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Health and Human Services Committee  
March 10, 2011

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[LB140 LB166 LB221]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, March 10, 2011, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB221, LB140, and LB166. Senators present: Kathy Campbell, Chairperson; Mike Gloor, Vice Chairperson; Dave Bloomfield; Tanya Cook; Gwen Howard; Bob Krist; and Norm Wallman. Senators absent: None.

SENATOR CAMPBELL: Good afternoon. I want to welcome all of you to the public hearings for the Health and Human Services Committee. I'm Kathy Campbell, senator from the 25th Legislative District in Lincoln, and we're going to introduce...I'll have my colleagues introduce themselves. We have senators coming and going, some of them have bills in other committees that they're introducing, so as they come in we will try to make sure that we let you know that they're here. So I'm going to start on my far right here. And today my far right, Senator Wallman, do you want to introduce yourself?

SENATOR WALLMAN: Senator Wallman, District 30.

SENATOR GLOOR: Senator Mike Gloor, District 35, which is Grand Island.

SENATOR CAMPBELL: We're going to reverse and go back.

SENATOR COOK: I'm Tanya Cook from Legislative District 13 in Omaha and Douglas County.

SENATOR BLOOMFIELD: Dave Bloomfield, District 17, Wayne, Dixon, and Dakota County.

MICHELLE CHAFFEE: I'm Michelle Chaffee, legal counsel to the committee.

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

SENATOR KRIST: Senator Bob Krist, District 10 in Omaha.

SENATOR CAMPBELL: On my far left is Diane Johnson who is the clerk for the committee. And Ayisha and Crystal are back. Those are our pages. And I want just to take a moment of personal privilege. Senator Bloomfield, how are you doing?

SENATOR BLOOMFIELD: Good.

SENATOR CAMPBELL: He has been to the dentist...on a broken tooth--ooh. So we're all going to...you know, if he starts to ask a question and you're not quite sure, Senator Cook will try to interpret for him. (Laugh) We're glad you're here, Senator Bloomfield,

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and that it went well.

SENATOR BLOOMFIELD: No problem.

SENATOR CAMPBELL: Okay. I'm going to go through a few reminders for you on testifying in front of our committee. First of all, please turn your phones, your cell phones to silent so you do not bother your neighbors with any strange cell phones. Handouts are not required in the committee, but if you are going to have a handout we'd like 12 copies. And we do not make copies here, so outside the door it will give you an instruction on where to find those. If you're going to testify today, we'd ask you to complete one of the orange sheets on either side and print those and make sure it's all filled out correctly. If you will not be testifying but you want to give an indication of how you feel about a bill, there are white sheets on either side and you can sign those. We have the five-minute rule here. We have lights. It will be green for a long time, then it's yellow for a short time, and then you'll look up and I'm going frantically, time, time, time. We try to hold people on the time so that the first testifier and the last testifier have the same advantage to this. When you come forward, give everything to the clerk and the page before you start, and then you can sit down and introduce yourself, and give us your first and last name and spell it. And with that, we'll open the public hearings this afternoon. Our first one is LB221, Senator Janssen's bill to provide for drug screening of public assistance applicants and recipients. Good afternoon. Two days in a row, Senator Janssen. [LB221]

SENATOR JANSSEN: I know. It's a pleasure to be here. I'm the ninth member. [LB221]

SENATOR CAMPBELL: Absolutely. We're glad you're...that's right. [LB221]

SENATOR JANSSEN: Or is it? Not even that many. [LB221]

SENATOR CAMPBELL: That's right. So go ahead and tell us about your bill. [LB221]

SENATOR JANSSEN: All right. Thank you, Senator Campbell, members of the Health and Human Services Committee. For the record, my name is Charlie Janssen. That's C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent the 15th Legislative District which is Fremont and all of Dodge County--and hopefully it stays that way. I appear today in front of you to introduce LB221. Senator Bloomfield, you'll be happy to know I believe I have a dentist here today in the audience to testify in favor of this, so that should help out... [LB221]

SENATOR BLOOMFIELD: I wish you would have told me that earlier. [LB221]

SENATOR JANSSEN: Yeah. Well, if you cosponsor my bill I go the extra mile for you, so I appreciate that. LB221 would require the Department of Health and Human Services to develop a drug testing program to screen applicants and recipients of cash

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assistance benefits under the Welfare Reform Act. If an applicant or a recipient is declared ineligible for benefits, he or she would be referred to the substance abuse treatment program by the DHHS Division of Behavioral Health. He or she would also be ineligible for cash assistance benefits for one year. I introduced LB221 after hearing from numerous Nebraskans, both in Dodge County and across the state, who asked me why they have 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 cash assistance. The federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allows states to test Temporary Assistance for Needy Families programs. Numerous states have introduced some form of drug testing requirement for welfare beneficiaries in the last few years, including Missouri, Iowa, and Kansas. Several proposals from other states included far more assistance programs than LB221 does. When I researched this subject over the last two years, I made the conscious decision to limit Nebraska's drug testing proposal to programs in which adults had children in their care who depended on them for food, shelter, and support. Raising a child, as you are all aware of, is a challenging experience, definitely rewarding but no doubt challenging at times. Clouding this important responsibility with drug use is not fair to the adult or to the child. I would hope LB221 would encourage parents to realize the importance of being a good parent. I asked DHHS for figures on how many people they estimate LB221 would impact. As of December 31, 2010, there were 23,261 total persons receiving Aid to Dependent Children--ADC--in Nebraska. LB221's fiscal note indicates that 5,629 adults could potentially be tested for drug use. DHHS ran the numbers with a possible 15 percent test rate. LB221 deserves serious consideration because these 17,632 children depend on those adults for their care. Drugs truly damage not only the user but also the family and friends of the user. I hope LB221 can make a difference in encouraging people to steer clear from illegal drug use. Thank you for your consideration. And I would like to note...first off, I'd like to say thank you for scheduling me first, two days in a row, although it was today that I really needed to go first. But I do appreciate your accommodation on that. Senator Wallman doesn't know it, but I brought this bill back largely because of his testimony last year when I brought this bill forward. He had asked the question--I thought it was very pointed--to the opponents: What have you ever done to stop this problem? While all of them acknowledged there was a problem there: What solutions have you had, other than to come here and tell Senator Janssen or anybody else that comes up with an idea that their idea is bad? And I don't think we got an answer to that, so I ran this bill again in hopes of getting an answer to that, a response to that of what else can we do. And we should be looking for something other than just opposing Senator Janssen's bill for one more year and one more year and one more year, because I'm probably not going to go away until District 15 tells me to go away or the term limits tell me to go away. So I would also like to thank the Nebraska Hospital Association. They stopped by my office and let me know that they were going to testify neutral on this and gave me a copy of their testimony. I appreciate that from anybody, whether they're in opposition of my bill or a proponent or a neutral. So I'd like to always mention that. I do not intend to stay for closing today.

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Fremont Bergan made the state basketball tournament and they play at 2:00, so I may go over there and support the Archbishop Bergan Knights this afternoon. So I just wanted to give you a little bit more insight of why I brought this bill. I certainly looked at the fiscal note as well, so I'm well aware of its status. [LB221]

SENATOR CAMPBELL: Okay. Questions for Senator Janssen? Senator Gloor. [LB221]

SENATOR GLOOR: Thank you, Senator Campbell. Senator Janssen, I didn't read anything in the bill that would require retesting before somebody was able to go back on assistance after the one-year hiatus. Was there any discussion about including that back in? I mean the supposition is after a year they'll have cleaned up and we won't have to worry about that anymore. [LB221]

SENATOR JANSSEN: Yeah, good point. I would hope it would get that far, as unlikely as it would be. In that case, they would be subject to drug testing again under the same scenarios that they're subject, right now, to drug testing once you're in the program. [LB221]

SENATOR GLOOR: Okay. Thank you. [LB221]

SENATOR CAMPBELL: Any other questions? Senator Howard. [LB221]

SENATOR HOWARD: Thank you, Senator Gloor, for that question. Thank you, Madam Chairperson. You bring a very good question to mind. There's a program in Omaha called Family Works, and it's specifically for moms who have had a drug problem when I assume they would have tested positive with this, and they're in the program for a number of months. How would they be affected by your bill? [LB221]

SENATOR JANSSEN: You know, I can't answer that, how they would be affected. The bill, if they're under this type of aid and they tested for it,... [LB221]

SENATOR HOWARD: Right. Right, right. [LB221]

SENATOR JANSSEN: ...they would be affected in the same manner as anybody else would be affected on this bill. [LB221]

SENATOR HOWARD: So they could lose benefits for...is it a year? And then... [LB221]

SENATOR JANSSEN: It is a year, yes, as written. [LB221]

SENATOR HOWARD: Which would be...the whole...the premise of the program is that they go into treatment and their children are with them, which is ideal, and I would not want to see them lose the opportunity to maintain this benefit while they work on their

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issue. Thank you. [LB221]

SENATOR CAMPBELL: Senator Krist. [LB221]

SENATOR KRIST: Knowing that you're going to watch a basketball game, we're going to be here for the next two hours, or more... [LB221]

SENATOR JANSSEN: (Laugh) Understood. Fully understood. [LB221]

SENATOR KRIST: ...talk to me about...and this is death by fiscal note if you look at it. I mean talk to me about the difference between Liz Hruska's, which seems reasonable and substantive enough, but the additional attorneys and program specialists and these that are listed in the other fiscal notes. And so there's the question. It's all yours, Charlie. [LB221]

SENATOR JANSSEN: Well, this year I think in many bills people were given several opportunities to kill bills by fiscal note, and I've had several questions, not only with this bill but other bills I've had and other senators have had. I've questioned a lot of those fiscal notes, even just putting something on it to make so it doesn't pass, and that's most evidently going to be the case here as well. I'm not going to sit here and try to totally badger the fiscal process, though, on this particular bill. It had a very good fiscal note last time and that did not advance as well, so I'll pick my battles wisely. [LB221]

SENATOR KRIST: That's a cop-out, but thank you for your answer. Thanks, Chair. [LB221]

SENATOR CAMPBELL: Senator Bloomfield. [LB221]

SENATOR BLOOMFIELD: Beings Fremont plays at 2:00, who is it they're playing? Wayne High also plays at 2:00. I may be looking for a ride. (Laughter) [LB221]

SENATOR JANSSEN: I graduated from Wayne State, and I do know Wayne is playing at 2:00, but I believe they're at Pershing, so you just have to walk right down the mall there and get excused from Chairman Campbell. [LB221]

SENATOR CAMPBELL: Any other questions? Okay, thank you, Senator Janssen. Good luck, Fremont... [LB221]

SENATOR JANSSEN: Yeah. Thank you, Senator Campbell, I appreciate... [LB221]

SENATOR BLOOMFIELD: Until tomorrow. [LB221]

SENATOR JANSSEN: ...and I definitely appreciate this committee. [LB221]

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SENATOR CAMPBELL: ...and Wayne. [LB221]

SENATOR BLOOMFIELD: Until tomorrow. [LB221]

SENATOR CAMPBELL: Oh, until tomorrow. Oh, goodness. [LB221]

SENATOR JANSSEN: Day by day. [LB221]

SENATOR CAMPBELL: Rivalry in the order here. Okay, with that we will proceed to take the proponents. How many people wish to testify in support of the bill? Okay. How many in opposition? How many in neutral? Okay. All right, we'll start with the proponents of the bill, those who favor it. Good afternoon. [LB221]

SANDRA LAB: Good afternoon. My name is Sandra Lab, L-a-b. And is that all you want, just my name? [LB221]

SENATOR CAMPBELL: That's fine. [LB221]

SANDRA LAB: Okay. I'm here...I'd like to tell you about a little bit of a story, and I'd like to think of you, before you make your decision on this, think about this story. My daughter, a few years ago, was living in Los Angeles, and she had a boyfriend, and he had a drug habit. And she called me and she was talking to me about it, and I said, well, if he doesn't work, how does he get the money to pay for the drugs that he's doing? She said, well, he went and he got public assistance. And I said, so essentially the taxpayers are paying for his drug habit. And she said, yes, that's what he's doing; they're paying for the drug habit. And I know I don't want my tax money being paid to help somebody's drug habit. And that's how he got his drugs, because he was getting assistance out there--cash assistance from the taxpayers. And so I'd just like to have you think of that when you make your mind up about this bill. [LB221]

SENATOR CAMPBELL: Questions for Ms. Lab? Thank you for coming and sharing your story. Is he doing better? [LB221]

SANDRA LAB: I don't know. We brought her back because he got her involved in drugs too, so we pulled her back and got her taken care of. So I don't know where he's at, so. [LB221]

SENATOR CAMPBELL: Thank you, Ms. Lab. Next proponent. Good afternoon. [LB221]

DANIEL MAAS: Good afternoon. My name is Daniel Maas; last name is M-a-a-s. I am a practicing dentist. And Senator Bloomfield, if you'd care to recline the chair, we will continue your procedure, okay? (Laugh) So I hope you're doing well. [LB221]

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SENATOR BLOOMFIELD: I believe I'll be fine. [LB221]

DANIEL MAAS: Okay. Honorable Senators, I thank you for the opportunity to participate in the legislative process. Your burden is very immense and I want to encourage you to make the right decisions for the benefit of the citizen. I did not make this trip lightly. Basically, I heard about the bill in the media, and my staff and friends and relatives have heard me harp on this subject for years. And so to be accountable to them, I needed to show up here today. And I rarely change my schedule for my patients due to personal reasons, once I'm scheduled, but today I did, so this is very important for me to be here. Relative to the bill that's at hand, I've observed suspicious drug use among Medicaid recipients in my office. Some individuals seem very knowledgeable about the doses of prescription medicines and things like that, and, you know, they have knowledge that the layperson would not have. Others show the health effects of illegal drugs. Evidence of drug abuse is something that dental professionals are trained to detect. And, yes, I have seen this. We can say it costs for the screening of individuals at a cost of feeding illegal activity. As an employer, I can drug test randomly any staff member and terminate them at will if they test positive. Why do we allow the state to give cash assistance without similar provisions? One of my staff members wanted me to bring a statement from them, so I'm speaking on their behalf now in the next moment here. And what she stated was that if she would do drugs, her employers or what her employer would suspect her of using, she could be tested anytime and lose her job, and therefore, lose her source of income. Many other employer...or rather, employees are subject to random drug testing, and if they their test is positive they lose their jobs, and therefore, their source of income. She feels that those who receive money from the government in the form of a Medicaid checks, which is their source of income, should be subject to the same drug test that working people are required, to keep their jobs. When doing drugs a big question is, are the recipients of these funds seriously going to look for a job? Because the drugs occupy their time. And are they going to look for a job...and therefore, if they're not looking for a job, they are going to continue the cycle of being dependent upon state aid. If a recipient is found to be doing drugs, he may be going through rehab. If an employee is found doing drugs, it's their choice to pay for their own rehab. Okay. So along the same line...I'm speaking as myself, now, as an employer...when I write my payroll checks, I am disturbed that some of the money that my staff has earned is going to support people who are using drugs. I very much value the people that I work with, and I...they work hard and I just really wrestle with the fact that they could be subsidizing, through the payroll deduction, people who are not using their money in an appropriate manner. If the recipient tests positive, it costs for the rehab. It's my understanding that this bill does not dictate that the state has to pay for rehab services, so the state would not have that burden necessarily. Another concern is if a drug abuser has tested positive, what happens to the children in the home? And yes, it does cost money for foster care. But what is the cost to that child? A foundation of drug abuse...a life of abuse in the home. And along with this is the consideration of

