[LB781 LB869 LB875 LB925 LB930 LB983 LB988 LB1013 LB1132]

The Committee on Judiciary met at 9:00 a.m. on Friday, February 9, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB875, LB930, LB781, LB869, and LB983. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Ernie Chambers; Steve Halloran; and Matt Hansen. Senators absent: Bob Krist and Adam Morfeld.

SENATOR EBKE: Okay. Good morning. Welcome to the first recess day hearing schedule. My name is Laura Ebke. I chair the Judiciary Committee. I would like my colleagues to introduce themselves starting over there with Senator Halloran.

SENATOR HALLORAN: Good morning. Steve Halloran, senator representing District 33, Adams and the best part of Hall County.

SENATOR HANSEN: Matt Hansen, representing District 26 in northeast Lincoln.

SENATOR PANSING BROOKS: Patty Pansing Brooks, representing District 28 right here in the heart of Lincoln.

SENATOR CHAMBERS: Ernie Chambers, District 11, Omaha.

SENATOR BAKER: Roy Baker, District 30, southern Lancaster County and Gage County.

SENATOR EBKE: And I want to thank my colleagues for making an effort to be here today. Senator Pansing Brooks has to be, Senator Hansen, because they've got bills up, but I do want to thank them. On a recess day, this is a real effort for some of us to make. Assisting the committee today, or this morning, anyhow, for this batch are Laurie Vollertsen, our committee clerk. She'll be sitting to my left all day. And then Tim Hruza, who is one of our two legal counsels, will be here this morning, and I think we switch out this afternoon. Also we have Rebecca and Megan who are our pages today. Megan, where do you go to school?

MEGAN CANFIELD: Nebraska Wesleyan.

SENATOR EBKE: Okay, so we have Megan from Nebraska Wesleyan and Rebecca from Doane University. Hopefully nothing bad will happen between the two of them. That's a big rivalry. At the (laughter)...on the table over there you will find some yellow testifier sheets. If you are planning on testifying today, please fill one out and hand it to the page when you come up to testify. This helps us to keep an accurate record of the hearing. There's also a white sheet on the table if you don't wish to testify but would like to record your position on a bill. Also, for future reference, if you are not testifying in person on a bill and would like to submit a letter for the official record, all committees have a deadline of 5:00 p.m. the day, the business day before the hearing. We'll begin bill testimony with the introducer's opening statement. Following the opening, we'll hear from proponents, opponents, and then those speaking in a neutral capacity. And the introducer can then provide a closing statement if they'd like. We ask that you begin your testimony by giving us your first and last name and spell them for the record. If you're going to testify, I ask that we try to keep the on-deck chairs up at the front there filled so that we can transition relatively quickly. If you have any handouts, please bring up at least 12 copies and give them to the page. If you don't have enough copies, the page can help you make more. We will be using, and have been using all session, a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask you to wrap up your final thought and stop. And about 15 seconds after that, a buzzer will go off. Okay? So that's your goal, not to let the buzzer go off. As a matter of committee policy, I would like to remind everyone that the use of cell phones and other electronic devices are not allowed during the public hearings. Senators may use them to take notes or stay in contact with their staff back in their offices. At this time, and I'm going to do the same thing, take a look at your cell phone, make sure that it's on silent or vibrate mode, and then we will proceed. So one other thing...well, I guess this won't happen today. People won't be coming and going too much, although we may have some senators come in a little late, had some other prearranged things going on. So with that in mind, let's get started, LB875 and Senator Bolz. [LB875]

SENATOR BOLZ: (Exhibit 5) Good morning. Thank you, Judiciary Committee, for being willing to hear this bill on a recess day and thank you for your further consideration of

scheduling for me and my work schedule, as well, so I appreciate it. My name is Kate Bolz and for the record that's K-a-t-e B-o-l-z. I'm here to introduce LB875. As you are all aware, when offenders are convicted and sentenced, the sentence structure includes a maximum and minimum limit. In cases of serious violent crimes, both the maximum and minimum sentence can be like. In this instance, the offender is never considered for parole. LB875 would prohibit this sentence structure for juveniles. It would specifically prohibit convinced offenders from being sentenced to death or life without the possibility or parole for any offense if they were under 18 years of age when they committed the offense. LB875 would also bring Nebraska into compliance with recent U.S. Supreme Court decisions scaling back extreme penalties for children, and permit the Parole Board to evaluate how youth have grown and matured while incarcerated, but parole eligibility does not guarantee release. Currently Nebraska is one of 39 states in which children who are not yet 18 years of age can be tried as adults and sentenced to die in prison--life without the possibility of parole. Let's put that into perspective. Because of their age and immature judgment, state statutes forbid the sale of alcohol and cigarettes to children of this age. They are not mature enough to vote, enter into a financial contract, or serve in the military, yet the courts can hold them as fully responsible as an adult if they commit first-degree murder or other serious offenses. Nebraska does not have a minimum age at which a teen can be sentenced to life without parole. Teens who are age 13, 14, and 15 at the time of their crimes are now serving life-without-parole sentences in Nebraska prisons. Some have been incarcerated for over 30 years. Twenty-seven youth were serving live-without-parole sentences prior to the U.S. Supreme Court case and are currently in the process of being resentenced. Four of those individuals have been released following their resentencing hearings. So who are these youth that commit serious offenses? National data tells us that nearly 80 percent witness violence in their home. More than 50 percent witness weekly violence in their neighborhoods. Fifty percent of all youth have been physically abused, 20 percent have been sexually abused, and black children are serving life without parole at a per-capita rate that is ten times that of non-minority children. Despite these considerations, I understand that many who...there are many who may ask what is wrong about life without parole for youth who commit a serious violent offense? A life sentence without parole certain holds a child who commits an offense responsible for their crime and we can all agree that this is necessary, but it gives no recognition to the immaturity of children who are under age 18 and their capacity to grow and change. An appropriate sentence for violent behavior of a child should do both. When it comes to sentencing adolescents, in addition to the

evidence related to the specific offense, we need to evaluate what research says about their development. Sentences should take into consideration that juvenile brains are still developing, that children are less capable than adults in long-term planning, regulation of emotion, and impulse control. Children are more vulnerable, too, and more susceptible to peer pressure, and children are uniquely capable of maturing and changing due to the plasticity of their brains, making them candidates for rehabilitation. While it's true some children who commit serious violent crimes may not be rehabilitated in prison and must remain there, this is not the case for everyone. Those who change can be responsible, productive citizens, contributing members of our communities. An irreversible life-without-parole sentence makes that impossible. Sentencing minors to irreversible life terms sends an unequivocal message to young people that they are beyond redemption. I am aware that children have committed crimes that are just as shocking and horrendous as those of adults; they may even have premeditated crime or appear unrepentant. Further, some may not be as responsive as others to rehabilitation. In those cases it is important to remember that the possibility of parole is not a guarantee of parole. But given the possibility of parole, assuming good behavior, it would still come after 20 or 25 years of incarceration, depending on the offender's age. Under LB875, it is possible to both hold young people responsible for their crimes while giving recognition to their maturity level and continuing capacity for change. Following my introduction, you will hear from the Campaign for Fair Sentencing of Youth and others who have worked on this issue longer than I have, and you will hear from individuals who have been personally impacted by the issue. I encourage you to take advantage of them for technical questions. The final note that I'd like to make is that many of us who were in the body in 2013 supported and we helped pass LB44, which took into consideration the Supreme Court cases available to us at the time, so there are some of us who were part of putting the current status quo into place. I think it is in no way inconsistent to bring this bill forward to you today because we have a new Supreme Court case, Montgomery v. Louisiana, which affords us the opportunity to have this discussion again and speak again together about why life without the possibility of parole for juveniles is not the best public policy for our state. So I encourage your support of LB875 and I'd be happy to try to answer your questions. [LB875]

SENATOR EBKE: Questions for Senator Bolz? Senator Chambers. [LB875]

SENATOR CHAMBERS: Nebraska abolished the death penalty for people under 18 years old and then the U.S. Supreme Court did the same thing. So that part of the bill can be ignored. [LB875]

SENATOR BOLZ: Very good. [LB875]

SENATOR EBKE: Anything else? Senator Pansing Brooks. [LB875]

SENATOR PANSING BROOKS: I just want to thank you for bringing this bill. It's really important. I helped lead a juvenile justice national panel. We created...we have a book that's come out on best practices and this is right there among the best practices to get rid of juvenile life without parole. I really...I'm having some trouble understanding, and maybe some lawyers or maybe you can explain, if the Supreme Court has ruled, why do the states need to act? I don't understand that. [LB875]

SENATOR BOLZ: I'll defer that question to Nikola,... [LB875]

SENATOR PANSING BROOKS: Okay. [LB875]

SENATOR BOLZ: ...who is testifying behind me, just because I think you'll benefit from her expertise. [LB875]

SENATOR PANSING BROOKS: Okay, thank you. [LB875]

SENATOR BOLZ: Yeah. [LB875]

SENATOR PANSING BROOKS: Thank you for bringing this, Senator Bolz. [LB875]

SENATOR BOLZ: Certainly. [LB875]

SENATOR EBKE: Senator Chambers. [LB875]

SENATOR CHAMBERS: By the way, I hope you know I support your bill,... [LB875]

SENATOR BOLZ: (Laugh) Certainly. [LB875]

SENATOR CHAMBERS: ...because I didn't mention that. [LB875]

SENATOR BOLZ: Certainly, Senator. [LB875]

SENATOR CHAMBERS: Okay. [LB875]

SENATOR EBKE: Other questions? Okay, thanks. First proponent. [LB875]

NIKOLA NABLE-JURIS: (Exhibit 6) Good morning, Chair Ebke and members of the Judiciary Committee. My name is Nikola Nable-Juris, with the Campaign for the Fair Sentencing of Youth. For the record, my name is spelled, Nikola is N-i-k-o-l-a; last name is Nable-Juris, N-a-b-l-e, hyphen, J-u-r-i-s. I want to thank Senator Bolz for introducing this bill and I'd like to further answer Senator Pansing Brooks's question and explain what the country has been doing on this issue nationally. The U.S. Supreme Court in the last decade and a half has consistently been scaling back extreme penalties for youth under 18. As Senator Chambers mentioned, in 2005, the U.S. Supreme Court ruled that the death penalty was unconstitutional for those who are under 18 at the time of their offenses. In 2011, the Supreme Court said that life without parole was unconstitutional for nonhomicide offenses. If no one was killed, it was just a disproportionate sentence for youth under 18. In 2012, the Miller v. Alabama decision ruled that mandatory life-without-parole sentences were unconstitutional for youth, that a sentencer needed a full range of options to be able to consider the circumstances of the case, the individual before them, whether life without parole was or wasn't an appropriate sentence, versus automatically giving the sentence upon certain convictions. That's the case that Senator Bolz referenced. The body passed a bill in 2013 to make life without parole a discretionary sentence for youth under 18 in Nebraska. The way the current law stands, youth can still face life without parole or they can face a parole-eligible sentence for homicide offenses. The subsequent case in 2016 was the case of Montgomery v. Louisiana. This case determined that the court's previous decision in 2012 applied retroactively and states needed to remedy violations of the earlier decision, so anyone

who was sentenced to life without parole prior to the 2016 decision had an opportunity to go back for resentencing. The Supreme Court also in 2016 clarified that not life...and I will quote for you. "Miller did bar life without parole...for all but the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." So the Supreme Court has not yet outright banned the sentence. They've narrowed it to say only youth who are found to be permanently incorrigible. In response, states have been eliminating this sentence from their sentencing structure for youth under 18. They've said, by the time that we determine who is that permanently incorrigible youth and who is not, we'll just not use the sentence if you're under 18. So that's why states, neighboring states North and South Dakota, Colorado, Iowa, Wyoming, Kansas, have just said we're not going to even use the sentence, life with parole is sufficient. And we think that's also true for Nebraska. If you look at the 27 youth who were previously serving life without parole in Nebraska, all but four have been resentenced and none have yet received a life without the possibility of parole sentence. They've all received ranges of years that they have to serve but have a parole eligibility date at some point. So what this bill says is life without parole is not necessary if you're under 18. And states who have kept it have experienced it's costly. You have to have a death penalty-style sentencing hearing to determine who is that permanently incorrigible youth. There is ongoing litigation for the people who were sentenced to life without parole who come back and say, I've been rehabilitated, I don't fall under that category. And we do think that the U.S. Supreme Court is aiming to eliminate this entirely when you see their trajectory of cases and the cases that are pending before the court. I apologize for... [LB875]

SENATOR EBKE: That's okay. [LB875]

NIKOLA NABLE-JURIS: ...running tight on time, but happy to answer more questions just in terms of the national posture and other folks who have been supportive of this reform across the country. [LB875]

SENATOR EBKE: Questions? [LB875]

SENATOR PANSING BROOKS: That was helpful, thank you. [LB875]

SENATOR EBKE: Senator Pansing Brooks. Anybody else? It's too early. Thanks. [LB875]

NIKOLA NABLE-JURIS: Yes. [LB875]

SCOUT RICHTERS: (Exhibit 7) Good morning. [LB875]

SENATOR EBKE: Good morning. [LB875]

SCOUT RICHTERS: My name is Scout Richters; that's S-c-o-u-t R-i-c-h-t-e-r-s. I am here on behalf of the ACLU of Nebraska in support of LB875. Brain development science tells us that there are fundamental differences between the adult brain and the teenage brain. We know that portions of the brain that are responsible for decision making and evaluating consequences of actions are not fully developed until a person reaches their mid-20s. This also means that young people have a greater potential for rehabilitation. The line of four Supreme Court cases over the course of the last 13 years have recognized these principles of development and the current state of the law is that only in the very rarest of cases may a child be given a sentence of life without parole. Children convicted as adults also need a, quote, meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation. However, despite this general prohibition against life-without-parole sentences for juveniles, children that are convicted of (sic) adults in Nebraska are regularly given lengthy term of year sentences where even the low number can be 80 or 90 years, which effectively amounts to a de facto life sentence, which gives no meaningful opportunity for review. This bill also makes financial sense. A 50-year sentence for a 16-year-old will cost approximately $2.25 million over the course of that sentence. So we offer our full support of this bill because it honors Supreme Court jurisprudence and it also recognizes the global consensus that children and adults...children are entitled to special protection and treatment. And we thank Senator Bolz for bringing this bill and I would be happy to answer any questions. [LB875]

SENATOR EBKE: Thank you, Ms. Richters. Questions? Guess not. Thank you. [LB875]

SCOUT RICHTERS: Thank you. [LB875]

SENATOR EBKE: Next proponent. [LB875]

THOMAS RILEY: Good morning, Senators, Madam Chair. My name is Thomas Riley, T-h-o-m-a-s R-i-l-e-y. I am here in support of LB875 as a representative of Nebraska Criminal Defense Attorneys Association and speaking for the Douglas County Public Defender's Office. In the wake of the Miller and Montgomery cases, our office had the responsibility and opportunity to represent 13 individuals from Douglas County who were resentenced under the requirement of the Supreme Court. What I want to tell you about is something that we discovered. When we gathered the information for the resentencings in the wake of the statute change that required 40 to life, we gathered all of the "pen" records of these 13 individuals and a very, very clear pattern was observed in virtually all of them and it bears out the science that you just heard about with regard to developmental...the development of adolescents. The virtually every one of our cases showed that for the first five or six or seven years that they were incarcerated, they had write-ups, they had problems in prison and the numbers abated as they got older. I had one client who did over 40 years in prison, had one write-up, one write-up in 40-plus years. We had a number of others, virtually all of them with one or two exceptions, after 15-18 years in prison, had they not had a life sentence...and keep in mind these are people who had no hope at the time that they were in prison, they had no hope of getting out. If they still managed to conform their conduct to norms, what I want to say is that the ability to be released in 20 years or, in the case of second degree, 10 years, makes a lot of sense. It puts some responsibility on the Parole Board but it would eliminate the judges who are sentencing a 16- or 17-year-old and don't have anything except the history of the last five years. It gives the Parole Board the opportunity to say to these folks who would otherwise have been able to be in community corrections but they served another 25 or 30 years...there was no more programming for them to complete. There was nothing else for them to do. They had done everything they should and now they were just doing time on a sentence that, as I said, at the time it was rendered left them in a hopeless condition. And I think that this bill is a very progressive-thinking bill. Maybe that's a bad word, but it's forward looking and it's a type of legislation that I think should be what we want to reflect the people of Nebraska recognizing that a 15- or 16- or 17-year-old, even though they commit an awful offense, are not lost forever. And the evidence is out there to support that almost unanimously. [LB875]

SENATOR EBKE: Thank you, Mr. Riley. Questions? Senator Chambers. [LB875]

SENATOR CHAMBERS: Did you finish all that you had to present? [LB875]

THOMAS RILEY: Pretty much. The only thing I would like to say, we do have, of the 13 we represented, 4 of those men are currently out of prison and are doing quite well. We stay...we've...I've got to tell you, we've got a bond with them. We stay in contact with them. They're doing very well and I have no concerns about their recidivism, their...they have great stories. I wish they could come here to tell them to you. [LB875]

SENATOR EBKE: Okay. Senator Pansing Brooks. [LB875]

SENATOR PANSING BROOKS: Thank you for coming, Mr. Riley. And I can't help it because you don't come very often. Can you just briefly say why it's important for kids to have counsel and have you representing them and why it's necessary? [LB875]

THOMAS RILEY: Well, I mean, obviously in the context where we're engaged in the public defender's office, typically what we are doing in juvenile court or in adult court is representing kids who are accused of breaking the law, whether it's juvenile or adult. And obviously they're vulnerable, they're malleable, and they can be taken advantage of. At least in Douglas County, for instance, when a person is arrested for a felony as an adult, we interview them before they go to court. Every day, 365 days a year, we interview someone. With misdemeanors, we have to wait until we're appointed by the court. And in juvenile court, it's a bit of a mix because sometimes they get released through the probation office before court, and then we don't get appointed. Other times, if they're detained, we do, and we get to speak with them. And it's really important for them to realize that they have someone that's on their side and one thing that has to be recognized, though, is there's a difference between a lawyer representing a youth that's charged with a crime or what would be a crime in juvenile court, versus a guardian ad litem. [LB875]

SENATOR PANSING BROOKS: Right. [LB875]

THOMAS RILEY: A lot of times there's two, there's two lawyers, because if we're representing them, accusing of a crime, as a public defender we have to kind of follow what their instructions are--do they want to plead guilty, do they not want to plead or make an admission, whereas guardian ad litem does what's in the best interest of the child, whether the child at that time agrees with it or not. So there are two roles and they're...I think they're both vital roles that can be played and will cover all the bases. [LB875]

SENATOR PANSING BROOKS: I'm just trying to get one lawyer representing children because I'm being told that prosecutors and judges can handle it just fine across the state, even though it's a constitutional right under In re Gault. [LB875]

THOMAS RILEY: There are, yes, there are situations that I have observed when...and here's what happens is... [LB875]

SENATOR PANSING BROOKS: Lancaster, Douglas, and Sarpy are doing this now, so I'm (inaudible). [LB875]

THOMAS RILEY: And I could tell you, in Douglas County, there are times when a kid will come into juvenile court charged with stealing a car or something of that nature, with the parents, and parents say we're not hiring a lawyer and the judge will say, do you want a lawyer, and the kid, probably scared to death, is going to say, well, I'll do what mom and dad say, and sometimes they don't get appointed. I don't think that's a good practice. [LB875]

SENATOR PANSING BROOKS: Well, my bill will change some of that, so thank you for speaking, appreciate it. [LB875]

THOMAS RILEY: Sure. [LB875]

SENATOR PANSING BROOKS: Thanks for coming. [LB875]

THOMAS RILEY: Sure. [LB875]

SENATOR EBKE: Senator Halloran. [LB875]

SENATOR HALLORAN: Thank you, Chair Ebke. I understand the compassion for the youthful offender, I really do. I just from time to time have to ask, where is the compassion for the victims of the crime? Is there any hope for them? Oftentimes a victim is dead, but the family, survivors, is there any compassion for them? Do they need any special treatment in this kind of a case? [LB875]

THOMAS RILEY: Well, of course there's compassion for them and the Legislature over the last several decades has given them a voice at sentencing. They've always had opportunity for a voice, but now they have a statutory opportunity for a voice. I don't mean to be callous, but compassion, whenever I'm picking a jury, I tell the jurors we can all have compassion but we have to be dispassionate when we're doing our jobs. Okay. We can't say, well, I feel bad for victim A's family but I don't feel as bad for victim B's family because they're not as nice of people. That gets into...we're sentencing...under LB875 you're sentencing an individual for an offense that he committed. You're not sentencing the family of the victim. They have issues that they have to deal with and we have compassion. I never, when I'm giving an allocution sentence, I'm never going to attack victims. Oftentimes, I...we're in situations where the victim's family or a victim is addressing the court and, you know, they have every opportunity. And believe me, there's plenty of compassion in the courtroom both by the court and by the prosecutors and by the probation office. So they have a voice and they...the compassion for them is recognizable. Any of the big cases that have come down in Douglas County, whether it's been sentencing, almost every single time you can read the comments by the judge about the defendant and how they have...how the court has compassion for the victim. So I think that the notion that there's no compassion for the victim is a bit overblown, honestly, with all due respect, sir. [LB875]

SENATOR HALLORAN: So we should be this compassionate towards the person convicted or being convicted of a crime as well? [LB875]

THOMAS RILEY: I'm sorry? [LB875]

SENATOR HALLORAN: So your instruction to the jury is that they should be dispassionate towards both the victim and/or the... [LB875]

THOMAS RILEY: What I'm saying is that you have to be dispassionate. As a juror you can't let your emotions dictate what you should do. You should follow the rules and the law. So I don't say, please be dispassionate when it comes to the state's witnesses but be really compassionate for my client. That's not how it works. I'm trying to be honest with them and say, hey, jurors, this is what your role is. And I think judges have the same role, and that is to be dispassionate. They can't be swayed by emotion or compassion. We're all human and those emotions have to be set aside in a courtroom. And I don't, like I said, I don't mean to sound cold, but I think that's the reality of the situation. Otherwise, we're exercising law on emotion and that's not how our system is designed. [LB875]

