

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

Judiciary Committee LR288
December 05, 2011

[LR288]

The Committee on Judiciary met at 9:00 a.m. on Monday, December 5, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR288. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; and Amanda McGill. Senators absent: Scott Lautenbaugh.

SENATOR ASHFORD: Good morning, everyone. Senator Christensen has LR288, an issue he's been concerned about for quite some time and we're happy to hear from him today about that issue. So, Mark, would you like to...? Welcome, and proceed along.

SENATOR CHRISTENSEN: Thank you, Mr. Chairman. Members of Judiciary Committee, I'm Senator Mark Christensen, C-h-r-i-s-t-e-n-s-e-n. I represent the 44th Legislative District and I'm here to open this study hearing on LR288. I first want to thank Chairman Ashford and the members of the Judiciary Committee for introducing and prioritizing this study and making room in the committee's schedule to look further into the issues of foster parent standing. As you may recall, the discussion of foster parents having standing as an interested party in the context of the removal of foster child to another out-of-home placement was part of the hearing on LB648 from our last regular session, which passed without the foster parent standing provision. LB648 proposed to put in statute standing for foster parents as interested parties in the context of a decision to remove the foster child from the foster parent's home. This standing was recognized in 1996 in Nebraska Supreme Court decision, In the Interest of Jorius G. , which is cited in language of this study resolution, LR288. With this standing, foster parents who object to the decision to remove the foster child would be able to call and cross-examine a witness and appeal an adverse decision. Currently in Section 43-285(3), it allows for interested parties to file an objection to any change of placement. The question which was addressed in the Jorius G. case was, who was an interested party? The Supreme Court said the foster parents were an interested party

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

Judiciary Committee LR288
December 05, 2011

for the purpose of this section. I believe this is an important issue to clarify because it affects the well-being of the foster child and the ability to retain good foster parents in Nebraska's system. Not all courts in Nebraska have allowed foster parents these opportunities to bring these cases to the court to address why they believe the removal of the foster child to another out-of-home placement is not in the best interests of the child. I believe we should do a better job of listening to foster parents who know the child better than the state, guardians ad litem, or another private agency if the child has lived with them for some time, six months or longer. My intent for asking Judiciary Committee to study this issue further is that I believe we can improve the due process and communication within our child welfare system, and we should improve the system to ensure the child's best interest is thoroughly reviewed. I've handed out a few amendments that were considered last session. I just wanted you to remember what I had brought forth. So if you have...I want to thank you for examining this issue further as we seek to improve the Nebraska child welfare system. Thank you. [LR288]

SENATOR ASHFORD: Thanks, Mark. Does anyone have a question of Senator Christensen? Yes, Senator Coash. [LR288]

SENATOR COASH: Thank you, Chairman. Senator Christensen, did you hand this out, the "LR288: Foster Parent Standing," the legal points presented by Chris Costantakos? [LR288]

SENATOR CHRISTENSEN: No, I don't think so. [LR288]

STACEY CONROY: No. [LR288]

SENATOR COASH: No? Okay. Then I'll maybe wait... [LR288]

SENATOR CHRISTENSEN: I don't remember. [LR288]

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

Judiciary Committee LR288
December 05, 2011

SENATOR COASH: ...and ask him about it. No further questions. [LR288]

SENATOR ASHFORD: Yes, Senator Council. [LR288]

SENATOR COUNCIL: Yes. Thank you, Chairman Ashford. And thank you, Senator Christensen. We've had some conversations around this issue and looking at AM1201, one of the amendments, as I recall initially your bill would require foster parents to have standing in the case of any movement of the child, and now, and as I read AM1201, you limited it to situations where the issue is movement of the child from one foster home to another, as opposed to your original bill which was any change in the placement of the child, granting the foster parent standing. And I think in the context of movement from one foster home to another and being limited to those situations would be a direction that I would be more inclined to be supportive of, because you and I had the conversation that I, in no way, wanted to elevate foster parent rights above biological parent rights. And the way your bill originally was introduced, it would put foster parents on par with biological parents when it came to final placement as opposed to moving it from one foster placement to another foster placement. So looking at it in that context, there may be some opportunity for us to draft the legislation in a way that restricts those situations where the foster parent has standing and the extent of that standing, so that we're not also going to a point where they're going to a lot of time and expense with foster parents fighting between foster parents and the child being left in the lurch. So I just wanted to let you know that. You know, I appreciated the fact that you listened to the concerns I expressed about putting biological parents at a seemingly disadvantage under the language of your bill as it was originally introduced. Thank you. [LR288]