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the likelihood of children in a drug-abusing home growing up to be drug abuser themselves. This, in turn, perpetuates the economic and social cost to the state for even more generations. Let's not fuel this cycle, please. Yes, this is an economic issue. It costs for testing. However, the larger issue is the spiral that our great society is degenerating into. Many of these assistance programs were initiated decades ago with the premise to help people improve their well-being. Unfortunately, in the name of equality and nondiscrimination and let's all feel good about ourselves, we have allowed these programs to slop over and deviate from their original intent. These social programs were meant to be an adjunct to improving the lives of Americans. Enabling a drug habit improves the life of no individual. So does this sound uncaring? In the short term, maybe. Long term, ultimately for the good of the citizen and our American way of life. Until the abusers realize that social services' money...that the money feeding that habit from social services won't be gone, will they ever think of cleaning up their behavior? Keep spraying gasoline on a fire and it will continue to burn. Allowing payments to drug abusers is enabling behavior that is a detriment towards society. Let's not enable illegal behavior. It's my understanding the cost of a test is about \$55. The price to society is very huge. I have some specific cases. I'll try not to go into detail. I would elaborate more if you would so choose. Okay. [LB221]

SENATOR CAMPBELL: Okay. We are at the five minutes. [LB221]

DANIEL MAAS: Okay. I thank... [LB221]

SENATOR CAMPBELL: You can go ahead and finish. [LB221]

DANIEL MAAS: Okay. Thank you. I know of a 27-year-old mother. Evidence of meth use from her oral care. However, she is able to get Pell Grants to pay for her copay. I know of another young mother, until the grandparents stepped in and took the child from the home, she was receiving assistance. She was obviously a drug abuser. I know of a young man that, even though he does not have children, he cohabitates with a woman who does have children. That household receives Aid to Dependent Children. So let's wake up, Senators. This is going on. Thank you as a citizen for your (inaudible) and allowing me to participate here today. [LB221]

SENATOR CAMPBELL: Thank you, Dr. Maas. If you want to stay...questions? Senator Cook, did you have a question? [LB221]

SENATOR COOK: Thank you, Madam Chair. Dr. Maas, when you opened your testimony I thought I heard you say among "gay" recipients or did you say among "another word"? [LB221]

DANIEL MAAS: No. No, among...no. (Laugh) I'm sorry. [LB221]



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SENATOR COOK: Okay. I don't know where I heard that. [LB221]

DANIEL MAAS: I may have paraphrased something. But I'm sorry, I did not use that word. [LB221]

SENATOR COOK: All right. And later on in your testimony, you talked about equality and nondiscrimination and let's all feel good about ourselves... [LB221]

DANIEL MAAS: Right. [LB221]

SENATOR COOK: ...being...could you elaborate on which parts of nondiscrimination and equality you disagree with? [LB221]

DANIEL MAAS: Oh, I mean the fact that we can't sense, okay, they have a disease therefore we must be nice to them. Well, it's not a disease. I mean they're choosing this. That's why I'm saying you can't discriminate because they have a disease process or something like that. [LB221]

SENATOR COOK: Okay. I thought that alcoholism and substance abuse were considered diseases as far as the CDC is described. I guess that's a difference of opinion. [LB221]

DANIEL MAAS: Well, it's a personal opinion, because it's also a choice. [LB221]

SENATOR COOK: It's a medical fact. [LB221]

DANIEL MAAS: I cannot choose to have cancer but it is still a disease. [LB221]

SENATOR COOK: You could choose behaviors. [LB221]

DANIEL MAAS: I can choose to be a drug abuser though. [LB221]

SENATOR COOK: All right. [LB221]

SENATOR CAMPBELL: Other questions? Senator Gloor. [LB221]

SENATOR GLOOR: Thank you, Senator Campbell. Thank you, Dr. Maas. Nice to have you here... [LB221]

DANIEL MAAS: Thank you. [LB221]

SENATOR GLOOR: ...and I appreciate the long drive that you've undertaken to get down here. And I also want to thank you for taking Medicaid patients... [LB221]

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DANIEL MAAS: Oh, thank you. [LB221]

SENATOR GLOOR: ...since as you're well aware, one of the challenges we have in this state is we can't find dentists who will take patients who are under assistance. It's a particular challenge. [LB221]

DANIEL MAAS: I'm going to interject just now then. I want you to understand I am not here as a Medicaid provider to squelch Kids Connection, things like that. Not at all. These are very valuable programs. I'm truly focused on the cash assistance that would enable a drug abuser. That is the scope of this bill and that's why I am here. Okay. [LB221]

SENATOR GLOOR: And I appreciate that. But it's worth pointing out that you certainly are committed to this as a concern that you as a citizen have, since you're willing to provide care to... [LB221]

DANIEL MAAS: Yes. [LB221]

SENATOR GLOOR: ...underserved populations, and not a lot of your peers unfortunately are, which is more of a commentary on your peers than it is on you. Let me ask you, do you do drug screenings for your own employees? [LB221]

DANIEL MAAS: I could. I never have. I've never had suspicion of it. I would if I "suspicioned" it. [LB221]

SENATOR GLOOR: Have you ever... [LB221]

DANIEL MAAS: Actually I have thought of it. I did have one instance where I did think of it. The employment situation terminated really before it became necessary. [LB221]

SENATOR GLOOR: Have you ever had to terminate somebody for specifically drug abuse, or was that the instance? [LB221]

DANIEL MAAS: I cannot say. Truthfully, no, I have not. [LB221]

SENATOR GLOOR: Thanks. [LB221]

DANIEL MAAS: Sure. [LB221]

SENATOR CAMPBELL: Questions? Senator Howard. [LB221]

SENATOR HOWARD: Thank you. I will chorus in with thanking you for coming in today

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and giving us your time as I know you probably have many demands on your schedule. I wanted to reassure you that this committee has been very diligent about looking at the drug issues. And, you know, it's very pervasive and it's also a large issue that prescription and nonprescription drugs. But I'm just wondering if you participate in the NeHII network...medical information sharing network? [LB221]

DANIEL MAAS: Don't believe it affects our profession to my knowledge. [LB221]

SENATOR HOWARD: It does. There are dentists that do participate in it. [LB221]

DANIEL MAAS: Okay. I...then the answer to the question is, I don't. Okay? [LB221]

SENATOR HOWARD: Okay. Okay, thank you. [LB221]

DANIEL MAAS: Wait a second. May I ask that...as far as if you suspicion somebody... [LB221]

SENATOR HOWARD: No. No, actually it's a medical information sharing... [LB221]

DANIEL MAAS: Seekers? Are you talking about drug seekers or things like that? [LB221]

SENATOR HOWARD: It's a medical information sharing network here in Nebraska. It's been up about five years. And it's going to be moving toward including prescription medications...that network. [LB221]

DANIEL MAAS: Okay. I will tell you this. If we have somebody we consider to be a seeker in the office... [LB221]

SENATOR HOWARD: I'm sorry. What? [LB221]

DANIEL MAAS: If we have somebody we consider to be a seeker, meaning a drug seeker... [LB221]

SENATOR HOWARD: Oh, I see. [LB221]

DANIEL MAAS: ...for prescriptions, we do make other contacts besides just to take them out the door. [LB221]

SENATOR HOWARD: Well, you might...this might be useful to you in the future. [LB221]

DANIEL MAAS: Okay. I appreciate that. Thank you. [LB221]

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SENATOR HOWARD: Thank you. [LB221]

SENATOR CAMPBELL: Dr. Maas, in any of the patients that you've had and you've had some suspicion, have you ever visited with the patient about the potential of the harm that they may be causing if they are? [LB221]

DANIEL MAAS: Yes. Yes. [LB221]

SENATOR CAMPBELL: And what has been their response to you? [LB221]

DANIEL MAAS: Uh, yeah, I know I shouldn't, or I've tried to clean up, and things like that. Yeah. I'll be honest, most of the time...and this is a revolving door. You don't get them from your own community; you get them from the other communities, you know. And they just...they don't go locally, you know what I'm saying? So we see them kind of remotely, although some of these I mentioned were local. [LB221]

SENATOR CAMPBELL: So it's other people from other communities... [LB221]

DANIEL MAAS: Yes. [LB221]

SENATOR CAMPBELL: ...who tend to come over... [LB221]

DANIEL MAAS: That. [LB221]

SENATOR CAMPBELL: ...and make an appointment to see you. [LB221]

DANIEL MAAS: Right. Because they don't want to be seen locally where they're at because we live in small towns and so it's harder to hide it. [LB221]

SENATOR CAMPBELL: They don't want anyone to know that they have that. [LB221]

DANIEL MAAS: Exactly right. [LB221]

SENATOR CAMPBELL: Have any of them responded by saying, I'm under care? Or I'm trying? [LB221]

DANIEL MAAS: I have not...I have not heard that response. [LB221]

SENATOR CAMPBELL: Okay. [LB221]

DANIEL MAAS: I do volunteer work for a rehab facility in Columbus, Nebraska, that they bring the residents to me, only if they are committed to rehab, and we volunteer our

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services for them. And it's a very rewarding project. But they are clean at that point.  
[LB221]

SENATOR CAMPBELL: Thank you for volunteering. Seeing no other questions, thank you for your testimony today. [LB221]

DANIEL MAAS: Thank you very much, Senators. [LB221]

SENATOR CAMPBELL: Have a safe drive back. [LB221]

DANIEL MAAS: Thank you. [LB221]

SENATOR CAMPBELL: Others in the room who would like to testify in support? Okay. We will go to those in opposition, the opponents. [LB221]

JIM COSSAART: Hello. [LB221]

SENATOR CAMPBELL: Good afternoon. [LB221]

JIM COSSAART: (Exhibit 1) My name is Jim Cossaart. I'm also a dentist from Hebron, and in light of the discord that's going on in other states, I really appreciate you folks. We have a nice place here. If I could just go ahead and read from my statement, would that be fine? [LB221]

SENATOR CAMPBELL: Sure. But would you spell your name for the record? [LB221]

JIM COSSAART: C-o-s-s-a-a-r-t. I graduated in 1999 from the University of Nebraska College of Dentistry. I've been practicing as a rural dentist ever since. As a rural Nebraska dentist, I am in a unique position to comment upon the welfare of suspected drug users. When new patients come into my office, they are required to reveal all their drugs taken, legal or otherwise. I then follow up with a verbal inquiry, stressing the importance of knowing the truth to prevent any dangerous interactions with our anesthesia or other drugs. Whether they are candid or not, I can generally tell who is using drugs by a thorough examination of the oral cavity. Marijuana use usually shows up by inspecting the posterior dorsal tongue. Heavy alcohol abuse shows up in the gum tissues. And a methamphetamine user, I can spot them in the instant they open their mouth. And so what I'm getting at here is I see these kind of people in my practice on a weekly basis. Drug testing, particularly a urinalysis, is an expensive process as we know. The procedural error rate, if done improperly, is so high that no person of medical training would take it seriously. State social service personnel--and they're already stretched to the limit--would now be tasked with getting somebody to pee in a cup. Charging Nebraska social service professionals to judge reasonable cause, which is--I don't think it's been defined--as well as arranging administrative hearings for the

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recipient of the violation is beyond their job description. Now this is the problem I have with this. Drugs are bad and getting people off of drugs is good. But alcohol can often not be detected by a drug test within a few hours. Heroin and methamphetamine use, if they quit 3-5 days ahead of schedule, they can't detect that either. But a marijuana user can be detected 30-45 days later. And if you've got the resources and you've got a little bit of money, you can get on the Internet and you can buy a kit and you can fool that test too. So the less creative and poorer cannabis users will be probably the only ones that you catch. Individuals in this category that I see in my chair are most often young parents trying to figure out how to get going in life and how to keep the baby fed. Those using the far more destructive drugs, such as alcohol and methamphetamine, have a far greater chance of slipping by undetected. An enforcement of the proposed provisions, I think, would only harm the children of the recipients. Drug counseling would be a much more effective alternative if we choose to spend state funds on this issue. From the research that I've seen, the only welfare drug testing bill to pass in recent years was a 1998 bill in Michigan, but that was struck down as being unconstitutional by an appeals court in 2003. And an aside for that, before they ended that test 268 people were tested, 21 were found positive; and of those 21, 18 was exclusively cannabis use. Now, to me, these are the...this is a problem and it's something they ought to stop, but I don't see this as being a really a big life-threatening problem such as methamphetamine, alcohol abuse, heroin. In my opinion, any drug testing of welfare recipients would be...it would be a waste of time and money. [LB221]

SENATOR CAMPBELL: Thank you, Doctor. Are there questions for the doctor? Doctor. Doctor Wallman. (Laugh) Sorry. Senator Wallman. [LB221]

SENATOR WALLMAN: I'm afraid I'm not...yeah, thanks for coming down. [LB221]

JIM COSSAART: Yes. [LB221]

SENATOR WALLMAN: But, you know, taking the cost fact...you know, I used to be on the school board and we checked our school bus drivers, I don't know what...I don't remember what that cost. But we checked all those for drugs. [LB221]

JIM COSSAART: Right. [LB221]

SENATOR WALLMAN: And they was on, literally, public assistance--I guess they are public employees. So we do it for those and they're getting public monies. Do you see where I'm coming from? [LB221]

JIM COSSAART: Yes. Yes. [LB221]

SENATOR WALLMAN: And so do you have any answer for that? [LB221]

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JIM COSSAART: Well, I think the sheer numbers of the recipients that are coming into our door, people that are getting Medicaid payments, if you had to drug test every one of those people, you'd have a staggering amount of money being spent. Oh, and I did clear out my schedule, too, to come up here, so. [LB221]