SENATOR EBKE: Other questions? Thanks for being here today, appreciate it. [LB875]

THOMAS RILEY: Yep, thank you. [LB875]

SENATOR EBKE: Next proponent. [LB875]

JEFF PICKENS: Good morning. My name is Jeff Pickens, J-e-f-f P-i-c-k-e-n-s. I'm testifying in support of LB875 on behalf of the Nebraska Criminal Defense Attorneys Association. I'm the chief counsel for the Nebraska Commission on Public Advocacy. Over the last few years I've represented six men whose life-without-parole sentences were vacated because of the U.S. Supreme Court Opinions in Graham v. Florida and Miller v. Alabama. These cases were in six different counties: Douglas, Washington, York, Hall, Dawson, and Sarpy. Before resentencing, a mitigation hearing was held in each of the cases pursuant to Nebraska Statute 28-105.02 and Montgomery v. Louisiana. The evidence presented at each mitigation hearing was very different because each of these men were very different from each other. The six men I represented had very little in common but they did have a few things in common. They were originally sentenced to die in prison. They entered the prison system when they were children. They had no hope of ever getting out of prison. Because they were never going to be released from prison, the prison did not see any reason to spend money to rehabilitate them. The most important thing the six

men had in common is that by the time they were in their mid-20s and their brain was fully developed, they had all turned out to be really good people. Some of these men committed heinous crimes. Many judges today are likely to see children who commit heinous crimes as irreparably corrupt and will sentence them to a period of incarceration that ensures they will not be released until they are well into their 50s, 60s, or 70s. Some will never be released. At the time of sentencing, judges have no way of knowing what kind of a person a child will become after he or she has a fully matured brain. The Department of Correctional Services and the Parole Board are in the best position to know what kind of people these children become after their brains are fully developed. I support LB875 because it allows the Parole Board to decide whether and when release on parole is appropriate. This bill would make these children eligible for parole. That does not mean that they're going to be released on parole. That's quite a different thing. The Parole Board does not release people convicted of these serious crimes unless they are certain that it's appropriate. There is one issue that's still out there that hasn't been decided, and that is when does a term-of-years sentence become a de facto life sentence. I had one of my clients was sentenced to 90 years to life. We appealed that to the Nebraska Supreme Court saying it was a de facto life sentence. The Nebraska Supreme Court disagreed. The U.S. Supreme Court has not decided that issue yet. We did take or we filed petitions for certiorari in two of our cases and I think Mr. Riley did in a few of his cases as well, and the U.S. Supreme Court refused to take those cases, but that is an issue that's still out there. All of the men I represented have remarkable stories. They're all different stories and they're all remarkable people and I wish I had time to tell you their stories, but that would take probably the rest of the morning. I would welcome the opportunity to answer any questions about my clients or the pertinent law, including Senator Pansing Brooks's question and Senator Halloran's question. Thank you. [LB875]

SENATOR EBKE: Thank you, Mr. Pickens. Questions? Senator Hansen. [LB875]

SENATOR HANSEN: Would you answer the two questions you wanted to answer? [LB875]

JEFF PICKENS: Yes. I think it...I would go farther than your bill goes, although I think your bill is terrific. I think it's important for children to have counsel at the time they're interrogated. It's not enough to have the rights advisory because they don't have the capacity to understand the

rights or the ability to waive those rights. So I would go a little farther, but I do think it's important for children to have lawyers because oftentimes their parents are pressuring them to plead guilty. And so having a parent there is not helpful in most cases. It seems that only the very wealthy people will have lawyers for their children to make sure their rights are protected. [LB875]

SENATOR PANSING BROOKS: And I'll respond to that, that I agree, and that's...I've got an upcoming interim study on school resource officers and the fact that there are people in the schools forcing people to confess and they are connected to the police department, so they're an arm of the law sitting there listening to some confession that's forced at school. So I agree with that. It doesn't go far enough, but it's something, so it's a minimal compliance with the U.S. Supreme Court ruling 51 years ago. [LB875]

JEFF PICKENS: Senator, one of the things that I observed when I was doing these cases, after I'd been doing them for a couple of years, is that particularly probation officers who do the presentence reports are looking for remorse and empathy in these defendants and it seems that they're trained to do that and when they don't see sufficient remorse or empathy, then that becomes a huge issue in the presentence report. One thing that I've noticed is that police officers, probation officers, and prosecutors have no empathy for these children. They only have empathy for the victims. It's appropriate for them to have empathy for the victims, but they should also have empathy for these children who commit these crimes. The U.S. Supreme Court has said that sentencing is one of the most difficult tasks for judges and the judges need to take into account the...I guess should have empathy for the child, as well as take into account what society needs in terms of punishment. One of the most troubling things that I've observed in these cases is that the judges have tremendous empathy for the victims and at these sentencing hearings we'll talk for long periods of time about how terrific the victims were, how they were great people, and how their life was taken senselessly, but of the six cases I did, I only saw empathy from the judge in one case. So maybe it's something we need to do to educate our judges, but it's troubling when judges don't have empathy for the person they're about to sentence. Thank you. [LB875]

SENATOR HALLORAN: If I may ask another question or make a comment, at least, you know, we're imperfect human beings, so empathy is not something that fits on a ledger sheet very well

for any of us. So, yes, the judge should have empathy towards both the victim of the crime and the perpetrator of the crime. I understand that. But ultimately what we're talking about here is there is no parole for the victim. Oftentimes they're dead, but their family has no reprieve. Right? [LB875]

JEFF PICKENS: Yes, sir. That's true. [LB875]

SENATOR HALLORAN: And I guess balancing that is my challenge, okay, because they don't have recompense. They have no way of getting back their loved one that was murdered and they have to live with that. It's a life sentence for the family. [LB875]

JEFF PICKENS: It's heartbreaking, Senator. [LB875]

SENATOR HALLORAN: It is. [LB875]

JEFF PICKENS: But the Bill of Rights does not protect the victim. It was...our...the Bill of Rights were not intended to protect the victim of a crime. The Bill of Rights are intended to protect the defendant in the criminal case. [LB875]

SENATOR HALLORAN: I understand, sir, but the victim has no defense after they're gone. [LB875]

JEFF PICKENS: That's right. [LB875]

SENATOR HALLORAN: Okay. Thank you. [LB875]

SENATOR EBKE: Senator Chambers. [LB875]

SENATOR CHAMBERS: I've been in this Legislature a long time and I get tired of hearing these people who don't understand the constitution or the laws. Civil actions are brought in the name of the victim or the victim's representative or the victim's family. Criminal laws are different. A crime is deemed under the criminal law not to have been committed against the

person but against the state. And if people knew history, they would understand how that came down from England. They used to have blood feuds and if I did something to your family, you did something to mine. There was a limited number of adult males who could fight for the king. And believe it or not, the blood feuds began to diminish the population to such an extent that the king said there would be no more blood feuds. This is a matter of history, but people in America don't read history, they're highly emotional, they generally are so-called conservatives, they are vindictive and want revenge until it happens to them, one of their family members, or one of their kind. So what the king said is that no longer will a crime...civil, all that, can remain the same. There will no longer be blood feuds. The king is the one who will establish a punishment because the way these blood feuds are operating, they are committing acts that endanger the welfare of the realm and diminish the king's ability to carry on warfare. And they had frequent wars in Europe. From now on, criminal actions will be brought in the name of the state. The crime is deemed to be committed against the state, not the individual, so once that determination was made, you will find no criminal action in Britain that says this individual’s family against the perpetrator. It's not Jones against Smith. It's the state versus the perpetrator because the crime was deemed to have been committed against the state. In civil matters you could try to get damages where you cannot make a person or a family whole, but you give damages or some kind of compensation to recognize the fact that harm was done. But all criminal actions are brought in the name of the state, not the families. And if people could be made to understand that by judges, by lawyers and others, we wouldn't have those people always popping up and saying, well, what about the victim, the victim cannot be brought back alive. Well, obviously not. And those are the kind of people who should say that if there's an accidental killing of somebody, then the person who accidentally did it should get life because that person took a life. So I want my comments in the record because I hear this all the time by uninformed, vindictive people who show in their life and in the things they do in the Legislature they have no compassion for anybody except themselves and their kind. Often they're people who are getting benefits from the government in the form of payments for not growing crops, other types of benefits that are based on other people paying taxes, and those spongers and moochers getting taxpayer money. But then when there are poor people who are ill and cannot afford medical care, they say, no, we don't want them getting a handout, we don't want them to talk about entitlements. So I just disregard those kind of people and when it comes up on the floor of the Legislature, then that's where the battle can occur. But I'm not going to sit in a committee hearing and let those statements be made and

give the impression that I'm agreeing with nonsensical things that are stated because somebody is ignorant of the law, ignorant of history. And I've used you for a sounding board because you've been used for a sounding board by what I call the other side. I don't have any questions of you, however. [LB875]

SENATOR EBKE: Thank you, Senator Chambers. Any other questions? Thanks for being here today. [LB875]

JEFF PICKENS: Thank you. [LB875]

SENATOR EBKE: Next proponent. [LB875]

ANNIE HAYDEN: Good morning, Senators. My name is Annie Hayden, A-n-n-i-e H-a-y-d-e-n, here representing the Nebraska Criminal Defense Attorneys Association. I'm also an assistant public defender at the Douglas County Public Defender's Office. My plan was to allow Tom Riley to do the talking this morning; however, we were also expecting that one of our clients would be here to speak to you today. I think he's the one that you guys really need to hear from. He was unable to make it because of a work obligation, but I have gotten his permission to tell his story to you today. We've known him very well for four years. His name is Shakur Abdullah. He was originally sentenced to death at age 16. He actually took it upon himself to appeal that death sentence and won by himself, got that overturned, but still he was facing a life sentence. He's the one that Tom Riley was saying had, one, right up in his entire term of incarceration, he has exhibited no violence since that one act at age 16, no violence before, no violence after, and yet he was still sentenced to death and then life in prison. When he came up for resentencing, he was lucky enough to have a judge that got it, that understood not only that he deserved to be released, but that he didn't need the parameters of parole. He was one of the few that did not need the supervision. He had proven that over his 41 years of incarceration, so he was released after 41 years without any parole. Since that time he has not wasted a single second of his life outside of prison. He works full time for ReConnect, Inc., which is a...it connects people who are getting, transitioning from jail or prison to the outside, it provides them services. So Shakur now goes into jails and prisons, both adult and children's, to speak with them, help them with these transitional services. This is his full-time job. I believe he's a senior case manager there. In

addition, he is very active with the Legislature and trying to get bills passed. He recently...the Campaign for the Fair Sentencing of Youth holds a conference in Washington, D.C. They flew him out there recently as a guest of honor to tell his story and he met so many other people in his situation. And to address Senator Halloran's questions about victims, I think Shakur says it best when he says he and others in his situation, it's very common for them to have...to feel bad that they got out. Their victims can't come back. The families will live with that forever. And so they actually feel a sense of guilt that they have been released and they get the second chance of life. And they say, why don't others get this chance? And Shakur has told these people and counseled them--he's a very, very wise man, Shakur--and he's counseled them to change their view to say, why not me? And if you have...he says if you have that kind of mind-set, then you're going to utilize the chance that you've been given, you're not going to mess it up, you're going to do whatever you can in the few years that you have remaining. Shakur is now...he got released when he was 57. He's been out for two years, so he's 59 years old. Luckily, he's...one, his health is still in good shape, unlike many of the others. He's very lucky because he, even though he had no hope, he was very careful to take care of himself for all these years and he...without...I can't imagine him not being in society with everything that he's done in these short two years right now, and so he is a model of rehabilitation. I wish he could be here today because you guys would see that. He's a much better speaker than I am, but I felt that his story needed to be told. And I can go on, just like Jeff and Tom, about our clients for hours and hours, but if you have any questions I'd be happy to answer them. [LB875]

SENATOR EBKE: Thank you, Ms. Hayden. Any questions? [LB875]

ANNIE HAYDEN: Thank you. [LB875]

SENATOR EBKE: Next proponent. [LB875]

VICKIE TAYLOR: (Exhibit 8) Hello. My name is Vickie Taylor and it's spelled V-i-c-k-i-e T-a-y-l-o-r, for the record. I'm here today in support of LB875. Today I'm speaking to you from a personal position. Three weeks after my son turned 18--22 days separates him from the juvenile status--he committed first-degree murder and was sentenced to life in prison. I am speaking to you as a mother of a man who has spent 22 years in prison. During the past 22 years, in spite of

no hope ever being released, he transformed from the lost boy he was as a teenager into a caring, responsible adult. He has grown into his adult self with a genuine concern for others. He maintains a close, loving relationship with his wife of 15 years, his family, and his friends, and he's highly respected by the staff, as well as fellow incarcerated citizens. He continues to enrich his life whenever possible, given the very limiting constraints. He's consistently demonstrated excellent decision-making skills which has served him well in his management position at the Cornhusker State Industries wood shop and Tecumseh, where he mentors and trains the skilled work force. It's a program he was instrumental in launching eight years ago, one of the very first ones. He no longer bears the resemblance to the reckless teen that committed the horrible act 22 years ago. I want to mention that he...that is not in my statement here. I'm going to go rogue for just a second. He went in front of the Parole Board hearing, which they are entitled to do, as you know, and he went because most people do video conferencing or don't go. Most people with a life sentence don't go, but he went and they asked him why he was there and he said, because I want you to know who I am and I want you to think about me when we meet again and the changes...you witness the changes that I've made. And, you know, being the person that he is and doing the things that he does, I just...that speaks volumes about wanting to have some sort of hope as a juvenile and knowing that you have a lot to contribute. So I'm just saying I think fair sentencing needs to be fair and it can only occur if the circumstances are equal. So the sentence that you put on a 17-year-old who is still maturing is not equal to imposing that same sentence on someone of 37. So I just share a bit of my story with you, his story that he...decision he made as an irrational, detached teen does not define who he has become today, and I sincerely believe that that is true for the majority of juvenile and youth offenders. I think they deserve to be given a second chance and no children should be disposable, so please eliminate juvenile life sentencing. [LB875]

SENATOR EBKE: Thank you, Ms. Taylor. Any questions? [LB875]

VICKIE TAYLOR: Thank you. [LB875]

SENATOR EBKE: Thanks for coming today. Next proponent. [LB875]

DENNIS MARKS: Chairwoman Ebke, Senators, my name is Dennis Marks, D-e-n-n-i-s M-a-r-k-s, and I'm a public defender in Sarpy County where I've represented juveniles for the last 21 years. I want to make it clear, however, that I'm testifying on this particular bill from my own personal opinion. I'm not representing a group or anybody. I came down here to testify on two bills. This was not one of them. But having heard Senator Chambers and the other speakers and having listened to your question, I just thought I would offer my own personal opinion and I had to jump in the fray. So as far as your question, Senator, the age of the offender does not dilute the harm caused to the victim by any means. But there is a principal of proportionality that judges use when they come to issue sentences. And the principle of proportionality says you don't just look at the harm caused by the actor, you have to look at the culpability of the actor as well. Culpability does not necessarily mean guilt, but if you look it up in the dictionary, that is one of the, I would say, synonyms. You've heard Senator Bolz talk about, in her introduction, about some of the characteristics of juveniles and I'll probably be talking about some of them in one the bills that I'm...I'll be talking about. But the impetuousness, the significance of peer pressure, all those things make a juvenile much less culpable than an adult, and I don't think that it's correct to hold a juvenile's culpability to the same standard as an adult culpability. So with that, I would take questions or comments. [LB875]

SENATOR EBKE: Thank you. Questions? Thanks for coming up. [LB875]

DENNIS MARKS: Thank you. [LB875]

SENATOR EBKE: Next proponent. [LB875]

JULIET SUMMERS: (Exhibit 9) Good morning. [LB875]

SENATOR EBKE: Morning. [LB875]

JULIET SUMMERS: Chair Ebke and members of the Judiciary Committee, my name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska supporting LB875 because all children deserve and need society's protection to grow into healthy, productive adults. And even children who commit serious crimes are still children. As

you've heard more eloquently than I can say and you hear on many, many bills in this committee, children are different. Children are still developing. Children will age out of antisocial behaviors and risky behaviors and tragic decision making that they can engage in, in their childhood and in their teens. And so at the moment of sentencing a teenage defendant, the judge has to, as you've heard, consider not just the crime that was committed, not just what's gone before, but what can potentially happen in the future. And for that reason, under LB875's provisions, judges would still have the discretion to sentence minors to lengthy sentences of incarceration and even to say to life, to a period of years that would equal life. What this would change, though, is it would allow opportunity for parole consideration at some point, so that the Parole Board could look not just at the terrible crime that occurred and the victim and the tragedy of what happened, but also at what that individual has done since then in their period of incarceration and what would best benefit society at that point with that, in light of that new evidence. And I think, you know, the brain size suggests, you've certainly heard today that we have evidence in Nebraska of individuals who had no hope, no hope to get out of prison and yet comported themselves as though they were citizens of our society, wanting to be prosocial, wanting to develop and change and be better people. And I have had the luck and the grace to get to meet and know Mr. Abdullah and I can tell you he is a person that, of all the people I know, is one that I most greatly respect. He is using his time that he has left in his life to ease that transition so that young people and older people who are getting out of our prison systems unprepared to reenter society, have a helping hand who's been there and can show them how to get there in a way that's not going to result in recidivism and a return back into the prison system. So I've gone completely off script here, but I want to say that this bill, it's good social policy for both the reasons I've laid and also the expense to the state of a life without parole. We know--my statistics are even a little old, so they're probably underrepresenting the cost--but taxpayers spend approximately $2 million to incarcerate a child for life. If someone can be released and become a contributing member of society, they can, they have the opportunity to contribute over $1 million to society. And so permitting that opportunity for parole consideration would hold minors accountable in a way that's not going to necessarily make them a burden on society for their lifetime. So I thank you for your time and your consideration. I strongly urge you to advance this bill. [LB875]

SENATOR EBKE: Thank you, Ms. Summers. Any questions? Thanks for being here. [LB875]

JULIET SUMMERS: Thank you. [LB875]

SENATOR EBKE: Next proponent. Are there any other proponents? Going once, going twice. Okay, opponents. [LB875]

COREY O'BRIEN: (Exhibit 10) Good morning, Chairwoman Ebke. Members of Judiciary Committee, my name is Corey O'Brien; that's C-o-r-e-y O-'-B-r-i-e-n, and I'm here today on behalf of the Nebraska Attorney General's Office in opposition to LB875. Currently, I'm having the page hand out a summary that I've put together of the status of the 27 youth that were originally convicted to life without parole for first-degree murder. As you can see, 23 out of the 27, I think, have been sentenced. None of them have received a life-to-life sentence. And so all of them are going to have a meaningful opportunity for parole. Of those remaining, I think one of them is incompetent to be resentenced and the other three are in the process of being resentenced, all of them will be...have their life-to-life sentences vacated. While I appreciate the discussion, our objection to LB875 is what has changed that makes it necessary. In 2013, there was protracted debate on LB44 and it was passed by the Legislature by a vote of 38 in favor and 1 opposed and it set the parameters for conducting mitigation hearings and what judges must consider. Myself, Mr. Pickens and I did a number of the resentencings of these juveniles across the state. They're unlike anything that I've ever experienced in my career because of the amount and volume of information that was available. The assistance of experts, of psychologists and judges, weighed and evaluated all that evidence and arrived at the sentences they did in each particular case. Additionally, our objections to LB875 is primarily the automatic parole eligibility for Class IA felony of 40 years, so you cannot deviate from that, the judges cannot deviate that, and, therefore, everybody would be parole eligible after 20 years; and for IB felonies, it would be after ten years. Our objection to that is because it doesn't recognize that every crime is different and every offender is different. I think it's important that our judges be able to evaluate that the murder committed by a 13-year-old, which one of these offenders was, that person might be someone that's more amenable to a parole eligibility date on the lower end, versus somebody that was 17 and only three days shy of his 18th birthday. Each offense is different. Lastly, our objections to LB875 is the failure to recognize...first of all, we believe that these sentences would be retroactive, and so the 23 that have already been sentenced would have to be resentenced again. In one case Mr. Pickens and I handled, the offender has already been

resentenced three times, and I've gotten close to the family in that particular case, and I hope you recognize the anguish that that family goes through every time that they have to be resentenced. And if I have to go back and resentence that kid again a fourth time, I don't even know if I can look him in the face, so I hope you recognize that. And I'd be certainly willing to answer any questions you have with regard to our opposition to LB875. [LB875]

SENATOR EBKE: Thank you, Mr. O'Brien. Senator Chambers. [LB875]

SENATOR CHAMBERS: Mr. O'Brien and I are antagonists and protagonists and we have our exchanges. And maybe there needs to be a little bit more discussion than you've been able to give thus far, so I'm going to create that opportunity for you by asking a question or two. Before the matter even gets to a judge, there is a decision made by a prosecutor, would you agree? [LB875]

COREY O'BRIEN: I agree. [LB875]

SENATOR CHAMBERS: Now, I have studied a lot of cases because I'm against the death penalty, and I had seen cases where they were very similar and a charge of first-degree murder would be brought in both cases. And the facts were such that a conviction could have been procured because the evidence was virtually the same, but the prosecutor would enter into a plea bargain with one person who was willing to accept the plea to take the death penalty off the table or have the possibility of a lower charge lodged. The other person does not accept the plea and is found guilty, maybe sentenced to death, maybe sentenced to life. If the facts are basically the same, are you aware that plea bargains are often offered to people who are in substantially the same set of circumstances and if one accepts the plea there would be a mitigation right at that point to make the punishment, the penalty less? Are you aware that that happens? [LB875]