SENATOR CHRISTENSEN: Thank you. [LR288]

SENATOR ASHFORD: Thank you, Senator Council. And thank you, Senator Christensen, for your comments. I think we have until 10:00 on this issue so there's no particular order. Anyone can come up and talk. I see Chris is here. How many people

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

Judiciary Committee LR288
December 05, 2011

would like to speak on this issue today? Just a couple. So why don't we...Chris, why don't you come on up and then we'll go with... [LR288]

CHRIS COSTANTAKOS: Good morning. [LR288]

SENATOR ASHFORD: Good morning. [LR288]

CHRIS COSTANTAKOS: (Exhibit 1) My name is Chris Costantakos. I'm an attorney. My address is 300 Overland Wolf Centre, 6910 Pacific Street, Omaha, Nebraska, 68106. I have practiced in juvenile court work for over 30 years and I'm the author of Juvenile Court Law and Practice, published by Thomson Reuters, now in its sixth edition. First, I'd like to begin by thanking Senator Christensen for bringing what I think is an important issue, thank you, to the attention of the legislators. I do have a great deal of compassion for the circumstances and situation that originally brought LB, I believe it was, 648 to the floor from Senator Christensen, and I know that the notice issue there was a pretty serious one. Nevertheless, what I thought I might try and do this morning, if it's acceptable to the committee, is maybe try and bring a little bit of balance and legal perspective to the discussion. (Fire alarm sounding) [LR288]

SENATOR COUNCIL: I think that means head to the door. [LR288]

SENATOR ASHFORD: Let's give it a half a second here. (Fire alarm stops sounding) [LR288]

SENATOR COUNCIL: You got it. [LR288]

STACEY CONROY: Exactly half a second. [LR288]

SENATOR COUNCIL: You got it. [LR288]

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

Judiciary Committee LR288
December 05, 2011

SENATOR ASHFORD: I didn't know I had that kind of power. (Laughter) (Fire alarm sounds, then stops again) [LR288]

CHRIS COSTANTAKOS: I have prepared an outline and I gave some copies to... (Fire alarm sounds) [LR288]

SENATOR ASHFORD: Why don't we just...why don't we go on outside for a second, not outside the building necessarily but out in (inaudible). If this is kind of difficult, why don't we just wait a second, Chris, until it stops and we can come back in or stay here or leave. [LR288]

SENATOR COASH: There will be an announcement here, you're supposed to leave or something. [LR288]

SENATOR ASHFORD: Yeah, why don't you...why don't we just wait a second, see what... [LR288]

CHRIS COSTANTAKOS: It's a fire drill? [LR288]

SENATOR ASHFORD: I don't know what it is, but whatever it is, it's... [LR288]

SENATOR COUNCIL: They had one last week so...didn't you have any... [LR288]

STACEY CONROY: I didn't have any indication of one today. [LR288]

SENATOR COUNCIL: Yeah, but you had one last week, right? [LR288]

STACEY CONROY: Not that I noticed. [LR288]

SENATOR ASHFORD: Was not a memorable one. [LR288]

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

Judiciary Committee LR288
December 05, 2011

STACEY CONROY: Yeah. [LR288]

SENATOR ASHFORD: Okay, Chris, let's try again. [LR288]

CHRIS COSTANTAKOS: Okay. (PA announcement) [LR288]

SENATOR ASHFORD: Good. [LR288]

CHRIS COSTANTAKOS: Okay. Just kind of a general overview what I think the current legal situation is regarding foster parents, foster parents typically have to sign a placement agreement and that agreement being enforced throughout the entirety of the placement. It's a standard provision in every one of those contracts that the foster parent agrees and acknowledge that the placement doesn't constitute a promise by HHS that the foster parent will adopt, also that HHS may remove the child from the placement at any time. Attached to the materials at the end, it's Appendix-1, is the administrative code, Section 390, Nebraska Administrative Code 7-001.008A3. Basically, there under HHS policy foster parents do have the right to file a grievance with the department in any situation where the department has removed a foster child who has been placed with the foster parents for six months or longer. So there is an administrative process in place to address that vis-a-vis the foster parent and the department. Under the statutes, as you all know, 43-1314 creates the opportunity to be heard, notice and an opportunity to be heard, and this means foster parents, they can come to the hearing, they have a right to know about the hearing. And the court now, under the amendment to that statute, has to make an inquiry. They have to ask questions of the foster parent at the hearing, if the foster parent attends or the caregiver or the relative provider, how is the child doing, and this is another opportunity that the foster parent has to convey information regarding the child and any concerns they may have. Under 43-1314.02, and I attached that as Appendix-2, that is...the Legislature passed this about three years ago I think. That is the caregiver information form. This is

