]

SENATOR GAY: Thank you, Senator Janssen. Are there any questions from committee members at this time? I don't see any right now. You're going to stay around, aren't you? [LB940]

SENATOR JANSSEN: I might, but I may need to go back to Government, so... [LB940]

SENATOR GAY: All right. How many proponents do we have that want to speak on this? All right. Come on up. [LB940]

CORINNE O'BRIEN: (Exhibit 1) Good afternoon, Senator Gay and Health and Human Services Committee. My name is Corrine O'Brien, C-o-r-i-n-n-e, last name O-'-B-r-i-e-n. Thank you for hearing my testimony today. Did you know that you can get a free car from the state of Nebraska? If you're a meth addict almost 40 years old that has admitted to using illegal substances since age 14, a single mom with six children conceived with three different fathers, attempted treatment multiple times and have been incarcerated multiple times, the Nebraska Department of Health and Human Services will help you obtain a car. Fortunately, I do not qualify for the free car. But I was the foster mom for two of the six children, now ages 3 and 8, of the woman I am describing. These children had been in foster care for two and a half years. The 3 year

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old I brought home from Children's Hospital, born as a preemie at 28 weeks and in fragile medical condition, weighing less than 5 pounds and recovering from major surgery. And I might mention that her mother, biomother used meth during the pregnancy. This child lived with my husband, my children and me for two and a half years before being returned to the "biomom" for the second time. The child was returned to the "biomom" the first time after living with our family for 18 months. Three months later, after she was returned, the "biomom" was caught with meth again. And the almost 2 year old was returned to us. At this time, we also fostered the 7-year-old sibling. The sibling had been in and out of six different foster homes before coming to live with us. Approximately two months after they came to live with us the DHHS protection and safety worker that was assigned to this case told us the plan for the case was parental rights termination. By the next month that had changed to reunification. The two children that lived with us were returned to the "biomom" in July of 2009. This family is in their third generation of involvement with the state of Nebraska's law enforcement, correctional system and the Department of Health and Human Services. The chief of police in the city where this family resides wrote this about the family: When the grandpa of these children, father of the "biomom", was killed, he was well-known to police as a chronic alcoholic and happened to be stabbed and found in an alley in 1988, his death ended a string of 206 arrests by the police department in the eight previous years. The department did not computerize arrest records until 1980, and the police chief wrote that it was too much work to go back into the 3 by 5 index cards on the grandpa to determine the number of arrests prior to 1980. Do I believe children should be with their biological parents whenever possible? Absolutely. Do I believe the Nebraska Department of Health and Human Services and the juvenile court system make decisions based on what is best for the child as their top priority? Absolutely not. And the reasons varied but primarily it is the way the laws are written and interpreted by those dealing with the issues. And by that I don't mean the Legislature, I mean the people out practicing. Unfortunately, the state of Nebraska through law has defined what is best for the child is to always be with their biological parent or parents and this is also costing our state millions of dollars. My husband and I received a report on the status of this case after we had fostered the baby for approximately six months. The protection and safety worker listed the state of Nebraska's expenses after just ten months at about \$75,000. That was in July of 2007, and they are still receiving cash assistance for housing, utilities, medical care, clothing and don't forget the free car. They live in government subsidized housing, the children are still wards of the state, however, they now reside with their mother, and the family is still involved with the court system. I suspect that the mother is still abusing drugs, but I am unsure if she is still being tested. Her oldest child is serving time in federal prison for dealing meth and the youngest one was born in 2009. I commend Senator Janssen for introducing LB940. This kind of cycle needs to stop. By providing abusers of illegal substances cash assistance with no strings attached we continue to enable the cycle of substance abuse for future generations. These children will most likely grow up watching and being with adults that are perpetual abusers and also perpetual receivers of government

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assistance. Often they do not know there is any other way to live. Please pass LB940 to make illegal substance abusers accountable but most of all to help the many Nebraska children with substance abusing parents to break the cycle of abuse. [LB940]

SENATOR GAY: Thank you. Are there any questions? Senator Gloor. [LB940]

SENATOR GLOOR: Thank you, Chairman Gay. Thank you, Mrs. O'Brien. So is it your assumption that if the family, the adult loses ADC payments, that the children will automatically then become wards of the state and move into the foster care program? I mean, I'm concerned about what happens to these kids when the parents no longer are able to get assistance. And so what happens to these children? What's your expectation is this law goes through of what will happen to these children? Because you care about the children, obviously. [LB940]

CORINNE O'BRIEN: I do. I guess, I'm not quite sure what you're asking. Are you saying if the children no longer...if the parent can no longer receive the assistance to care for the children, what will happen to the children. [LB940]

SENATOR GLOOR: Yes. [LB940]