COREY O'BRIEN: If there's two codefendants and the facts are largely the same and they're both offered a plea and one accepts and the other doesn't, then I think that's fair to say. [LB875]

SENATOR CHAMBERS: And here's what I'm getting at. Some people, when we discuss things in a vacuum, will say, as some of my colleagues, well, he did that crime, and the victims, this

and that, but they never stop to look at the fact that prosecutors make decisions that automatically exempt certain perpetrators from the maximum penalty available. And the reason I say available, the judge doesn't have to impose the maximum sentence but it would be available, so... [LB875]

COREY O'BRIEN: Senator...I'm sorry. [LB875]

SENATOR CHAMBERS: Go ahead. [LB875]

COREY O'BRIEN: All I was going to say is, in that particular case, you know, the distinguishing characteristic between the two offenders is one offender is accepting responsibility for his acts and, you know, saving the state the...and the victim for having to go to trial on that particular case, and so, you know, to treat the one that's willing that's willing to accept responsibility different from the one that's not, I think, is fair. [LB875]

SENATOR CHAMBERS: But the victim is still dead. [LB875]

COREY O'BRIEN: True. [LB875]

SENATOR CHAMBERS: I'm saying that prosecutors split hairs to get to the point they want to get to. Policymakers have to look at the entire panoramic picture and I've seen people in Douglas County who committed atrocious crimes and there would not be codefendants and the guy would say, I'll take the plea. That doesn't mean you're accepting responsibility for what you did. You're just trying to mitigate the punishment you're going to get. When Nikko Jenkins was trying to defend himself, he didn't want to plead guilty and the judge said: This is a death penalty case, I will not accept a no-contest plea. Nikko Jenkins would not change it, so then the judge changed and he accepted a no-contest plea from a man who I think was crazy and had been crazy for some time. So judges change in midstream. For example, a person like Senator Halloran wouldn't be aware of anything like that. He wouldn't be aware of the fact that a judge said you cannot give that plea. And then when the person not going to give the plea but he's the kind of person that society insists must face the death penalty, the judge shifts his position. And this is a matter of record. I'm taking a little time on it because I think it's very important. When you come

here from the Attorney General's Office, you all have prosecuted murder cases, haven't you? [LB875]

COREY O'BRIEN: Yes, sir. [LB875]

SENATOR CHAMBERS: And you've given plea bargains, haven't you? [LB875]

COREY O'BRIEN: I've extended plea offers that have been accepted, yes. [LB875]

SENATOR CHAMBERS: And although I'm saying what I've said, I've never been in favor of saying abolish plea bargains because I don't like the way some of them go. We have to be practical. So those of us who understand what really happens owe it to the public not to allow simpleminded statements to go unchallenged, like were made this morning here about the victim. If you were looking at the victim, you could never give a plea bargain, I could never say that there should be a plea bargain. Now here's what I'm going to ask you. Are you aware that there are parents who will prevail on their minor child to plead guilty because they don't want this dragged out, they don't like the attention, and they don't have the money to pay a lawyer and, therefore, they say go ahead and plead guilty? Are you aware that things like that happen? Well, if you're not, you can just say, no, you're not. [LB875]

COREY O'BRIEN: I'm trying to think back in my mind. [LB875]

SENATOR CHAMBERS: Well, are you aware that such things happen, whether it happened in cases that you were involved in or not? See, there are people who have... [LB875]

COREY O'BRIEN: I mean, I've heard of such situations, okay,... [LB875]

SENATOR CHAMBERS: Okay. Okay. [LB875]

COREY O'BRIEN: ...not that I have ever experienced, that I know of or have been told by another lawyer that, you know, my client's father is coming here and telling my client that he needs to plead guilty today. [LB875]

SENATOR CHAMBERS: Okay, and there are... [LB875]

COREY O'BRIEN: And in that case, I don't know that I could accept that plea, me personally. I mean I... [LB875]

SENATOR CHAMBERS: That's why I'm taking the word from you personally, but... [LB875]

COREY O'BRIEN: I think it's unethical for me to take that when it's not the defendant's own free will to enter that plea, so no. [LB875]

SENATOR CHAMBERS: But, see, there are judges who know the law and they violate it and a judge was reprimanded because he accepted a plea from a woman who was obviously intoxicated. She could not give the plea knowingly and intelligently. This happened in Douglas County not long ago and the reprimand was delivered not many days ago. So when we say this is the way it should be, that doesn't mean anything. Judges violate what the law and the constitution require. Judges have failed, and I filed a complaint against the judge who did this and he was reprimanded. He did not advise a defendant of his right to remain silent. He put him under oath, began to question him. The defendant made incriminating statements and that cannot be done. You must advise this person, if he or she does not have a lawyer and you're going to question a person, you have the right to remain silent. The matter was corrected by the Court of Appeals and the Supreme Court...well, the Judicial Qualifications Commission gave a public reprimand to the judge. So judges don't follow the law. They are like some of my colleagues: punish, punish, punish, forget the law, forget the constitution. There are wealthy people who think poor people ought to be locked up and if they can't afford a lawyer, well, let the judges look out for them. But those wealthy people never say it's enough to let the judge take care of my child. They spend a lot of money to get a lawyer and they can know that their child did it. But they get that lawyer. And the judges are affected by the status of the person. I mentioned the other day a judge created, accepted the creation of a term called "affluenza." The child was affluent and the judge gave him probation. So I get to see these things, Mr. O'Brien, and I cannot be sympathetic to anything that comes from the Attorney General's Office or the prosecutors because they themselves will know that...we'll say a horrendous crime had been committed, yet a vast majority of these criminal cases are settled by a plea and it lets somebody be put in a position to be

paroled at some point and somebody else not. I'm saying this rather than ask a lot of questions. But since I was opening the door for you to continue if you needed more time to make your case, I presented it without interrogating you. [LB875]

COREY O'BRIEN: I appreciate that, Senator. [LB875]

SENATOR CHAMBERS: But I wanted to make my comments, too, and in case you wanted to respond to whatever I said, you would have the opportunity. Otherwise, I don't have any other questions. [LB875]

COREY O'BRIEN: Since you gave me just a quick second, I just wanted to bring up one thing that my good friend Mr. Pickens brought up, and that's our ability to empathize with the defendants. And I don't know that I would call it empathy, but I think it's understanding. And I think the good prosecutors do understand that a lot of these children that we resentenced had troubled backgrounds, that they did have undeveloped minds, that they were impetuous, that some of them fell prey to peer influences. But that's things that the judges considered, as well, and that I would consider pre-plea, in many cases. And again, the judges considered that and I think that that's what distinguishes each one. And so what our issues with LB875 is, is that to say that a child that didn't, wasn't motivated by peer influences, is automatically eligible for parole after 20 years, undermines the seriousness of the offense and undermines the notion of justice because when the public sees that the kid that didn't act under such influences is getting the same bottom sentence and the same opportunity for parole, I do fear about what the next offender down the line comes, as well as the perception of justice amongst our people, so. [LB875]

SENATOR CHAMBERS: I said I wouldn't ask questions but you went a little into it. Again, the prosecutor is the one who determines if somebody is going to be eligible to be convicted of first-degree murder. [LB875]

COREY O'BRIEN: It's true. [LB875]

SENATOR CHAMBERS: The prosecutor doesn't have to charge first-degree murder. [LB875]

COREY O'BRIEN: It's true. [LB875]

SENATOR CHAMBERS: If I take a child and I shoot that child in the head, the prosecutor is not compelled to charge me with first-degree murder and the prosecutor is not prevented from allowing me to enter a plea. So these things are not carved in stone and, therefore, I think certain punishments ought not even be on the table, because human beings are changeable. Depending on how they feel personally, will determine how they might charge somebody. And let's say you're one of those prosecutors who will act in accord with the principles you laid out. You look at the facts. You look at the circumstances of the individual. You particularize the charge that you're bringing to the circumstances of this person before you here, not ten people who might have come before. But you either retire or you die, and somebody else takes your place. They don't do that. And because of this possibility existing among the 93 prosecutors that are in this state, there are some penalties I think ought to be off the table because some prosecutors are not going to bring a charge where that punishment would ever come into play. And that's what was happening with the death penalty, and it does now, so it shouldn't even be on the table. And I'm...this is not to be argumentative but to get those things into the record because some of my colleagues never hear it, they're unsympathetic so they don't read court cases, they don't pay attention, they say what the people in their district want to hear, but I look at individuals and, as a result, unfortunately, I get calls from their districts because they say their senator will not even talk to them about the issue. So your job is easier than mine. Everybody who comes to you is at least accused of something. I don't know whether people did what they might be accused of or not, and I cannot investigate. But if they can show me that they're not being treated fairly, they could have been charged with first-degree murder and I will do what I can because my job is not to say that if you committed first-degree murder you don't get punished. My job is to make sure that if they're going to convict you, they have to play by the rules and get it. Then they have to impose the sentence in accord with the law, not mob attitude. But... [LB875]

COREY O'BRIEN: That's why I told you to vote yourself a raise the other day, Senator. [LB875]

SENATOR CHAMBERS: Say it again? [LB875]

COREY O'BRIEN: I said that's why I told you the other day to vote yourself a raise, because your job is harder than mine. [LB875]

SENATOR EBKE: Okay. [LB875]

SENATOR CHAMBERS: (Laugh) I don't have anything else. [LB875]

SENATOR EBKE: Okay, thank you. Thanks for coming. Next opponent. And I will just issue a gentle timekeeping suggestion. This is our first bill of the day. We've been on it for almost an hour and a half and we have four more this morning and four this afternoon, and so just take that for what it's worth. [LB875]

PATRICK CONDON: Thank you, Chairman Ebke. Members of the committee, my name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the chief deputy Lancaster County Attorney and also a member of the Nebraska County Attorneys Association. I'm here on behalf of the Nebraska County Attorneys Association testifying in opposition of this bill. In light of Senator Ebke's recent comments, I will...or Chairman Ebke, excuse me, I will try to...will not try to reiterate much of what Mr. O'Brien has said. Again, we, the County Attorneys Association, is in opposition of this bill. We feel that by allowing a juvenile sentence under a IB...or, excuse me, a IA felony to have a mandatory opportunity of parole after serving 20 years and a mandatory opportunity for parole after serving ten years, is not a good thing and not a good thing in the sense of by treating all of them the same way. I think that's what we're trying to avoid, and that is the courts at this point in time, for individual sentenced under a IA...a juvenile sentenced under a IA has a range of penalties beginning at 40 years and up to life imprisonment and, for IB, at 20 years up to life imprisonment. And to mandate that those be 40 and 20 years, it is the opinion that you are, one, not taking into consideration those individuals that may be 17 and two days shy of their 18th birthday and did horrendous things and individuals that are otherwise situated and may be not...you know, the circumstances weren't as horrendous but we're treating them all the same and I think you have the give the court some discretion. And the court looks at that in determining their sentences and imposing the sentences on these juveniles when the sentence is imposed. You also incentivize organizations, gangs to use juveniles. They know that they, that the juveniles will not be punished as heavily or available or have the option of parole, so you

incentivize them for doing that. And you could put a prosecutor in a position where...or a...not a prospector, excuse me, an individual, a criminal in the position of, okay, I've done this to this person, this person is seriously injured, if I stop now I'm convicted of a Class II felony where I could be sentenced to 50-50 years of imprisonment. I'm eligible for parole after serving 25 years. They could go ahead and just say, I'm going to kill him, and they kill them and they're convicted of a second-degree murder or even a first-degree murder and they're eligible for parole after 20 years. I think that these things need to be considered by the Legislature. And again, we are in opposition to this bill, and I will entertain any questions. [LB875]

SENATOR EBKE: Senator Chambers. [LB875]

SENATOR CHAMBERS: And because I had the conversation with Mr. O'Brien, I'm not going to ask you all those questions. But in the same way you said you agreed basically with him, my questions would be the same to you but I'm not going to ask them. I want to see how logical and rational you are. How long am I going to live? [LB875]

PATRICK CONDON: We do not know that, Senator. [LB875]

SENATOR CHAMBERS: How long are you going to live? [LB875]

PATRICK CONDON: I do not know that, Senator. [LB875]

SENATOR CHAMBERS: In the Bible, people lived hundreds of years. Do you think that's possible now? I didn't say likely or whatever. Is it possible? [LB875]

PATRICK CONDON: Well, I think anything is possible, Senator. [LB875]

SENATOR CHAMBERS: So then suppose we felt that way, too, and we put in the law a possible sentence of from 10 years to 1,000 years. We could do that, couldn't we? [LB875]

PATRICK CONDON: Yes. [LB875]

SENATOR CHAMBERS: We could set any range we wanted to. Well, why have you all never come in here and asked for a maximum sentence of even 300 years? Why haven't you done that? [LB875]

PATRICK CONDON: Senator, we...a sentence of life seems to cover that 300 years. [LB875]

SENATOR CHAMBERS: But if we had it, then, and decided to change it, you all would come in and be against changing it, wouldn't you, because that's what the law said and you don't think maximum sentences should be altered? Isn't that the position of the group you represent? [LB875]

PATRICK CONDON: No, we're more concerned about the minimum sentence here, Senator, the 10 years that they would be out, or the 20 years on the IB felonies and the 40 years on the IA felonies. [LB875]

SENATOR CHAMBERS: But if we were in court, I'd say, Your Honor, the witness has not been responsive to the question, would you direct the witness to answer the question? But I'm not going to put you through that. I want people to see that prosecutors don't answer the questions that are asked. Prosecutors jump to something else. And if you're talking about the minimum sentence, then, well, that might go, "We're interested, we're talking about the maximum." They don't stay in one position. And I've seen prosecutors come here, I've seen their representatives, and I know what you're going to say before you say it. When cops come here, I know what they're going to say before they say it. But anytime a cop is charged with anything, their union defends the cop and says he didn't do it. No matter what a rich person's child has done, the rich person gets a lawyer and the only purpose for the lawyer is to let their child escape the punishment that is set, although if a poor person cannot obtain a lawyer then they have no sympathy and say, well, they did the crime, let them do the time. As a policymaker, I weigh these things. You all don't have to. You're hired to do what you're doing, apparently, but I think you misread the job of a prosecutor. And it's why people cannot say America has the best legal system on the earth because in other countries, and you're probably aware of that, the prosecutor's job is to see that justice is done and the prosecutor often, in the middle of a trial--I shouldn't say often--occasionally would say we can see that there's a failure of the evidence here

and this trial should not go forward. There's no prosecutor in America who would say anything like that. [LB875]

PATRICK CONDON: Senator, I've done that. [LB875]

SENATOR CHAMBERS: But anyway, that's all that I have to ask. [LB875]

SENATOR EBKE: Any other questions? Okay, thanks. [LB875]

PATRICK CONDON: Thank you. [LB875]

SENATOR EBKE: Other opponents? [LB875]

LIDDIE DANIELS: (Exhibit 11) My name is Liddie Daniels; it's L-i-d-d-i-e, Daniels, D-a-n-i-e-l-s. I'm here in a personal capacity, not in any professional capacity, to oppose LB875. I vehemently oppose the 40-year minimum language. My only big brother, Hank, was murdered. It's been 20-some years and look at me, you know? I don't...since this is a room full of sympathy for victims, but there is a place for it and our justice system isn't just about rehabilitation. For me, I went on and lived my life and I'm highly educated in criminal justice, in particular. Minus a dissertation, I have my doctorate and I kind of did that to make my brother proud in some way. These resentencing hearings are beyond what you could imagine to live through. I feel like I'm the only one here because it's so hard just to come here and talk about it. Excuse me. I am an emotional person. I appreciate your sympathy, Senator. Twenty years for taking away someone's life, an innocent person, that's not enough and I'm not ready to run into this man on the streets, the grocery store. I mean I just feel like that's not considered. I'm way off script here. Sorry. We've been through sentencing and we've been through resentencing and I feel like enough is enough. Justice has been promised to us twice and he was given a sentence that was within the parameters. It's not a life sentence. I don't believe in the death penalty. I don't want the man dead. But I feel like there's a weight that should be given to what happened. Children that are young know right from wrong. My other always said that. And while I think she may have wanted the death penalty for the five men that abducted and tortured and dumped my brother in a stream, she could live with this, just the outcome as it was. And I'm very, very opposed to this idea that

20 years and they're rehabilitated and that's that. And I am empathetic. I'm horrified by the way some of them grew up, I really am, but we didn't all have easy childhoods. It wasn't...you know, we grew up behind a bar. And I just feel like this isn't fair to the victims and there's no victim voice here or consideration being evidenced and that's why I'm here. This is painful for people and I don't want to go through it again. And the judges of this state have spoken and the Supreme Court of this state said okay and shouldn't that be enough? You know, in my study of criminal justice, it should be, so that's all. [LB875]

SENATOR EBKE: Thank you, Ms. Daniels. Questions? Thank you for being here. Next opponent. Do we have any other opponents? Anybody speaking in a neutral capacity? [LB875]

ERIC ALEXANDER: Good afternoon, Chairman, members. My name is Eric Alexander; that's E-r-i-c A-l-e-x-a-n-d-e-r. I'm here before you this afternoon as a walking, breathing, living example of a child who went into the justice system as a juvenile who immersed as an adult. But I want to give you a little background history on what led me to the situation that put me there. I was born the oldest of four children to a very abusive, alcoholic father. I grew up witnessing his abuse firsthand. I don't know if it was because I was the oldest, but I was always there. One instance of his abuse stands out clearly to me than others because this instance scarred me for life. I was in the third grade. My mom had made up her mind that she was leaving him and she talked to me and asked me to help get my brother and sister in the car and I did so. It was raining this afternoon, actually storming. It had gotten dark. My mom was coming to the car. My dad appeared from nowhere, punched her. The blow sent her to the ground. I watched her struggle to get up from the mud. When she finally did, she got into the car, hurt, but we left. We filed a restraining order against him. She went on to divorce him, but this didn't stop his abuse. He would show up at our house, kick on our door, bang on our door. Even after we moved, he would find us. I became known in the neighborhood and at school as the drunk guy's son. I remember my middle school years I really fought hard to build my own personal self-esteem, to build friends, to no avail. Kids accused me of wanting to be something that I wasn't. I was an avid reader, so they accused me of wanting to be white. I could articulate myself better than others, so that even marginalized me even more. Going into my high school year, I was so broken as a child and in such desperate need of friends that I joined a gang my freshman year in high school and end up failing my ninth grade year because of it, because I began to skip school. I didn't think, I

didn't personally feel that I fit in anywhere. So I began to skip school in high school. I missed so many days in high school that the school mailed a letter home to my mom saying that I missed so many days that I needed to go to summer school. So on the day that I should have been signing up for summer school, I went over to a friend's house to convince him to go to summer school as well. He was sitting home, watching a movie, smoking marijuana. I went in. He came up with a plan to go to a convenience store that was close to where we were. He wanted to run in and steal beer and asked me to stand as a "watch-out." I agreed. He went into the store. Unbeknownst to me, he took a loaded pistol inside of that store. While I stood outside, I heard two gunshots. He came running out. Curiosity compelled me to go in and I found the victim, body of Mr. Cantrell, stretched out on the floor. We were arrested later and I gave a full-blown statement to cops, not understanding that I was incriminating myself. My intentions were to help because my intentions were not to hurt anyone, so I told him the full story of what happened. Subsequently, I had to plead guilty to two 25-year sentences to avoid life without the possibility of parole. My codefendant wasn't as fortunate. He's currently serving a life sentence plus 25 and this year marks 24 years that he's been incarcerated. While incarcerated, I finished high school, I began to study psychology and child development, I began to write youth programs inside of prison, I denounced gang membership, and began to work with other inmates inside of prison on denouncing their gang membership as well. I met the parole board three times. The third time, I was released... [LB875]

SENATOR EBKE: Go ahead and finish up, please. [LB875]

ERIC ALEXANDER: The third time, I was released after serving ten years. Upon release, in 2004, I began to volunteer for the public school system because inside of prison I thought about public safety, I thought about my own growing up, I thought about my scars as a child and, if I was ever given a second chance, how could I contribute to my community in a way that would be helpful. So when I came home, I began to volunteer. I wrote youth programs that dealt with youth in gangs. I became a vendor for the public school system and this year marks ten years that I'm still a vendor for the public school system. I joined AmeriCorps Community HealthCorps and I work with an organization where we place clinics inside of high schools and middle schools that dealt with youth who joined gangs and teen pregnancies as mental health issues. The YMCA of Middle Tennessee took note of the work that I was doing and they actually called me

without me going to them. They wanted me to come in and work with youth through the YMCA, so they got with their attorneys and they changed their policy. They had a "we don't hire felons under any circumstance" policy. I became the first person within the YMCA as administrative with a felony background, and I began to develop youth programs for the YMCA, working with the very kids whom I was of that population as a child myself. I helped to cofound ICAN, and it is a national action network called the Incarcerated Children's Advocacy Network, and what ICAN is, it is a group of individuals like myself who went into the system as children but sentenced as adults. And what ICAN seeks to do is link individuals to individuals like myself when they come home to show them that not only is their life post-prison, but you can have a positive and professional life post-prison, because, individuals like myself, I'm not the exception to the rule. We spend time thinking about our childhoods, thinking about how we could repair ourselves in situations where repair didn't come to us, we had to seek it ourselves. Prison is a very violent place. Prison is a very dangerous place. Ten years in prison for me was a very long time. I endured that time. And to speak directly to Senator Halloran, I made a promise to myself and the victim's family that if I was given a second chance, I'd spend the rest of my life dedicating every day, every breath, to make sure that no other child, male or female, with the circumstances that I was born into, make the same type of decisions, and this year marks almost 14 years that I have successfully done that. My original 25-year sentence expired March 3, 2016. I had no infractions while on parole. Again, I say this to say that I am not the exception to the rule. I left a lot of men inside who helped me to become a better man, to help me to become a better man. And in closing, I'd like to say that children who commit these type of offenses, we're better than the worst act that we've ever committed. We're better than that. We just have to mature. And meeting the parole board that third time, they saw my level of maturity and though that I was worthy of a release, and I proved them right, walked until my sentence was expired and continue to prove them right. And I won't stop because I made a promise to the victim's family. Because I was a part of the situation that took a life, I will dedicate the rest of my life, and I'm 42 years old. I don't know much longer I'll live. But every day I walk is dedicated to the memory of Mr. Cantrell, in my case. [LB875]