SENATOR WALLMAN: Well, thank you. (Laugh) [LB221]

SENATOR CAMPBELL: Senator Krist. [LB221]

SENATOR KRIST: Thanks, Doctor, for coming. [LB221]

JIM COSSAART: Yes, sir. [LB221]

SENATOR KRIST: You bring up an interesting point and it's the technical side of the testing. I'm familiar, in a prior life, that a false positive can end a career and do some pretty tough things. I am also aware that in recent times those drug tests have been a little more accurate. [LB221]

JIM COSSAART: Yes. [LB221]

SENATOR KRIST: What would you offer to someone who said it's necessary for us to get the feedback from you, dentists or healthcare professionals, that there is an issue, either through disclosure and NeHII or some other? Is that an alternative? Would you be comfortable with that? [LB221]

JIM COSSAART: I would not be comfortable with that. I think that would be an invasion. If somebody would ask me, you know, how many of your patients do you think are abusers, I'd be glad to tell them, but I'm not going to get a drug test for each one. [LB221]

SENATOR KRIST: Okay. Thank you. [LB221]

SENATOR CAMPBELL: Doctor, I'm going to ask much the same question as I did earlier, and that is that the patients that you see and which you can identify--and I follow your testimony that in some cases you can't--have you discussed with them that they have...obviously have a problem and what they might be doing? [LB221]

JIM COSSAART: I do. I do. But I try... [LB221]

SENATOR CAMPBELL: And their response? [LB221]

JIM COSSAART: I try to limit it to a one-on-one. I don't even let my assistants or anybody on the staff hear when I'm talking, and sometimes I'll just go outside with them

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and chat with them for a few minutes. And I'll offer my two cents' worth and encouragement and support and suggest how, you know, they ought to get their act together, but...and also let them know that I can tell, so they're accountable at least in some fashion. But beyond encouraging somebody to improve their life, I can't compel them to do anything. [LB221]

SENATOR CAMPBELL: If we put such a practice in place, would it be better to try to...to say to someone, okay, you've been identified, but we're going to offer a program that you can go to and you can stay on benefits. Let's take the Senator Howard's. What would you think of that? [LB221]

JIM COSSAART: Oh, I think that would be good. Yeah, if you can offer help to people. But if you're going to punish them for some mistake that they made 30 days ago, I don't think that accomplishes anything. [LB221]

SENATOR CAMPBELL: How many of the patients that you would come in contact with, that you know or suspect that they have drugs, have small children? [LB221]

JIM COSSAART: I'd say about half. [LB221]

SENATOR CAMPBELL: About half. Okay. Because that's, obviously, what we're... [LB221]

JIM COSSAART: Yeah. These are often young people that are just trying to figure things out. [LB221]

SENATOR CAMPBELL: Any other questions or comments? Thank you for coming today, sir. [LB221]

JIM COSSAART: Thank you very much. [LB221]

SENATOR CAMPBELL: Next opponent. [LB221]

JIM CUNNINGHAM: (Exhibit 2) Senator Campbell and members of the committee, good afternoon. My name is Jim Cunningham, C-u-n-n-i-n-g-h-a-m. I am not a dentist. (Laughter) I am a basketball fan, or at least I was until yesterday when I wasted my time catching the final few moments of the Nebraska game. (Laughter) I represent the Nebraska Catholic Bishops Conference, the mutual interests and concerns of the Archdiocese of Omaha and the Dioceses of Lincoln and Grand Island. I have submitted written testimony to you. I've learned over the years that it's always better on these social programs to wait for the experts to go ahead of me, but I am planning to testify in two other committees this afternoon so I kind of jumped up quickly. The conference opposed Senator Janssen's bill, LB940, last year. We have not changed our position.



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We are opposed to LB221. We regard the proposed policy as punitive and unjust, because cutting off cash assistance for one year absolutely, as prescribed by this bill, would make the already impoverished family even poorer and the innocent children more dependent, making their future even dimmer. Implementing this would be inconsistent with and contrary to the longstanding policy of Aid for Dependent Children which is designed to help meet the subsistence needs of poor children, as well as it would be inconsistent with the welfare reforms of Employment First and TANF which have the goal of self-sufficiency. I appreciate very much the testimony of those who were proponents of this bill. I guess one place where we would differ is that we do not see that ADC has lost its focus or its need or that it has somehow deviated from its original purpose. I don't think that you could say, because there are known cases of some substance abuse, that that necessarily condemns the entire program. The program has a longstanding success rate of helping poor children, children from poor families, with subsistence needs. And I think this bill is contrary to that purpose which is to assist children in poor families, and so we oppose this bill and would ask you to indefinitely postpone it. And I know you will hear after me some addressing of the significant legal issues that are involved with this bill as well, and I hope you will pay close attention to that also. Thank you. [LB221]

SENATOR CAMPBELL: Senator Wallman. [LB221]

SENATOR WALLMAN: Thank you, Chairman. Mr. Cunningham, thanks for coming. [LB221]

JIM CUNNINGHAM: Thank you, Senator. [LB221]

SENATOR WALLMAN: I, too, want to take care of the children. But if they spend money on drugs, that money isn't going to the children. Would you agree? [LB221]

JIM CUNNINGHAM: I agree that that system is open to abuse. The extent of the abuse relative to the overall good that the program does, I think that would be hard to assess; but I think it would probably pale in comparison to the good that the program does. I also think that we have to be careful about a program such as this, of making presumptions and judgments about the recipients and those who apply, because we don't know, in very many specific situations, what the particular circumstances are. [LB221]

SENATOR WALLMAN: Thank you. [LB221]

SENATOR CAMPBELL: Any other questions for Mr. Cunningham? Thank you very much. [LB221]

JIM CUNNINGHAM: Thank you, Senator. [LB221]

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SENATOR CAMPBELL: And we all share your pain on the Huskers. (Laughter) Good afternoon. [LB221]

AUBREY MANCUSO: (Exhibit 3) Good afternoon. My name is Aubrey Mancuso, A-u-b-r-e-y M-a-n-c-u-s-o, and I'm here on behalf of Voices for Children in Nebraska. We're opposed to LB221 because it is contrary to the goal of moving families to self-sufficiency and because of the impact on children. The Cash Assistance Program, or ADC, is only available to families with children. In fiscal year 2009, children made up 75 percent of all ADC recipients in Nebraska, and the largest number of these were under age 5. These children didn't choose to be born into poor families and these are the children who will be impacted by this bill. Families applying for or receiving cash assistance are already in a desperate situation. In 2009, the average ADC benefit in Nebraska was only about \$318 per month. Children in these families will see a decline in their quality of life even if only the adult portion of the payment is removed. We believe that children should grow up in a drug-free environment, but mechanisms are already in place through the child welfare system to address issues of parental drug abuse. As written, this bill does not account at all for what happens to the child and his family beyond the loss of income to meet their family's basic expenses. Any sanction imposed through ADC should ultimately be geared at self-sufficiency. The self-sufficiency contracts in place require compliance with a number of standards that it would be difficult for a person struggling with a serious addiction to maintain. For children in families struggling with something like mental illness or substance abuse, the first response should be to offer treatment that is not tied to an immediate sanction, and allow them and the child to remain in the home if it is deemed to be safe. The treatment would also have to be affordable to the family in order for it to be a meaningful option. This bill further stigmatizes benefit recipients and punishes children who are caught in an unfortunate circumstance. LB221 will harm innocent children and struggling families and take away the resources that they need to care for children in the environment where they develop best--their own home. In addition to negatively impacting low-income children, the bill will add an increased cost to the General Fund. According to the fiscal note, the state would be spending over \$150,000 a year, for an annual savings of less than \$50,000. The savings from this policy would be to the federal government, eliminating an influx of over \$190,000 in federal money coming into the state. We urge the committee not to advance this bill. Thank you, and I'll take any questions. [LB221]

SENATOR CAMPBELL: Questions for Ms. Mancuso? Senator Wallman. [LB221]

SENATOR WALLMAN: Thank you, Senator. You know, thanks for coming, Aubrey. You know I'm for the children. [LB221]

AUBREY MANCUSO: I know. [LB221]

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SENATOR WALLMAN: And that's what really bothers me that... [LB221]

AUBREY MANCUSO: Um-hum. [LB221]

SENATOR WALLMAN: ...in my area, one drug...you know, we lost three children...I mean one child. They took three children away from the mother on account of drug abuse. [LB221]

AUBREY MANCUSO: Right. [LB221]

SENATOR WALLMAN: And then the other child was drowned. [LB221]

AUBREY MANCUSO: Right. [LB221]

SENATOR WALLMAN: Through neglect on account of problems. [LB221]

AUBREY MANCUSO: Right. [LB221]

SENATOR WALLMAN: So that's what bothers me, I guess. If you have any answers to that... [LB221]

AUBREY MANCUSO: Yeah. I appreciate what you're saying. And what I would say is that the appropriate place to address that issue is through the child welfare system. And if the child welfare system needs improvement in that area, that's another conversation; but that's not the purpose of the ADC program. And also to your general question about drug testing, I think we all agree that public funds should not go to purchase drugs. But if the standard were to be applied, it would have to be applied to everyone receiving public funds, which no offense to anyone in this room, but that includes state senators, so. And, you know, I haven't seen any statistical evidence that ADC recipients abuse drugs more than the general population, so. [LB221]

SENATOR WALLMAN: Okay. Thanks. [LB221]

AUBREY MANCUSO: All right. Thanks. [LB221]

SENATOR CAMPBELL: Ms. Mancuso...wait just a minute. [LB221]

AUBREY MANCUSO: Oh, sorry. [LB221]

SENATOR CAMPBELL: In the research that you've done in this, do you have any idea how many parents who are in the child welfare system have been court-ordered for treatment...substance abuse treatment? [LB221]

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AUBREY MANCUSO: I don't, but we could try and find out that information for you. [LB221]

SENATOR CAMPBELL: I think it would be helpful, I mean just for our general knowledge, because in many cases they are,... [LB221]

AUBREY MANCUSO: Right. [LB221]

SENATOR CAMPBELL: ...and that also is a part of what is required... [LB221]

AUBREY MANCUSO: Right. [LB221]

SENATOR CAMPBELL: ...of private agencies is to do drug testing of those parents... [LB221]

AUBREY MANCUSO: Right. [LB221]

SENATOR CAMPBELL: ...on a regular and ongoing basis, because it's been court-ordered. And I think a lot of people forget that part of it, and assume that none of these people are ever being tested again, or whatever. [LB221]

AUBREY MANCUSO: Right. [LB221]

SENATOR CAMPBELL: And the child welfare system, under a court order, that parent is. [LB221]

AUBREY MANCUSO: Right. Absolutely. [LB221]

SENATOR CAMPBELL: So if you could look at some of those numbers, that would be helpful. [LB221]

AUBREY MANCUSO: I'd be happy to. [LB221]

SENATOR CAMPBELL: Thank you. [LB221]

AUBREY MANCUSO: Okay. Any other questions? [LB221]

SENATOR CAMPBELL: Anything else? Thanks for coming today. [LB221]

AUBREY MANCUSO: Thank you. [LB221]

SENATOR CAMPBELL: Next opponent. Good afternoon. [LB221]

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JAMES GODDARD: (Exhibit 4) Good afternoon, Madam Chairman, committee members. My name is James Goddard. That's G-o-d-d-a-r-d. I'm a staff attorney at the Nebraska Appleseed Center for Law in the Public Interest. Nebraska Appleseed is a nonprofit, nonpartisan legal advocacy organization that works for equal justice and full opportunity for all Nebraskans. I'm here to oppose LB221. As this committee knows, ADC is a cash assistance program that provides cash assistance to low-income families with children. In some cases, ADC is the only income that the family actually has to meet life's basic necessities, such as food, shelter, or clothing. LB221 would require drug testing of ADC recipients when reasonable suspicion exists that they're taking illegal drugs. A positive drug test result would lead to a yearlong sanction. A law like this would be harmful to Nebraska's children and is not likely to produce even modest cost savings. The first thing I do want to mention is that LB221 does not directly address issues in the child welfare system. Department of Health and Human Services employees already have a duty to report things which could result in abuse or neglect, such as drug use or abuse. Child Protective Services already has the authority to remove children from the home when the parent has a drug issue that's affecting parenting. LB221 does not add to these powers or obligations. Indeed, LB221 is more likely to harm children than to help them. Under the bill, a positive drug test would lead to the loss of the adult's portion of ADC for one year. But children can suffer even in this situation. Sanctions and benefit reductions have been shown to increase the risk that children's basic needs will go unmet. That's an unreasonable outcome for children that have...that are in a family that's already in a precarious position. Furthermore, getting drug treatment is considered preparation for work under the ADC program currently, and can count towards meeting a work activity requirement. LB221 would essentially negate this because it would deter parents that want help overcoming an addiction from seeking treatment in the first place. If a parent that needs help can't get it, the entire home is going to become less stable. In short, LB221 does not better protect children or families, and it's counterproductive to the purpose of ADC, which is to move people from poverty to self-sufficiency. Moreover, it's not clear that this bill would produce even modest cost savings. Administering a drug testing regime will take up General Funds, from employee training to administering the drug tests to ensuring the confidentiality of results and the like. It's not clear to me that the fiscal note considers all of these costs, nor is it clear that this is the best use of General Funds in a tough budget year. For all of these reasons, we urge this committee not to advance LB221. Instead of a bill like this one, we would suggest implementing a comprehensive drug screening and treatment process within the ADC program. More specifically, substance abuse screening could be added to the typical assessment that already occurs as part of the Employment First program within ADC. If a person is identified as having the potential for drug use or abuse, that person can be referred to the behavioral health division for an evaluation and, potentially, for drug testing and a drug treatment plan. Now if that person fails to follow through on the referral or fails to follow the treatment plan, then they could be sanctioned and they would be sanctioned according to existing failure to participate

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sanctions. Providing this type of screening and treatment plan is more likely to keep children in the home and keep their needs met and is more consistent with ADC's goal of helping people become economically independent. Thank you. [LB221]

SENATOR CAMPBELL: Questions for Mr. Goddard? Mr. Goddard, did you hear my question to Ms. Mancuso, the last testifier? [LB221]

JAMES GODDARD: About the numbers... [LB221]

SENATOR CAMPBELL: Right. [LB221]

JAMES GODDARD: ...of individuals in the child welfare system. I actually don't have the answer for that either, but I'm sure between one of us we can get it for you. [LB221]

SENATOR CAMPBELL: That would be excellent, because we are trying to help parents it seems to me in that situation. Okay. Oh, I'm sorry. Senator Wallman, I apologize. [LB221]

SENATOR WALLMAN: She's first. [LB221]