CORINNE O'BRIEN: Yes, they would probably go back into the foster care system. But, hopefully, the courts would start observing a law that we already have on the books which is terminating parental rights. And we also have nothing on the books that says anything like three strikes and you're out, which I realize is difficult to legislate. But how many chances do these bio parents get? Do they get from birth to age 18? It seems they do. And this would just be one small step of making them accountable. There's many others that I think our state needs to address. For example, I know in the state of Utah if the child is under, I believe, it's 12 months, and the parents have not made the changes they need to make within six months, those rights are terminated. [LB940]

SENATOR GLOOR: Okay, thank you. [LB940]

SENATOR GAY: Senator Wallman. [LB940]

SENATOR WALLMAN: Thank you, Chairman Gay. Yeah, thanks for showing up. This is an emotional issue for most of us. And would you put alcohol on the same area then, alcohol abuse? [LB940]

CORINNE O'BRIEN: Alcohol is not illegal. [LB940]

SENATOR WALLMAN: I know. But they abuse children, too, you know what I mean. [LB940]

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CORINNE O'BRIEN: I know. [LB940]

SENATOR WALLMAN: And so...yeah. [LB940]

CORINNE O'BRIEN: I don't know what they do now with alcoholics. I mean, I suppose there's a burden of proof that has to be determined. [LB940]

SENATOR WALLMAN: Thank you. [LB940]

CORINNE O'BRIEN: And I don't think...well, I'll stop there, thanks. [LB940]

SENATOR GAY: Senator Stuthman. [LB940]

SENATOR STUTHMAN: Thank you, Senator Gay. Corinne, thank you for your testimony. And I've had numerous situations of constituents call me on similar situations. And it is really heartbreaking for me to see the kids being jerked around and pulled around, taken away, shoved back and everything when the child, in my opinion, doesn't really want to go back because it's never been a home. And the courts decide it should try to have reunification. You know, we've tried to take away the parental rights if they go back on meth or anything like that. I think in the future, in my opinion, this is a suggestion that we've got to be a lot harder, a lot stricter on illegal drug use, especially meth. You know, we took care of the meth labs in the state of Nebraska, but we haven't...it's still a problem, it's a major problem. What do you feel we should do? You know, you support this bill and I truly support it too. Should we be going a lot further on meth addiction because, you know, once on meth you're always on meth. Should we be doing more in that area? [LB940]

CORINNE O'BRIEN: Yes, I definitely believe that. I don't think that...I don't know. I felt when I would talk to the caseworkers from HHS, they didn't care, they didn't care about the meth addiction. It's all about their procedure that they have to follow. You know, it's like how many months have they been in out-of-home placement, you know, what's the next step in my plan. I mean, I know they have to follow the rules and every state agency has their rules that all the employees that work for that agency have to follow and I understand that. But...and I don't know that it's HHS. I mean, maybe it's the courts. But I've seen some judges that I think, I guess I've read about them, I haven't seen them, that have made those kind of decisions and then sometimes it tends to backfire as well on them. But my feeling is that we take the biological connection sometimes too far. Because it seems to me the priority is the biological connection, not what is in the best interest of the child. [LB940]

SENATOR STUTHMAN: Yes, I think that's very true. But in my opinion, once they're taking away from a family that is a liability to the state and put into a family that is an asset to the state, that child will be an asset to the state. But we're continually putting

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these people back into the situations that will be liabilities to the state of Nebraska for 40 years. And that disgusts me. [LB940]

CORINNE O'BRIEN: I agree, Senator Stuthman. I agree totally. You're absolutely right. [LB940]

SENATOR STUTHMAN: Yeah, thank you. [LB940]

SENATOR GAY: Senator Campbell. [LB940]

SENATOR CAMPBELL: Thank you, Senator Gay. And I apologize, Ms. O'Brien, that I had to miss the first part. I was with another committee. [LB940]

CORINNE O'BRIEN: That's okay. [LB940]

SENATOR CAMPBELL: And this question may have been asked. But as a part of the court orders on the children at any point when they were going to foster care or coming back, did the court order the parents to be drug tested? [LB940]

CORINNE O'BRIEN: Oh yes. [LB940]

SENATOR CAMPBELL: Okay. It was only when the children went back that that went away? [LB940]

CORINNE O'BRIEN: I don't know, to be honest. I don't know where it's at now because I can't find anything out. The mother will not let me see the child that I had for two and a half years. So...and the attorneys, the judge, none of that will let me know anything about what's happening currently with the case. I am going to attend a court hearing. I know there is still a court hearing coming up in February. But I am not privy to any information, even though I took care of this woman's children, as it says, for over two and a half years. And now she calls me a baby stealer. [LB940]

SENATOR CAMPBELL: Thank you. [LB940]

CORINNE O'BRIEN: Um-hum. [LB940]

SENATOR GAY: Are there any other questions? I don't see any. Thank you very much. [LB940]

CORINNE O'BRIEN: Thank you. [LB940]

SENATOR GAY: Are there any other proponents? How many opponents do we have that will be speaking? We'll hear from opponents. [LB940]