SENATOR EBKE: Thank you, Mr. Alexander. You made one point here that I think that it's important for everybody to keep in mind. You went to the parole board three times? [LB875]

ERIC ALEXANDER: Three times. [LB875]

SENATOR EBKE: So parole eligibility does not necessarily equate to being released. [LB875]

ERIC ALEXANDER: No, ma'am, it doesn't, not at all. [LB875]

SENATOR EBKE: (Exhibits 1-4) Okay, thank you. Any other questions? Thank you. Thank you for being here today. Do I see any other neutral testimony? If not, Senator Bolz can wrap up this piece of the morning. We have several letters, three in support: one from Shawn Fitzgerald; one from Mary Bahney of the National Association of Social Workers-Nebraska Chapter; one from Becca Brune of Nebraska Appleseed; and then, opposed, John Wells of the Omaha Police Officers Association. [LB875]

SENATOR BOLZ: Thank you. [LB875]

SENATOR EBKE: Senator Bolz. [LB875]

SENATOR BOLZ: Thank you. Thank you for your time and attention this morning. I'll be as brief as I possibly can, but I wanted to clear up a couple of things. The first is that you heard reference to the bill applying retroactively. That is not the case. That is not how we drafted it with Bill Drafters. If additional clarification is necessary, I'd be happy to work with the committee on that, but that is not the intention or the drafting as I understand it. The second is just in reference to Senator Chambers' comment about the death penalty language. That was brought at the recommendation of Bill Drafters as cleanup language. If it's not necessary, we can certainly amend. The third, to restate what the Chair has already stated, I want to be absolutely clear that opportunity or eligibility for parole is not parole. Opportunity or eligibility for parole is not parole. An individual still needs to earn that parole. Two more things, the next is that the 20-year minimum for IB and the 40-year minimum for IA are currently in statute, so we used current statute as a guideline in this bill. And so we are not establishing new minimums here. We are tying this piece of legislation to existing statute. If individuals have opposition to those minimums, I would suggest that that's perhaps a different conversation, because what we are trying to achieve here is really to address the circumstances in which juveniles are given

extremely long sentences and, I would say, unjust sentences. The Douglas County Public Defenders have brought to attention to me...to my attention a recent case of a 15-year-old who was resentenced to 84-100 years in prison, and that's the heart of this issue. The heart of this issue is, is it justice to put a juvenile offender into prison for the rest of his or her life; is it fair and equal what we know...given what we know about brain development, history of trauma, and potential for rehabilitation, to sentence a juvenile to life without parole, to a lifetime of incarceration? I would argue that it is not justice and that is the role of this committee and the legislative branch and I would argue that LB875 is needed change. I thank you for your attention. [LB875]

SENATOR EBKE: Thank you, Senator Bolz. Questions? Okay, thanks. This closes the hearing on LB875. We're going to forge ahead. If anyone needs to get up and move around at some point, please, feel free to do so. Senator Hansen. [LB875]

SENATOR HANSEN: (Exhibit 6) All right. Good morning, Chair Ebke and fellow members of the Judiciary Committee. My name is State Senator Matt Hansen, M-a-t-t H-a-n-s-e-n. I represent District 26 in northeast Lincoln. I am here to introduce LB930 which would make any statement, admission, or confession made by a juvenile as part of a custodial interrogation admissible only if it was made in the presence of the juvenile's parent, guardian, or custodian, and both the juvenile and the parent were advised of the right to counsel and the right to remain silent and both waived those rights before submitting themselves to the questioning. Under current law and case law, custodial interrogation is when someone is being questioned by law enforcement without being able to leave, even if they are not technically under arrest, as is viewed by a reasonable person. I believe that Nebraska law has a weakness when it comes to protecting juveniles under a custodial interrogation. This is because we do not specify in statute whether juveniles have a right to the presence of attorney or even the presence of their parent during an interrogation and young people are often unaware, unable to fully understand and invoke these rights. Adding to this fact is that children are also more likely to assume that they cannot leave from being questioned by law enforcement, which is why in 2011 the Supreme Court ruled to expand for juveniles the circumstances when law enforcement must read them their Miranda rights because they may have different understanding of when they are free to leave and when they are being questioned. The scenario we often see is that a child suspected of

a crime is pulled out of school by investigators and interrogated without a parent or attorney present. Sometimes the parent only becomes aware of the fact that the child is being interrogated when they do not come home from school. Imagine learning only after the fact that your child underwent hours of interrogation without your knowledge. Even in circumstances where they don't incriminate themselves or give false information, the emotional effects alone could be cause...would be minimized if a parent were present. This bill was on my mind a few weeks ago when we heard...in this committee when we heard the bill on emancipation brought by Senator Howard. If you remember, in that hearing we had testimony from an 18-year-old who has successfully gotten a job and an apartment while still excelling in high school but she was deemed to still be under the authority of her parents and was actually a runaway and was taken back to her home. I thought during that bill if we as a state do not think that 18-year-olds are able to fully understand and consent to an apartment lease, why on earth do we think we can get them to waive their constitutional rights? We don't think an 18-year-old is eligible. Why do we think a 14-year-old or a 9-year-old can do that, especially without their parent present. We had the pages pass out a recent article from the Governing magazine exactly on this topic. It's kind of a good summary of the issue that children don't have a clear enough understanding of the concept of Miranda rights to be able to waive their rights to an attorney and to stay silent. I'll point you to the last paragraph of that article where an expert in adolescent psychiatry, along with the American Academy of Child and Adolescent Psychiatry, recommended that an adult who cares about the child's welfare, such as a parent, should be present during interrogations. I would also like to note that included in this bill is an exemption for statements, admissions, or confessions that are made under the public safety exemption of Miranda v. Arizona. This is one of the few exceptions to the Miranda rule that permits law enforcement to engage in limited questioning if it was made in order to protect the immediate safety of the public. With that, I would conclude my testimony and ask the committee to advance LB930. [LB930]

SENATOR EBKE: Thank you, Senator Hansen. Any questions? I see none right now. Thanks. [LB930]

SENATOR HANSEN: Thank you. [LB930]

SENATOR EBKE: First proponent. [LB930]

AMY MILLER: (Exhibit 3) Good morning. My name is Amy Miller; that's A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska. We support LB930 for all the reasons that this committee has heard regarding child brain development. Scientists refer to it as poor future orientation. Many people have difficulty understanding Miranda rights and the possibility of what's going to happen if they speak with police but that's particularly true for people who are under age. They simply lack both the real-world knowledge as well as the brain development issues. The problem is that without legislative reform this issue has already been decided by the courts. The Eighth Circuit, which governs Nebraska, and the Nebraska Supreme Court have both held that they'll individually determine whether children had a knowing waiver of their Miranda rights. And as you'll see in my testimony in footnote number 1, our courts have said for Nebraska children who were 16, who were 15, and who were 14, that they totally understood what their rights were and knowingly and voluntarily waived those rights. Some of those cases involve even situations where the threat of the death penalty was on the table and yet it was held that the child could understand and chose to speak with the police. Given the fact that we need legislative reform, this is an area ripe for advancement, along with the other juvenile justice issues that Nebraska has been looking at as a package. And it's not boldly going where no one has gone before. Arkansas, Hawaii, Missouri, and other states already provide these same protections in law. It allows flexibility so police can still question the minor. They just have to make sure that there is someone with an adult brain and the best interest of the child standing nearby, whether that's a parent or guardian. For that reason we support LB930 and I'm happy to answer any questions you may have. [LB930]

SENATOR EBKE: Thank you, Ms. Miller. Any questions? I see none. Thanks. [LB930]

AMY MILLER: Thank you. [LB930]

SENATOR EBKE: Next proponent. [LB930]

JULIET SUMMERS: (Exhibit 4) Good morning, Chair Ebke, members of the Judiciary Committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska supporting LB930. At every stage in our justice system, we should ensure that youth are held accountable with safeguards in place to ensure that our response is

measured and appropriate. We support this bill because we believe it provides an age-appropriate protection for youth when they come into contact with law enforcement in the first place. By requiring the presence of and consent of a parent or guardian for a child to waive his or her Miranda rights during a custodial interrogation, this bill will help to ensure that any such waiver is more likely to be made truly from a knowing and intelligent standpoint. It will simultaneously ensure that parents are able to respond immediately when a child becomes involved with a criminal investigation. We are all, children included, entitled under our constitution to a right against self-incrimination and the required reading of rights under Miranda is intended to balance the government's interest in investigating crimes and pursuing confessions as the pathway of least resistance to a conviction but with the citizen's interest in understanding and accessing his or her constitutional protections. A custodial interrogation, when you're not free to leave, is by its nature, or can be, coercive, particularly if the individual under interrogation is a child with a room full of adults and adults in authority. Children may be more likely to waive their rights without true knowledge or understanding of either what those rights mean or what the possible consequences might be. And even worse, we know that children are substantially more likely to confess falsely to crimes that they did not commit than adults are, so when you look at exoneration, studies of exoneration have found that on average though 13 percent of adult exonerations involved a false confession, 43 percent of juvenile cases did. And the younger the child, the more likely the child is to falsely confess. One study found that of all juvenile wrongful convictions, 69 percent of children age 12-15 had falsely confessed compared to 25 percent of youth age 16-17. Desiring to please, desiring to leave, trusting the assurances of the interrogators, the child might be willing to just kind of go along with it rather than stand up for their rights or insist upon a lawyer, believing that that agreement will end the interrogation. I also want to note that individuals who are unfamiliar with our justice system are often surprised to discover that parents aren't notified or don't have to be notified when a child is under interrogation. They might not know that custodial interrogations can go on for hours without break or contact with a trusted adult. And so as a parent, if I were to someday pick up my children from school and discover that they had been interrogated without my knowledge or consent, I would know that that was the law if it didn't change here, and I would be livid. And I also want to say that this bill doesn't eliminate the possibility for confessions in custodial interrogations or waiver of those rights and, in fact, as you've heard, sometimes parents may even push their children in that direction of complying and working with law enforcement. It just

ensures that someone is there looking out for the best interests. So with that, I'd be happy to take any questions. [LB930]

SENATOR EBKE: Thank you, Ms. Summers. Any...Senator Pansing Brooks. [LB930]

SENATOR PANSING BROOKS: Thank you for coming, Ms. Summers. Why is it that we feel free to tromp on children's constitutional rights? Do you have a feeling about that? [LB930]

JULIET SUMMERS: Senator, I have a lot of thoughts about that and actually that is a reason my organization was initially formed, because children by their nature can be voiceless and can't come and testify before you today to defend their rights and to say...stick up for themselves in that regard. I think specific to constitutional rights and the way things work in the juvenile court, at least, I think there's a perspective among the general population, among adults, that the stakes are lower and so juvenile court is kiddie court or, you know, there's not going to be serious consequences so we don't need constitutional rights, that's just for if you're facing conviction. But the fact of the matter is you actually..the consequences are very serious. It can involve years out of the home. It can involve, you know, infringements on parental rights. It can involve incarceration. It can even involve records that may go unsealed and follow you the rest of your life. So I know you're so passionate about this, Senator, and we are, too, and I think this bill does not require that a lawyer be present for that interrogation. We would support legislation in the future in that direction. But this is absolutely a step we would support which simply ensures that that vulnerable child has an adult, whose brain is fully formed, able to sit there and stick up for them. [LB930]

SENATOR PANSING BROOKS: It's so simple. So if anybody has seen Making a Murderer, it's pretty clear what can happen in this kind of instance. And I'm sure that everybody that's coming will say, oh, this would never happen in Nebraska, but it has happened various places and rather than kiddie court, the Supreme Court aptly described it as a kangaroo court when children's constitutional rights are abridged, including right to counsel and interrogation, right to confront, all of those things. So thank you for coming today. I appreciate it. [LB930]

JULIET SUMMERS: Thank you, Senator. [LB930]

SENATOR EBKE: I see no other questions. Thanks for being here. Next proponent. [LB930]

CHRISTINE HENNINGSEN: (Exhibit 5) Good morning. Chair Ebke and members of the Judiciary Committee, my name is Christine Henningsen, C-h-r-i-s-t-i-n-e H-e-n-n-i-n-g-s-e-n, and I direct a project called Nebraska Youth Advocates which is housed at UNL's Center on Children, Families, and the Law. I'm also an attorney specializing in juvenile defense. As you're all aware, Miranda warnings are a fundamental part of a criminal justice system designed to protect the person in custody's right against self-incrimination. In the Miranda decision, Chief Justice Warren explained that being in custody itself compels an individual to give a statement that is not truly voluntary. As such, there must be adequate protective devices employed to protect our children's constitutional right. The U.S. Supreme Court has also ruled that a child's age must inform the Miranda custody analysis, recognizing that a reasonable child subjected to police questioning will sometimes feel pressured to submit when a reasonable adult would feel free to go. It follows that there need to be additional procedural safeguards in questioning children to ensure that their right against self-incrimination is protected. Research has also highlighted problems with traditional Miranda warnings, whether their use with youth can produce knowing, intelligent, and voluntary waivers, as early as 1980. Research by Thomas Grisso found that youth under 15 years of age generally do not adequately comprehend formal Miranda warnings. Only 20 percent of all the youth demonstrated an adequate understanding of the entire set of Miranda warnings. Another study in 1987 found that youth need to be counseled carefully if they are to understand their rights competently and a simplified Miranda form failed to increase youth understanding. Recent research on the subject has shown that while most defendants may be able to recognize their Miranda rights when placed in front of them one at a time, there's a lack of understanding when presented all at one time. Additionally, specific with youth, there are problems with vocabulary use and the youth’s ability to recall the warnings they were given. Some youth held the misbelief that silence would be incriminating itself and the lack of their ability to weigh costs or alternatives against immediate rewards leads to a higher probability that it was not an intelligent waiver. The presence of a parent, guardian, or custodian during the youth's interrogation brings us closer to what is necessary when providing adequate protective devices necessary to protect our children's constitutional rights. I'd also add, we entered...there was a bill passed a few years ago that required that the Miranda warnings be given in developmentally appropriate language. The presence of a parent or a guardian would be able

to inform the law officer at what state in the developmental process their child was at, whether they had a...they had special education needs or had...were suffering from a disability. I'd be happy to answer any questions. [LB930]

SENATOR PANSING BROOKS: Thank you, Ms. Henningsen. Any questions? Thank you for coming today, appreciate it. [LB930]

CHRISTINE HENNINGSEN: Thank you. [LB930]

SENATOR PANSING BROOKS: Next proponent. Welcome. [LB930]

DENNIS MARKS: Thank you. Senators, my name is Dennis Marks, D-e-n-n-i-s M-a-r-k-s, and again, I'm with the public defender's office in Sarpy County where I've predominantly represented juveniles for the last 21 years. I am here on behalf of the Nebraska Criminal Defense Attorneys Association to testify in support of LB930. When you think about custodial interrogations, you have to think about what the purpose of these interrogations are and I really think there's three purposes. One is to gather intelligence. A second is to obtain incriminating statements from the individual. And the third purpose is to obtain confessions in order to secure convictions. Law enforcement is specifically trained in how to do these three things. They receive substantial training and they do it in different ways. They have different methods. But one of their most effective methods is they can lie, and I don't know that everybody knows that, but they can lie to obtain this intelligence, to obtain these statements, and to get this confession. Having a parent present, although an attorney would be preferable, having a parent present is a step in that direction. It doesn't exactly level the playing field, but I think it helps. There's an added protection for juvenile rights. And as has been stated earlier, I believe, by Ms. Summers, parents are not aware that their children can be interrogated without them being present. That is a question I have gotten at least once a month every month for the last 21 years. So with that, I would entertain questions or comments. [LB930]

SENATOR PANSING BROOKS: Okay, thank you. Any questions for Mr. Marks? Thank you for coming today. [LB930]

DENNIS MARKS: Thank you. [LB930]

SENATOR EBKE: Okay. Do we have any other proponents? Any opponents? [LB930]

COREY O'BRIEN: Good morning again, Vice Chair Pansing Brooks. Chairman Ebke, my name is Corey O'Brien, C-o-r-e-y O-'-B-r-i-e-n, and I'm here today appearing on behalf of the Nebraska Attorney General's Office and Nebraska County Attorneys Office (sic--Association) in opposition to LB930 as it's currently proposed to you. Our objections are minimal here, but one of those objections is that most people don't know, outside of the legal profession, that the case of Miranda v. Arizona created the Miranda warnings, in and of itself. It was a court that actually required law enforcement to give those warnings. And so our opinion would be that the courts themselves should regulate the administration of Miranda warnings and have done so in Nebraska and in federal courts. In particular, our Nebraska Supreme Court in 2009 issued a rather lengthy Opinion in State v. Goodwin--that's 278 Neb. 945--in which they extensively went into the considerations that must take place when a waiver is obtained from a child pursuant to an advisement of Miranda. In that case, the court indicated that children are different and they must be treated different and their waivers of Miranda must be treated different, as well as the advisement of rights. One of the things that our issue with LB930 is that it doesn't recognize that every child is different, every person that's read Miranda is different. There are people that are over the age of 18 that for various reasons are incapable of understanding and successfully waiving Miranda. There are children that have been through the system 15, 16, 20 times that know the Miranda warnings verbatim and exactly what they mean. So we believe that the courts regulating this area of the law is the appropriate way to proceed because they can take into account all facts and circumstances. Finally, if the bill does move forward, we do have some concerns with respect to some of the situations in which the bill applies, such as what happens in the situation where the parent themselves is a victim. And it has been alluded to in various forms here today what happens, and I do know of this happening, where the parent is sitting there browbeating the child into speaking to the law enforcement officer even though the child doesn't want to. It's our opinion that it is the constitutional right of the child and not of the parent. And so I have some real problems with the admissibility of that statement in any circumstance where the parent is telling the child that they need to speak with law enforcement despite the fact that

they don't want to. So I think that if this bill moves forward, maybe we can address some of those situations as well. I'd be happy to answer any questions you have. [LB930]

SENATOR EBKE: Your comments sound very much like the question that Senator Pansing Brooks is getting ready to ask you about... [LB930]

SENATOR PANSING BROOKS: So how would you solve that problem of the parent forcing the child to answer even though they don't want to or shouldn't? How could we solve that problem? [LB930]

COREY O'BRIEN: To be honest with you, Senator, I haven't really thought that thought forward. I can tell you... [LB930]

SENATOR PANSING BROOKS: How about an attorney? [LB930]

COREY O'BRIEN: Huh? [LB930]

SENATOR PANSING BROOKS: How about an attorney present for the child? [LB930]

COREY O'BRIEN: Well, or some type of guardian, potentially, and that's what I'm saying about, you know, the situation where there's the parent themselves is a victim of the child. I mean, how do you handle that situation? So I don't know. I haven't really thought it through. [LB930]

SENATOR PANSING BROOKS: Well, I had hoped you were coming to speak positively about protecting kids' constitutional rights and instead we're quibbling about some particularities and that the courts instead should decide this. And we have courts in Nebraska that say that kids don't have to have their constitutionally protected right to counsel and that they shouldn't...they...that the courts and the prosecutors can just decide that themselves and they can handle their own people. So that's what I had hoped, that you were coming forward to talk about the protection of kids' constitutional rights. I presume you believe in kids' constitutional rights. [LB930]

COREY O'BRIEN: Absolutely, and I just differ with this body being that body that necessarily should take that lead, and I do believe that it is the courts that traditionally have that role of protecting the adherence to the constitutional rights. [LB930]

SENATOR PANSING BROOKS: But if there are judges saying that kids don't need to have their rights to counsel, then at some point we have to act. Wouldn't you agree? [LB930]

COREY O'BRIEN: I don't know that it's a question of whether I agree or not, so. [LB930]

SENATOR PANSING BROOKS: Okay. [LB930]

COREY O'BRIEN: Sorry. [LB930]

SENATOR PANSING BROOKS: Thank you. [LB930]

SENATOR EBKE: Thanks. [LB930]

COREY O'BRIEN: Thank you. [LB930]

SENATOR EBKE: Okay. Other opponents? Anybody testifying in a neutral capacity? Neutral? [LB930]

SHAKIL MALIK: Yes. [LB930]

SENATOR EBKE: Okay. [LB930]

SHAKIL MALIK: Can I start? [LB930]

SENATOR EBKE: Go right ahead. [LB930]