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

Judiciary Committee LR288
December 05, 2011

a written form promulgated by the Nebraska Supreme Court and the juvenile court does give it out to foster parents and it's provided to them. They can complete it and give it back to the court. I know from personal experience it's done a lot, at least in the Douglas County cases that I'm seeing. The one thing I think that is important as the Legislature moves forward with this issue is there's a difference between legal standing, which constitutes a foster parent as a full party to the proceeding...(PA announcement)...difference between full legal standing versus kind of a limited right of a foster...(PA announcement)...between limited right to contest the removal versus full legal standing. The juvenile court right now does have jurisdiction to permit foster parents to intervene as full legal parties in the proceeding and the way that they can do that is, even though the case law recognizes that foster parents do not have an interest in an adjudicated child such that that warrants a right to intervene as a matter of legal right, juvenile court can still do it under the concept of permissive intervention. What the foster parent would have to do is demonstrate to the court a proper factual basis, and the bottom line with all juvenile court determinations would be that the intervention is in the best interest of the minor child. Grandparents, parents do have a right to intervene as a matter of law, foster parents do not, but every court has this inherent kind of authority. And I've outlined on page 5 of the outline five cases. They were cases I was involved in where the juvenile court exercised its discretion to grant permissive intervention by others, not just foster parents but aunts, uncles, brothers and sisters, into juvenile court proceedings. You'll notice that I put the word "timing" in there to show the point at which the intervention was granted, and typically those interventions were granted either after parental rights were terminated, after the parents had died, or right at the brink of termination of parental rights. The two cases that I know are of interest are Jorius and Destiny. It's my opinion that Jorius is really no good law any...no longer good law anymore. It's not been technically overruled by any appellate court but it regarded foster parents as interested parties under three bases. The first basis was under 43-285(2) and that was the old statute that said that the department's plan is entitled basically to a presumption of validity that it's in the child's best interest. And if any party wants to defeat that, any party, including the county attorney, the guardian ad

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

Judiciary Committee LR288
December 05, 2011

litem, the parent, or any other, quote, interested party could prove by a preponderance of evidence that the department's plan is no longer in the best interest. That was the first ground upon which Jorius found the foster parents to be interested parties. But the Legislature last summer amended 43-285(2) and eliminated the presumption or the preference in favor of the department's plan. It also took out that language requiring anybody to have to have a burden of proof, so that's no longer a viable basis. And in the recent case of Ethan M., the Court of Appeals, and I thought this was fascinating, they applied the new legislative enactment on appeal and said that the burden of proof now shifts to the state of Nebraska to prove that the department's plan is in a child's best interest. The second grounds upon which the court, in Jorius, recognized foster parent as interested parties was based upon the "notice" and "opportunity to be heard" language that is in 43-1314. However, Jorius was in 1996. The Legislature amended 1314 in 1998, two years later, and they specifically added this language that notice to the foster parent shall not be construed to require that such foster parent be made a party to the review solely on the basis of notice and an opportunity to be heard. The third basis and this is so unusual, but the court recognized the foster parents as an interested party in that proceeding based upon the fact that the biological mother had done a direct relinquishment of parental rights to the foster parents and also signed an open adoption contract with them. Over to the side I'm just going to say I'm not sure that would stand up today because the department is very proprietary about who can do a relinquishment and how it's done, but that's how it was done there. So I'm not sure Jorius provides much guidance. Destiny S. was decided in 2002. That involved a great-grandmother. She had placement of the child. The child was later adopted by a couple. The child was removed from the couple due to allegations of physical abuse. The child went back into the system and the department temporarily placed the child with the great-grandma and they said, listen, we're going to put this child with you temporarily while we look for adoptive placements. And they were considering great-grandmother as a placement. At the end of the day they decided that the child's interests would be best served by placing her with the cousin, and the grandmother hired an attorney and filed a motion to intervene and also a motion for discovery. The