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TIFFANY SEIBERT: (Exhibit 2) Chairman Gay, members of the committee, my name is Tiffany Seibert, T-i-f-f-a-n-y S-e-i-b-e-r-t. I'm a policy coordinator with Voices for Children in Nebraska. Voices for Children in Nebraska is testifying in opposition to LB940 today. We believe it is contrary to the goal of moving families to self-sufficiency and paid employment. And because the greatest impact of this policy will fall on innocent children, we believe that LB940 takes away resources and assistance for families when they need it most. And this will ultimately harm the ability of children to have their basic needs met. I certainly can empathize with the previous testifiers testimony. You can imagine that we hear stories like that on a fairly regular basis at Voices for Children. We're constantly trying to help families find and deal with the balance between protecting children. But I would also say that research supports that it is sometimes in the best interests of children to try to remain with their biological parents when possible, when they can be kept safe. I think the question here is whether or not this policy would have affected the situation that Ms. O'Brien talked about. And I'm not sure that LB940 would have addressed this in any way. Ms. O'Brien seems to have experienced a very difficult experience with the foster care system. And that's certainly valid. But I think the question is, what happens to kids when we do take away whatever meager benefits that the Aid to Dependent Children program does provide. I think we will be perhaps sending more kids into the child welfare system. And if you look on DHHS's Web site, I'd like to point out that rules and regulations say the purpose of the program is to maintain dependent children in their own homes, if possible, and to assist parents to provide care essential to healthy growth and development of children. The purpose is to strengthen family life and help parents reach and maintain self-sufficiency and independence. So our concern is that sanctioning parents and making them ineligible for the support and really the assistance they need to address a substance abuse problem, if one exists, would not be available by eliminating their eligibility for benefits. I'd also like to quickly touch on the fiscal note here. I think it's important to note that there is an impact to General Funds of \$67,000. If you look at the first round of testing costs \$50,000. And then assuming that a third tests positive, there's another \$17,000. So that's \$68,000 just for the testing. And then the additional staff to carry out this policy, an attorney and a specialist is another \$78,000. So that's a \$146,000 General Fund impact. And there is some savings identified by cutting 310 people off is what the number factors out to be. But I think it's important to note that there is a General Fund impact. The savings comes from federal funds which is not necessarily beneficial to the budget at this time. So I know there are others after me. But if anyone has any questions, I'd be happy to answer them. But we would urge you not to advance LB940. [LB940]

SENATOR GAY: Thank you. Senator Stuthman. [LB940]

SENATOR STUTHMAN: Thank you, Senator Gay. Tiffany, in your comments you stated, you know, getting the kids back to the family and hopefully create a healthy

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environment and move ahead. [LB940]

TIFFANY SEIBERT: Um-hum, right. [LB940]

SENATOR STUTHMAN: How can you really say that when the parents fall off the wagon, get on meth for a week or two again and they're not working because they've never had the education to get a job or anything like that. How can you say that that's healthy for those children to grow up in an environment like that? [LB940]

TIFFANY SEIBERT: Oh, I'm certainly not saying that's healthy, Senator Stuthman. I'm saying that I think we need to do our best to give parents the opportunity to take advantage of resources that could help them overcome their addiction. I don't believe it's in the best interests of children to keep returning them to homes that are not safe and are not offering welcoming environments for these children and positive developmental environments. But what I think LB940 does is not give parents an opportunity to access resources that may help them overcome their addictions. I think anyone in the child welfare system would tell you that drug abuse is a difficult thing for families to overcome. But I think LB940 is based on an assumption that others will touch on, that I think drug abuse is more prevalent among this population, which I don't think has been borne out in research. And by simply removing benefits from the family and an opportunity to overcome those family weaknesses we're being more punitive than helping take care of the families and helping take care of the children. [LB940]

SENATOR STUTHMAN: I'll totally agree with you there. But the situation that always has concerned me with the fact is I do support giving them some assistance hopefully to straighten out their lives. But that doesn't happen. They continue to get that much money, they survive on that much money to get their kids growing up. And their kids are in an environment where they get on drugs. And it's just a cycle after cycle after cycle. And I would like to see something where they get assistance for so long and you know the government has tried that, the welfare to work program. Get them to work, get them a job. In my area there we've got openings for people to work unbelievable. But these people don't want to work, they're getting assistance and they're surviving. [LB940]

TIFFANY SEIBERT: Well, I might add ADC is only available for five years since welfare reform. So it's not as if families are able to depend on this program forever. It's the Temporary Assistance for Needy Families program. So I think that's an important point. I also think there are success stories, Senator Stuthman. I think we often hear the worst ones. Because of your role and because of my role, we're to be advocates for people who need a voice. But I do believe there are success stories. What I think we're talking about here is whether or not LB940 addresses this problem that you and I are talking about. And I think it doesn't. And I think we could have larger conversations about how to best deal with families and children in situations of drug abuse but I'm not sure and I'm certain from our perspective that LB940 does not accomplish that. [LB940]