SHAKIL MALIK: My name is Shakil Malik, S-h-a-k-i-l, last name Malik, M-a-l-i-k. I actually originally was not planning on testifying on this bill and testifying only in an individual capacity,

neutral, just to talk about some comments that Ms. Henningsen, who I do sincerely respect, made about some studies that have been done and what juvenile Miranda warnings...I just wanted to comment on that, remind this body that in 2016 this committee advanced and the Legislature passed LB894 which essentially required developmentally appropriate Miranda warnings be given. When that bill was passed, I then worked with the Omaha Police Department and the Douglas County Sheriff's Office to rewrite their Miranda warnings. There were studies done and there was research done to find out what would be considered developmentally appropriate for a Miranda warning. Those studies were then tested and validated and that's what I based the rewritten Miranda warning on. The question is, has it been working, has it been having any effect? I think it has been because I'm currently sitting on an e-mail from one of our departments complaining that...detectives are complaining that too many juveniles are now invoking their right to not speak or to have counsel. Just to give you an example, with the rewritten Miranda warning, which I would have had a printout but I wasn't planning on testifying, it's written in a way where instead of just throwing out all the rights and saying, hey, do you want to talk to me, actually says: I would like to advise you that I am a police officer; do you understand that; you have a right to remain silent; that means you do not have to say anything; do you understand that; and goes onward. And then to even eliminate the bias of a juvenile getting into the routine of saying yes, yes, yes, to everything, the last question, this is the one where I'm getting the flack on, is, after it says do you want to talk to me, if the juvenile says yes, it then asks the juvenile, do you want to have a lawyers, and that's..if they're just saying yes, yes, yes, they're going to invoke at that point, and that was also...I've seen something done in a courtroom by one of our juvenile court judges. Judge Kelly does that sometimes. So I just want to point that out. The only other thing I would point out just from my experience in prosecuting a number of juvenile cases both dealing with parental neglect and juvenile delinquency is there is the concern of when you have the scenario where the parent is the codefendant. And I understand it's the exception, it doesn't happen often, but it is something for this committee just to be aware of what would you do in that scenario because unfortunately I have had cases where, you know, moms...I've actually had a case where the mom is in a clothing store, starts stealing something, gets into a fight with security guards, starts screaming for the kid. The kid does not realize what the mom is doing, just thinks a man is attacking the mom, and runs over and starts fighting with the security, you know, and if there's limitations on talking to that juvenile, if the parents are right there saying, hey, don't say anything, you know, we're obviously going to want to go for the parent, not the

kid, but just I'm raising that as a concern just as something I've seen in my practice. And with that, I certainly would be happy to answer any questions. [LB930]

SENATOR EBKE: Thank you, Mr. Malik. Any questions? Okay, thanks. [LB930]

SHAKIL MALIK: Thank you. [LB930]

SENATOR EBKE: (Exhibits 1 and 2) Any further testimony on LB930? Senator Hansen. We do have some letters, two opposed, one from Todd Schmaderer of the Omaha Police Department, one from John Wells of the Omaha Police Officers' Association. [LB930]

SENATOR HANSEN: All right. Thank you, Senator Ebke and members of the Judiciary Committee. Thank you for hearing this bill. Just a couple points to make. So I do think the comments about kind of how do we best incorporate judicial case law into our statutes is an interesting one. I know legal counsel had flagged the issue of citing a Supreme Court case by name might not necessarily be the most appropriate and so I was already planning on figuring out some language to maybe incorporate, you know, standard definitions without necessarily citing cases. As to the overall purpose of...as to the overall kind of role of the Legislature, I guess, in terms of protecting juveniles during custodial interrogations, I do agree that a lot of the current standards have been set by courts at various levels, whether it's our Supreme Court or the United States Supreme Court. That doesn't eliminate or diminish our role in setting up protections we as the Legislature view as necessary. As was pointed out, other states have done this and that is certainly something we in Nebraska can hold ourselves to a higher standard than necessarily is the constitutional minimum. There are several situations that have been brought up, both situations in which the parent or guardian is either the victim of the crime or the parent or the guardian is a codefendant. That's something we probably will need to have a longer discussion, a deeper discussion on, of how do we address those issues. I would say certainly it brings up some interesting discussion points but I don't know to what extent it changes or diminishes the role of the parent as we view the parent's relationship to a child. Obviously, in my bill, I...the waiver of the constitutional rights has to be both by the parent and by the child, and I understand we might be putting a child in a difficult situation where a parent comes in and is advocating things that are not necessarily in the child's legally best interest. And that came up in

the previous bill as well, but that's something that's allowed now, you know, both in the first interrogation, custodial interrogation, and throughout the court process. So that's something we should look at. And then a couple times it's been brought up of, you know, the term where the parent comes in and the parent is--and I believe it was one of the letters--the situations where the parent is not advocating in the child's best interest, whether or not they're the codefendant or victim or they just don't want to deal with this or they think the child deserves to be punished, yada yada yada. That's a really disappointing, heartbreaking situation, because then you're putting a child alone in the room who, you know, you'll have a police officer or two over here who is obviously interrogating him as a suspicion of a crime and you have a parent who is not supporting them or is, worse, advocating for their legal punishment. That's a child there that is in a no-win situation because there is nobody in that room who, other than the child, who is advocating for the child's rights. I will point out--Senator Pansing Brooks is correct--there is a wide pool of people we could ask to be in that room to help advocate for the child, but my bill is starting as a measured first step, or a measured alternative step, which I will point out had no fiscal impact that we could do to protect juveniles' rights. And with that, I'd be happy to work with stakeholders and the committee. [LB930]

SENATOR EBKE: Thank you, Senator Hansen. Senator Pansing Brooks. [LB930]

SENATOR PANSING BROOKS: Thank you for bringing this, Senator Hansen. It's my understanding that it is not the parents' right to waive for the child, waive counsel or waive any kind of...is that...are you addressing that in your bill? I'm trying to...what are they waiving? Sorry. I need to peek at this. [LB930]

SENATOR HANSEN: So, yes, my bill, it would have to be both so the parent can't unilaterally waive the rights of a child but the... [LB930]

SENATOR PANSING BROOKS: Cannot? [LB930]

SENATOR HANSEN: Cannot. But, so if the child wants to invoke them... [LB930]

SENATOR PANSING BROOKS: That's constitutional law, but, yes. [LB930]

SENATOR HANSEN: Yeah, absolutely, but it's...so it's both ways, so if there's ever a split where the parent wants the child to waive their right and the child wants to invoke it, or vice versa, so I'm giving the, I guess, parents an extra step in situations where the child's like, no, no, (inaudible) attorney, mom or dad...I'll talk without an attorney, you know, I'll confess, and mom and dad could come in and say like, actually, no, you don't want to do this, I'm not allowing my child to do this, and that's kind of the added provision that's new that I'm working on. [LB930]

SENATOR PANSING BROOKS: Yeah, which is exactly why they need a lawyer, because the parents have no idea what their rights are, what the kid's rights are, or what is happening. Anyway, it's much easier without a parent, without a lawyer. It's way easier for prosecutors and to go forward, so thank you for your help on this. [LB930]

SENATOR HANSEN: Thank you. [LB930]

SENATOR EBKE: Other questions? Okay, this closes the hearing on LB930. We're going to move ahead to LB981 (sic), and we only have three more before we break for lunch. LB781. What did I say? Oh, sorry. [LB930 LB781]

SENATOR PANSING BROOKS: Thank you, Chair Ebke and members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I am here today to introduce LB781 to remove mandatory minimum penalties for juveniles. Specifically, LB781 removes mandatory minimum penalties for Class IC or Class ID felonies for offenses committed when such a person was under 19 years of age. The bill provides that these penalties shall not be a mandatory minimum but a minimum term only. To be clear, I support Senator Chambers' LB447, which eliminates selected mandatory minimum sentences for individuals, including adults. I hope the Legislature will advance a comprehensive elimination of mandatory minimums. I offer LB781 because mandatory minimums are particularly egregious when applied to juveniles and I am hopeful the Legislature will at least move forward on this proposal. The U.S. Supreme Court in 2012 in Miller v. Alabama and Jackson v. Hobbs ruled that mandatory life prison sentences for juveniles are unconstitutional. The court further said that judges must be able to consider the characteristics of juvenile defendants so that they can issue fair and individualized sentences

because adolescence is marked by "transient rashness, proclivity for risk, and inability to assess consequences." Since that time, states have taken action to curtail mandatory minimums for juveniles for both life and nonlife sentences. In 2014, the Iowa Supreme Court held in State v. Lyle that "one-size-fits-all" mandatory minimum sentences were unconstitutional when applied to juveniles, finding such sentences "cannot satisfy the standards of decency and fairness embedded in article I, section 17 of the Iowa Constitution." Chief Justice Cady wrote in the ruling that "mandatory minimum sentences for juveniles are simply too punitive for what we know about juveniles." The court said trial judges may sentence a juvenile to a minimum sentence, but only after a separate hearing that examined five factors, including the offender's age, the family environment, the circumstances of the crime, the offender's competency in navigating the legal system, and the potential for rehabilitation. Last June, the Iowa State Supreme Court in a subsequent ruling said even these minimum sentences should be, quote unquote, uncommon. Many states have taken measures to reform mandatory minimum laws for both adults and juveniles, including Arkansas, Georgia, Louisiana, Michigan, Ohio, Pennsylvania, and South Carolina. Mandatory minimums are particularly harmful and counterproductive for juveniles. Nearly 200,000 juveniles are tried, sentenced, or incarcerated as adults each year, according to the Cardozo Law Review. A 2012 sentencing project study of those sentenced to juvenile life without parole shows 79 percent of them witnessed violence in their homes regularly. Prior to their interaction with the criminal justice system, fewer than half were attending school at the time of their arrest and nearly half were physically abused. When you consider the unfortunate circumstances of so many of these kids and you further consider that numerous studies show that a juvenile's brain isn't fully developed until ages 25 or 26, those factors illustrate that mandatory minimums are destructive policies for crimes. Judges should have the discretion to weigh the myriad of special circumstances relevant to the crime and should be able to consider the juvenile's age. Mandatory minimum laws do not allow for that judicial discretion. They ruin more lives and they create a heavier financial burden to the state. For instance, it costs $31,271 a year to house an inmate in our adult prisons once the mandatory minimum kicks in for those children and, otherwise, $114,876.45 to house a juvenile at the Youth Rehabilitation and Treatment Center in Kearney, over...almost $115,000 a year at YRTC. With Nebraska having the second most overcrowded prison system in the country and with our state currently subject to a lawsuit because of this overcrowding crisis, it is important to move forward on both short-term and long-term steps to fix our overcrowding crisis. We must ensure

that our prisons are not packed with people where the punishment does not fit the specific circumstances of the juvenile's crime. Especially in the case of juveniles, we must shift our state resources from excessive and expensive interminable incarceration to rehabilitative programs proven to reduce crime and recidivism and to keep our communities safe. I would like to also address the fiscal note on this bill. It would appear that the Board of Parole cut and pasted their fiscal note on my previous LB842 from...which was the one-third rule because it's nearly identical. These bills really have nothing to do with one another, as this one deals solely with juveniles. Parole indicates that it would affect 660 individuals while the Department of Corrections said it would affect four or five a year. It's the corrections numbers that I believe are more accurate here. There are nowhere near 660 juveniles sentenced to IC and ID mandatory minimums each year. However, if these numbers were correct, the state would indeed receive a significant savings in the millions of dollars after you factored in reduced correction costs per the fiscal note. But once again, the parole numbers, I believe, are not correct and I would expect a revised note once they recognize the errors. So in closing, I ask you to advance LB781 to General File. I'd be glad to answer any questions or refer you to the juvenile experts behind me. [LB781]

SENATOR EBKE: Thank you, Senator Pansing Brooks. Questions? Guess not. First proponent. [LB781]

THOMAS RILEY: Senator Ebke, members of the committee, my name is Thomas Riley, T-h-o-m-a-s R-i-l-e-y. I'm here in support of LB781 and represent Nebraska Criminal Defense Attorneys Association and the Douglas County Public Defender's Office. I agree with Senator Pansing Brooks, that support for Senator Chambers' bill to eliminate mandatory minimums is the right way to go. And not knowing what the legislative body is going to do with that, I think it's important for us to also recognize that it's particularly egregious, these mandatory minimums, with regard to juveniles. I think what one of the things that is the most disconcerting to me about mandatory minimums in cases like this, we're talking, ICs and IDs, basically about drug cases and firearm cases. And we have a rule in Nebraska called the aider and abettor rule which makes each codefendant equally culpable under the statutes regardless necessarily of their level of participation or their other characteristics, like lack of previous record. Frankly, if you get charged with an offense that has a mandatory minimum, you are going to prison. I sat here

earlier and listened to prosecutors talk about how important it is for judges to have discretion. Well, this takes discretion totally away from the judge. The judges that have to sentence someone with a mandatory minimum, probation is, per se, off the table. Well, in a situation with addressing with juvenile, aider and abettor cases, if two or three kids go and do something, one person goes in to rob the Kwik Shop with a gun and he's 22, and the 16- and 15- or 18-year-old brothers or friends or cousins are sitting out the car getting ready to drive away, they're all going to be charged with the robbery and the use of the firearm charge, even though their participation level is significantly different. And that should be of grave concern to any legislative body that's considering whether or not mandatory minimum sentences are appropriate in any case. The...and I think the likelihood of kid cases with aider and abettor situations where the younger participant is less culpable and probably has a less serious record, it just screams out that this mandatory minimum is an unfair approach. And as I say, it takes any discretion away from the judge. In many of these cases I've had judges say, you know, I would have given this kid probation but I can't because I have to give him the mandatory minimum. And if the prosecutors that Senator Chambers mentioned earlier, if the prosecutors won't move off it, they're going to prison. And, you know, they can utilize the mandatory minimums for a number of reasons like you help us in the (inaudible) case and I'll drop this firearm charge and maybe you won't go to prison. And again, the younger kids are the most malleable to law enforcement on that. So that's my time. I see my time is up and I'll entertain any questions. [LB781]

SENATOR EBKE: Senator Chambers. [LB781]

SENATOR CHAMBERS: Do you have a conclusion that you would like to arrive at? [LB781]

THOMAS RILEY: The only thing I want to say, I want to emphasize, is that by and large, entities that I represent or participate in are believers in judicial discretion in sentencing and I guess I just wanted to say that anticipating...well, if you don't...if you want to give judges discretion and take away mandatory minimums, why do you want to put a 20- or a 40-year parole eligibility on them, because it's different, because that doesn't mean they're going to get out. Mandatory minimums mean you're going to prison, end of story. The parole eligibility on the other bills we spoke about doesn't mean you're getting out of prison. You’re already done 10

or 20 years in prison. I just wanted to make that clear because I anticipate that might be "goose v. gander." [LB781]

SENATOR EBKE: Okay. Thank you, Mr. Riley. I see no other questions. [LB781]

THOMAS RILEY: All right, thank you. [LB781]

SENATOR EBKE: Thanks for being here. [LB781]

THOMAS RILEY: All right. Thank you. [LB781]

SENATOR EBKE: Next proponent. [LB781]

JULIET SUMMERS: (Exhibit 4) Good afternoon, Chair Ebke and members of...good morning, Chair Ebke and members of Judiciary Committee. [LB781]

SENATOR EBKE: It's still morning. [LB781]

JULIET SUMMERS: My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here representing Voices for Children in Nebraska, in support of LB781, because all children deserve society's protection to grow into healthy, productive adults, and we need to respond to youth crime in a thoughtful and effective way that responds to youth needs, preserves community safety, and contributes to Nebraska's future prosperity. We believe that this bill allows judges the discretion to tailor sentences for youth based on their unique needs and circumstances and in doing so gives both children and communities the protection they need. The second paragraph on my testimony that you have in front of you is my "broken record" information that you hear on every bill, so I won't hammer it home to you. You know how children are different. You've heard it all this morning. And we believe that LB781 would take a commonsense next step from Supreme Court decisions and this Legislature's own trajectory of juvenile justice reform by offering judges the discretion to sentence minors below statutory minimums. It doesn't require that, but it would give the judge the ability to look at that youth's unique needs and circumstances. As a former juvenile public defender serving under Mr. Riley, I represented youth

facing mandatory minimums in district court, and I don't want to minimize their behaviors or the consequences of their crimes to victims and the broader community. But the nature of mandatory minimums is inflexibility. It is inflexible to the different circumstances, histories, personal characteristics, and capacity for change presented by unique youth defendants. Whether or not the judges might have ruled differently in those cases that I represented, their hands were tied by the sentencing statute. LB781 might not have changed the sentences that were, in fact, imposed upon the youth I represented, but it would have allowed the judges the discretion to do so based on the facts of the case and the circumstances before them, looking at those developing young humans. Our responsibility to protect children requires us to hold them accountable in a way that gives them the opportunity for rehabilitation, redemption, and hope for a second chance. So I thank Senator Pansing Brooks for bringing this bill and we thank the committee for your time and urge you to advance it. Be happy to take any questions. [LB781]

SENATOR EBKE: Thank you, Ms. Summers. Questions? Thanks for stopping at the yellow light. [LB781]

JULIET SUMMERS: (Laugh) for once. [LB781]

SENATOR EBKE: Okay. Next proponent. [LB781]

DENNIS MARKS: My name is Dennis Marks, D-e-n-n-i-s M-a-r-k-s. Again, I'm with the public defender's office in Sarpy County for 21 years where I've represented predominantly juveniles during that time. I'm here on behalf of the Nebraska Criminal Defense Attorneys Association to testify in support of LB781. The concept that adult time for adult crime is antiquated and it's something that needs to go by the roadside, and I think historically over the last ten years that is starting to happen. It's happened here in Nebraska and it's happened nationwide. Senator Pansing Brooks cited the Lyle case in Iowa from 2014. This committee also worked on LB44, which has been cited earlier this morning on numerous occasions, that dealt with treating juveniles differently when the sentenced involved life without parole. So this is something that tracks not just nationally, regionally, but also in the state of Nebraska. When you look at it historically, you can see where this evolution starts to take hold. In the Roper v. Simmons was decided a decade ago which outlawed death penalty cases for juveniles. Graham v. Florida outlawed life without

the possibility of parole in cases that didn't involve homicide. And then the case that has been cited several times this morning, Miller v. Alabama, involved giving juveniles life sentences without the possibility of parole in just the rare exception of cases. So this bill tracks with the evolution of juvenile sentencing and it's really based on the characteristics of youth that they don't have the life experience of an adult, they don't have the perspective of an adult and the judgment necessary to avoid choices that could be detrimental. And I know Senator Pansing Brooks talked about the Lyle case. There's one other quote that I would add to that, that came out of that case, and that is: Juvenile culpability does not rise to the adult-like standard that mandatory minimum provisions presuppose. I would advocate supporting this bill and advancing it to, again, be in line with the evolution of juvenile sentencing in Nebraska and nationwide. [LB781]

SENATOR EBKE: Thank you, Mr. Marks. Any questions? Thanks for being here. [LB781]

DENNIS MARKS: Thank you. [LB781]

SENATOR EBKE: Next proponent. [LB781]

CHRISTINE HENNINGSEN: (Exhibit 5) Good morning. My name is Christine Henningsen, C-h-r-i-s-t-i-n-e H-e-n-n-i-n-g-s-e-n. I'm director of a project called Nebraska Youth Advocates and I'm also a juvenile defense attorney. You have a copy of my testimony today and a lot of the other testifiers have hit on some of those same points. I just want to note again the Supreme Court jurisprudence in regards to mandatory juvenile life with parole in its most recent decisions, Montgomery v. Alabama, Supreme Court Opinions say that children are constitutionally different from adults in their level o culpability and must be given the opportunity to show their crime did not reflect irreparable corruption. The same is true with mandatory minimums. The 2014 Iowa Supreme Court case that has been cited today applied that same logic and neuroscience to mandatory sentencing schemes. I think as a legislative body you have a responsibility to be proactive in the protection of constitutional rights, rather than reactive to whatever a state supreme court has told you how to act. If you know it's the right policy, you have a responsibility to move it forward. As in the case with the...it avoids situations where families have to go through resentencing after resentencing to fix, that corrects, that you

could...you have the foresight to correct before those mistakes are made. Creating a sentencing structure that's able to take into account the distinct differences between adults and youth and uses discretion on what is a fair and just sentence, is what is in line with our constitution and is also just good policy for our state. I'd be happy to take any questions. [LB781]

SENATOR EBKE: Thank you. Any questions? I see none. Thanks. [LB781]

CHRISTINE HENNINGSEN: Thank you. [LB781]

SENATOR EBKE: Next proponent. If there are any other proponents, move this way. If there are any other...any opponents, why don't you go ahead and make your way forward. [LB781]

AMY MILLER: (Exhibit 3) Good morning. My name is Amy Miller; it's A-m-y M-i-l-l-e-r. I'm legal director for the ACLU of Nebraska and we so appreciate Senator Pansing Brooks for bringing forward LB781. This really is a mosaic piece in the work that the Council for State Governments has asked Nebraska to do if we want to reform our overcrowded system. It's not the entire piece of the whole picture; it is one part of the mosaic that needs to move forward. I looked this morning. This Nebraska Department of Corrections has finally released their fourth quarter data sheet showing that our prison system that was designed to hold 3,375 men, women, and children, is today holding 5,280 men, women, and children, almost 2,000 more people than the system is designed to hold. That's why we need smart sentencing reform like this. You've heard, Senator Pansing Brooks did an amazing job of outlining both the legal and policy reason for it. We would ask that not only this but other bills relating to mandatory minimum reform, habitual criminal reform, all of these things need to move forward if we're going to solve the problems. Notwithstanding the continued resistance on the part of the Attorney General's Office or the County Attorneys Association who continue to resist smart justice reforms without offering any new solution, Senator Pansing Brooks has brought you smart legislation that should move forward. I'm happy to answer any questions you may have. [LB781]

SENATOR EBKE: Thank you, Ms. Miller. Questions? Thank you. Okay, I didn't see any more proponents. If there are, raise your hands real quick; otherwise, first opponent. [LB781]

PATRICK CONDON: Good morning, Madam Chairman, members of the Judiciary Committee. My name is Patrick Condon, P-a-t-r-i-c-k C-o-n-d-o-n. I am the chief deputy Lancaster County Attorney and I'm also here representing the Nebraska County Attorneys Association. Once again we will say, as was...as did the Council on State Government, who was the...one of the architects of the LB605 and the restructuring of the Nebraska laws in regards to trying to reduce prison overcrowding, minimum "mandatories" and habitual criminals are not the cause of prison overcrowding. CSG stated that and I challenge anybody to find where CSG stated that minimum "mandatories" and habitual criminals were the cause or were...led to the overcrowding of prisons. That is not what they said. They said the exact opposite. Secondly, we're here...I'm here to oppose this in the fact that, again, the County Attorneys Association feels that this is a way that you incentivize criminal orgnaizations--gangs--to use juveniles in their bidding. They use the juveniles to use the weapons. They use the juveniles to hold the drugs. They can do that because the juveniles aren't...don't stand to have the same potential penalties as the adults, so you're incentivizing these organizations to act this way. And finally, I think one thing...and again, this was probably brought to light somewhat by the bill this morning on the mandatory minimums in regards to IA and IB...or, excuse me, the IA and IB sentencing structures of 40 and 20 years on the bottom end of those sentences and that is, on that bill, I believe, Senator Bolz was asking for an 18-year...I think it was 18 years of age and under and in this bill Senator Pansing Brooks is saying 19 years of age and younger. And I guess we...I...it's the County Attorneys Association's position that we should at least be agreeing, if not on anything else, at least on the age of what we're talking about when we're dealing here with juveniles. So with that I have...if anybody has any questions, I'll entertain those. [LB781]