SENATOR HOWARD: Oh. Well, no. I just...okay, thank you, Madam Chairperson. Just a fine technical point so that I can help your academic career. (Laugh) In Nebraska, child protection service workers do not remove children from the home. Only the police do that. [LB221]

JAMES GODDARD: Okay. Sure. [LB221]

SENATOR HOWARD: Thank you. [LB221]

SENATOR CAMPBELL: Senator Wallman. [LB221]

SENATOR WALLMAN: Yeah, Chairman Campbell, thank you. Yeah, thanks for coming. You know, it's not about the money, for me. It's about taking care of the child. And do you know if a parent or parents are on drugs, how many times they are taken from the house? Is that a hammer they use, that is used at HHS? [LB221]

JAMES GODDARD: I don't know that it would be HHS's. Apparently Senator Howard would say that the...apparently, that the police...and you're correct with that. The police would be the ones removing them, presumably based on a report and an HHS investigation. And I want to make very clear that my organization is very concerned about child welfare. We have a division within our organization that's dedicated solely to that purpose. And so if a child is in a precarious position where a parent has a drug problem, that concerns us greatly. The question is, what is the solution to it? And we

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believe a screen-and-refer and treatment-and-accountability program is the answer and LB221 is not. [LB221]

SENATOR WALLMAN: Thank you. [LB221]

SENATOR CAMPBELL: Anyone else? Sorry to have missed you. [LB221]

SENATOR WALLMAN: That's okay. [LB221]

SENATOR CAMPBELL: Thank you, Mr. Goddard. [LB221]

JAMES GODDARD: Thank you. [LB221]

SENATOR CAMPBELL: Next proponent...opponent. Sorry. We don't want to get you in the wrong column here. [LB221]

AMY MILLER: (Exhibit 5) Good afternoon. My name is Amy Miller. It's A-m-y M-i-l-l-e-r. I'm legal director for ACLU-Nebraska. We've heard several testifiers ask the question: Why does my employer test me but state recipients of public assistance do not get drug tested? And the answer is simple. It's the Bill of Rights. The Fourth Amendment protects us from unreasonable searches and seizures or intrusion into our privacy. The Fourth Amendment only protects us from the government. Private employers and private businesses are able to strike separate bargains with people. They're not governed by the constitution. That's why my local restaurant can tell me they're not going to serve me because they think my T-shirt is crass but the courthouse cannot refuse to allow me to walk in and access the public services because they disagree with the message on my T-shirt. The Fourth Amendment does not bar private employers from doing drug testing, but the Fourth Amendment does prohibit drug testing of welfare recipients. And the only court that has looked at this, as was referred to earlier, has resoundingly found that drug testing of public recipients violates the Fourth Amendment as an unreasonable intrusion of privacy. In order to talk about why, I want to first acknowledge some of the mechanics that were discussed earlier. LB221 is neutral or at least does not say how the drug testing is to be done. You can test hair, but that can be difficult if people do not have long enough hair or do not have any hair if they are bald. You can do drug testing by a blood draw, which can be difficult if the person has medical issues, and certainly changes the nature of how the testing is done because they have to be brought into a medical facility. The most common way to drug test is to provide a urine sample. And in order to make sure that someone does not go on the Internet and buy a kit, to make sure that the drug test that's being provided or the urine sample that's being provided is, in fact, the testee's sample, the usual proper procedure is to have an employee of the government watch as the urine sample is being produced. In other words, you are literally requiring impoverished people to strip themselves naked in front of the eyes of a government employee. And this is why the United States Supreme Court has said, in

thinking about drug testing as a whole, that we reserve it for the very rare circumstances when public safety is at need. On page 2 of my testimony, at the top paragraph, we have cited the case Skinner v. Labor Executives Association. That 1989 case in the U.S. Supreme Court talked about when do we allow public employees to be tested. Senator Wallman pointed out that the bus drivers in his local school district are tested, and that's because there is a safety issue of public safety. We have allowed safety sensitive positions, such as railway workers, prison guards, police, nuclear power plant workers, and customs officers to be tested; but we do not test all public employees. Indeed, if the state of Nebraska decided that we might have a problem and decided to test all public employees, that also would fail because that sort of drug testing is so invasive. There are two prongs that have to be satisfied in a legal test. The rest of the page there talks about two different cases, the first being Ford v. Dowd, which came out of the Eighth Circuit, the federal circuit that we are located in. And the Eighth Circuit talked about the fact you have to have reasonable, articulable grounds. Now LB221 does say when reasonable cause exists, but there's no definition of what will trigger that. If I'm slurred voice or a little muzzy when my social worker is talking to me, it may be because I'm legally taking a prescribed pain medication. But would that be adequate grounds to give rise to suspicion that I need to strip naked in front of a caseworker and provide a urine sample? Will it be because I smell as if I have been smoking marijuana? Will it be because I have bleary eyes? As one of the previous testifiers pointed out, a lot of symptoms of alcoholism could be mistaken for drug use. Alcoholism is not being reached by this. We would only be addressing people with drug issues. So a reasonable, articulable suspicion is going to be a very hard standard for a caseworker to find who's going to set what the grounds are. In the Ford case, the mayor thought that his local police chief was probably into drugs and ordered the police chief to take a drug test. He said he had been known to be hanging out with a drug dealer. The Eighth Circuit said no, even though it was a safety sensitive position; that it was not reasonable, there wasn't enough articulable grounds. Also you'll see quoted there the substantial-needs test. In order to do the testing, the state has to demonstrate there is a substantial need. We've heard some anecdotes, sad stories about people who have related the fact that they knew a person who was taking drugs while receiving ADC, but there's been no showing about any statistical studies, even any statistical estimates about what's going on in Nebraska. Senator Janssen cited no record that this committee could legitimately move forward with a very unconstitutional proposition. Even with a factual record before you, I think you would be in a hard position. I'll conclude by saying that on the first page I've given you the Michigan case that was mentioned already. After the state of Michigan passed a drug testing of public welfare recipients, it was sued by the ACLU in Michigan, and the case was struck down after many legal battles. If this bill were to advance, the fiscal note needs to be corrected to also address any litigation costs that would come from it. Thank you. [LB221]

SENATOR CAMPBELL: Questions? Senator Krist. [LB221]



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SENATOR KRIST: I'm going to do something that I probably am not expected to do, but I want to thank you for testifying today. And I want to thank you for testifying in some other activity that was involved with one of my bills, because often we learn more from those in the ACLU than we want to know; (laughter) but often we find that there are things that we need to consider that are hidden and need to be disclosed before we go down the bad track. So thanks for your words and thanks for your cautions. [LB221]

AMY MILLER: I appreciate it. I do understand that many times that the message I bear is not always agreed with, but I do try because of that understanding to bring you as accurate information as I can. So I appreciate the comment. Thank you. [LB221]

SENATOR KRIST: I don't want to disclose what happened exactly but I do want to compliment this lady because she came in and said in another hearing: This is the worst part of my job; I have to defend this kind of person. And your honesty and your candor and the items that you brought up, I appreciate that. [LB221]

AMY MILLER: Thank you. [LB221]

SENATOR KRIST: We may not always be on the same side but I appreciate it. Thanks. [LB221]

AMY MILLER: Thank you. [LB221]

SENATOR CAMPBELL: Thank you, Senator Krist. Senator Wallman. Oh, sorry. I'm so used to him asking...(laughter). I can kid him. Senator Bloomfield. [LB221]

SENATOR BLOOMFIELD: Thank you. I carry a CDL. I'm required by the federal government to take a drug test before I can get that. How can they force me to do that, but we...under the same Fourth Amendment? [LB221]

AMY MILLER: It is...it falls into that same safety concern that Senator Wallman's bus drivers have. In the transportation industry, and especially because the CDL, especially for people that might have the incredibly large semitrucks, it's considered that in the balancing test of the government, need versus the private individual's privacy, the government need to have all CDL license holders to be clean and safe on the roads brings that scale back down. That's why the courts have really limited this to public transportation situations and I would say law enforcement quasi-military settings are pretty much the only two categories we have seen a stamp of approval specifically to drug testing. It may be that in a future date we will be able to come up with a way to do drug testing that is less invasive and the government may loosen some of those Fourth Amendment strictures. But right now, because you're literally talking about breaking the skin and removing part of your body, or watching you as you are naked, both of those... [LB221]

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SENATOR BLOOMFIELD: I have a problem with your statement there, too. I've been taking drug tests for the CDL and random tests for...ever since they started doing them, and I have yet to have anybody go into the facility with me. They provide you with a facility where you cannot carry anything in, where there is no way to falsify the thing. I have yet to have a doctor or a nurse or a staff person go into the little room with me. [LB221]

AMY MILLER: I have a feeling that that experience might change depending on the nature of the person who's being asked to provide the sample. For example, most of my work and familiarity with drug testing comes up in the context of prison, people who are on probation, people who are on parole who have to be subject to random drug testing, and prison guards. I'm frequently hearing from people who work in corrections and are not happy that they also have to provide a random test. And in those situations, they are providing the sample under observation for the security concerns. I wonder if perhaps because there are so many CDL holders, if they are slightly looser in the way that they expect you to produce the sample. [LB221]

SENATOR BLOOMFIELD: Well, I wouldn't call them looser, because you...if you get pulled over alongside the road, you go into this little square box, there is no way to cheat that. There's just...they give you the cup and you go into the little square wood box. But in the hospitals there is no way to cheat it, in the doctor's office. There are ways...you know, I understand if you're in a prison facility, they've already done that to the prisoners in there anyway. There's no big secrets to be found there. But again, I have yet to run across that in...where these folks would be being tested. [LB221]

AMY MILLER: I suppose that may be one of the areas that could use some further expansion or some further fact finding, because I think your cost on drug testing proposed under LB221 is going to change...again, as I mentioned, whether it's a blood draw or whether it's urine sample, whether it's hair follicle sample, that would affect the fiscal note up or down, and also how the testing is to be done, because if you do have to provide the sample while someone is observing...of course, there would have to be training of that person to make sure that it was done in an appropriate, professional manner. [LB221]

SENATOR CAMPBELL: Senator Gloor. [LB221]

SENATOR GLOOR: Thank you, Senator Campbell. And I do appreciate and was hoping and waiting for someone to get up and provide us with the specific legal background, as Mr. Cunningham promised, because I wondered what the specifics were behind the Michigan case. And obviously that and the fiscal note will weigh heavily on whatever decision the committee makes. But I have to say, and I've been waiting for a time to say it, as an employer who has subjected their employees in healthcare to

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screens, it can be done and it can be done in a way that I think verifies, has a great degree of validity. I think there are different steps that can be taken. First of all, screening everybody does not make sense to me, but I think you accomplish almost the same thing if you have random screens. I was in the military and subject to random screens. As an employer, I was also subject to random screens. My name was in the pool also, and that involved being watched when I submitted the sample. And had that sample not passed the test--been a positive--to make sure that it wasn't a false positive, my next step was a blood test and so on, so forth. It also wasn't grounds for immediate dismissal. It was grounds for now you're coming in, every week or every so often. You are on a heightened schedule to come in for screens. We found it to be very effective and very cost-beneficial for us the way the system was set up. I think to immediately deny people assistance isn't a good approach, and I don't think it was fair. It wasn't fair for my employees; wouldn't be fair for people on assistance, in my opinion. But on the other hand, I had a few employees who argued the case, and in fact, wanted to clear their reputation: Please screen me more frequently; you'll find out that for any number of reasons this was not a true positive test. And in those occasions, and they were rare, thank goodness, that we had somebody with a problem, we were in a position to offer assistance to those employees. Again, not arguing the constitutionality of this and the Michigan case, but there are ways. I think the bureaucracy of this, the cost of this, all of that to me can be dealt with and is dealt with in private industry all the time with a degree of success that makes most people comfortable. And I just say that for the record. [LB221]

AMY MILLER: I do think that there's an interesting tension that LB221 suggests on reasonable cause, whereas you're talking about perhaps rotating random ones, pulling people's names out of a hat. One of the problems with the random drug testing is you're casting too broad of a net. And as discussed in that Ford v. Dowd case with the chief of police, you have to have some reason to focus in on someone. And then the next question is, okay, then if you stay with LB221's suggestion that, okay, we'll just go with people who have a reason, how do you decide or articulate what those reasons are, who will set those standards? I think that is particularly amusing because I think one of the previous testifiers suggested something about public employees would be subject to test. Chandler v. Miller, which is cited in the middle of the second page, was the suggestion where Georgia wanted to start drug testing all candidates for public office. And it was, of course, the current holders of public office that were not very thrilled about the idea of having to provide a urine sample. And they argued that there was some past problems with state senators or public officials who had had addiction to pain pills or had gotten addicted to prescription medication, and so they argued that we had a past problem. And the United States Supreme Court said no. And I think that goes back to we don't even recognize whether or not we actually have a problem. The statistics out of Michigan indicated that about 8 percent of the people tested showed up positive for some drug, and the majority of that was soft drugs as opposed to hard drugs. The fiscal note assumes that 15 percent of people will be found to actually be

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drug using. So again I think you're talking about a very small potential pool of people. How, within the bounds of fiscal responsibility and appropriate weighing of the Fourth Amendment, do you zero in on those few people? We don't allow police officers to make a person provide a urine test on the street without a warrant or a court order. Why would we empower caseworkers to do the same thing without a warrant? This is why it is likely that a drug testing program of this sort will not be held constitutional by a court, in my opinion. [LB221]

SENATOR GLOOR: And outside the constitutionality, I would again differ with you in saying I have 1,300 employees. I knew that some of them were abusing drugs, but they also knew that at any point in time a computer program--not somebody who decides I don't like the way John looks today, I think we'll call them in for a screen--a computer program could pick them, could pick me, could pick an employed physician, and require us in a certain number of hours to show up at a location where we would provide that. I think there are ways that you can deal with mechanics of this in a very cost-efficient method. I say that as one side of this argument, and I don't think this is something that would be onerous to put together or impossible to organize and enforce, but I do understand the concerns about constitutionality. [LB221]

SENATOR CAMPBELL: I think we're going to continue. Any other questions here? Thank you very much for your testimony and for the court cases. [LB221]

AMY MILLER: Thank you. [LB221]

SENATOR CAMPBELL: The next opponent. Good afternoon. [LB221]