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SENATOR STUTHMAN: Okay, thank you. [LB940]

TIFFANY SEIBERT: Sure thing. [LB940]

SENATOR GAY: Senator Gloor. [LB940]

SENATOR GLOOR: Thank you, Chairman Gay. Ms. Seibert, common theme for all the testifiers is probably going to be we're concerned about the children. And we may have differences of opinions on what we would like to see happen to the parent or parents but concerns about the children. Part of the argument for the proponents is that the system will then step in and, once the adult portion is gone, the system will step in and rescue these children. Your experience, is the system set up to actually step in and rescue these children so that they're not faced with an even worse and dimmer future? [LB940]

TIFFANY SEIBERT: I think what we risk doing here is...I don't want to comment on whether or not the system does a good job or not. I think the department works very hard to identify kids that are in need of assistance. But I think what we risk doing here is if we remove the parent's portion of the benefit that's a significantly reduced amount of assistance being provided to that family. It may take some time before we see that neglect appearing in the child's life. So we're sort of pushing children away from one system when we could have continued to help them and help the parents access resources. We are not serving that child in the best way possible and then we're perhaps running into that child in another system. The child welfare system has gone to great reforms to try to provide more services to families in-home, keeping children in the home where possible. And so I think we're sort of pushing families and children out of one area of support and perhaps moving them into another. [LB940]

SENATOR GLOOR: Well, you may not want to get into how the system is set up. But you have some good experience that can be a good perspective on this. And, I guess, one of the examples that is used is that the courts will remove parental rights as a result of something along these lines, failure to pass drug tests specifically. Your experience is that the courts are quick to step in and take away parental rights because of multiple failures of drug tests? [LB940]

TIFFANY SEIBERT: I would say the termination of parental rights is a very serious process. And so I think there are some concerns among child advocates that that doesn't happen quickly enough in all situations, specifically when there are sort of aggravated circumstances when the parents really are not making efforts, not taking the right steps. I think steps are being made in the right direction on that. I think our concern with this bill specifically is that we will be hurting children because we're taking away support and perhaps letting children suffer before they're recognized in another system. [LB940]

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SENATOR GLOOR: Okay. That helps, thank you. [LB940]

TIFFANY SEIBERT: Thank you. [LB940]

SENATOR GAY: Senator Wallman. [LB940]

SENATOR WALLMAN: Thank you, Chairman Gay. Thank you for showing up, Tiffany. [LB940]

TIFFANY SEIBERT: Sure, thank you. [LB940]

SENATOR WALLMAN: This issue has always bothered me too. My wife is for children and she does Mother to Mother ministry and some of these mothers are...I would probably not let the child with the mother. But aren't we perpetuating this problem by giving them assistance, by not holding them accountable? You know what I mean? If the child suffers on account of what the mother or father decides to do with the monies, that's not...we're supposed to...you know, child assistance as a state, that's our duty, I think. But are we really doing it this way? [LB940]

TIFFANY SEIBERT: Well, I would say again I think we have to remove ourselves from the sort of place where we're talking right now is that this is a really prevalent problem on public assistance. I don't think we know that and I don't think the research has borne that out, one. Two, I think by simply eliminating any resources by which parents could perhaps address a substance abuse problem, we are allowing this to continue. If we push families away from anything, you know, when they lose TANF/ADC eligibility they also lose Medicaid eligibility. So really, we'll not be able to...most likely not be able to afford any assistance should they have a great desire to take it. So I think we're pushing them out of the system and really not giving them any sort of resources, not empowering families in any way to break the cycle. It's a difficult cycle to break, there's no doubt. But I don't think that LB940 is the solution and I'm afraid it pushes families further from a positive direction than we would hope. [LB940]

SENATOR WALLMAN: Okay, thank you. [LB940]

SENATOR GAY: While you're, while you're at it, I'm going to ask a question too. There's four other sponsors on this bill who I respect very much and I'm sure all the members respect these members who have signed onto this bill. And I bet probably if you...we've all had constituents that say the same thing, quite honestly. Try and get 49 members to do this. However, on this bill, and I know we're getting off the subject of the bill and this question is going to be off the subject of the bill, too, a little bit. But I guess Voices for Children, Appleseed, others, and I know you're only going to speak for Voices for Children, when you come in again and again and again on these issues I respect your

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opinions. And there's other opinions. But to me, when I read about this proponent, the case she gave, a terrible case. But I think at some point...what specifically are your groups doing? Because I do think, as Senator Stuthman said and others, there's a certain point here where this always putting them with the parental first that reunification thing, you know, I got to wonder sometimes, too, what specific steps are you guys making to look at the beginning of this and to solve this? Are you guys working on that end of it instead of after the fact where we're talking about benefits? But do you have programs going there? Because that's a Judiciary,... [LB940]