SENATOR EBKE: Okay. Senator Baker. [LB781]

SENATOR BAKER: Thank you, Mr. Condon. Some said before adult time for adult crime. Do you subscribe to that, there should be adult time for adult crime? [LB781]

PATRICK CONDON: Yes, adult crime for...adult time for adult crime. [LB781]

SENATOR BAKER: So do you have any line that you wouldn't go below, or range? I mean would you hold that to be true of an eight-year-old who committed a heinous crime? Should they do adult time? [LB781]

PATRICK CONDON: Well, Senator, an eight-year-old, we would not be able to charge as an adult. [LB781]

SENATOR BAKER: Okay. [LB781]

PATRICK CONDON: I mean there are certain crimes that we cannot charge as an adult and there's... [LB781]

SENATOR BAKER: What is the age cutoff for you when you would do that? [LB781]

PATRICK CONDON: What's the crime, Senator? [LB781]

SENATOR BAKER: Make it a horrible crime if you want. [LB781]

PATRICK CONDON: Well, and that's what I'm saying. By the statute, Senator, we are...the Legislature has imposed statutes where adult crimes, adult punishment, cannot be imposed on juveniles. [LB781]

SENATOR BAKER: Okay. [LB781]

PATRICK CONDON: That's already done. And what I'm...you know, and it's also, you know, just because we're opposing the minimum mandatory sentence does not mean that we oppose the right for a juvenile to go in and try to get a crime transferred to the separate juvenile court. They have that ability to do that and the court has the ability to transfer a case to the separate juvenile court if they chose to do that. [LB781]

SENATOR BAKER: So if I'm hearing you right, juveniles couldn't go in adult court, be tried in adult court. [LB781]

PATRICK CONDON: Juveniles can be tried in adult court. [LB781]

SENATOR BAKER: Okay. [LB781]

PATRICK CONDON: They can be tried in adult court and they can be tried in juvenile court. It's up to the...certain crimes, and as this legislative body has enacted it, there are certain ages of individuals that prohibit being tried as adults, period. And then there are crimes where due to certain ages they can be tried as an adult, but they can also have that crime or have that charge be moved to transfer to juvenile court. And there's other crimes that mandate that they be...that they start in juvenile court and that prosecutors, if they wish, can try to move those to the adult court system. [LB781]

SENATOR BAKER: Okay. Those that you would want to take to the adult court, what age would you go down to, to do that? [LB781]

PATRICK CONDON: It depends on the crime, sir. [LB781]

SENATOR BAKER: Would a ten-year-old? [LB781]

PATRICK CONDON: Again, I couldn't charge a ten-year-old with most crimes...well, in fact, I don't think I can charge any ten-year-old with a crime. [LB781]

SENATOR BAKER: All right. But you said you would take juveniles and charge it in adult court on some occasions. [LB781]

PATRICK CONDON: If there's a 17-year-old that took a gun and put it in the face of a clerk and that 17-year-old has a criminal history that has, you know, other incidences of violence that I can see, then I may charge that individual as an adult. I may charge them as an adult in that incident and he could be charged with being...using a firearm to commit a felony so he could be eligible for the mandatory minimum sentences. Now they can move to ask that to be moved to the separate juvenile court and the court can decide to do that and that that way...and if that occurs, then these mandatory minimums do not come into effect. Or they can decide not to and then if

that is the...if that's what their decision is, then that comes into effect. The same way is if I have a juvenile that is charged with a drug crime that I believe, you know, he isn't...you know, he is eligible to get into juvenile court. So he's a 16-year-old and he has a little bit of drugs and he's in a school zone. It's his first chance. He's selling, first time we have him. The prosecutor may very well decide to charge that in juvenile court and, again, take the minimum "mandatories" out of play in that instance. [LB781]

SENATOR BAKER: Thank you for your answers. [LB781]

SENATOR EBKE: Other questions? Thank you, Mr. Condon. [LB781]

PATRICK CONDON: Thank you. [LB781]

SENATOR EBKE: Next opponent. [LB781]

COREY O'BRIEN: Still morning. Good morning, Chairwoman Ebke, members of the Judiciary Committee. My name is Corey O'Brien; it's C-o-r-e-y O-'-B-r-i-e-n, and I'm appearing here today on behalf of the Nebraska Attorney General's Office in opposition to LB781. I'm going to confine my remarks specifically to LB781 and our objections. First of all, the first objection to LB781 would be the expansion beyond the traditional definition of a juvenile under Nebraska law. Generally juveniles are differentiated by the age of 18 and here this would make anybody that commits a crime at the age of 18 susceptible to a reduced opportunity for probation for a Class IC or ID as opposed to a 17-year-old. Second, as Mr. Condon briefly alluded to, this is a real concern and that is on the streets, particularly in our metro areas, every day there are gang members putting the guns in the hands of youth because those gang members are going to mandatorily go to prison for shooting at the occupied dwelling or doing the drive-by shooting, whereas under this bill they'll telling the children that they're putting the guns in their hands, don't worry, you're going to get probation, you're going to go to juvenile court if you do this crime. And so our objection is that we don't want to create any more incentives for them to put that gun in that juvenile's hand. Second...I'm sorry, lastly, juveniles have an opportunity, unlike adult offenders subject to a mandatory minimum, of, one, having their cases transferred to juvenile court. And this is something a lot of people don't know, but Nebraska Statutes already

provide under 29-2204(5) that even if a child is being prosecuted for a IC or D felony in adult court, when they're sentenced, the judge has this option, the district court judge has this option. "Except when a term of a life is required by law, whenever the defendant was under eighteen...at the time he or she committed the crime for which he or she was convicted, the court may, in its discretion, instead of imposing the penalty provided," may give the child such disposition as the defendant...to the defendant as the court deems necessary or proper under the Nebraska Juvenile Code. So what that means is that the courts already have discretion for a juvenile being prosecuted in juvenile court to sentence them under the Juvenile Code if they think that the sentence of a mandatory minimum imprisonment wouldn't be justified. With that, I'd be happy to answer any questions the committee might have. [LB781]

SENATOR EBKE: Questions for Mr. O'Brien? Thanks for being here. Do we have any other opponents? Anyone testifying in a neutral capacity? We have a couple of letters, one from Chief Todd Schmaderer of Omaha Police Department, and one from John Wells of the Omaha Police Officers Association. Senator Pansing Brooks. [LB781]

SENATOR PANSING BROOKS: Well, it's so aggravating because we've had Mr. O'Brien come up and say that we already have...they already have the discretion to do this, so why are they coming up and opposing it then if that discretion is there? The argument by Mr. Condon that it's not being sense...that they'll get gang members to use kids to come up, this getting rid of mandatory minimums, if you think some child understands that if they're standing outside watching and they have some realization that, oh, I better not because there's a mandatory minimum, and I think it's disingenuous. Thank you for asking the question, Senator Baker. Under 11--that's a bill that I had three years ago that we passed in the Legislature--they will go off to HHS via the 3(a) charging, so it's under 11, so we're talking about an 11-year-old could be charged. That's a sixth-grader. As a former superintendent, you can understand how young a sixth-grader truly is. And to say, as we heard from Mr. Alexander's testimony on the previous bill, where he came up and he was asked to stand outside and watch and some crazy kid went in and shot the person in the Kwik Shop and then all of a sudden he is stuck as just standing out there, we know about victimization of people who are charged. Those kids are forced by gang members and by family members and others to do the work they do. So should we have a hammer and send them away for life? We want that life without parole. Well, give the judges

discretion there bu don't give them discretion here. This is just two-sided discussions every time, no matter what. There's no effort to come and work with us, to help create bills that are more just, more fair. I am embarrassed and sorry I did not know about the aider and abettor rule. That makes it even more necessary. The fact that some kid is going to get charged with an adult crime because they stood outside and watched and the court is not allowed the discretion to say, no, that case is particularly different than the case of the kid that went inside and shot everybody, that is unreasonable that we have prosecutors coming and saying let us continue to use our hammer to put away every child because there might be some terrible situation. You bet. There will be a terrible situation and judges get it. So I find this really unreasonable on some of these arguments that are being proffered...produced by the prosecutors, by the Attorney General's Office. I appreciate their coming forward and allowing us to have this discussion. But again, come with solutions, come with ideas on how we might make laws better and stronger and put away the people that we're most scared of and not the people whom we're maddest at. Some little sixth-grader we want to put away at a mandatory minimum? Come on. Thank you very much. [LB781]

SENATOR EBKE: Thank you, Senator. Senator Chambers. [LB781]

SENATOR CHAMBERS: I want to pose this question to somebody who is rational. Senator,... [LB781]

SENATOR PANSING BROOKS: So were not going to pose it to me? [LB781]

SENATOR CHAMBERS: Senator Pansing Brooks,... [LB781]

SENATOR PANSING BROOKS: Okay. [LB781]

SENATOR CHAMBERS: ...an earlier testifier, who shall remain nameless in my question, had said that if you don't have the mandatory minimum, a gun will be placed in the hand of one of these children. If you have a mandatory minimum, will that stop one of these adults or gang members from putting the gun into the child's hand and say, go in there? [LB781]

SENATOR PANSING BROOKS: Exactly. That, I mean, that... [LB781]

SENATOR CHAMBERS: So this shows that the prosecutors know that these children can be misused in this way but they still want that child who, in my mind, is not culpable to go away with the mandatory minimum. That's why sometimes I don't ask them questions. Early on I will to make it clear that I'm here, that I'm aware of what they're saying, I object, but I don't try to reason with them. They can't do anything other than what they do. We used to have what are called wind-up toys. They might call them mechanical now, robots. And you wind it up and when you set it down, it does only one thing, whatever it's geared to do. They had little ducks and they'd jump up and down and their head would go up and down as they jumped up and down. No matter whether you wound the spring tightly, loosely, or in the middle, for the amount of time that it was going to take for that spring to release its tension, the duck is going to do the same thing. So we've got to put these bills out there and you all have to put me in a position on the floor to write my rhymes, recite them, and point out how preposterous, how cruel these prosecutors are. Their own words undermine what it is they say. They don't want these children to be implicated in adult crimes by adults. But if an adult implicates the child, who ha no say-so, that child should do adult time, adult crime, adult time. But I say, if you don't have the adult mentality, even if the act is done, it's not only not an adult crime, it's not a crime. The mens rea is not there. [LB781]

SENATOR PANSING BROOKS: Exactly. [LB781]

SENATOR CHAMBERS: They understand this, but it makes them no difference. And poor Mr. Corey comes here. You all...I'm giving him an alias. [LB781]

SENATOR PANSING BROOKS: Corey O'Brien. [LB781]

SENATOR CHAMBERS: The Attorney General does not respect him. You go down there and be a fool because I'm not. I'm running for reelection. You don't have to be elected. I hire you. I hire you to be a fool. When I say be a fool, be a fool. When I say jump, you jump. When I tell you despite all of the moral training you've had in terms of portioning out responsibility and culpability, sweep that aside so you can keep getting your salary. We should put these bills out

there and I hope that we will and I want them to be in the lobby so I can turn around and say, there they are, look at them. [LB781]

SENATOR PANSING BROOKS: Well, I do have to say that, you know, everybody from the prosecutor's standpoint is willing to talk about vulnerability of juveniles to be corrupted or convinced by gang members to do certain bad acts but, boy, the minute we want to have an attorney for a child, well, they're not going to be manipulated by prosecution or counsel. So it...this is aggravating. I thank you for your time. [LB781]

SENATOR EBKE: Thank you, Senator Pansing Brooks and Senator Chambers. My grandmother had one of those ducks in the toy box in the closet that two generations of grandkids and great-grandkids played with, so. [LB781]

SENATOR CHAMBERS: So you know I've been around awhile, don't you? [LB781]

SENATOR EBKE: Yeah. So that closes the hearing on LB781. Senator Pansing Brooks. [LB781]

SENATOR PANSING BROOKS: (Exhibit 5) Thank you. Thank you, Chair Ebke and fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. And I appear before you today in introduction and support of LB869. Last year I introduced LR216, an interim study to examine the practices, policies, and laws that govern the safeguarding and sealing of juvenile records. I was able to speak with national experts and review how other states approach the sealing and expungement of juvenile records. Nebraska has made a number of juvenile justice reforms in recent years, informed by adolescent brain research and response to studies which recognize that children need to be treated differently than adults. Youth are still in the process of development and are more prone to risky antisocial behavior, more susceptible to negative peer pressure, more impulsive, and less capable of thinking through the long-term consequences of their actions. Our juvenile justice system is supposed to be rehabilitative, seeking to "hold juveniles accountable for their unlawful behavior in a manner consistent with their long-term needs," pursuant to Nebraska Revised Statute 43-402. Nebraskans should not be

defined for a lifetime by the bad decisions they made as a teenager. I know I would not want my teenage years to define me and I imagine that the members of this committee might not either. The accessibility and effectiveness of our state sealing statues is imperative to reach the goal of a juvenile justice system focused on rehabilitation. Public access to a juvenile record can create lifelong barriers to success for youth and young adults who have either outgrown their behavior or who have become rehabilitated. Public access limits the young person's ability to secure housing, obtain jobs, join the military, pursue higher education, or receive public benefits. We must take steps to ensure protection of juvenile records not only for our youth but for the community as a whole. Access to juvenile records blocks a young person's ability to become a productive member of our society. It undermines the intent of our juvenile code and it ultimately reduces the tax base by limiting employment and educational opportunities. As a reminder, the State Chamber has determined that the number-one issue across our state is work force development. Nebraska does not have...Nebraska does have a statute governing the sealing of juvenile records. In the context of LR216, I was able to speak with local juvenile justice stakeholders and gather input on the effectiveness of our current statute and whether the intent of our current statute is reflected in our current practice. LB869 attempts to clarify the sealing process and make it less cumbersome. It helps remove current barriers that youth and families face when requesting their juvenile records be sealed. First, the bill modifies the initial advisement to youth on sealing eligibility and process for which the county attorneys are already responsible, so they'll save money, to ensure that the information is presented in a manner that youth and families can understand. Second, the bill allows for youth who successfully complete probation or complete the orders of the court to be able to have their record automatically sealed upon successful completion of probation or of court orders. The current confusing process requires the court to send notice to the youth when they reach the age of 17, whether or not the case has been closed, and then to initiate a process wherein a hearing is held to determine if the court record shall be sealed. This is an unwieldy and oddly timed process and it places a burden on both the youth and parties to the case. Providing for an auto seal upon successful completion of probation, instead, will ensure the youth who has demonstrated compliance with court orders and successful rehabilitation gets the benefit of a sealed record without this additional burden to all parties of further additional court proceedings. Third, the bill makes clear that any youth whose record is no automatically sealed may motion the court to seal their record after their case has been closed for six months or upon reaching the age of 19, whichever comes sooner. The bill

describes the procedure for the filing and determination of this motion. The county attorney may file an objection to the request to seal the record stating the basis upon which they are objecting to the sealing, so that the youth may be aware of what to expect in order to prepare for the hearing. In making the determination whether the youth has been rehabilitated to a satisfactory degree, the court will consider criteria that already appears in our current statutes, including the youth's response to treatment or rehabilitative services and the youth's record of employment or education following case closure. This bill removes criteria that currently appear in statute but are not related to the actions of the youth since the case has closed. When the court does order a record sealed, the court is already required to explain to the youth what sealing means, but the bill adds that the explanation be given in developmentally appropriate language and requires that the written order give contact information for the relevant government agencies so the youth and the family can follow up on their own to confirm that the record has been correctly sealed. Fifth, the bill provides for an enhanced sealing status which occurs five years after the date that the record was originally sealed. After five years, the youth's record can only be assessed by youth for research purposes or by the Inspector General of Child Welfare. This enhanced level of sealing will provide meaningful assurance to the youth that they can truly put their past behind them and move forward into their futures. Finally, this bill also includes the additional accountability to system holders to ensure that we are taking care to promptly and correctly seal a youth's record as required. Failure to seal a youth's record when they have been assured it will be sealed can put them in an even worse position if they are applying for a job, college, or professional association while relying on the promises of our statute to not disclose a juvenile history. If a record is incorrectly left unsealed, the youth is seen not only as a criminal but also viewed as dishonest. These failures by system players do not comport with our Juvenile Code. Our Juvenile Code requires that our justice system act in a way that is cognizant of the youth's developmental limitations balanced against his or her lifetime...balanced against his or her long-term needs to live a productive life. When we do wrong by children who have done everything we have asked of them, we should be held accountable. The juveniles who have complied with what the state requires of them should not be expected to wear a lifelong mantle of punishment. I have one amendment to this bill. AM1850 makes a couple of changes to clarify references to district or county courts and specifies references to specific diversion programs. There are a number of people who are present to testify with regards to this bill. And in closing, I'm happy to

answer any questions the committee may have and ask that you forward AM1850 along with LB869 to the General File. Thank you. [LB869]

SENATOR EBKE: Questions for Senator Pansing Brooks? I see none. First proponent. [LB869]

ANNE HOBBS: (Exhibit 6) Hello. My name is Dr. Anne Hobbs. It's A-n-n-e H-o-b-b-s. I'm the director of the Juvenile Justice Institute at the University of Nebraska at Omaha. Thank you for the opportunity to speak in support of LB869 and the amendment. The proposed legislation is designed to enhance Nebraska's sealing provisions specifically around automatic sealing. When automatic sealing records are benfecial...automatic sealing policies are beneficial for helping youth transition, but we have to ensure that the process itself is followed through. Right now in Nebraska the data shows that we're really struggling with sealing juvenile records. In the handout that you received, on page 2, you'll see three tables and I'll just very quickly touch on them. In 2017, the Juvenile Justice Institute obtained data from the Nebraska Court Administrator's Office. We looked at cases of juveniles filed between 2012 and 2015, so we looked through anyone who was under the age of 21. We specifically looked at this time frame because we wanted to ensure the cases had been closed and had adequate time to seal. Of the total of 173,000-plus cases, we examined 133-plus cases because those are the ones that were closed. What we found was that Nebraska's current sealing laws does not assist 18- to 20-year-olds at all. Juveniles in those age ranges, I think, first of all, it may not have been the intent of the law, but those are young people that are transitioning and looking for housing and employment. So if you look at Table 1, those are the number, overall, the total number of cases where a person was under 21 when the offense happened. About 91 percent of those are not sealed. If you look at Table 2, what you can see is even for young people who were under the age of 18 when the offense happened--so those account for about 28,000 cases during that time frame--even young people who were under 18, only 43 percent of the cases are getting sealed. So we then looked to see, well, maybe in particular cases, for example, when a case is filed and then later dismissed, we might expect that those would automatically seal and we expect that a large proportion of those cases would seal. Instead, what we found--and it's shown in Table 3--is that even when cases are automatic or are dismissed, they don't end up sealed. So of the 30,000-plus cases that were dismissed and never even made it to court, 94 percent of them were not sealed. So right now as it stands in Nebraska, we really do need some enhanced...we need to streamline and

simplify the process so that records actually do get sealed for young people. Thank you. I will take any questions if you have them. [LB869]

SENATOR EBKE: Thank you, Dr. Hobbs. Questions? I see none. Thanks. Next proponent. [LB869]

SCOUT RICHTERS: (Exhibit 7) Hello. My name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-rs. I'm here on behalf of the ACLU of Nebraska in support of LB869 and we'd like to thank Senator Pansing Brooks for bringing this bill. As she mentioned, LB869 is consistent with the overall goal of the juvenile justice system, which is rehabilitation. And by making the sealing of these juvenile records automatic in most cases we are really ensuring that once a child completes their probation or completes their diversion, they don't have these collateral consequences from that sealed record that haunt them and prevent them from fully moving forward with their lives. On a personal note, prior to my position with the ACLU, I worked as the juvenile reentry attorney at Legal Aid of Nebraska and a major part of that work did involve juvenile record sealing, and I saw a widespread misconception among my clients and their parents that the juvenile record was not open to the public when we know that it is. And unless...anyone can go on-line, pay a small fee, and see that unsealed record. And I consistently saw unsealed records holding my clients back in various areas. One particular area was in getting jobs. Young people would truthfully answer on job applications that they had not been convicted of a crime because a juvenile adjudication is not a crime, yet potential employers would be able to access those unsealed records and then they would assume that the young person was lying because the employer themselves didn't understand the distinction between an adjudication and a criminal conviction. And so as simply as that, a young person would be out of the running for that job that they really wanted. So this bill makes sealing more automatic, doesn't place the burden on kids to file a petition to seal their record, in most cases and, as such, the ACLU of Nebraska fully supports this bill. And I would be happy to answer any questions. [LB869]

SENATOR EBKE: Thank you, Ms. Richters. Questions? I see none. Thanks. [LB869]

SCOUT RICHTERS: Thank you. [LB869]

SENATOR EBKE: Next proponent. Go right ahead. [LB869]