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

Judiciary Committee LR288
December 05, 2011

juvenile court denied the intervention and said any discovery was limited to basically adducing evidence regarding her own qualifications and fitness to serve. She couldn't just do like a discovery war that sometimes happens in some of these cases. But the Supreme Court held that the great-grandmother was not entitled to intervene as a matter of legal right based upon her status as the child's maternal great-grandmother because Mom's rights were terminated and that has a domino effect and terminated her legal status, and there's...the other bases are set forth. So foster parents do have the right to file a grievance. They have the right to notice, and an opportunity to be heard. They have...are required to be allowed to have an opportunity to speak at a juvenile hearing to inform the court as to what's going on at any hearing they attend. They have the opportunity to complete the caregiver information form, which they can complete and give to the juvenile court. And in a proper case, the juvenile court right now has and does exercise discretionary jurisdiction to permit a foster parent to intervene in juvenile proceedings. The concerns in terms of expanding, by statute anyway, the foster parent standing would be if the Legislature looks at anything such as full legal party standing. This means you have the foster parent in the case as a full legal party. They can attend and participate in every hearing, just to the same extent as the parent or the county attorney can. They can file motions seeking orders from the court for any substantive relief. The concern I have, as a practitioner, is that really will have the ability to change the direction and landscape of the case. If you have three foster...different foster placements, you have three different foster parent interveners, you may have the case going in three different directions depending on the strength and competency of the other counsel in the case to either oppose or support that direction. You have the right to conduct discovery. And most concerning, I think, is the ability to file appeals from any final order of the juvenile court that the foster parent believes affects the foster parent's right or the child's best interests. And as everybody knows, appeals mean delay in terms of the child's permanency. The other concern that comes up for me is because foster parents sign placement agreements with the department, another typical provision in those contracts is that they agree to cooperate with the department and the juvenile court in terms of visits with the parents and the permanency objective by the

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

Judiciary Committee LR288
December 05, 2011

court. If foster parents are in place as a legal party in the proceeding and they can participate in an adjudication hearing or a termination of parental rights hearing, both of which typically are adverse to the parent, you then posture the foster parent in an adversarial relationship with the parent for whose child they're providing care, which could be interesting. Inevitably, money is going to come up. Someone will be asking the question of if the foster parent cannot afford to retain legal counsel, should they have court-appointed counsel, and then you're going to have the inevitable budgetary wars. HHS, there might be an argument you could make that they should provide or supply legal counsel for the foster parent, but, in essence, that would be requiring the department to hire an attorney to litigate against themselves. My bottom line concerns are listed on 9. Basically, I think to do this, to confer some sort of legal foster parent standing in terms of party status, would superimpose a great layer of complexity upon juvenile court proceedings that are already complex. It would interject significant delay into the proceedings in terms of just the time taken to hear foster parents' motions and the appeals. There would be great diversion away from the primary focus of the case, which normally is reunification of the child with the family, if that can be accomplished safely. I think there you risk instability within the juvenile court proceeding if more than one foster placement wants to intervene, and I don't think it's a good thing. But we have some cases where kids have been in five and six different foster placements, and if you have five or six different foster parents coming to intervene you have kind of a nightmare. You're going to also have potential claims, I think, of bias or discrimination if foster parent A gets to intervene and foster parent B doesn't, for whatever reason. The budgetary concerns, if there's a claim for court-appointed counsel; and then the enhancement of an adversarial posture between foster parents and biological parents. Now that happens sometimes already where you have foster parents that can't stand the biological parents, and vice versa, and we have great foster parents that do everything, you know, under the sun to accommodate what's going on in the juvenile system, but to put a foster parent at the counsel table in an adjudication hearing or a termination of parental rights hearing, seeking to either end that parent's rights or to adjudicate the child as lacking proper parental care I think unduly ramps up the

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

Judiciary Committee LR288
December 05, 2011

adversarial posture here. So those are kind of the legal overlay that I saw and the concerns that came up for me. [LR288]

SENATOR ASHFORD: Thank you, Chris, and I appreciate the information. Senator Council. [LR288]