TIFFANY SEIBERT: Sure. [LB940]

SENATOR GAY: ...obviously, not here. [LB940]

TIFFANY SEIBERT: Right, right. [LB940]

SENATOR GAY: But I think that's where some of these things start. And that's where these cycles begin. Are you doing specific steps over in Judiciary to help these problems? Because we always see you here. What's going on over there? [LB940]

TIFFANY SEIBERT: Well, yeah, I would say termination of parental rights, and I'm not an attorney so I would let Appleseed or someone behind me really address that more thoroughly if they wish to. There are really strong legal implications here and bases that need to be covered when we're talking about terminating someone's parental rights. I mean, that's a very serious issue. I think Voices for Children is...our role is to advocate for the best public policies and systems that we can for kids. We're watching very closely the child welfare privatization, the reform as that's rolling out and watching, making sure children are protected as we're trying to serve more kids and support more families and homes. I think that could be a positive change. I think we are often finding ourselves in roles later in the game because that's when families are interacting with systems. And that's sort of where our advocacy lies. We, of course, support prevention services, education services, all of those things. But we often find ourselves in this position to try to make sure when families are interacting with our public systems that they function in the best way possible for kids. [LB940]

SENATOR GAY: Well, maybe someone else will answer that question. Because I think that's what most of us would like to see is prevention instead of having to deal with it after the fact continually. And I know your role, we all respect that too. Thank you very much. [LB940]

TIFFANY SEIBERT: Sure. [LB940]

SENATOR GAY: Are there any other questions? I don't see any. Thank you. [LB940]

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TIFFANY SEIBERT: Thank you. [LB940]

SENATOR STUTHMAN: Thank you. [LB940]

AMY MILLER: (Exhibit 3) Good afternoon, members of the committee. My name is Amy Miller, M-i-l-l-e-r. I'm an attorney with the American Civil Liberties Union of Nebraska. We have submitted written testimony that you have being passed out to you that discusses the scientific and fiscal improprieties of the bill. I will leave that. I understand Nebraska Appleseed will be testifying after me and will touch more on those policy issues. So I'm going to focus my presentation entirely on the constitutional problems with LB940. There is only one case out there about drug testing welfare recipients, and that came out of Michigan just a couple of years ago. It was struck down by the Sixth Circuit as patently offensive, unconstitutional violation of the Fourth Amendment to drug test public welfare recipients. The reason why is because the Fourth Amendment of the constitution says that any time the government conducts a search, and a search includes a drug test, that there has to be individualized suspicion for that drug test. I want to point out that a police officer couldn't do what LB940 wants DHHS caseworkers to do. A police officer would require probable cause, consent or a warrant. And here we're going to allow caseworkers to do this for no other basis. For a moment, I need to describe to you the mechanics of a drug test in order for you to understand why courts are so opposed to the concept of drug testing. The best form of drug test to discover what the person has been consuming would be a urine sample. You can do blood samples, you can do hair samples, those also have been struck down by the U.S. Supreme Court as violating the Fourth Amendment. But the usual format is the urine sample. If you wanted to drug test an individual, and you were going to ask them to provide a urine sample, you can't have them just bring one in, because it may not be theirs, they may have doctored it, they may have diluted it. Therefore in order to obtain an accurate sample you have to watch the person produce the urine sample, so you are literally requiring an impoverished family to expose themselves in the most literal sense to the eyes of the government. Senator Janssen in his introductory comments mentioned that some of his constituents are concerned why they have to do this drug testing even of that sort to keep their job in the private sector. The reason is the Fourth Amendment of the constitution doesn't apply to private employers. That's a private agreement between you and your employer as to whether you want to accept that condition of your employment. The government, including DHHS, is bound by the Fourth Amendment. The U.S. Supreme Court has in some of the cases I've cited here, expressed a concern not only that the process of the testing is invasive of the privacy but also the results and the information gained back from a drug test is very invasive. The U.S. Supreme Court has noticed that it can reveal "a host of private medical facts," revealing all sorts of things about your medical conditions, other drugs, legal drugs, prescription drugs that you may be taking and also that it requires a Fourth Amendment violation because you have to literally detain the person, you have to be able to say to the person you must stand in this room and you must do what we're telling you. Again,