CHRISTINE HENNINGSEN: (Exhibit 8) Okay. Thanks. Good morning...or afternoon, Chair Ebke and members of the Judiciary Committee. My name is Christine Henningsen, C-h-r-i-s-t-i-n-e H-e-n-n-i-n-g-s-e-n. I'm the director of a project called Nebraska Youth Advocates which is housed at UNL's Center on Children, Families, and the Law. I'm also an attorney specializing in juvenile defense. I'm here today in support of LB869 as it takes steps to both simplify and expand our current sealing statute to help ensure that youth can move forward in their future and not be held back by juvenile adjudication. You have a copy of my testimony. I want to take time to share a story with you of a young girl I recently represented in a sealing hearing where the county attorney had filed an objection to the sealing of a record when the youth turned 17. The young girl, while she was represented during her delinquency case, no longer had an attorney; once she was satisfactorily released from probation, her attorney's appointment ceased. She was confused by our sealing process and mistakenly thought that her record would seal automatically. As such, she applied for employment and was offered the position pending a background check. When the employer discovered the adjudication, the offer of employment was withdrawn. She then received notice from the courts that her record would be sealed, followed two weeks later by an additional notice that the county attorney had filed an objection and there would be a hearing in three weeks. Appointments of counsel do not continue through this late stage of a case, so she and her mother sought legal assistance. The county attorney objection did not state any grounds for the objection and the mother and daughter were unaware of what to expect since she was going to school and had not received any new charges. The county attorney did not want to withdraw the objection without the hearing, so the mother took off work and took her daughter out of school for the hearing on the objection to the sealing of the record. The mother also described the emotional toll it took on her daughter not knowing what was going on, unsure of what the outcome would be despite completing all probation requirements. The judge ultimately sealed her record but it was an arduous which can and should be avoided when a youth has successfully completed probation. My client wanted me to share her story but not her name in case that would put up additional obstacles as she moves ahead. She also feels she can never go back to that original employer because she's already been marked as someone with a record. I do also want to make note that automatic sealing is good but we're doing a horrible job of it, as Dr. Hobbs was saying, and we really need to take steps that the court and the county

attorneys are adequately and correctly sealing those records. I'd be happy to take any questions. [LB869]

SENATOR EBKE: Thank you for being here today. Questions? I see none. Thanks. Next proponent. If there are any other proponents, please move to the front. If you're not a proponent but an opponent, you can move to the front as well. [LB869]

JULIET SUMMERS: (Exhibit 9) Good afternoon, Chair Ebke and members of the Judiciary Committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here on behalf of Voices for Children in Nebraska supporting LB869. Our justice system should be structured to ensure all children can take the right steps to put their past behind them and move toward a better future. And as a society, we all benefit by policies that hold youth accountable in age-appropriate ways and allow them the ability to grow out and past their adolescent decisions. We support this bill because it provides a much-needed update to our statutory code regarding the sealing of records to ensure that those records don't become dead weight dragging down Nebraska's youth and, by extension, our communities. Youth who have paid their society and who have taken advantage of the rehabilitative services of the court should have the chance to get an education and earn an honest living, and these markers of opportunity are also markers of reduced recidivism and increased prosperity in neighborhoods. So when they're able to do so, when they're able to put their past behind them by the sealed record, their prospects for lifetime income and stability improve, which impacts the prosperity of neighborhoods, communities, and our state as a whole. Unfortunately, information obtained through LR216 this past summers suggests that the implementation of our current statute is haphazard across the state, which is leaving too many young people saddled with unsealed records that should have been closed. We support this bill because we believe the additions and changes and clarifications it makes to our code will fix some of the current issues and will benefit Nebraskans in a number of ways. First, it ensures that families receive the information they need to understand the importance of a sealed record, the steps and process the youth will need to take in order to achieve it, and whom to contact after the fact to check to make sure that the record has actually been sealed as promised by the statute or ordered by the court. Secondly, it'll ensure that youth who have completed the orders of the court and followed through with their rehabilitative plan actually receive the benefit of the sealed record without the undue burden of or needing to initiate a complex proceeding by providing for

the automatic sealing of records upon successful completion of probation and the orders of the court. There are some judges in Nebraska that are already doing this, so they'll say, I'm ordering you to this term of juvenile probation, follow through with your orders, make sure you stay out of trouble and your record will be sealed, but right now that's only happening in some courtrooms, not consistently across the state. Finally, this bill would provide additional protection as the youth grows up by heightening the sealing protection after five years have passed. We believe that LB869 will ensure our statute is functioning to meet the need it was intended to meet and in doing so it will provide relief to young people who have done everything we've asked of them and only wish to move forward into a better future. Like to thank Senator Pansing Brooks for bringing this bill and this committee for your time and commitment to these issues, and I'd urge you to advance it. [LB869]

SENATOR EBKE: Thank you, Ms. Summers. Senator Chambers. [LB869]

SENATOR CHAMBERS: You made me think of something. I have a confession to make. When I was young--a long time ago--I committed offenses but I never was captured and put into the clutches of the law. Me, or, to be grammatically correct, I and two or three other guys my age would climb over people's fences and go into their apple orchard and steal apples which we had not asked for and which we did not have permission to take. And we would take these apples home and share them with our brothers and sisters, with other kids in the neighborhood. And because we only had two small hands, we would tuck our sweatshirts into our belts--you know, in our trousers--and then we'd fill up our shirts and look like miniature Santa Clauses or whatever. We did that and then when cherries ripened, we would actually take sacks. They didn't have plastic bags like you have at the store now. We would take sacks and we'd wait until we felt nobody was home and we'd climb up in those people's cherry trees and we'd fill those sacks with cherries. We trespassed. We stole. But since I was never apprehended, never adjudicated--I don't know what they would have called it in those days, probably convicted--I don't have a record. And apparently, children who are thieves when they're little have the capacity to rehabilitate themselves because I never told my parents what I did. I never confessed in church. So nobody took me under their wing and lectured me about the need to change my evil ways, yet I did it. So to say that because a child did something that would be a violation of a law, therefore, the child should be locked up in jail, is disproved by me. But I know there are a lot of people, some of

them sitting in this room, who wish that I had been apprehended and convicted of a felony so that I could not be in the Legislature and they wouldn't have me to contend with. These are the things that go through my mind when I hear these prosecutors make all these dire statements about the necessity of locking up children. And if they have children, I bet every one of them would either be the lawyer or hire a lawyer so their child would not have to go to prison, would not have to get a record, and use all of his influence to get his child a break. I know of politicians who have done that in this state and I have said on the floor of the Legislature when it involves yours, you understands. But you want the harshest of punishments for other people's children, maybe feeling that in the universe every sin must be punished. And since your children committed sins and were not punished, to restore the balance in the universe, these poor people's child should bear the punishment that your child deserved but didn't get. That's why I speak sometimes so forcefully. And I do feel anger. I feel contempt for these self-righteous hypocrites who come up here and have also done things, if they would confess, and happened not to get caught, or if they got caught they got a break. I live in the real world and I want other people to be given the breaks that all these big shots and others have gotten. I've never taken a drink of alcohol in my life, therefore, I could not be charged with drunk driving or failing a breathalyzer test or refusing to take one. But because I was so pristine pure in that area, it doesn't cause me to feel superior to somebody who had that failing, because they didn't steal apples, perhaps, they didn't steal grapes. We used to steal grapes too. They grew those purple grapes. And I even went in gardens and they had onions that had these green stems and I'd make sure that nobody was looking, nobody watching, and I also stole onions, I stole tomatoes, I stole the grapes, I stole apples, I stole cherries. But objects I never did steal. I didn't want things. I wanted something that I could eat. I wanted something that after I ate what I needed I could give to other children in my neighborhood. A lot of people were poor and I really didn't feel like I was doing anything wrong. But after I got older, I realized that I should not have stolen those commodities and fed other people's children because it was not...they were not my responsibility. Their parents should have done the stealing if there was to be stealing. But then the rest of the story: I went to church and I read the Bible and instead of being condemned by what I read in the Bible for having stolen, I read that there were times during Jesus' day when he took his disciples through cornfields and they stole corn and they did it on the Sabbath and Jesus not only did not condemn them for stealing the corn they didn't ask for, but said they didn't commit a crime while they did it on the Sabbath because the Sabbath was made for man and man not for the Sabbath. And I

said, if I knew that, I could have expanded my stealing one more day, because I wouldn't steal on Sunday because I was in church all day. Read further in the Bible and there was a requirement that people who had farms, who planted crops, had to leave a certain amount in the field so that the people who were poor and hungry would have something to eat and the people who took those leftovers were not called thieves. They were called gleaners. In order that the gleaners could eat, these people who had more than they need were required by the moral law of their day to leave something for those who were less fortunate. But prior to having read that, I had deemed myself a thief and maybe because I deemed myself a thief I really was a thief and thieves are to be punished and I never was because I never got caught. But then it occurred to me that maybe people were home and maybe they saw me and maybe instead of seeing a thief, they saw a hungry child, and if that child was so hungry he would risk whatever he risked to take an apple, some apples, to take cherries, to take onions, to take tomatoes, so the child should be allowed to have it. That's the way I rationalize things. But when I put it all together, it makes it difficult for me to sit here today and listen to these grown men come here, they've got a job, paid for by taxpayers' money, and talk about the terrible things that ought to be done to these children so that they will be adequately punished. I wish they would do some things to me, punish me for what I did wrong. And if they would promise to do it, I'd go out in the hall right now, or in any alley they chose to go into, and let them punish me. But there would be a price to pay. See, when I was out there in the world, as we called it, these kind of people would have gotten a physical whipping, but they know they're safe now. And they're too cowardly to attack a man like me so they'll say take it out on the children. You think they wouldn't want something to happen to me? You think if they were not cowards they wouldn't put their hands on me? I want them to know the utter contempt and disgust I have for them, and I can't conceal it anymore. We have had too many bills. If they come on one bill, I can take them in small doses. But when I overdose on these rotten, cowardly, cruel men who sponge off the public and get that money because they cannot make it in private practice, I cannot contain my anger and hostility. And if they feel insulted, there is a way they can get satisfaction, because I'm, right now, while they're angry and I am, I'm going to go to the restroom, but I'm going to go slowly, and if any of them or all of them want to take issue with me about anything I said about them, those who testified, we can chat about it in the hall. [LB869]

SENATOR EBKE: Okay. Thank you, Senator Chambers. Thank you, Ms. Summers. I don't see anybody else, any other questions, so we'll move. Thank you for being here. Were there any other proponents? Opponents? [LB869]

SHAWN RENNER: Good afternoon, Senator Ebke, members of the Judiciary Committee. I'm mildly nervous coming up here. My name is Shawn, S-h-a-w-n, Renner, R-e-n-n-e-r. I'm a lawyer at the Cline Williams law firm in Lincoln. I'm appearing today on behalf of clients. Media of Nebraska, Inc., is a nonprofit corporation that represents the legislative interests of the Nebraska print and broadcast news media. Media of Nebraska's quarrel with this bill is not in the details of it and they understand the policies that drive the bill. The steering committee of Media of Nebraska asked me to remind the Judiciary Committee that there is another side to the equation when we're talking about how government operates and what government records should be open to the public and what shouldn't. Again, we understand the policies that drive decisions about juvenile justice and the consequences of the juvenile justice system. Every decision that's made as part of that system, though, is part of our government and a prosecutor makes a decision to charge. The court system, the juvenile justice system or the adult justice system, processes those charges filed by the prosecutor. A judge passes sentence. Other government actors make sure that the sentence is carried out, whatever that is. The nature of sealing records and expunging records is that the actions of our government are deleted from the public record. And while there are countervailing policies that sometime makes that a good idea, my clients desire that the committee consider that there is a cost in the sense of accountability of how our government operates when government records go away. I'll leave it at that. [LB869]

SENATOR EBKE: Thank you, Mr. Renner. Any questions? The only question I would have is, and I'm sympathetic to the notion of public record going away, but does the public record actually go away anymore in this era of Google? And it may not be in government records, but there's still going to be a record, right? [LB869]

SHAWN RENNER: There may be and that... [LB869]

SENATOR EBKE: Because we can't really expunge Google, you know. [LB869]

SHAWN RENNER: You cannot, and that presents an additional problem for my client because...and the news media rarely...it probably happens more now than it did 10 or 15 years ago, but rarely reports on juvenile crime. That's not the steady diet of our state's news media. But it sometimes happens, when there's a serious crime that's committed by a juvenile, that there will be reporting either in the press or the broadcast news media. Once that report is there, the First Amendment makes it very clear that the government can't require the news media to take that report down or to delete it or to pretend it didn't happen, and to the extent that it exists on a computer file, someone can find that. And then the criticism comes to the news media: Why are you destroying this juvenile's life? Or if it's not a juvenile record that's expunged, we heard this afternoon about other records being sealed,... [LB869]

SENATOR EBKE: Right. [LB869]

SHAWN RENNER: ...why are you destroying this person's life? Well, it was an accurate report when it was made. It was newsworthy when it was made. And the fact that the court system and our government has decided to seal that record from public view doesn't mean that it didn't happen and it doesn't mean that the news media is responsible for that report being available to the public. That's how the process works. [LB869]

SENATOR EBKE: Okay, thanks. [LB869]

SHAWN RENNER: Thank you. [LB869]

SENATOR EBKE: I see no other questions. Thanks. If there's anybody else planning in testifying on this bill, please move forward. If there's not, we'll...okay, go right ahead. [LB869]

SHAKIL MALIK: (Exhibit 11) Good afternoon, I guess, now, Senators. My name is Shakil Malik, S-h-a-k-i-l, last name Malik, M-a-l-i-k. I'm appearing on behalf, I guess, the self-righteous, rotten, cowardly, cruel men who cannot make it in private practice, that association, the Nebraska County Attorneys Association, that's who I'm here for. [LB869]

SENATOR EBKE: Go ahead. [LB869]

SHAKIL MALIK: And the issue that we have with the bill is not automatic sealing for a juvenile that rehabilitates or the case is dismissed. You know, speaking as a practitioner in Douglas County, we've been doing that for five or six years. The issue is not that if a juvenile, their case doesn't go forward or, you know something else happens that the record stays open, the issue is really with...there are drafting issues with the bill. The bill creates what I view as a shift in the burden for if a juvenile does not successfully complete probation, later comes back to ask for their record to be sealed, it's then put on their prosecutor to put the reasons why it shouldn't be sealed when they were already unsuccessfully completed to begin with. So logic would indicate that juvenile should be coming to say, hey, I know I didn't do it right in juvenile court but here's why it should be sealed now, since they already missed out on that. And then...and with the talk about the drafting errors and issues, I haven't seen that amendment, so I don't know. They may very well have been taken care of, because the issues I've seen I've not hidden. I've spread it around the bar. The bar had told me it's been getting conveyed to senators. I swear on the County Attorneys Association I've been very up-front for weeks now about what...the issues I see with this bill. Then some issues talking about just some procedural issues I see with it, you know, this retroactivity clause, it's just...says the changes made by the bill are retroactive but no mechanism of how that occurs, what happens for the different stages of seals we've had in the past before even LB800 back in 2010. What about the set-asides? How do you do that? You know, also, with changing it where...and I don't know if this is the intent of the bill, but where the prosecutor becomes responsible for notifying the court that the juvenile has completed probation, that I don't think the court even want that occurring that...when it seemed to make sense. The criminalization aspect where it's making it now a misdemeanor but it establishes negligence as a mens rea, whereas the same individuals who advocate on behalf of juveniles and criminal defendants will go berserk anytime a bill comes forward that would establish negligence as a mens rea and doesn't also establish what the elements of the offense are. And then also, that doesn't fully address the numerous issues that are with the existing sealed records statute, which we will readily acknowledge has needed some revision since it was passed about eight years ago now. For example, you know, there's still outstanding issues between harmonizing the juvenile sealed record statutes with the...well, we call it adult, but it's basically the Criminal History Information Act and the sealed records that have been put in there, the State Records Management Act, so there are a few other issues there. And, you know, well, it was discussed

today, which I find amusing for my interactions before the Legislature, is...I see I'm out of time. May I have a moment to just finish my thought here? [LB869]

SENATOR EBKE: Please do. [LB869]

SHAKIL MALIK: ...is working constructively. So when I sit on a number of legislative committees for different organizations, and on one that I sat in, juvenile law section of Nebraska State Bar Association, when I raised my issues with the bill, it was brought up, well, do you want to draft something else or do an alternative? So, yeah, I spent a bunch of time and came up with an alternative. I researched laws going back 30 years and got that circulated, so, and I've attached that with it. And then people wonder about, well, you know, you just write what's wrong with it. Well, okay, I did a markup also identifying provisions, so I'm giving this to the committee. I fully support if a juvenile is not filed on, that the record should be sealed, if they complete diversion, absolutely. I mean, that's...it's a great incentive for juveniles and, you know, I've done a lot of work with diversion, with juveniles. It's a great incentive. If they complete probation or juvenile court orders, excellent, let's seal them. But the point where if they blow through everything else or they age out or they run out the clock and it doesn't get sealed because they didn't successfully complete, I think there should be at least something saying, hey, court, this is why. And honestly, as a prosecutor who's gotten these sealed notices before, the...if it's...if there's something accompanying it, if it's something triggered by the juvenile who is now an adult and they outline, hey, this is what I've done since, I'm...if it's something reasonable, I'm not going to go and then object to that because at least I know why versus if it's just blank, then how do I know? And you almost have to default to the side of caution. With that, I'd certainly...I'd be happy to answer any questions that are offered. [LB869]

SENATOR EBKE: Thank you. Questions? I think Senator Pansing Brooks has your information and we will take that into consideration as we're working through the bill. [LB869]

SHAKIL MALIK: Thank you. [LB869]

SENATOR EBKE: Thanks. Appreciate that. Anybody in the neutral capacity? We have a few letters, I think--LB869, right?--in support from: Mary Bahney of the National Association of

Social Workers; Mary Ann Scali of the National Juvenile Defender Center; John Else of the League of Women Voters of Nebraska in favor; and then opposed, Todd Schmaderer of the Omaha Police Department. Senator Pansing Brooks. [LB869]

SENATOR PANSING BROOKS: (Exhibit 10) Thank you very much, Chair Ebke. Well, first off, it would have been nice if Mr. Malik had brought me this information. I would have been happy to talk with him and work with him on whatever he thinks is so unclear about what we're trying to do. To come to the hearing with the entire draft all outlined and, I mean, it took quite a while for him to figure this out. So I appreciate that. I will look at it. It's good to get those things earlier if we can. Again, he said on the record just now that, you know, that we shouldn't allow the sealing of cases that have not been successfully completed. I want to point to page 4, line 11. If a juvenile described in this section has satisfactory completed the diversion, mediation, probation, supervision, or other treatment or rehabilitation program provided under the Nebraska Juvenile Code, or if the juvenile has satisfactory completed the diversion or sentence ordered by a county court or district court, the county attorney or city attorney shall notify the government agency responsible for the arrest, custody, citation in lieu of arrest. Anyway, it goes on. This is not about just dismissing unsuccessfully completed charges or...and I also have...so I want to thank Dr. Anne Hobbs for her incredible research. She gave you a one-page synopsis of the study, but I decided to make a copy and have the entire study passed out to you. As you can see, I think that from her letter and her testimony, Table 3, the number and percent of cases dismissed, of the dismissed cases, the number that were sealed is 6.4 percent. The number not sealed, of the dismissed cases, is 93.6 percent. Clearly we have a problem. Mr. Malik said, oh, we seal them all the time up in Omaha. Well, he's got to have probably the greatest number of cases up in Omaha and so that number of 6.4 percent should be a lot higher if Omaha is...and Douglas and Sarpy County are actually sealing as they should. So he did admit there are problems with it. I appreciate that. There are a lot of problems with our sealing statutes as they are created. So I'm happy to work with them. Again, Mr. Renner came in with Media of Nebraska. I appreciate his concern for his clients about balancing the First Amendment against the child’s right to life, liberty, and the pursuit of happiness. And if this child has completed what we have asked them to do, I think that that's punishment enough. So I thank you for your time and I know this has run over. I appreciate it. Thank you. [LB869]

SENATOR EBKE: Senator Chambers. [LB869]

SENATOR CHAMBERS: I have to give a mea culpa to my goddaughter. I didn't want you to know that when I was young I lived a life of crime. And I also want to point out that when you grow up in certain areas, you have to literally fight, not with words like I do here. I cannot say that I won every fight that I was in, but I never felt like I lost. The reason I didn't feel like I lost, even if I got hit more times than I was able to hit back, I never quit and I never ran, ever, and there were people who wanted to what is called take up for me and I'd tell them this is between me and whoever it was. And they must have thought I was getting the worst of it. Maybe I was. But I didn't want people fighting battles for me. If I got into a situation, then it was up to me to get myself out of it. And that's why I do like I do on the floor of the Legislature; it's why I do what I do in my community; it's why I don't carry guns; it's why when I got a threat from Norfolk I went out there and I put on a sweatshirt and I drew a target on it. This white person's town, they told me I better not come there. And I called the radio station and I told them, tell me the biggest open-air park you've got and that's where I'm going to be. And to prove, I'm going to wear it. No, I won't wear it, I'll bring it, because it's sacred. I'm going to bring that shirt. And I wrote the date on it. And I went to Norfolk and I gave my talk at high noon in a park and had announced: This is where I am and if you, whoever you are, if you want me, you don't have to hunt for me. I'm making myself available. Then I let it be known I was going to go to the most popular eating place, and I didn't go there to eat. But in case nobody went to the park, they happened to be there, that's where I would be. And then I did some walking around Norfolk. I'm not a fool. That was foolish. That was foolish. I wouldn't advise anybody to do it. But I'm also not a coward. And if I create a situation and there are consequences, I bear them. I don't ask anybody to help me. And if all those people that I referred to wanted to take me on, all of them, I wouldn't want anybody to help me. It's up to me at 80 years old. Maybe I am as weak as cream. Maybe I can't lick my lips. And maybe I have not even a teaspoon of gas in my tank. But if somebody is going to get a banquet from me, I'm going to get a minced ham sandwich along the way. I want them to know who they might be messing with. And I say again, if we hadn't had all of these bills on the same day, that in me wouldn't have built up in the way that it did. And since I had that explosion... [LB869]