KIM CLARK: Hi. My name is Kim Clark, K-i-m C-l-a-r-k. I think a lot of great points have been made today, but I wanted to come and talk to you because I work in a treatment center that provides services to women and their children, and it's an addiction and mental health treatment center and it's a 4- to 6-month treatment center. And I just wanted to talk about what it would...how it would impact women who have children and their entry into treatment. From what I understand from this bill, women would lose a portion of their funding, and I wanted to talk first about how I feel like this would discourage women from entering treatment. Our program allows women to come to treatment with their children there, or their children can be placed with them shortly thereafter, and so they use the funding that they receive from ADC to buy supplies for their children while they're in treatment and to receive treatment at that time. I also feel that with this bill, if it was to pass, a lot of people would...I don't know the numbers, but people would be turned away and I believe that they would be living on the streets. I believe they would become homeless at that time. And I believe that women, mothers and their children, would be separated and that they would be entering into the CPS system, which is I believe one of the outcomes that would happen from this bill. And I think that that would have a devastating impact on the communities in Nebraska. It will

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increase our homeless populations. It will increase the services that CPS provides. And at this time, with funding, treatment is not always immediately available for women and their children. And I wanted to give you some stats that I know about our program. Last year, we turned 72 people away that met the criteria for our program, and because we simply did not have the room for them to move into our treatment program or they were on the wait list for such a long period of time that they were at risk of losing their children, their parental rights, and so they had to seek alternative services and wouldn't...could not enter into our program. And that's just counting...there's a lot of people who do not meet our criteria because we serve women who have...who are pregnant or who have children, so there's many people out there who are seeking treatment that aren't able to enter into treatment in a timely manner. Our wait list at this time is an average of 29 days to get in. And I also wanted to talk about...I do believe that chemical dependency is a disease, and that this bill would be further stigmatizing towards the women and children that are trying to get treatment that have families that also suffer from this disease of chemical dependency. Thank you. [LB221]

SENATOR CAMPBELL: Any questions for Ms. Clark? Senator Krist and then Senator Howard. [LB221]

SENATOR KRIST: Ladies first. [LB221]

SENATOR HOWARD: Oh, thank you. Thank you. Thank you, Madam Chairwoman. You didn't give us the name of your program and where are you located... [LB221]

KIM CLARK: I am located in Omaha and I work for Family Works. [LB221]

SENATOR HOWARD: Oh, well...Carolyn Thiele's program. [LB221]

KIM CLARK: Yes. Yes, we're here today. [LB221]

SENATOR HOWARD: Well, good. Thank you. Thank you for coming down. There are stuffed baby rabbits...baby bunnies in my office for you. [LB221]

KIM CLARK: Oh, thank you. [LB221]

SENATOR HOWARD: Baby rabbits. (Laugh) [LB221]

SENATOR CAMPBELL: Senator Krist, I think you're on. [LB221]

SENATOR KRIST: Thank you. It's a hard act to follow. The unintended consequences of trying to control some of this you've described as those who probably will not seek treatment, those that won't be there for fear of penalty. And it goes to say and what I wanted to say is on the record. It's not necessarily a question. Thank you for coming,

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obviously. But it's the same thing that we heard from, really, both of the dentists in different ways, and that is if you want them not to come back and seek dental care, then you become the source that they are exposed to that ends some of the ADC or privilege they have. How do we identify those treatments? Because I know just in what ended up in a car chase in Cass County, it wasn't a drug, it was an alcohol issue as I recall; and there were plenty of signs that led up to that...and you know the situation I'm talking about. How do we intervene? How do we get there? [LB221]

KIM CLARK: A lot of times people know that they're in trouble. They are aware a problem exists. They're either unsure how to get help, they're unsure what changes to make, or they're unsure of where to go; or it's just not available to them because they have so many barriers. So I think just educating people about how to get treatment and then removing some of those barriers can be really helpful. [LB221]

SENATOR KRIST: Thank you. Thanks for coming. [LB221]

SENATOR CAMPBELL: Yes. Senator Cook. [LB221]

SENATOR COOK: Thank you, Madam Chair. Ms. Clark, what would you identify as the top barrier over which this committee may have some purview? [LB221]

KIM CLARK: Well, speaking from our program, we allow women who are pregnant or have their families to bring their children while they're in treatment. And so it has...the dynamic of being able to not only receive services from your addiction, also to receive services for mental health and for trauma; but also to parent and bond and attach with your children at the same time. And I think many women choose not to seek treatment because they know that they'll have to be separated from their children, whether...if they are fortunate, maybe a family member could step in and take care of their children while they do treatment; but other times, sometimes the foster care system has to step in. And so I think that funding programs where women and children can be together in that programming is...would be the most successful. [LB221]

SENATOR COOK: Thank you. [LB221]

KIM CLARK: Thank you. [LB221]

SENATOR CAMPBELL: Senator Howard. [LB221]

SENATOR HOWARD: Thank you, Senator Campbell. Just in addition to that, you have a terrific success rate. This is a program I'm very supportive of, so. How many people do you usually have graduate, say, in a month or a year? [LB221]

KIM CLARK: Yeah, our program is 4-6 months, and we usually have...it varies, but this

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month we have had three graduations, so women who are moving on to transitional living programs who are leaving with their children. And at most times, CPS has become a very supportive service at this point, where there's a lot of working together. It's very collaborative. And we have two graduations that will be coming within the next...probably within the next month's time. So it's very exciting and it's very successful. And we have a much higher success rate because the women do get to bring their children and do that joint programming. And other...I think other programming for treatment is great, but the children...the women and the children are separated, and then they come back together after treatment and then there's a lot of stressors that can, at times, can lead to relapse; where our program does it right then and we can support them in all of their needs that they have maybe with parenting as well as the addiction and trauma piece. [LB221]

SENATOR HOWARD: And your moms that have graduated are also supportive of the moms that are continuing to go through. I was just at your event on Sunday... [LB221]

KIM CLARK: Yes. [LB221]

SENATOR HOWARD: ...and that was very nice. [LB221]

KIM CLARK: Thank you. [LB221]

SENATOR CAMPBELL: Any other comments or questions? Thank you, Ms. Clark, for coming today. [LB221]

KIM CLARK: Thank you. [LB221]

SENATOR CAMPBELL: Any other opponents to the bill? [LB221]

JESSICA HOPPINGTON: Hi. My name is Jessica Hoppington, and I am a client from Family Works, and I would...I just...I am opposing this bill because we need more solutions than consequences or punishment, because we need help; but we just don't realize it until it's too late. And we need more treatment places. I've been sober for seven months, and I feel very confident now. I'm almost going to graduate, and I feel very confident that I'm going to stay sober; because if there wasn't a place where a mother and child could be together, I don't think I would have been successful. I needed a place where I could be with my daughter and focus on me. And I was drinking and drugging because I was a child of abuse--physical, mental--and I grew up without my mom and all these issues. I have never resolved it. And I tried. I tried. Being a single mom, I worked, I was going to school, but I just...I couldn't. And I kept relapsing until I found this wonderful program, Family Works. And now I am very confident I am going to do well, and I'm going to return back to school. I have worked for my PTSD, my depression, my anxiety. And so I am also seeing a psychiatrist in that program. And me

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and my daughter, we have bonded. And I believe that punishing is not going to help us. I believe in a resolution. Thank you. [LB221]

SENATOR CAMPBELL: Thank you for coming today and sharing your story. Questions or comments? And the best of luck to you. [LB221]

JESSICA HOPPINGTON: Okay. Thank you. [LB221]

SENATOR CAMPBELL: (See also Exhibits 6 and 7) Any other opponents today? Anyone who wishes to testify in a neutral position? With that...and Senator Janssen had waived closure of the bill, so we will close the public hearing on LB221 and we'll ask our guests who were here for that hearing to exit quietly. Senator Lautenbaugh. Mr. Smoyer, are you representing Senator Lautenbaugh? [LB221]

BRENT SMOYER: Yes. [LB140]

SENATOR CAMPBELL: Okay. We will open the public hearing on LB140, Senator Lautenbaugh's bill to change provisions relating to criminal background checks required for Health and Human Services transportation services. And representing the Senator is Mr. Brent Smoyer. Welcome. [LB140]

BRENT SMOYER: Yes, ma'am. Madam Chairwoman, members of the committee, thanks for having me. The senator apologizes he can't be here. Popular day for Senator Lautenbaugh, he's also in Government and Judiciary. Everybody loves them some, Lautenbaugh, so to speak. As the Chairwoman said, my name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r. I am legal counsel for the Rules Committee, and for Senator Scott Lautenbaugh here to, of course, pinch hit for him. LB140, a fairly, a fairly simple bill, fairly easy bill comes to us as a result of Senator Stuthman, former Senator Arnie Stuthman, amending an initial change to transportation of at risk adults into Senator Lautenbaugh's LB97 of 2009. The folks at AARP Nebraska came to us and said, hey, we could kind of use a couple of alterations so we said, all right, we'll throw that out there. So LB140 basically just alters the standard for background checks for people providing transportation services to at risk adults. What it does is remove the requirement that the State Patrol do all the background checks and allow for various other agencies, various other companies, and other private companies that take care of this, then the option of doing that. It also allows the checks to be done so long as they meet the approval of the Department of Health and Human Services here in Nebraska. So it's not going to be willy-nilly, hey, you know, it's good enough, we Googled them. There will be some control. The one thing that we were missing and that has been suggested to us through a couple of phone calls and I know...(I don't know if you guys have the letter from the Nebraska Hospital Association, but I do have a copy here to share, if necessary,) is that we amend it to clarify who pays for the background check. And the most common suggestion we had from both hospital associations and those



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who called in, were that the party providing the transportation services pay for the background check; not, of course, the agency or the at risk adult themselves. There are folks who are a little more...who have a little more expertise in this area following me for testimony. And I do believe that Senator Lautenbaugh said he was going to end up waiving closing just because his schedule is crazy. (Laugh) Otherwise, that's the opening for LB140. [LB140]

SENATOR CAMPBELL: Questions from the senators on the bill? We'll wait to hear the other testimony for my colleague's sake. Mr. Smoyer is Commissioner Smoyer, serves on the Lancaster County Board. [LB140]

BRENT SMOYER: (Laugh) Thank you, ma'am. Yes, yes, happy to follow in the footsteps of actually Senator Campbell, so very proud to be representing there. But thank you for your time, ladies and gentlemen. [LB140]

SENATOR CAMPBELL: And we're glad to have you there. Senator Krist found a question. [LB140]

SENATOR KRIST: I'm sorry. [LB140]

SENATOR CAMPBELL: That's okay. [LB140]

SENATOR KRIST: On the fiscal note, the state's not going to incur, but the providers will incur and they give an estimate. You, obviously, have looked at that. Is that reasonable? [LB140]

BRENT SMOYER: We believe it is and, of course, the fiscal note was done with a real general approach because they don't know how many providers are going to be there, how many have been already licensed, and are providing services now because, of course, anybody who is providing services now has already gone through the State Patrol. [LB140]

SENATOR KRIST: Sure. [LB140]

BRENT SMOYER: So it really actually is a fluctuating number; but what we were assured was that it will not cost HHS anything and, of course, judging from the letter that the State Patrol provided, it doesn't look like there will be any major changes to them. So it's just going to be the providers that will be hit, and again it depends on what new providers come forth and have to pay those costs. And there may be nobody. It could be that the existing providers who have already been checked by the State Patrol are there and could be zero. That's just what we found so far. It's kind of a moving target. [LB140]

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SENATOR KRIST: Thank you, Commissioner. [LB140]

BRENT SMOYER: Thank you, Senator. [LB140]

SENATOR CAMPBELL: Senator Cook. [LB140]

SENATOR COOK: Is it easier for you to see, Madam Chair, when I go like this or is it all the same? [LB140]

SENATOR CAMPBELL: No, it's the same. (Laughter) [LB140]

SENATOR COOK: All right. I'm just checking. I've thought about that, not to you, Commissioner Smoyer. [LB140]

BRENT SMOYER: Go ahead. (Laugh) [LB140]

SENATOR COOK: But thank you, Madam Chair. [LB140]

SENATOR CAMPBELL: You're welcome. [LB140]

SENATOR COOK: As a consumer of this particular product, I'm interested to know whether or not a particular incident in Nebraska precipitated this legislation, and whether or not you would know or that's something I would have to ask former Senator Stuthman? [LB140]

BRENT SMOYER: That would actually be one for Senator Stuthman. [LB140]

SENATOR COOK: Okay. [LB140]

BRENT SMOYER: Again the more stringent background checks were something he had pushed very heavily for when he was in the body. Of course, was attached to Senator Lautenbaugh's bill and that was the extent of it. We knew it was important. We knew it was germane, and it went, so. [LB140]

SENATOR COOK: Thank you. [LB140]

BRENT SMOYER: No problem. [LB140]

SENATOR CAMPBELL: Any other questions? Okay. Thank you, Mr. Smoyer. [LB140]

BRENT SMOYER: Thank you. [LB140]

SENATOR CAMPBELL: How many people wish to testify in favor of this bill? Mr.