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police officers can do that when they suspect a crime is in progress, DHHS caseworkers cannot. And that's why LB940 goes too far. Now the U.S. Supreme Court and then the Eighth Circuit Court of Appeals, which would be the federal circuit that governs the state of Nebraska, have looked at drug testing repeatedly, none in the context of welfare drug testing. Because, as I mentioned, the Michigan case is the only one out there. So all these other cases I'm referring to do arise in the public context of public employment. And the U.S. Supreme Court and our Eighth Circuit has been very reluctant to allow drug testing. They say it's only in those most limited cases where there is a public safety need. For example, we allow public employees to occupy safety-sensitive positions to be drug tested: police officers, nuclear power plant workers, railway workers, prison guards. It's because there's a larger societal concern and the public is impacted. Saving money is not an adequate private concern, public concern to overcome the privacy rights of the individuals receiving welfare. I also want to suggest to you that there will be two prongs that this law will have to be reviewed by a court, and I don't think LB940 can pass it for the same reasons it failed in Michigan. One, the government has to have reasonable, articulable suspicion to choose who they're going to test. It can't be a hunch, it can't be a guess, it has to be very specific. In the Eighth Circuit case, Ford v. Dowd, the mayor had heard rumors that her police chief was using drugs, so she ordered him to be drug tested. He's the police chief, she wants to make sure he's not engaged in illegal drug activity. The Eighth Circuit struck it down. Rumors were not adequate. We don't know what would be adequate. The bill sets out no grounds upon which a caseworker has to decide who she is going to test and who she's not to. The second issue I want to point to you, as my time is drawing closed, is at the bottom of the second page of my testimony, the U.S. Supreme Court called Chandler v. Miller, maybe more interesting to those of you who are elected, because here Georgia had a law saying all candidates for public office had to be drug tested in order to be running. May I finish, if I promise to be very brief? [LB940]

SENATOR GAY: Yes. [LB940]

AMY MILLER: Thank you. The state argued that this drug testing was necessary for a number of reasons that you could see someone making the argument as to welfare recipients. We've heard there's a demonstrated problem of drug abuse among Georgia politicians in this case. But we've heard rumors that there is high drug use among TANF recipients. Testing is effective, if you do the test you'll find out who is in fact using drugs. There's dangers from drug use. We've talked about some of those here as to whether or not it harms families. And without testing, the state doesn't know who's using the drugs because it happens outside of the scope. Government never gets to see what's going on inside of a welfare families house. But the U.S. Supreme Court struck all of those down. They said that these deeds for testing were irrelevant and did not have a close match to the privacy needs of the people who would be tested. I'm happy to stop there. If you have any questions, I do need to tell you that LB940 is so patently offensive to the constitution that it is inevitable it would be challenged. And the fiscal note does not take

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into consideration the court costs for the state defending this case. If there are any questions, I can answer. [LB940]

SENATOR GAY: Thank you. Any questions? Senator Gloor. [LB940]

SENATOR GLOOR: Thank you, Chairman Gay. To my mother's great disappointment, I did not get a law degree so you're going to have to help me with something. If LB940 were advanced and the Legislature would decide to pass it, what would you see as what would next happen? Obviously and the Governor...and in this case the Governor signed it or the Governor doesn't sign it and we do an override. What would you see are the likely scenarios that would then begin to play out? [LB940]

AMY MILLER: The usual process for a civil rights lawsuit is it can be filed in state court or in federal court. An advocacy organization or an individual private attorney would bring a lawsuit against the state naming either the Director of DHHS or naming the Governor for having signed the law into order. And the lawsuit would probably ask for a couple forms of relief, one, a permanent injunction finding the law to be unconstitutional so that it could not be imposed, which is what happened in the Michigan case. Anyone who did have a drug test conducted upon them also could claim monetary damages, that is they could say, I was forced to expose myself in this way, it was humiliating, I am asking for monetary damages. I could tell you that most advocacy organizations, such as ACLU, don't bring cases about the money, we bring the lawsuit in order to strike the law down. It would then proceed in either the federal or state system. And that process can take a couple of years, which is why lawsuits are expensive and should be avoided at all costs. [LB940]

SENATOR GLOOR: Okay, thank you. [LB940]

SENATOR GAY: Any other questions? I don't see any. Thank you. [LB940]

AMY MILLER: Thank you. [LB940]

JIM CUNNINGHAM: Chairman Gay and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I'm appearing in my capacity as executive director of the Nebraska Catholic Bishop's Conference in opposition to LB940. The sign-in sheet that I randomly picked up is copied in a crooked way on the page. And I don't know if it's any type of a message or is meaningful in any way, but it is tilting to the right. (Laughter) I just thought that was curious. [LB940]

SENATOR GLOOR: Use the term "crooked," Mr. Cunningham. (Laughter) [LB940]

JIM CUNNINGHAM: Slanted. [LB940]

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SENATOR GLOOR: Thank you. [LB940]

JIM CUNNINGHAM: Our opposition to this bill is a pretty basic premise, and that is that we view it as unjust and punitive. I don't say that because of the idea of encouraging or referring people to drug rehabilitation, obviously that is a positive aspect, but rather our view of this as unjust and punitive is because the approach that it seems to take is to make the family or the household poorer and make the children more dependent by denying the assistance. And in our view that is inconsistent with the longstanding notion and longstanding policy of Aid for Dependent Children, and that is to make sure to help the needs of the children. And that's the extent of my remarks. Thank you. [LB940]