SENATOR COUNCIL: Yes, thank you again, Senator Ashford. And thank you, Ms. Costantakos. Always good to see a fellow Bluejay alum. You were present when I was engaged in the dialogue with Senator Christensen and you know, I think, as well as anyone the genesis of this legislation. And I appreciate the detail explanation because your document kind of validates some of the concerns I had about the original piece of legislation in terms of granting foster parents the same kind of status as a biological parent, a party in the action. But in terms of just the limited focus, and I think the answer to my question is in your document, but in terms of the limited focus of if there's just an opportunity to participate when placement is being moved, where the ultimate placement of the child is not being adjudicated, it's just the department has decided to remove the child from one foster parent and place the child or children with another foster parent. Is it your opinion that the current administrative complaint process provides an adequate avenue for relief for a foster parent in that situation? [LR288]

CHRIS COSTANTAKOS: I don't know because I don't know if it's been used and how often it's been used and, if it's been used, with what effectiveness it's been used. There are no time lines in that procedure so, you know, that would be another concern. If I were a foster parent and I wanted to aggrieve the proposed removal of a child from the foster parent home, how fast does any of this stuff get resolved? And with the department, there's probably no guarantees. [LR288]

SENATOR COUNCIL: So is there a means by which that one issue could be addressed and have you reviewed AM1201 to... [LR288]

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

Judiciary Committee LR288
December 05, 2011

CHRIS COSTANTAKOS: No, I have not. [LR288]

SENATOR COUNCIL: Okay. And in regard to the multiple foster parent dilemma that you describe, under AM1201, as I read it, the only foster parents who would be granted any rights under it would be a foster parent who has had the child for at least six months and that, in terms of that foster parent's intervention, it would be limited to the removal and placement of that child in another foster home as opposed to ultimate reunification or adoption, for example. Would you see the same level of concern in that? [LR288]

CHRIS COSTANTAKOS: So there would not be, if I understand you, Senator, there would be no right of intervention for that limited purpose if the planned removal was to reunify the child with the parent? [LR288]

SENATOR COUNCIL: Correct. [LR288]

CHRIS COSTANTAKOS: Okay, or for... [LR288]

SENATOR COUNCIL: Correct. It would only be if the child was being removed from one foster home and placed into... [LR288]

CHRIS COSTANTAKOS: Yeah. [LR288]

SENATOR COUNCIL: At least that's how I read AM1201. [LR288]

CHRIS COSTANTAKOS: I think if Jorius is no longer good legal authority, you don't really have a statutory framework in place to address that. Let me tell you this, though. I've been in these hearings where there is an objection to the proposal to remove a child from placement. It's not like they start at 9:00 and get done at 9:30. One of the ones most recently I was in took, five full days of adversarial, a hotly contested trial, over three months because the court couldn't find time. So, you know,...but to answer your

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

Judiciary Committee LR288
December 05, 2011

question, no, there isn't a procedure, statutory procedure, in place to address that. If there were one, I think it would have to be extremely clearly delineated as to when the commencement of that involvement starts and when it stops because...although the court probably could extend it on its own discretion, in terms of extending that jurisdiction, and say, well, now that you're in, you're in kind of thing. [LR288]

SENATOR COUNCIL: Okay. But...and my final question is, is based on your analysis and what you've presented, under the existing juvenile court structure, if a foster parent, who had a child placed with them for more than six months, went and requested intervention, to intervene or to be heard, under the existing statutory framework the court has the authority and the jurisdiction to... [LR288]

CHRIS COSTANTAKOS: Yes. [LR288]

SENATOR COUNCIL: ...extend that relief and opportunity to participate. [LR288]

CHRIS COSTANTAKOS: A court could and it's a case-by-case basis, and that's...from some person's point of view, that's probably the problem. They would like it more uniform. On the other hand, my concern is you would open floodgates in a way that maybe the juvenile court might lose control over. But right now, if a foster parent had a child for one month and parental rights were terminated or parents had died, the court can exercise at some jurisdiction to grant them permissive intervention and allow them to come into the case. [LR288]

SENATOR COUNCIL: Okay. Whereas here, under AM1201 to LB648, in that scenario, if the child had only been placed with the foster parent for two months and they were going to be moved to another foster home, they would have no right of... [LR288]

CHRIS COSTANTAKOS: That would appear to be the case. I have not read it but... [LR288]

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

Judiciary Committee LR288
December 05, 2011

SENATOR COUNCIL: Okay. Okay. Thank you. That's all I have. [LR288]

SENATOR ASHFORD: Yes. [LR288]