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Intermill. Those who are opposed to the bill? One. And in a neutral position? One. All right. Mr. Intermill, we'll start with you as a proponent. [LB140]

MARK INTERMILL: (Exhibit 8) Thank you, Madam Chairman, members of the committee. My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today representing AARP in support of LB140. Until December of last year, AARP had served as a convener of a coalition that was formed to promote improvement and coordination of public transportation services in the state. The coalition was formed in 2008 to try to improve the efficiency of public transportation and access for those who relied on those services. The coalition includes representatives of consumer groups, transit providers, local elected officials, and state agencies, including the Department of Roads, Health and Human Services, Motor Vehicles, and the Public Services Commission. This year we handed off the leadership role of the coalition to the Easter Seals of Nebraska. One of the purposes of the coalition has been to try to identify barriers to the efficient delivery of public transportation services. And one of the issues that has been raised repeatedly during the past year has been the challenge to service providers posed by the FBI background check requirement for drivers who will transport customers whose transportation costs are covered by the Department of Health and Human Services. We have some representatives from transit agencies who will discuss those complications in more detail and more effectively than I can. We supported the intent of LB290 that was introduced by Senator Stuthman in 2009, and subsequently amended into LB97. And that intent was to ensure that individuals whose transportation services is supported by HHS are safe while receiving those services. People who receive HHS-supported transportation services are some of our most vulnerable citizens. But it has proven to have some practical implications that have created problems for transit providers. This bill wouldn't relieve providers from getting criminal background checks for their drivers, but it does relieve...provides some relief from having to obtain a criminal background check from the FBI. And I do want to thank Senator Lautenbaugh for introducing this bill. What we're trying to achieve is to provide public transportation services that are safe and efficient, and I think this moves us in that direction. Thank you. [LB140]

SENATOR CAMPBELL: Questions for Mr. Intermill? I'm purposely looking down this way. Any questions? Thank you, Mr. Intermill. Okay, we will...are there any other proponents? Oh, okay, I'm sorry. Good afternoon. [LB140]

MARILEE HYDE: Good afternoon. My name is Marilee, M-a-r-i-l-e-e, Hyde, H-y-d-e, and I'm from North Platte. And I came up here today...I'm the public transit manager for the city of North Platte, and so I'm just going to speak from the point of where we've been in the last year and a half, or two years almost, since we were required to do this. There's a big lag time from the amount, you know, if you look at when a driver turns in their two-week notice and they're going to leave your services, we naturally then go out and start interviewing people and like to hire people within that two week process. We

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do...the city of North Platte does the preemployment drug testing on all city employees. We have to do the immigration requirements and everything so there's a natural progression that we like to get done in a two-week period so that when that person terminates, we can have somebody there to take their place. Well, with the time frame that it usually takes for the background check through the State Patrol, it's a lengthy process, and it's hard to hire somebody and ask them to basically hang on for six to eight weeks until you get that back. And so, you know, by moving the process to the company that HHS uses would speed that up, and it would be a more timely issue, you know, where we could get somebody hired within that two weeks period. It's quite painful to say to somebody that you're hired; but we don't know, it could be six to eight weeks before we see you again. [LB140]

SENATOR CAMPBELL: Thank you. Questions for Ms. Hyde? I don't really have any questions. I want to thank you very much for coming from North Platte and visiting with us today, and you provide a pretty valuable service. [LB140]

MARILEE HYDE: Thank you. Thank you so much. [LB140]

SENATOR CAMPBELL: Take care. Any other proponent? Okay. Those who are opposing LB140, opposition? Sir, feel free to come forward. Good afternoon. [LB140]

DALE JOHNSON: (Exhibits 9 and 10) Good afternoon. I, too, had to clear my schedule to make this meeting. (Laughter) I could be working right now. My name is Dale Johnson. I live at 2216 East 8th Street, in beautiful downtown, Fremont, Nebraska. I have over 20 years experience in background investigations. I own a Nebraska-licensed private detective agency that specializes in employment screening services to schools, hospitals, and private industry. We serve both national and local accounts. And licensure as a detective agency or private investigator in Nebraska is required to offer background-checking services. Anybody selling background-checking services in the state of Nebraska must be licensed through the Secretary of State's Office as a detective agency or a private investigator. The reason I'm here is not out of personal interest, as you can be able to tell from my testimony, but because I have been contacted by service providers who have concerns about LB140 and LB166. First of all, wouldn't it be advisable for HHS to have one standard for background checking for people who are exposed to adults or children or whomever, and not have a number of different policies. It is my understanding that the standard now is the FBI and a State Patrol check. The liability for service providers and the state are minimal when using law enforcement for background checking. There are major problems with missing information and inaccurate information in law enforcement. A recent Attorney General's report on criminal history background checks stated that over 50 percent of the information in the FBI record system does not have dispositions. Those that do have dispositions may be questionable because some law enforcement have put dispositions into records before a prosecutor has ever even looked at the case. They do this to save

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time instead of tracking the cases through the court system and recording the actual dispositions. Despite the problems with the FBI checks and the fact that the Nebraska criminal record system is broken, there is less liability for service providers and the state to continue using the current standard. The Nebraska State Patrol is in the process of rebuilding their computerized record system and, when completed, there should be no turnaround problems like there are now. If a private contractor, a third party, which would be me, is used to provide background checking services for service providers and the state, this process must now comply with the Fair Credit Reporting Act, which is administered by the Federal Trade Commission. Law enforcement checks requested by an employer or the state do not fall under the Fair Credit Reporting Act, but when this service is contracted to a private business, there are a myriad of rights and responsibilities that must be followed to stay in compliance with the FCRA. There are very specific steps that must be followed by employers to afford employees due process if he believes a record is incorrect, which is not the case when law enforcement records are requested directly. A major problem in the background industry today is the use of what is called national background checks. These are proprietary databases created by wholesale information companies with information they obtained at little or no cost. My business has access to not one but several of these databases, and when you do get a hit, it is usually on a common name and has few, if any, identifiers to differentiate between one person and another. Most courts and law enforcement agencies do not sell their databases in bulk, so most of the information in these databases are from sources like state correction departments, which often offer name-only matches and certainly don't contain information on people who commit felonies and misdemeanors and did not serve time in the state penitentiary system. The use of these national background checks has become such a problem that the Federal Trade Commission has ruled that criminal record information must be current and up-to-date when reported. This means that a national background check cannot be released to an employer until the primary source is checked for accuracy. The states of California and Maine have created similar laws. Many background checking businesses are not following the law. This has resulted in literally hundreds of lawsuits filed in federal court on individual companies for not being compliant with the Fair Credit Reporting Act. These lawsuits not only involve the background checking businesses that supply the reports, but they also include the employer and anyone deemed responsible. [LB140]

SENATOR CAMPBELL: Any questions? Senator Gloor. [LB140]

SENATOR GLOOR: Yes, thank you, Senator Campbell. Thanks for making the trip and thanks for taking the time, but what are you suggesting? I mean, I recognize you have a problem with these databases. What are we supposed to do? [LB140]

DALE JOHNSON: Well, the point I'm getting at is, I'm not going to lose business. The business that I've been doing with these providers, I understand has been on a temporary basis because they've been having a problem getting the FBI and the State

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Patrol back within a two- to three-month period. And they've got a problem, how could we put the people in the job without the background check? So they've been using services like myself in the meantime until the FBI checks come back. Now the reason I first got involved in this is that a lot of these businesses realized that they weren't getting correct information from the FBI and the State Patrol because of the way their databases are created being incomplete, etcetera. And they were supplementing their background-checking services with mine because they weren't getting the right information. When other services found that, jeez, there's a number of services out there that can supply a background check within two to three days, then we started to get more of these accounts. I expect I'm going to lose all those accounts when the State Patrol gets their system up and operating the way it should be; and the FBI checks really can come back within a short period of time, depending on how they're ordered. At the present time, they're being...according to my knowledge, they're being ordered by the individuals themselves on themselves. That takes a very, very low priority with the FBI. If they were being processed directly by the State Patrol, they would probably take a matter of a couple of days to get that done. They are not the best background checks in the world, unlike what you see on television. What the FBI...when you go to the FBI Web site, you go to most of the state Web sites, state criminal record repositories. They all recommend that you not rely upon the FBI or you do not rely upon the state criminal record repositories for employment purposes. But federal legislators just keep pushing the FBI checks on everybody because they see what's on television and they think that's the way that real life is. The fact of the matter is, the FBI only has...from one of the last reports I saw, they only have 13 percent of the information they're supposed to have. That's why they always recommend that you also do a statewide check in whatever state you're from because they don't always get the records from the state that they should have. They actually operate off of an index. [LB140]

SENATOR GLOOR: But as I understand the bill, it will be up to the department to make the decision on what's an appropriate background check. [LB140]

DALE JOHNSON: Sure. Well, they're talking about... [LB140]

SENATOR GLOOR: You may fit that category. [LB140]

DALE JOHNSON: Well, yeah, that's fine. They're thinking about going to the outside, to the private sector, which is myself. Unfortunately, what I see going on in the private sector right now, and there's a lot of businesses that are licensed to do this, they're selling what's call national background checks. And it's a real legal liability. What I suggest you do when somebody spits out a name of a background-checking business that they're proposing that the state use, and they're going to use one; I suggest, first of all, that you go to Google and you Google the name of that company and/or their subsidiaries and/or the parent company and see the response that you get. The second thing I would ask you to do is to check the federal court system and see how many

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lawsuits have been filed against those companies for noncompliance with the FCRA that results from bad information from background checks. When you get bad information...like I said before, you're now entering into a different world of legal liability. You're contracting to a third party for background checks. That is different than using law enforcement. That's why I supplied the committee with a number of federal pamphlets having to do with the Fair Credit Reporting Act. There's a whole world of new liabilities and steps and hoops that employers must follow through, especially when adverse information pops up in a background check; and there's a lot of incorrect adverse information that's going to pop up in these national background checks. And I can guarantee you that that's what people...that's what is going to be contracted. When somebody says, we've got something...when I give presentations about background checking and I talk about these national background checks, I refer to my back pocket as a national background check because that's how good these databases are. Primarily, like I said in my dissertation here... [LB140]

SENATOR GLOOR: Make decisions, obviously. [LB140]

DALE JOHNSON: Yeah, anything they can get for free and cobbled together. If I've got records from three different states, I could put it in my pocket and I could legally say, my back pocket is a national background check. And the problem is, most of these records...and I've got four of these different databases that I don't sell it. I will not sell information from these national background checks for a background check. Most of the information, you know, we'll put a common name in there and what you'll get is a lot of records with one common name that might be four or five pages of Bob Smith's, but there's no differentiation between your Bob Smith and the Bob Smith that's on these records. And employers that don't know what they're dealing with are going to think, well, this is a national background check and nobody is going to make us do a background check through a bad source, this must belong to Bob Smith and they'll deny him the job. And people do not understand all the steps you must go through for due process. We'll say, don't let the door hit you on the way out because we've got this criminal record on you. We don't want to see you. And that's what is contributing to literally hundreds of federal court cases on individual background-checking companies right now that are using these national background checks illegally. [LB140]

SENATOR GLOOR: Well, I think we appreciate the education and heads up, and I appreciate the fact you've been here today to... [LB140]

DALE JOHNSON: Sure. [LB140]

SENATOR GLOOR: This all, obviously, ends up being part of the testimony and Senator Lautenbaugh's staff are making notes and so, thank you very much for the education. Good points. [LB140]

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SENATOR CAMPBELL: Any other questions or comments? Thank you, sir, for coming today. [LB140]

DALE JOHNSON: Yes. [LB140]

SENATOR CAMPBELL: Any other opponent to the bill? Anyone in a neutral position? Good afternoon. [LB140]

CHARLES McGRAW: (Exhibit 11) Good afternoon. My name is Charles McGraw; it's spelled C-h-a-r-l-e-s, and the last name is McGraw, M-c-G-r-a-w. I'm the transportation director for RYDE Transit, and RYDE Transit is spelled RYDE. It stands for Reach Your Destination Easily, in Kearney. RYDE Transit is an agency of Community Action Partnership of mid-Nebraska. RYDE Transit covers public transportation for 31 rural communities in five counties in central Nebraska. Those five counties are Buffalo, Adams, Franklin, Kearney, and Gosper County. LB140 of this legislative year will change the provisions related to criminal background checks required for HHS transportation services previously enacted by LB97. This past two years with the requirements of LB97, RYDE Transit incurred additional fingerprinting costs of \$1,620 for the 38 public transit employees. Of this \$1,600, \$1,500 was record-check costs and the other \$100 was for additional fingerprinting costs because of the unavailability of a local State Patrol office. As a condition of employment and in accordance with the program guidelines of RYDE Transit, we currently do the following background checks: We do a national sex offender registry check; a national criminal background check; a national terrorist registry check; state motor vehicle record check; county of residence criminal check; Adult Protective Services central registry check; and a Nebraska child abuse and neglect central registry check. When a new driver is hired, the individual is not allowed to drive until all the background checks are completed. The current law set by state statute caused a delay in the hiring process because of the wait times of up to two months for responses in fingerprinting results from the Nebraska State Patrol and Department of Health and Human Services. The earlier mentioned background checks that our agency performs takes up to 48 business hours to complete. When the dissemination information from the fingerprinting came back with a record found, the RYDE Transit employee was not allowed to drive HHS clients until a written exemption appeal was approved by the Department of Health and Human Services. Once the RYDE Transit determined an appeal for exemption was needed for existing employees, an example being insufficient-fund checks that happened 18 to 20 years ago, the turnaround time was about one week within the Department of Health and Human Services. Appeals for exemptions included interviews with employees and determination by our agency whether an appeal for an exemption would be requested from the Department of Health and Human Services. Under current state statutes, this process has occurred every two years with the additional cost of the fingerprinting and the cost to obtain those from the Nebraska State Patrol. Thank you. [LB140]



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SENATOR CAMPBELL: Questions from the senators? Thank you very much for your testimony and for your service to those counties. [LB140]

CHARLES McGRAW: Thank you. [LB140]

SENATOR CAMPBELL: Any others in a neutral position? Okay. Seeing no one else to testify, we will close the hearing because Senator Lautenbaugh had closed...or had waived closing. So we will move to our third and last hearing for the day, LB166, Senator Coash's bill to change the Developmental Disabilities Services Act to authorize a private preemployment screening service to conduct criminal background checks as prescribed. While we're kind of all shuffling papers here and getting ready, how many people wish to speak in favor of LB166? Two. How many wish to speak in opposition? One, two. And how many in a neutral position? One. All right. Senator Coash, welcome again. Glad to have you back. [LB140]

SENATOR COASH: (Exhibits 14 and 15) Thank you. Thank you, Chairwoman Campbell and members of the HHS Committee. For the record, my name is Colby Coash, C-o-l-b-y C-o-a-s-h and I represent the 27th District here in Lincoln. And I'm here to introduce LB166 which is a bill dealing with background checks and the process and how that occurs for those who serve people with developmental disabilities; and it's a bill designed to save money for both the department and service providers. However, it is not a bill to do anything that would decrease the safety of the vulnerable people that are served by those providers. And I'm going to start out by talking briefly to the green copy of the bill and then tell you that that green copy is going away, and the amendment that I passed out is actually what I would like the committee to consider. But I think discussing the green copy at the beginning will kind of illustrate to the committee my intentions on how we got from the green copy to the amendment that I presented to you. The green copy of the bill basically did this. It authorized the department of...the director of Developmental Disabilities systems the authority to waive or replace the background-check process from the current process which requires fingerprints, going through the State Patrol, and accessing the FBI. The green copy authorized the director to use an alternative method that would not be that. Since introducing that bill and working further with the department, and with folks like Mr. Johnson who do these things, it became clear to me that we may not want to go down that road; and we want to keep the background-check process within the confines of utilizing law enforcement. So the amendment that I'm going to speak to, AM632, still gets us to a more efficient way. However, it keeps law enforcement in their role and keeps the private sector background checks out of the realm of possibility. So we're going to move forward and just speak to AM632. And I've tried to reach out to groups who understandably would have problems with LB166 as introduced and so...but I just let the committee know that not everybody who may testify in opposition has actually seen the amended version. And that's the version I'm going to talk about, which is AM632, which expedites the background-check process for those hired to work directly with people with