SENATOR GAY: Thank you. Are there any questions? I don't see any, thank you. [LB940]

JIM CUNNINGHAM: Thank you. [LB940]

JAMES GODDARD: (Exhibit 4) Good afternoon, Mr. Chairman, committee members. My name is James Goddard, that's J-a-m-e-s G-o-d-d-a-r-d. I'm a staff attorney at Nebraska Appleseed, which is a nonprofit public interest law firm located here in Lincoln, Nebraska. I'm here today to testify in opposition to LB940. And that's basically because our position is that this is not a good policy for low-income people in this state. The purpose of the ADC program is to move people from dependence to self-sufficiency and to protect children. Kicking off people that may or may not have a drug problem is contrary to this purpose. Other states recognize that treatment is the best policy. As far as I understand, every other state that has either passed a bill like this or has considered it has said a positive test will lead to treatment, not to ineligibility. This bill, on the other hand, would simply punish someone without giving them any treatment, which won't help them and wouldn't help their children either, in my estimation. In addition to that, the parent would lose their cash assistance, they're also going to lose their Medicaid. So if they would want to seek treatment on their own, they're not going to have any health insurance likely to do that. We're also concerned, we're certainly sensitive to child welfare issues and we don't want any child to be in a home where their parent is abusing drugs and where the home environment is unstable. But I would submit to you that taking away someone's cash assistance only leads to instability, whereas treating the parent may lead to a better outcome for both the parent and the child. If the goal is getting someone to self-sufficiency and protecting children, it's our position that there are better ways to achieve that. And I've already touched on that, which is treatment. Currently, under the ADC program there are work requirements. All people who are on welfare in this state have to work, they have to work usually at least 20 hours a week, if not longer. Sometimes they can get a work exemption. One of those exemptions can be for seeking substance abuse treatment. However, there's currently a cap on that. So if someone actually had a problem, sought help and needed more treatment, they're not going to be able to get it. So a possible solution to some of the

problems we're discussing is getting rid of that cap. Another possible solution is simply putting more money into programs for substance abuse treatment out in the public. I also just want to briefly touch on the fiscal note that we have seen with this bill. It claims to have some fiscal cost-savings. And I would submit to you that that rests on a significant faulty assumption. And it's this, it assumes that 15 percent of ADC recipients will be tested. That is an unproven assumption for which there is no evidence. The reason I say that is, as has already been alluded to, there's a standard. You have to show reasonable cause in order to test. And there's no evidence to say that standard will definitely be met in 15 percent of case. So to say that this will definitely result in cost-savings is speculative at best. While it's possible some ADC recipients are using drugs, there is no evidence to indicate that such use is higher than in the general population. There have been studies done on this and those are the outcomes that I'm familiar with. So I would like to say that this bill is not based on evidence that drug use is higher in this population. I would assert that it's based on myths, on stereotypes, on stigmas associated with low-income families, and it speaks ill of the way we view them. Finally, I would just like to say I feel like we've talked about both the child welfare system today and the ADC program. And while there certainly are some interconnections between the two, those are two separate things. The choice of the child welfare system to remove a child when their parent is drug addicted or in a bad situation, that's a part of the child welfare system. The ADC program is a separate thing where the recipients, as I said, are no more likely to be doing drugs than anyone else. So I would submit to you that these are two separate things, both of which are important. And if you have any questions and I can answer them, I'd be happy to. [LB940]

SENATOR GAY: Senator Stuthman. [LB940]

SENATOR STUTHMAN: Thank you, Senator Gay. Mr. Goddard, you said that this is not a good policy, this bill is not a good policy, correct? [LB940]

JAMES GODDARD: Yes. [LB940]

SENATOR STUTHMAN: Okay. I just want to mention one thing. This is my eighth year here on the Health and Human Services Committee, this is my final year. For eight years I've heard things about, you know, this is not a good policy, this is not a good policy. When will your group ever come up with a situation that is this is what we need? And I respect the fact that you are concerned about children, I appreciate that thing. But in my opinion when you're working with this why can't you see what is needed? We think this bill is going to be a good policy. And since you work with the kids and you also stated that you did not want children to be in a house where drugs are being used. Well, there's reunification, they use drugs again, they pull them out, and the worst thing in my opinion, and I would like to ask this, is the fact that the movement of the children in their forming years of life from one place to another, does that benefit the child or does that

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hinder the child's growth and mental ability? [LB940]