CHRIS COSTANTAKOS: Sir. [LR288]

SENATOR HARR: Thank you for coming down today. [LR288]

CHRIS COSTANTAKOS: Senator. [LR288]

SENATOR HARR: Just a quick question: Is it the majority or the minority view that allows foster parents to have standing with...around the United States, if you know? [LR288]

CHRIS COSTANTAKOS: Oh, you're asking for like a statewide survey, do I know? [LR288]

SENATOR HARR: Yeah, if you know. [LR288]

CHRIS COSTANTAKOS: I don't know. [LR288]

SENATOR HARR: Okay. [LR288]

CHRIS COSTANTAKOS: I know that Utah allows foster parents to coprosecute terminations of parental rights proceedings, which seems kind of an interesting aspect. [LR288]

SENATOR HARR: Uh-huh. [LR288]

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

Judiciary Committee LR288
December 05, 2011

CHRIS COSTANTAKOS: I think that my sense is, from other cases I've read, that foster parents at times can intervene and have legal participation as in party status, but it's usually late in the case when there really is no reasonable hope or likelihood of parental reunification with the child. For example, the one case I was and am involved in, there is a terrible problem going on with the assistive technology required for these foster parents to maintain this little boy in their care. I mean he is a walking medical nightmare and the department is sort of offering this much and the foster parents need this much, in terms of the material modifications that need to be made in order to reasonably continue that care and competently care for him. And the judge in that case allowed the foster parents to intervene. Parental rights were terminated years ago and that's what's being addressed in this case, is how is the department going to help make...continue that placement? So my sense is, yes, under limited circumstances they can, but I may be speaking recklessly so I don't know how all the states do that. [LR288]

SENATOR HARR: Okay. Thank you. I appreciate it. [LR288]

CHRIS COSTANTAKOS: Senator. [LR288]

SENATOR ASHFORD: Seeing no other questions, Steve, do you have any questions? [LR288]

SENATOR LATHROP: None. [LR288]

SENATOR ASHFORD: All right, Chris, thanks. Erica. [LR288]

CHRIS COSTANTAKOS: Okay. Thank you. [LR288]

SENATOR ASHFORD: Do you want...who's next here? Erica. Thanks. [LR288]

ERICA FISH: Hello, everyone, today. Erica Fish, E-r-i-c-a, Fish, F-i-s-h. I've spoken to

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

Judiciary Committee LR288
December 05, 2011

all before. You all know that I am the genesis and the beginning of all this, and I want to quick address some things that Chris talked about a little bit because Chris has had some amazing cases. And let me tell you, if I could have had her as my attorney, I may not be here today. She's fantastic. But, you know, what's on paper and what is the law is different than what's been happening, because many of you are aware I have triaged many of your constituents' phone calls that have to do with foster care because they couldn't get answers anywhere else, and roughly I have several hundred documented cases. And I can tell you some school teachers that just the other day got their foster care license revoked and not even got a chance to have a hearing, never got a chance to plead their case. Now if they're really dangerous people, how would you feel about them teaching your kids in the school system? I mean that would be a pretty scary thought. And it's just...the idea that they were dangerous or that they were bad foster parents is just insane. And many of you know me on a personal level, I know, and saw the kids that were in my care and you guys can all testify that they were not in danger and that there were 50 pages of crazy things being said about me that each and every one of them we could document is completely wrong. But did I ever get a chance to plead my case? No. Did it...you know they stamped it in court as if it were the whole truth and nothing but the truth, but yet I was never allowed to say what was wrong or what was the law. And you know, since you guys all know the details and we don't want to beat a dead horse, you know, I just...it's something that keeps coming to my mind over and over and over again is, you know, this pipeline. So we spend, you know, \$2 million on researching the pipeline and we call a special session and we spend how many thousands of dollars on a special session to deal with this. And you know, different friends that I have that say, oh, but they're just kids and, you know, maybe they're not kid people, maybe you guys aren't kid people. But, you know, at the end of the day it's going to come to your pocketbook because, you know, I think the average...one time I heard and don't, you know, say this is the Bible, but you know something like if a kid isn't adopted by age 5, their likelihood of being imprisoned by age 20 was like somewhere in the 70 percent statistically nationwide. And we're going to pay for this one way or the other. And you know when we come to you with these bills that