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developmental disabilities. The amendment accomplishes this by placing those hired into two categories for purposes of background checks. And the categories are people who have lived in Nebraska for more than five consecutive years, and people who have lived in Nebraska for less than five consecutive years. So the way we've construed this is that if you've lived in Nebraska more than five years, you must submit the fingerprints to the Department of Health and Human Services, and undergo a criminal history information check conducted by the Nebraska State Patrol...becomes a statewide check. If you haven't been in Nebraska for five years, you have to submit the fingerprints to the department who will then submit them to the State Patrol for the purposes of a national criminal check conducted by the FBI. So...and I'm going to pass this out as well. This is a helpful flow chart that may help the committee understand what it is I'm trying to get accomplished. First of all, what we're trying to say is that every employee who is going to do this is going to get their fingerprints taken. Okay, so you're going to have your fingerprints taken. Those will be...and then you submit those to the department and the thing about that has changed. The department then submits those fingerprints to the State Patrol. And then based on this amendment, what will happen is if you've been a lifelong Nebraskan for example, or at least been here for five years, then the check becomes a statewide check. And if you've been here less than five years, then it's the national check which is no different than what occurs now. There's a...and so, what I will tell you is, Nebraska is not the first state to do this. There was a survey done by the department, the DD Division, and what we found out, we just wanted to know how other states are doing this because as Mr. Johnson said, turnaround time from the State...this isn't the State Patrol's issue necessarily, but turnaround time of getting these checks back to the FBI is becoming slower and slower so states are trying to figure out a way to wrestle with how to get these done faster. So, for example, we found out that in Arkansas the FBI checks are required only for employees without a five year history of the state. And Kentucky, out-of-state checks are required for hirers who have lived or worked within another state for just the past year. In North Dakota, prospective employees who have not lived in the state continuously over five years have to have a background check obtained from the previous state of residence. In Ohio, an employee who has lived outside the state within the past five years must submit to the FBI for their national check. In Utah, an employee who has lived out of the state for more than six weeks in the preceding five years must submit to the FBI check. So in essence, there are lots of different ways states are doing this. We modeled this after a state...we modeled this amendment, actually, after what the state of Nebraska is doing already outside of this division which is, they make the cut at five years and at five years...if you've been here for five years, the state check is sufficient for state employees. If you haven't lived in the state for five years, they go to the national. But regardless, again, all employees get the checks and it's only law enforcement who is doing them. Okay. Adapting these policies for our state allows for the majority of Nebraskans obtaining background checks for this realm of employment to have those checks completed in an adequate, cost-effective, and a timely manner. According to February, 2011, data provided to me by the State Patrol, the average

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turnaround time for the FBI criminal history check was ten days. By contracts, was about ten days. By contrast, the average turnaround time for a statewide check was four days. In addition to saving time, AM632 saves both the state and providers valuable funds. The department incurs the cost of the background check. The currently required FBI background check is \$38. That's the cost that is paid to the State Patrol to do those for the national. If we can, for people who have been here for five years or more, just do the statewide, that cost is only \$15. So there's a significant savings if we can narrow the search based on that criteria. So that's the savings to the state. Now the providers can get reimbursed for that, so the actual cost of the background check is not the only cost the providers have because they can get that reimbursed. That's the department's cost, but where it saves the providers money is in the time. Providers can't put an employee into direct service until these come back. And basically what happens is, they hire somebody and they can't put them into service independently until they come back. And if it's an average of ten days, I'll tell you sometimes it's longer, sometimes it's shorter, but it really puts them at a time crunch. And so by getting these back more quickly, it assists providers in saving funds because then they can put their person into service. So I've worked with the department, I've worked with...and I think the department sent a letter that you should have that kind of illustrates we were. It's been a pleasure to work with them and I will continue to work with the department and this committee to make this work. Thank you. [LB166]

SENATOR CAMPBELL: Okay. Questions for Senator Coash? Seeing no questions, Senator Coash, will you be staying for closing? [LB166]

SENATOR COASH: I'll stick around. [LB166]

SENATOR CAMPBELL: Okay. First proponent. Good afternoon. [LB166]

ROGER STORTENBECKER: Good afternoon, Chairwoman Campbell and members of the committee. My name is Roger Stortenbecker, R-o-g-e-r S-t-o-r-t-e-n-b-e-c-k-e-r. And yes, that's just one person's name. (Laughter) I'm the chief operating officer for Developmental Services of Nebraska, and I'm here to testify in support of LB166, AM632. I'm not going to provide you with written testimony. I think my message is straightforward. We like what Senator Coash and the Division of Developmental Disabilities and some of the service providers in the state have put together. This gives us the ability to still use the FBI when we need to because it leaves that in the statute. We still have access to the Nebraska State Patrol, so we can all feel good about keeping bad guys away from the vulnerable people that we support. The other thing it does is it allows us to get a quicker turnaround time, as the senator mentioned. It isn't the purchase price. It's the amount of time we spend with an applicant before we can put them into services with this quicker turnaround time because by and large, most of our applicants are Nebraskans are going to fit that five-year residency requirement. We will be able to make a quicker decision about do we go any further with this applicant;

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and if we're not, then we can move on to the next person who is qualified. Then we'll enter them into our training department, start training them, and getting them ready to go. So it will really save us quite a bit of time and energy on those folks who should not work for us who have no business being an employee of ours. So that said, I would be happy to answer any questions you would have for me as an administrator or service provider. [LB166]

SENATOR CAMPBELL: Questions? Yes, Senator Krist. [LB166]

SENATOR KRIST: What's the percentage of people that you have to apply for jobs that have either just come off of active duty, or have just come off of retired from the fire department, or police department, or something like that, that are absolute no-brainers? [LB166]

ROGER STORTENBECKER: No-brainers for not fitting the five years or no-brainers that we should just hire them? [LB166]

SENATOR KRIST: Hire them. Because of some other kind of criteria that you are able to look at or background. [LB166]

ROGER STORTENBECKER: Oh, I'm sorry. I don't have a percentage. We've never studied that. I can't answer your question. [LB166]

SENATOR KRIST: Okay, I'd be interested in finding that out if you can take the time. Not to cause you any distress, but I'd love to find that out. Thank you. [LB166]

ROGER STORTENBECKER: So...I'm sorry, so if I could qualify the question is, how many people come to us that we don't feel we have to do a background check on? [LB166]

SENATOR KRIST: You wouldn't have to do a background check at all. And by that, I would say you would have to make a phone call to a military commander with a service record or something like that. I guess I'm looking for those criteria where not even this would be essentially necessary that would actually just be no-brainers. And maybe it's always going to be necessary. Don't get my question wrong, but. [LB166]

ROGER STORTENBECKER: No, I appreciate the clarification. I can give you at least the procedural answer to your question, but not a quantitative answer. The procedural answer is, unless the person that we're hiring is already licensed or certified by their profession, (doctors, nurses, those kinds of things), everybody goes through the background check. [LB166]

SENATOR KRIST: Okay. Thank you. [LB166]

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ROGER STORTENBECKER: Sure. [LB166]

SENATOR CAMPBELL: Senator Howard. [LB166]

SENATOR HOWARD: Thank you. Just so I understand this, you do fingerprinting yourself and then you submit that to the State Patrol? [LB166]

ROGER STORTENBECKER: No. We used to do that but we had such a hard time getting good prints that everyone goes to law enforcement. [LB166]

SENATOR HOWARD: I completely understand...that's why I was puzzled. I completely understand. When I worked for Health and Human Services we started out doing that for foster parents. We had a terrible time getting clear prints. And so, then they just went over to the State Patrol who knew what they were doing. So this step here where fingerprints of employees are given to Health and Human Services, that's not quite how it works? [LB166]

ROGER STORTENBECKER: That is one possibility, but I think most of the DD providers have gotten away from trying to do those fingerprints on their own. We bought a lot of fingerprinting equipment and tried to educate, and Lincoln City of Police were the beneficiaries of a donation of many fingerprinting stations and equipment. (Laughter) [LB166]

SENATOR HOWARD: I understand what you're staying. I saw the same thing happen. It's harder than it looks. [LB166]

ROGER STORTENBECKER: It's incredibly difficult. [LB166]

SENATOR HOWARD: Plus if you go...the individual goes right to the State Patrol you don't have that chain of handling things too. [LB166]

ROGER STORTENBECKER: Exactly. [LB166]

SENATOR HOWARD: Good. [LB166]

SENATOR CAMPBELL: Any further questions? Thank you for your testimony today. [LB166]

ROGER STORTENBECKER: Thank you. [LB166]

SENATOR CAMPBELL: Good to see you. [LB166]

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ROGER STORTENBECKER: Good to see you. [LB166]

SENATOR CAMPBELL: The next proponent. [LB166]

DON WESELY: Chairman Campbell, members of the Health and Human Services Committee, I'm Don Wesely, registered lobbyist on behalf of the Nebraska Association of Service Providers. We are a community-based developmental disabilities providers, and support Senator Coash's effort to try to address this problem. And again, it is a time issue. It's not the cost of the background checks; but they talked about ten days, but when I was told about the bill some people experienced six weeks waiting for an FBI check to come back. When you've got an employee, you're trying to train them, they can't be independent, and time passes, so something needs to be done to address this. And there's some people, you know, that have already been checked, and the five years seems like a reasonable compromise. It's offered in the amendment. Again, we've worked with Senator Coash and the committee to come up with some solution to this, but hope you will be supportive of making some change. [LB166]

SENATOR CAMPBELL: Excellent. Questions for Mr. Wesely? Thank you very much. [LB166]

DON WESELY: Thank you. [LB166]

SENATOR CAMPBELL: Those who wish to testify in opposition? Good afternoon. [LB166]

PATRICIA CRAWFORD: (Exhibit 16) Hi. I'm Patricia Crawford. I live in Omaha and I have a son Matthew who is at the Beatrice State Developmental Center. And he's been there since he was 14 years of age and he has a profound intellectual disability; but he's physically fit, and he has no speech at all. He has some receptive speech or language and some sign language, which is a little iffy apparently. But he is a productive worker and pays for part of his care. And I'm also speaking for members of MRAN, an organization working for people with intellectual disabilities. I urge you to retain the current law which protects our most vulnerable citizens. In regard to LB166 and this new amendment, I find the old and the new versions troubling and unacceptable. Every prospective employee must have a criminal history check regardless of how many or how few years he or she has lived in Nebraska. If a prospect comes from a similar job, it's not a guarantee of good behavior. It could be a sign of bad behavior. That person may have been a threat to vulnerable clients elsewhere. The previous employer may have reserved that information for many reasons: fear of a lawsuit, fear of retaliation or whatever. There's no guarantee that information concerning an employee is available from another state and in some cases, an employee comes from another state. They come across the border to work. The crux of the problem is a very high turnover rate in direct care community-based programs. The pay is poor. The job is demanding. It's

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difficult and sometimes dangerous. Staff turnover is upsetting to the clients and incites them to act out. LB166 is not the answer. This bill cuts too many corners to enhance staff members and leaves vulnerable people in jeopardy. Please kill this amendment. [LB166]

SENATOR CAMPBELL: Okay. Questions? Thank you, Ms. Crawford for coming. Oh, Senator Wallman, did you have a question? [LB166]

SENATOR WALLMAN: Thank you, Chair. No, just a comment. Thanks for coming. Always enjoy to hear you testify. [LB166]

PATRICIA CRAWFORD: Thank you, Senator. [LB166]

SENATOR CAMPBELL: Thank you, Ms. Crawford. Next opponent. Good afternoon, again. [LB166]

DALE JOHNSON: (Exhibit 17) Good afternoon. I'm still holding my schedule open. My name is still Dale Johnson, D-a-l-e J-o-h-n-s-o-n, and I live at 2216 East 8th Street in Fremont, Nebraska. And like I mentioned earlier, I have over 20 years experience in background investigations and own a detective agency licensed in Nebraska. I was first made aware of LB166 by service providers who expressed to me concerns. I did thoroughly read the bill, as did some of my researchers, and we then crafted a very lengthy letter which we did send to Senator Coash. And I was very appreciative to see how he had greatly modified LB166, which originally was going to outsource background checking using national background checks, which are extremely dangerous and would cause you liability problems you aren't aware of. But people who are in the security business, background-check investigations, any kind of investigations, that read the new bill would probably see holes in it that you could drive a truck through when it comes to security and doing background checks. The most recent amendment to LB166 requires that each employee shall file a set of fingerprints with the department. The department then forwards the prints to the Nebraska State Patrol for a criminal history record information check. If the employee has resided in this state for less than five consecutive years, then the State Patrol is to transmit a copy of the employee's fingerprints to the FBI for a national criminal history record information search. My first concern is, who determines how long an employee has resided in this state? And how do they determine the residential history? Is this determined by what the employee self-reports on the application? Why don't we then just ask the employee if he has any criminal convictions and save a lot of time and money? If an employee has been deemed a Nebraska resident for more than five years, the only records searched are the records that the State Patrol has in their database. Five years is not long enough for many crimes to be considered in the hiring process. If an employee lived in Ohio six years ago, and committed a serious crime like felony fraud, felony assault, assault with a deadly weapon, robbery, burglary, sexual assault, rape, or homicide,

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shouldn't this be a concern to a service provider? And I think HHS has hiring policies that preclude employment if these different criminal records are found that are even older than five years, ten years, and even fifteen years. So the five year thing, I'm confused about. If someone murdered someone six years ago in Ohio, it's not going to show up in the Nebraska check. I understand that trade-offs have to be made and lines have to be drawn somewhere when it comes to making the workplace safe. The primary purpose behind this legislation is to speed up the hiring process because law enforcement currently takes too long to complete the reports. Is the trade-off worth the risk? Is exposing people with developmental disabilities to employees that may have committed serious crimes more than five years ago worth the risk? What is an alternative or additional safeguard that often finds criminal records that might not be found in a law enforcement search? The federal government has two basic checks that they require for personnel in various positions of responsibility. The first is called a background check, which by definition is a single database search, which standard procedure is an FBI search. The second higher level check is called a background investigation. This type of check is used for higher level security clearances and other positions deemed critical. A background investigation involves verifying a subject's identifiers, that being legal derivation of name, aliases, date of birth, Social Security number, and residential history, and then checking all court jurisdictions the subject has lived in for the prior X number of years. Residential history and identifiers can be verified very accurately by checking what is referred to as trace reports. The best ones contain information from all three credit bureaus and other sources of public information. Background investigations have become much easier and less expensive to do in recent years because of direct access to court systems and the ability to check many court systems statewide and not just county by county. The background checking industry in the private sector relies almost exclusively on court record research and not law enforcement because court records are more complete and accurate than law enforcement records. When you ask someone, have you been convicted of a crime? Only courts convict. Law enforcement does not convict unless you're in New York. Many law enforcement records are never sent to state level from local jurisdictions and many records that do make it to the state level have no dispositions or have incorrect dispositions because local law enforcement did not follow the case through the court system before entering into their computer system. And the rest is what I basically said having to do with how inaccurate the FBI check is. Mainly...what I'm basically saying is, there's no perfect way of doing background checks. The FBI and law enforcement is one source. The court record information is the second primary source of information, and those are the only two that should be used for doing criminal background information checks. The law enforcement is slow right now because of some inadequacies in the computerized program that they have. That will speed up in probably another year or a year and a half. I'm sure the State Patrol can speak better to you about that than I can. Even when it does get sped up, there are inadequacies with the FBI background checks. They miss a lot of information. A lot of information is incorrect, and people get denied employment because of these incorrect records. And