JAMES GODDARD: Well, certainly, Senator, I would not say that moving a child in and out of a home where a parent is addicted to or abusing drugs, I would never say that that would benefit or be beneficial to the child. I don't think there's any question that it's not. I would, however, again say I think that there's a difference here in the question of it being a part of the child...is that a topic for the child welfare system to come to a conclusion on when they should or should not pull a kid out of the home or is that a question in the ADC program? And I see a distinction between those two. But to answer your first question, I believe that we have suggested what a good...we have come up with an idea that would be, in our estimation, a good policy here. The solution, in my mind, is treatment. The solution, in my mind, is instead of penalizing someone the first time they fail a drug test, you give them an opportunity to be treated instead of taking...just simply taking away their money for a year. That at least gives them a chance to demonstrate I'm trying to change, I'm trying to better myself and my life for my children. [LB940]

SENATOR STUTHMAN: Has that been acceptable? Has it been introduced and have they done that already, the treatment part of it? [LB940]

JAMES GODDARD: In other states? [LB940]

SENATOR STUTHMAN: In other states. [LB940]

JAMES GODDARD: Yes. And I'm sorry that I don't...I can certainly follow up with you. I don't have numbers on success rates or things like that. But I would say to my knowledge Nebraska would be the very first state in this country to have, once a person tests positive, they're immediate cut off for one year. Every other state that I know of that has done this, if they test positive they get treatment. And take that for what it's worth. [LB940]

SENATOR STUTHMAN: Okay, thank you. [LB940]

SENATOR GAY: I've got to ask while you're here the same question I asked of Voices for Children. What specifically then is your group doing in the...over in Judiciary? Because one thing does lead to another. I mean the fact is they should be working together. And from what I've seen it's a fractured system. And I don't think anybody in this room has exactly all the answers, I know nobody does or we would have found those years ago. But what is your group doing? Because many times we do hear, and good causes, I'm not saying that. But what specifically, are you going over there and trying to get the system better? Because there are cases out there. We read about them in the papers, and we hear about them from constituents. And if go to Foster Care Review Board situation you hear all these cases and they don't ever end. But at what

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point do we start that process there so we have less of these things here that we have to deal with? Are you guys being proactive as a group? And this is a time for an advertisement for you, if you want. [LB940]

JAMES GODDARD: Well, I mean, and thank you for that opportunity, Mr. Chairman. Well, Appleseed has different divisions and things they work on. My division or what I do is basically focusing on public benefits. There's some overlap, but we also have an attorney that all...her entire job is looking at the child welfare system. And so there are various things that that involves with our organizations. Some of that is getting involved in trying to move legislation forward that we see as beneficial to reforming the child welfare system. Some of that is creating...we have a child welfare resource center that anyone, any attorney, a GAL or otherwise could go on-line and get information about child welfare issues in this state. And unfortunately, you're asking the question to the person that is not the best suited to answer it. But obviously, our position is that we would like to see reform in the child welfare system and we are making efforts that we would believe to be proactive to do that. [LB940]

SENATOR GAY: And, I guess, on that, I'm not asking you to do a senator's job, which that is a legislator's job to do that. But, I guess, in some way if you're an advocate or advocacy you should help them is all I'm saying is none of us, obviously, are not on Judiciary Committee or we wouldn't be here. But to me I just hope that's what is going on over there. It's probably just people we just don't see a whole lot of, because we're not on that committee. But at some point, and I don't know when it's going to be. Maybe if you guys can help facilitate opportunities so we don't have to always deal with the end result, we can correct things at the beginning of the process. And I think the beginning of this process or this problem starts a little bit over there. So we're not seeing some of these abuse cases. It's a complex deal, but take that back to your group. [LB940]

JAMES GODDARD: And we're always happy to sit down with senators and share information and ideas, so I appreciate that. [LB940]

SENATOR GAY: You bet. Any other questions? I don't see any. Thank you, James. [LB940]

JAMES GODDARD: Thank you. [LB940]

SENATOR GAY: Any other opponents who want to speak on this? Come on up, sir. [LB940]

WAYNE WHITMARSH: Good afternoon. I'm Wayne Whitmarsh, W-h-i-t-m-a-r-s-h. I appear before you to oppose LB940 not for the children. I learned of this gathering at 10:30 this morning. I have no paper to give you, no paper to read. I'm concerned about one drug, I guess, medicinal cannabis, also known as medical marijuana. And the

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people who need that to overcome the problems that their doctors tell them to take does damage to their body. The medicinal cannabis is serving a purpose in 14 states now, that's 25 percent less than the nation; 25 percent of the population of our country has that possibility, if they need it. I'm concerned that there could be people who, for whatever reason, receive funds that if tested and are using it medicinally perhaps even what we call recreationally, some people have a whisky sour when they go home from work and that can cause more problems than the marijuana. AIDS was mentioned a moment ago. And the cannabis can do away with the wasting syndrome and let a person die looking like a human being. Wasting syndrome takes away that possibility. I have nothing else, I guess. Do you have any questions? [LB940]

SENATOR GAY: Okay. Thank you sir. Any questions? I don't see any, thank you. Any other opponents? Anyone neutral on this issue? And Senator Janssen is not here to close, so we'll close the public testimony and we're done for today. Thank you. [LB940]