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

Judiciary Committee LR288
December 05, 2011

we want to speak, it's not anything against biological parents because, you know, the other day I sat with a bio mom at the hospital coming off a methadone drug withdrawal and I sat there at the hospital. You know, I've footed the bill for so many of these bio moms, to help them. You know, my kitchen remodel is gone, my new car fund is gone, you know, so we as foster parents are necessarily out there for the biological parents. And I keep seeing it put on, you know, one side and the other side, foster parents and biological parents, because all the foster parents I personally know, on a personal basis, they want anything to help those parents. But you know, when they're removed like this (snaps fingers) or they changed hands, you know, and we have no rights to speak up because, yes, on paper Chris is right, you are supposed to go through an administration, but when you have an administration that could care less...some of you were even in meetings with me and the administration and it didn't go anywhere. And so until you guys stand up and say, if you're not going to handle this, you know, we're going to implement laws, and it's really sad that we have to implement laws for something that shouldn't even need to be a law because, quite frankly, we should all have such a high moral standing that we don't need laws to dictate that we have to do what's best for kids. But unfortunately, we do, and I just hope that each of you, when you think about this and you argue about your laws and most of...a lot of you are attorneys and you have a better understanding of language and Chris is a great resource on how to do this, but you guys have to step up to the plate and dictate things. And some things are happening in the court system. You know, like Chris said, you know, there are cases where judges are bringing them in and saying, do you, as foster parents, feel that the state is acting in the best interest of this child, and we're allowed to speak and say...you know, I gave you guys an example last year. I had one kiddo in my care and that judge was like tell me everything about this kid, tell me his likes, his dislikes, tell me what we can do to better serve him. And then I had the other one where it's, oh great, bring allegations against the foster parents; I don't even need to hear from them to know what's in the best interest. And you know, if we had all judges that cared about these kids and wanted to know everything, we wouldn't need these laws and we wouldn't need to even go about it. But unfortunately, there's some judges that, quite

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

Judiciary Committee LR288
December 05, 2011

frankly, don't care and whatever the social worker, even if she has no education and she's a young kid that's never even had kids of her own, it's good as gold. Or if you hit heads with the guardian ad litem, maybe for something as far as at what age the kid should enter kindergarten, and so they got into an argument about whether or not the kid should go this year or next year, and so then they file, you know, a removal because they're sick of dealing with that foster parent because that foster parent says, no, I think you need to spend more time getting to know this kid. I mean if all those different...I gave you so many random examples of why it's not here and if you guys personally want to talk to other foster parents that were never given the opportunity to speak out, I would be happy to give you those. I won't give them on public over here but in private I will give you names of many foster families who have gone through far worse things than I have. It's just you guys personally know my situation. And I hope you guys really consider finding a way to work through this for these other kids because, I mean, I came to you pregnant and now I have a little girl and pretty soon she's going to be in high school before we figure this situation out. I mean there's a comic strip about HHS, you know, and it has the little baby standing there and then they keep asking, you know, when is this ever going to be figured out, when is anybody ever going to start standing up for me, and I want you guys to think about that. If I'm here again when she's walking, that's a pretty sad state that we're in at the state because there's so many kids who can't hire expensive lobbyists to fight for them like the pipeline can. You know, if I had Jane Kleeb's get up and go and had signs in everybody's front yard that says take care of our children, take care of our children, instead of our pipeline, you know, maybe I'd be taken more seriously. But unfortunately, I don't, so think about all those kids that don't have an expensive lobbyist to wine and dine you. Any questions? [LR288]

SENATOR ASHFORD: Any questions of Erica? Erica, let me just tell you that had we had the opportunity to have a special session on HHS issues, I would have applauded that decision. I think that we will be spending a good part of the next 90 days, 120 days on HHS issues. Quite frankly, I don't see any other issue that even comes close to be addressed. We have 6,200, 6,400 foster care children in our state. We have to...we