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so probably the best solution, with no consider to economy, is to consider doing...keep doing FBI and State Patrol checks, and also like many of the providers are doing, they're doing...with the outside they're doing with the private sector, they're doing background investigations. Not national background checks, doing background investigations. [LB166]

SENATOR CAMPBELL: Thank you, Mr. Johnson. Are there any questions? Senator Bloomfield. [LB166]

SENATOR BLOOMFIELD: Two actually. Number one, if I went in and said I've lived in Nebraska for five years and the state of Nebraska, the first thing they're going to do is pull the MV record on drivers license and it's going to tell them how long I've been in Nebraska. [LB166]

DALE JOHNSON: That would tell you how long they've had a driving record. [LB166]

SENATOR BLOOMFIELD: Yeah. [LB166]

DALE JOHNSON: A lot of people...we find a lot of people...you know, we do background checks for schools, hospitals, whatever. We get a lot of people coming into this state from other states, they never change their driving license until it expires and then they get a Nebraska license. Some of them have got brand new licenses from Arizona that may last 15 years or longer; and they come to Nebraska, they never change their driving record. [LB166]

SENATOR BLOOMFIELD: Then I would say they haven't been here that long because the law says they have to change it within, I believe, it's 90 days. [LB166]

DALE JOHNSON: Yeah, that's what I tell people too. [LB166]

SENATOR BLOOMFIELD: They just failed the background test. The second question would be... [LB166]

DALE JOHNSON: Well, how do you know that they came from...since they've... [LB166]

SENATOR BLOOMFIELD: If they come with that Arizona driver's license. [LB166]

SENATOR CAMPBELL: Sir, I think we need to let Senator Bloomfield finish his question. [LB166]

DALE JOHNSON: Okay. Sure. I'm sorry. [LB166]

SENATOR BLOOMFIELD: And the second part of the...you had me right up until you

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told me that somebody killed somebody in Ohio. I don't know if I killed somebody in Ohio six years ago they'd still have me there? Go ahead. [LB166]

DALE JOHNSON: We did a background check recently on an individual that was applying for a position at a community college. We did the check on him. Through our research we discovered, well, he's lived in other states. We checked the other states. We found that he had five felony convictions for first-degree sexual assault. Somehow he got out of jail on bond somehow, and he was gone. There was a warrant for his arrest, and he was applying for a job in western Nebraska at a college. [LB166]

SENATOR CAMPBELL: Senator Cook. [LB166]

SENATOR COOK: I'm going to wait and ask Trooper Sankey because it's about Nebraska laws. [LB166]

SENATOR CAMPBELL: Okay. All right. Any other questions? Thank you, Mr. Johnson. [LB166]

DALE JOHNSON: Yes. [LB166]

SENATOR CAMPBELL: Okay, sir, wishing to testify in a neutral position. Good afternoon. [LB166]

DAVID SANKEY: (Exhibit 18) Good afternoon. Chairperson Campbell and members of the Health and Human Services Committee, my name is David Sankey, D-a-v-i-d S-a-n-k-e-y, and I serve as the superintendent of the Nebraska State Patrol. I am here today to testify in a neutral capacity on LB166 to provide the committee information related to criminal history background checks. One of the State Patrol's many responsibilities is to maintain the centralized repository of criminal history records and fingerprints for the state of Nebraska, function as the state's conduit to the Federal Bureau of Investigation national criminal history databases, and furnish this information to any person authorized to receive it. As the state repository and the FBI conduit, we routinely field questions regarding the different requirements between a FBI fingerprint-based criminal history check, a name-only criminal history check, and a private vendor background check. I would like to explain the differences between the three different checks. The first check is an FBI fingerprint-based criminal history check, such as specified in Nebraska Statute 83-1217.02. These checks have proven to be reliable, accurate, and they establish a complete national record of criminal activity for a person matching those fingerprints, regardless of what name is associated with the criminal event. An FBI identification record, often referred to as a criminal history record or a rap sheet, is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, federal employment, naturalization, or military service. The FBI fingerprint record includes the

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name of the agency that submitted the fingerprints, the date of the arrest, the arrest charge, and the disposition of the arrest, if known to the FBI. All arrest data included is obtained from fingerprint submissions, disposition reports, and other information submitted by agencies having criminal justice responsibilities. The information provided is assuredly from the person whose fingerprints were submitted as it is utilized by biometric identifiers. FBI criminal history records can only be accessed by a state identification bureau, which in Nebraska is the State Patrol, and only when authorized by Nebraska statute. The FBI has been adamant that the only way a records check can be completed is pursuant to state statute enacted by the state Legislature and via the state identification bureau, or by an authorized channeling agency. The FBI informs us that there are 15 organizations nationwide that are authorized channeling agencies to fulfill specific federal statutory requirements. The State Patrol is routinely audited by the FBI to ensure compliance with the requirements. The Nebraska State Patrol's Criminal Identification Division, CID, charges \$38 for processing a fingerprint-based national criminal history record check through the FBI. In 2010, 21,749 fingerprint-based checks were completed; 3,444 checks were completed for the reasons listed in LB166. The second check is a name-only check, which is notably different from a FBI fingerprint check as it is a nonbiometric criminal history record based solely on the name, date of birth, and Social Security number provided. This check accesses arrest and disposition information from only Nebraska criminal justice agencies that report to the state centralized repository. Name-based record checks are provided by the Nebraska State Patrol CID Division for \$15. In 2010, the State Patrol completed 32,381 name only checks. The third check is a private vendor background check. The State Patrol understands the private vendor compiles information from public records of local, state, and federal sources and then searches the records for information on the individual subject to the check. Over the last 14 months, the State Patrol has committed considerable time and resources to address and improve a backlog of criminal history check requests. The corrective process included a review of workflow, staffing, equipment, and training needs. As a result, new leadership was introduced into the Criminal Identification Division and the workflow was restructured. The staffing restructuring continues and is included in both the Governor's and Appropriation Committee's recommendations in the pending budget. Today, I am happy to report that our efforts are paying off and the turnaround time has decreased dramatically as we are providing a more timely service. For example, in February of 2010, the turnaround time for FBI fingerprint checks covered under LB166 was averaging more than 30 days. For the same time frame this year, the processing time has been reduced to 13.5 days. To clarify, the Nebraska State Patrol has no position regarding the correct check to be done on an individual contemplated by this legislation, which is a question for the Legislature. However, the State Patrol does have an interest to ensure the Legislature understands the difference between the three checks. I appreciate the opportunity to be here today and to provide this information regarding criminal history checks. The State Patrol continues to strive to provide for professional and reliable services to the citizens and those in need of the criminal history information. I'd be happy to answer any

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questions you may have. [LB166]

SENATOR CAMPBELL: And we'll start with a question by Senator Cook. [LB166]

SENATOR COOK: Thank you, Madam Chair. Thank you, Trooper Sankey, for joining us this afternoon and offering us these definitions. My question arose with one of the previous testifiers and that is what I hope you can help me with. Is it against the law in the state of Nebraska to not hold an operator's license to conduct a motor vehicle? [LB166]

DAVID SANKEY: Yes, you need to have a driver's license to operate a motor vehicle. [LB166]

SENATOR COOK: If you choose not to, for whatever reason, is it unlawful to not have that piece of identification? [LB166]

DAVID SANKEY: Yes, if you want to operate a motor vehicle in the state of Nebraska you have to have an operator's license. [LB166]

SENATOR COOK: If I do not want to. [LB166]

DAVID SANKEY: If you do not want to, you do not need to have one. [LB166]

SENATOR COOK: Okay. Thank you. There's no mandate within the state law of Nebraska that a resident or citizen have an operator's license for a motor vehicle, as far as you know. [LB166]

DAVID SANKEY: As long as they don't drive. [LB166]

SENATOR COOK: Thank you. Drive a motor vehicle. [LB166]

DAVID SANKEY: Correct. [LB166]

SENATOR COOK: Thank you. [LB166]

SENATOR CAMPBELL: Okay. Other questions for the superintendent. Senator Krist. [LB166]

SENATOR KRIST: I'll be brief. What you're telling us is that...thank you, Superintendent, for coming, first of all. But you're telling us that the situation is getting better because we've applied some attention to it? [LB166]

DAVID SANKEY: Yes, sir. There's many reasons for the delay, but we recognize that

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part of that reason was that we needed to restructure our CID division, and we've done some of that. We have more restructuring that we plan to do in the near future which we think will even result in faster background checks, or at least we hope so. [LB166]

SENATOR KRIST: That was the question. You think it's going to get faster than what you have? [LB166]

DAVID SANKEY: I believe so, yes, sir. [LB166]

SENATOR KRIST: Okay. Thank you so much for coming. [LB166]

DAVID SANKEY: Thank you. [LB166]

SENATOR CAMPBELL: Good question. Any other questions? Superintendent, it was a delight to have you here and congratulations on your appointment. Usually we see the State Patrol in Transportation. I'm so used to seeing you there. It's nice to have you in Health and Human Services... [LB166]

DAVID SANKEY: It's nice to be here. [LB166]

SENATOR CAMPBELL: ...and thank you for the report today, very much. [LB166]

DAVID SANKEY: Thank you. [LB166]

SENATOR CAMPBELL: Anyone else in a neutral position? Senator Coash, you would like to close? [LB166]

SENATOR COASH: Yes. I'm the last one right? [LB166]

SENATOR CAMPBELL: You are. [LB166]

SENATOR COASH: So this will just take a couple of hours. (Laughter) Thank you for everybody's attention through this. I wanted to clarify a couple of things I heard during the testimony and some questions. Senator Krist asked about, you know, what percentage we could do that, or a provider could do that for. I think the short answer is, at this point zero because they have to do it; providers have to get a check for every employee and frankly, I agree with that. Regardless of your background and where you're coming from it's good to check, and I would always support that. Senator Howard, you kind of had a question about the process just so I can kind of give you how it goes. When the employee goes, usually now it's most employees are going to law enforcement because they do a better job of not smudging the paper and all that. Then they bring that back and the provider will send that to the HHS who then forwards it to the State Patrol, and then the State Patrol runs it through their system. A couple of

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things. I just want to be clear. I'm not waiving...this amendment does not waive any background check, and I want to make sure that the committee and others that testified understand that. My intent is not to waive any check. What I'm trying to do is find a smarter way to do some of them based on some residency requirements. Many other states do this. Our state does this. Other divisions of HHS cut off at five years. It seems to be working well. It hasn't been a problem. HHS is doing this, just not within this particular statute. I appreciate the State Patrol's testimony. I will tell you that from my own experience, these background checks have improved and they're turning around and they're starting to improve...seems to be getting better and better. When I first started looking at this issue it was closer to that 30-day mark the superintendent talked about. And before that when I was looking at it, it was closer to six weeks. His data said 30 days at that time. Currently, according to his testimony, we're at 13 days. So I really do appreciate the State Patrol's effort in this. And that is saving providers money and that's important, that short turnaround. We can take with this amendment 13 days down to three, and I think that will save even more money. But regardless of the turnaround time, there's still a cost to process these checks; and what we're talking about in my amendment is the difference between \$38 and \$15. So the cost to do these does change and that cost changes proportionately whether it takes six weeks or is an instant turnaround. I want to make sure the committee is clear on who would determine this. And my intent, and if we need to adjust the bill to make sure that this is clear, is that the department, HHS, would promulgate rules and regs to give direction to the providers as to how they would determine residency, you know, what...whether it would be through the application process or some kind of a credible check; but my intent was to let the department decide on how best to put this process in place. And then finally, with regard to Mr. Johnson's testimony, is a guy who works in the industry and seems to have a lot to say but he didn't bring any solutions. And so, I'm trying to bring a solution, and I'll continue to work with the department on a solution to this, and thank you for your time. [LB166]

SENATOR CAMPBELL: Questions? Senator Howard. [LB166]

SENATOR HOWARD: Thank you, Madam Chairman, Chairperson. I just want to make sure I understand this. The employee goes to the trooper, the State Troopers' Office, gets the... [LB166]

SENATOR COASH: No, not necessarily. [LB166]

SENATOR HOWARD: Or the individual? [LB166]

SENATOR COASH: There's a lot...goes to law enforcement, I think. Providers in Lincoln, for example, go down to the Police Department or someplace like that and they have training professionals who put the ink on your fingers. But then they get the card back and then they go...and then that card is submitted to the Department of Human

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Services and then that goes to the State Patrol. [LB166]

SENATOR HOWARD: That's the part I'm having a problem with is they go out there and get the fingerprint done, why do they need to carry it back to the department to have it sent on again? [LB166]

SENATOR COASH: I think there's a couple of reasons for that, Senator Howard. One is because of the payment issue, you have to send money with that, and providers pay that money on behalf of the employee. So what a provider will do is, they'll get these cards back, you know, and then pay the \$38, write a check for the \$38 times the ten employees so a \$380 check, send that the department, and then the department forwards those on to the State Patrol who runs it through their system. [LB166]

SENATOR HOWARD: Okay. All right. Thank you. [LB166]

SENATOR COASH: It's fairly bureaucratic, I agree with you, but it's the way it works. [LB166]

SENATOR HOWARD: Well, my only frame of reference is when we would have foster parents do it. It could have changed, of course, it's been a few years, but the foster parents would go to the State Patrol Office and have the fingerprints done, and they would take care of it then. I know there was a payment amount involved and I think the department just collected that. They didn't need that card back again. But this is just kind of a technicality. I'm sure it can be worked out. [LB166]

SENATOR COASH: Sure. [LB166]

SENATOR CAMPBELL: Senator Krist, did you have a question? [LB166]

SENATOR KRIST: No. [LB166]

SENATOR CAMPBELL: Okay. Anyone else? I want to make sure. Thank you very much, Senator Coash. [LB166]

SENATOR COASH: Thank you. [LB166]

SENATOR CAMPBELL: And with that, we'll close the hearing and that completes the hearings for the afternoon. [LB166]