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

Judiciary Committee LR288
December 05, 2011

must reform, not simply band-aid but reform that system, and it is such a critical issue that I don't think anybody on this committee would say anything different than that. We see what happens at the end sometimes when those...there are failures throughout that continuum of care, and I think this committee was ready to address your issue in some way, and I don't know what the answer is, and we've got good information from Chris and from you and from Mark. But this session will be the session of children, the 6,400 children who are in foster care, the 2,200 children who have been adjudicated as delinquent, the 2,200 in addition to the crossover children who are both victims of abuse and neglect and have violated or offended. I mean there are 10,000 children in our state that need a continuum of care and I promise you this, that what you're saying to us is not going on deaf ears, that we're not disregarding it. You don't need to wine and dine us with...at dinners. I think we get it. This committee is sensitive very much to what you're saying. And what you're talking about is going to be part and parcel of an overall reform of the system. The system must be reformed at its core. And I don't...by the end of April hopefully we will have put forth the kind of effort that was put forth on the pipeline issue or other issues that seem to be not dealing with our future and our children, but we focus that same attention on our children. And your point is getting through, Erica. I mean don't think that...I think the points that Chris makes, the juvenile courts are clogged now with cases when we should be...they should have the opportunity, when a case takes five days to try, then so be it and that should be able to be done and without...there should be a way of bringing other judges in to take care of other cases. There are so many solutions out there and we need to arrive at them. So I'm not...didn't want to make a speech to you, but your points are heartfelt. They make a difference to me and to these members of this committee. [LR288]

ERICA FISH: It's okay, keep speaking that, because we all have to pay attention and start fighting it. [LR288]

SENATOR ASHFORD: So anyway, so I appreciate...my point, I guess, is your points are well-taken and they're heartfelt and they're important and they are critical, and there

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

Judiciary Committee LR288
December 05, 2011

will be nothing more important to this Legislature. If we have to stand up on the floor and tell everyone in the building that until we solve the problems of our children, the 10,000 children that are in the system in Nebraska in some form, until we address finally, after all the years that we've addressed so many other issues, we can finally address the issues of those 10,000 children, I think that will be maybe movement forward. So anyway, thank you for your comments. [LR288]

ERICA FISH: Any other questions? Thanks. [LR288]

SENATOR ASHFORD: Mark. [LR288]

SENATOR CHRISTENSEN: I don't, unless people have questions. [LR288]

SENATOR ASHFORD: Does anybody else want to talk about this issue? If not, we'll take a little break and then move on to the... [LR288]

SENATOR LARSON: I think Colby... [LR288]

SENATOR ASHFORD: I'm sorry. Senator Coash. [LR288]

SENATOR COASH: (Inaudible) Senator Christensen a question, please. Thank you, Chairman. Senator Christensen, yeah, our office worked with you on getting some testifiers here. Have you talked with HHS about this particular hearing, this issue of foster parents? I didn't reach out and ask them to come here. I don't see anybody here from the department to... [LR288]

_____: (Inaudible) here. [LR288]

SENATOR COASH: Oh, we do. From HHS? [LR288]

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

Judiciary Committee LR288
December 05, 2011

_____: Yes. [LR288]

SENATOR COASH: Do you have any comments? [LR288]

_____: I have not brought any comments from the department. [LR288]

SENATOR COASH: Okay. I'll leave it at that, unless you have...I'm just curious if you're working with the department, if they have... [LR288]

SENATOR CHRISTENSEN: I haven't contacted them since we began this bill last time or last session on this. I found them very difficult to work with. [LR288]

SENATOR COASH: Okay. The other group, I know that foster parents in Nebraska have a pretty strong...I mean they try very hard to keep a strong group with Nebraska Foster Parents and Adoptive Parents Association. Have you worked with them at all? I'm just curious. I mean we've got one story, one approach here, but has the Foster Parent Association talked with your office about what they feel, as an organization, might be an appropriate approach to this? [LR288]

SENATOR CHRISTENSEN: Well, I guess we didn't talk to them recently. We reached out, sent stuff out when we was doing the bill the first time and I guess I didn't personally reach out a lot ahead of this hearing. I was just...I was hoping people would step forth because it has become more, in the public, more known. And at times I hate just to go call the people I want because, you know, one side. You hope people step up and share both sides of it and that you get a complete story of what's going on and not just a...loaded from one side. [LR288]

SENATOR COASH: I agree. [LR288]

SENATOR CHRISTENSEN: That's why I'm hesitant at times just to call and line up a list

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

Judiciary Committee LR288
December 05, 2011

of testifiers. [LR288]

SENATOR COASH: I understand. Thank you, Senator. [LR288]

SENATOR ASHFORD: Thanks, Mark. [LR288]

SENATOR CHRISTENSEN: Thank you. [LR288]

SENATOR ASHFORD: Why don't we just take a few minutes here and then we'll start the next. [LR288]