SENATOR EBKE: Mea culpa. I'm just going to apologize for scheduling all of these bills on the same day. [LB869]

SENATOR CHAMBERS: No, it's not you. Oh, no. [LB869]

SENATOR EBKE: I know. I'm just kidding. I'm just kidding. Anything else? Okay. [LB869]

SENATOR PANSING BROOKS: Thank you. [LB983]

SENATOR EBKE: Okay, that concludes the hearing on LB869 and I'm the only thing standing between us and lunch, so I'm going to open the hearing on LB983 here as soon as Senator Pansing Brooks gets up. I don't believe this is going to take very long. And for the committee's general information, we will not have an Exec Session today. We will come back at 1:30. [LB983]

SENATOR PANSING BROOKS: Okay, thank you. Welcome, Chair Ebke. [LB983]

SENATOR EBKE: Thank you. [LB983]

SENATOR PANSING BROOKS: Opening on LB983. [LB983]

SENATOR EBKE: (Exhibit 1) All right. I've got some handouts here. Thank you, Vice Chair Pansing Brooks an members of the committee. This has been a long morning and we're going to have a long afternoon, I fear. For the record, my name is Senator Laura Ebke; that's E-b-k-e. I represent Legislative District 32. LB983 is a bill that I've introduced on behalf of the courts, and it really ought to be thought of as, more or less, a cleanup bill or a clarification bill. The Supreme Court rule on cameras in the courtroom was vetted by several judicial branch stakeholders who are well versed in remote technology. And the image that's going around and being distributed demonstrates the use of a camera within a courtroom capturing an image from a remote location, okay, and it's a good example of why the statute revision is needed. The proposed statutory change to 29-4205 is needed to allow the Nebraska media to photograph video court arraignments from the prison and jails. So in other words, when a...when a defendant is not

brought actually into the courtroom, they need to be...this allows for the media then to photograph the picture, basically of the defendant. Since March 1, 2017, the Nebraska Supreme Court has allowed news media cameras into trial courts across Nebraska for news reporting purposes. The newly created Supreme Court rule on cameras in the courtroom, however, did not contemplate the statute at the time it was written. An exception needs to be made to allow photographing of the video screens within the courtroom where individuals are appearing from remote locations via video technology. I don't know if there's anybody here behind me. We have one representing the media who will be testifying on behalf of this bill. There is no fiscal note and the courts are obviously fully in favor of this. [LB983]

SENATOR PANSING BROOKS: Okay, thank you, Chair Ebke. Anybody else have a question for Senator Ebke? Thank you. Okay. First proponent. Welcome. [LB983]

SHAWN RENNER: Thank you, Vice Chair Pansing Brooks. Members of the committee, my name is Shawn, S-h-a-w-n, Renner, R-e-n-n-e-r. I'm appearing today on behalf of Media of Nebraska, Inc., in support of LB983. I agree with everything Senator Ebke said. I will add one thing to it by way of information. Under the Supreme Court's expanded media coverage rules, first appearances are the one aspect of court appearances where you don't need to get prior permission from the court to engage in expanded media coverage--in other words, use a camera--and I agree with Senator Ebke's and the court's assessment that when the court put the rule together it simply was unaware of this statute. And the statute made perfectly good sense when no cameras were allowed in courtrooms, makes less sense when you open the courtrooms to cameras and allow the filming of first appearances in criminal cases since, at least in some of the bigger jurisdictions, those are done remotely from jails where the reporter is not (inaudible). [LB983]

SENATOR PANSING BROOKS: Okay, thank you. Any questions for Mr. Renner? [LB983]

SHAWN RENNER: Thank you. [LB983]

SENATOR PANSING BROOKS: Thank you very much. Any further proponents? Okay, how about opponents? Anybody in the neutral? Wow. And Senator Ebke waives closing, so that ends LB983. [LB983]

The Committee on Judiciary met at 1:30 p.m. on Friday, February 9, 2018, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1132, LB988, LB1013, and LB925. Senators present: Laura Ebke, Chairperson; Patty Pansing Brooks, Vice Chairperson; Roy Baker; Steve Halloran; and Matt Hansen. Senators absent: Ernie Chambers, Bob Krist, and Adam Morfeld.

SENATOR EBKE: (Recorder malfunction)...take their seats. Okay. Welcome to part two of the recess day hearings. My name is Laura Ebke. I chair the committee. And I would ask my colleagues who are currently in attendance to introduce themselves, starting with...

SENATOR HANSEN: Matt Hansen, representing District 26 in northeast Lincoln.

SENATOR PANSING BROOKS: Patty Pansing Brooks, representing District 28 right here in the heart of Lincoln.

SENATOR EBKE: And this is Pansing Brooks's afternoon.

SENATOR PANSING BROOKS: Yes.

SENATOR BAKER: Roy Baker, District 30, southern Lancaster County and Gage County.

SENATOR EBKE: And assisting our committee today are Laurie Vollertsen, our committee clerk; and Dick Clark, one of our two committee counsels. And we have two pages and I don't...we've got Rebecca and who else is here?

LAURIE VOLLERTSEN: Cadet.

SENATOR EBKE: Cadet is who is here. Could have yelled. That's okay. Where do you go to school, Cadet?

CADET FOWLER: I go to school at UNL.

SENATOR EBKE: Okay, so we've got a UNL page and a Doane University page here today. On the table at the front over there where people are standing you will find some yellow testifier sheets. If you are planning on testifying today, please fill out one and hand it to the page when you come up to testify. Have that ready when you come up. This helps us to keep an accurate record of the hearing. There's also a white sheet on the table if you do not wish to testify but would like to record your position on a bill. Also, for future reference, if you are not testifying in person on a bill and would like to submit a letter for the official record, all committees in the Legislature have a deadline of 5:00 p.m. the day before the hearing. We will begin bill testimony with the introducer's opening statement. Following the opening, we will hear from proponents of the bill, then opponents, followed by those speaking in the neutral capacity. We'll finish with a closing statement by the introducer if he or she wishes to give one, actually, if she wishes to give one today. And we ask that you begin your testimony by giving us your first and last name and spell them for the record. If you are going to testify, I ask that we keep the on-deck chairs filled. Those are basically the front row right behind the testifier table. If you have any handouts, please bring up at least 12 copies and give them to the page. If you do not have enough copies, the page can help you make more. We will be using, we've been doing this the whole session, using a three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the red light comes on, we ask that you wrap up your final thought and stop. At about 3 minutes and 15 seconds you will hear a beeper go off. As a matter of committee policy, I would like to remind everyone use of cell phones and other electronic devices is not allowed inside the hearing room, and so some senators may use it to keep in touch with their staff or to take notes. If people come and go, don't take it personally. Members of the committee have other meetings that are being held, especially on a recess day, so people may come in for a little while and leave for a little while. Has nothing to do with the quality or the importance of the bills being heard, simply that we have lots of things going on. With that in mind, Senator Pansing Brooks, we will begin with LB1132. [LB1132]

SENATOR PANSING BROOKS: (Exhibits 8 and 9) Thank you, Chair Ebke and fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB1132. The bill will allow sex trafficking victims to access a process by which they can come forward with a conviction that they received as a result of their being trafficked and have that conviction set aside and those records sealed. While this bill does not draw a line on which crimes you can apply to have set aside, we predict that most crimes set aside in Nebraska will relate to prostitution, petty theft, or drug abuse. A set-aside law for sex trafficking survivors would provide survivors a pathway to rebuild their lives without the burden of a criminal conviction hanging over them. This bill is critical for survivors of trafficking. Research shows us that 91 percent of trafficking victims nationwide have criminal records as a result of their victimization. These charges generally include prostitution charges because of the acts their traffickers force them to commit, theft charges because they know they'll face violence if they don't meet their nightly quotas, drug charges because of the addictions their traffickers have forced upon them to coerce compliance, and the list goes on and on. These criminal records follow victims long after they've escaped their traffickers' sinister hold on them. In the past years our Legislature as stood by our Nebraska values and tackled human trafficking head on. In 2015, we expanded definitions, and before that we worked even more vigorously on changes to our human trafficking law. And Senator Amanda McGill is here in the room, too, and we need to give her credit for her initial vision on this. In 2016, we provided for legal immunity from prostitution charges for victims of human trafficking. And last year we imposed tougher sentences on sex buyers and sex traffickers, decreasing the supply and demand of sex trafficking victims and bringing violent criminals to justice. It is now time to turn to trafficking victims themselves and provide them the support that they need to move forward with their lives following the brutality that they have endured. Victims never chose to commit these acts, but their criminal records still destroy their chances of moving forward and leading normal, productive lives. Research shows that criminal records prevented 58 percent of victims from finding a place to sleep at night and 73 percent of victims from obtaining jobs. These are victims being penalized for their criminal...for the criminal malfeasance of their traffickers, not their own. LB1132 follows victims...or allows victims with criminal records to apply to have those records set aside. First, victims must prove to the court that they are a trafficking victim. Second, they must prove that their criminal records are a result of and occurred during their victimization.

If the victim proves this, then all public records of their conviction shall be set aside and sealed. What this means practically is that any employer, landlord, or private citizen doing a background check on the victim will not be able to see any record of the victim's conviction. However, law enforcement agents will see that the arrest and conviction occurred and that the conviction was set aside. This procedure will give victims privacy and security and hope for a future. Thirty-four states have already passed similar bills to LB1132 and twenty-nine of these, of the states, have even more expansive laws than I'm bringing before you. We can't be left in the minority of states that do not allow victims the hope following their victimization. Nebraska is a state that stands up for its people. In order to support our survivors and stand for Nebraska values, we must join the 34 states that have already allowed these set-asides. Set-aside bills are complex, but I want to assure my colleagues that this bill fits into existing set-aside law in Nebraska. This bill does not affect the powers of the Board of Pardons. It applies to 29-2264 of Nebraska Revised Statute outlining set-aside law which was found constitutional under State v. Spady in 2002. This section, quote, this section is constitutional. It does not violate the separation of powers clause of the Nebraska Constitution, Article II, Section 1, as an infringement of the power expressly delegated to the Board of Pardons: State v. Spady, 2002. I would also like to briefly address concerns about criminals using this bill to set aside their own convictions by claiming that they were trafficked. I recognize the sentiment behind these worries. I don't want a procedure in place that would allow criminals to have the convictions they deserve stripped from their records. That's why I have worked with extensively with partners from other states who pioneered these laws. The procedures in this bill create multiple layers of judicial discretion and opportunity for the prosecution to be heard. Additionally, research in states that have passed similar laws indicate that not a single false report has been made through similar procedures. Today you will hear numerous people testify about LB1132. Testifiers range from academic experts researching these issues to survivors of trafficking who have experienced simultaneous convictions firsthand. You will also hear from law enforcement officers keeping victims safe on the streets, as well as the service providers working with trafficking victims every day. I want to thank each of these individuals who have come forward for showing up today to share why this bill matters. LB1132 has the potential to impact hundreds of victims across this state, providing them with the tools they need to rebuild their lives. When victims can't obtain housing, education, and employment, they're held prisoner with invisible chains due to the force, fraud, and coercion of their traffickers. It's our duty, as lawmakers, to ensure that every citizen has an equitable chance at

living a decent life. This cannot happen when Nebraskans who have had the most heinous crimes committed against them are further punished legally for their victimization. Think about that. Justice isn't about just putting people behind bars. It's about removing shackles on victims who have been brutalized by criminals, raped by sex buyers, and for years have been ignored by legislators, law enforcement, and the court system. I'm introducing one amendment to this bill today. AM1858 adds juvenile adjudications to this bill. We inadvertently left this off of the introduced version. I have also passed out a fact sheet on LB1132 that's been put together by the Women's Fund of Omaha. I'm grateful for their intense work. In closing, I just ask that you please listen to the testimony today--it will be heartrending at times--and consider the needs of trafficking victims and advance LB1132 with AM1858. Thank you. [LB1132]

SENATOR EBKE: Thank you, Senator Pansing Brooks. Any questions at this time? Senator Baker. [LB1132]

SENATOR BAKER: Thank you, Chairwoman Ebke. Senator Pansing Brooks, first of all, I'm with you on this. But how would a person go about proving they were a victim of sex trafficking? [LB1132]

SENATOR PANSING BROOKS: You'll see some of this, and there are ways. They can look at phone records. They can look at all sorts of information. If a trafficker has been arrested or a purchaser has been arrested, there are multiple ways set forth. We decided not to specifically set each way out because there might be more ways, but they will have to prove through a variety of mechanisms to...that they were trafficked. [LB1132]

SENATOR BAKER: Thank you. [LB1132]

SENATOR PANSING BROOKS: Thank you. Good question. [LB1132]

SENATOR EBKE: Any other questions? I see none. Okay, I have a list of people and I think that the intention is for them to come up in this order first, and then anybody else can jump in later. Meghan Malik, go right ahead. [LB1132]

MEGHAN MALIK: (Exhibit 10) Thank you, Chairperson Ebke and members of the Judiciary Committee. My name is Meghan Malik, M-e-g-h-a-n M-a-l-i-k, and I'm the trafficking project manager with the Women's Fund of Omaha, a nonprofit organization focused on improving the lives of women and girls. We are proud to partner with the Trafficking Task Force, who is focused on stopping traffickers, eliminating the demand, and helping survivors. Last year we supported a bill to bring traffickers and sex buyers to justice. Now is the time for the Legislature to pass a law that supports trafficking survivors in rebuilding their lives. Through research from Creighton we know 900 individuals a month are sold on-line for sex in our state. Through our survivor-informed study, Nebraska survivors stated that paramount is the need for their records to be treated appropriately. The study found that law enforcement, judges, and prosecutors are still learning how to best identify and help trafficking victims. Progress is being made towards trauma-informed, victim-centered investigations, and hopefully one day we will not need laws like LB1132. However, despite our best efforts, we get it wrong and victims are still regularly convicted of crimes they were forced to commit. Research has shown sex trafficking survivors experience some of the most heinous violence and pain. Ninety-nine percent of sex trafficking survivors experience physical health problems, eighty percent are raped, and forty-two percent have attempted suicide. Because of coercive and threatening relationships, which often include trauma bonding between victims and traffickers, many victims are not ready to self-identify as trafficking victims when they are arrested and charged. For victims, the choice to commit these crimes was never theirs. Traffickers forced victims to commit a vast array of crimes, not just prostitution. They are often put in violent situations where they need to defend themselves, resulting in felony criminal convictions. Survivors come to believe the system is stacked against them and that it's best to plead guilty to charges. Best practices recommend legal relief for victims at multiple levels of the process, including arrest, trial, postconviction. It may take survivors years to feel comfortable pursuing relief through the system. LB1132 is a balanced approach to competing concerns of encouraging personal responsibility for criminal conduct and the very real complexities of being a victim of sex trafficking. We must pass a law that does not put undue burden on victims. This bill allows for the safety net while providing a rigorous process that ensures that it will not be abused. When victims know they won't have a roof over their head or be able to find jobs, they will end up being trafficked again, fueling the trafficking industry. There's national recognition by 34 states that have passed similar laws, and 29 of these states have more expansive laws. LB1132 is a step in the right direction and is a balanced,

common-sense approach to help survivors make this lifesaving transition. We respectfully request the Judiciary Committee advance LB1132 and the amendment. Thank you for your time and consideration. I'd be happy to answer any questions. [LB1132]

SENATOR EBKE: Thank you, Ms. Malik. Any questions? I see none. Thanks for being here. Next up, Alicia Webber. Go right ahead. [LB1132]

ALICIA WEBBER: (Exhibit 11) Thank you, Senator Ebke and members of the Judiciary Committee. My name is Alicia Webber, A-l-i-c-i-a W-e-b-b-e-r, and I am the program director for the Salvation Army's Fight to End Trafficking program, or the SAFE-T program. The SAFE-T program serves survivors of sex and labor trafficking across the state of Nebraska through the provision of coordinated case management and advocacy services. Previously, I worked as a therapist and case manager for adult survivors of sex trafficking for the Salvation Army's Wellspring program in Omaha. The Salvation Army is proud to partner with the Nebraska Attorney General's Office in leading the Nebraska Human Trafficking Task Force, which is a multidisciplinary team charged with combating the crime of human trafficking through a coordinated response. In the past four years of serving survivors of sex trafficking, I've encountered many program participants in the community who have extensive criminal histories, a preponderance of those charges related to the things they were forced to do while being controlled or coerced by a trafficker. These charges usually included prostitution, trespassing, possession and use of drugs, but it also included assault with a deadly weapon and robbery. I had the privilege of working with many survivors in the correctional facility. There I encountered women sitting with domestic assault charges because they chose to fight back against a pimp after years of abuse; 19-year-olds sitting with felony charges, such as pandering or adult auto theft, because their trafficker threatened them with their lives if they refused; women who stated they carried knives at all times and had to use them. They knew purchasers of sex and sex traffickers see their lives as property and they know these individuals would not hesitate to kill them if the mood struck. I was instructed by my former supervisor in Wellspring to never review a list of criminal charges before meeting someone new, and for good reason. These individuals can appear dangerous on paper due to the crimes they were forced to commit. The list of crimes can cause one to make assumptions about an individual when, if this person is placed in a nonthreatening environment, are simply not concerns. As service providers who specialize in this

population, we understood this and never made a determination regarding entry to services due to what a piece of paper said about their lives. Unfortunately, employers, landlords, and licensing boards do not have this special training and many times make determinations based on a criminal history, before they even meet an individual for an interview. For example, when I was a new, naive case manager, I met with a woman to help her apply for housing opportunities in Omaha before she started applying for college. When I suggested she complete a subsidized housing application she laughed and told me to look at a background check. I was shocked to read the background check put "prostitution" in the same category as homicide, rape, and illegal manufacture, sale, or distribution of illegal substances, causing an automatic screen out for consideration for the next five years. In the life of sex trafficking, the name of the game is survival. We are interviewing, working, and living with the survivors who survived. They have had to make decisions they would not have otherwise made in order to still be here today. LB1132 ultimately supports survivors in their recovery and restoration process. This bill allows them to stop paying socially and economically for crimes they were forced to commit. I respectfully request the Judiciary Committee to advance this bill and would be happy to answer any questions. [LB1132]

SENATOR EBKE: Thank you, Ms. Weber. Any questions? See none. Thanks. [LB1132]

ALICIA WEBBER: Thank you. [LB1132]

SENATOR EBKE: Sally Richardson. Welcome. [LB1132]

SALLY RICHARDSON: (Exhibit 12) Good afternoon. My name is Sally Richardson and I'm the mother of six wonderful children. [LB1132]

SENATOR EBKE: Would you spell your name for us? [LB1132]

SALLY RICHARDSON: S-a-l-l-y R-i-c-h-a-r-d-s-o-n. [LB1132]

SENATOR EBKE: Thank you. [LB1132]

SALLY RICHARDSON: And I'm a former resident of Omaha, Nebraska. After a near-fatal car accident which left me with a traumatic brain injury, I met my trafficker, Michael Richardson. It was at this time he immediately started to traffic me in almost every form of the word. Anytime I showed signs of resistance, my trafficker became extremely violent, verbally, physically, sexually, and psychologically. In the beginning, he would threaten to harm himself. Later, he would nearly take my life and that of my pregnant 20-year-old and threaten to rape and traffic my underage daughter. It took me nearly two years of enduring violence, multiple attempts on my life, and near death for the courts to issue me a permanent protection order. After my escape in late 2014 and my divorce in mid-2015, I was left with less than nothing, completely broke and broken. Still, I could not stay silent. Later, I filed a civil case, which was dismissed at the circuit court level. Recently, on December 27 of 2017, the South Dakota Supreme Court decided unanimously on my behalf and overturning case law out of California, giving myself and countless other victims the right to take their traffickers to a lower court for jury trial. Because of my trafficking, in February 2014 I was arrested and convicted, which keeps me today from securing basic needs such as employment and housing. All this only adds to my daily psychological torment. As I sit here before you today I am asking the great state of Nebraska to make today independence day for all who are trafficked in Nebraska, past, present, and, sadly, future, and give us back our voice, and what thunderous voices you will hear if only given the chance. Thank you. [LB1132]

SENATOR EBKE: Thank you, Ms. Richardson. Any questions? Thank you for being here today. Next up, Jessyca Vandercoy. [LB1132]

JESSYCA VANDERCOY: (Exhibit 13) Good afternoon. My name is Jessyca Vandercoy, J-e-s-s-y-c-a V-a-n-d-e-r-c-o-y, and I am the project director and therapist for a program called Indigo. Indigo is a program that serves victims of sex trafficking in the Omaha area who are between the ages of 17 and 24 years old, and is a program of the Women's Center for Advancement, and in partnership with Youth Emergency Services. The handout that I have describes a little bit about the victims that we have served thus far, some basic demographics. And we are the main priority of Indigo is to enhance quality and quantity of service, collaborate with the Nebraska Human Trafficking Task Force in creating systems to respond to the needs of trafficking victims, but also we provide direct service, relationship-focused, client-centered, low-barrier service to trafficking

victims that are identified in the Omaha area. Over the last year that our program has been up and running we've had great development with the Nebraska Human Trafficking Task Force. We've had expansion of service provision, like our program, Indigo, and the Salvation Army SAFE-T program, and we've had some policy changes, like LB289. And with those efforts, we've decided as a state that trafficking exists in Nebraska, that victims deserve and need access to services and protections that will allow them to rebuild their lives, and traffickers and buyers should receive increased penalties. As a state, we've also agreed on a definition of trafficking. We have decided and agreed that any child cannot be a child prostitute, that a minor cannot consent to be sold or bought, and that traffickers and buyers will receive heavy penalties if a minor is forced to do so. We've also agreed with the federal definition which requires the presence and the use of force, fraud, or coercion. We agree that sex traffickers use violence, threats, lies, debt bondage, and other forms of force, fraud, and coercion to compel adults and children to engage in commercial sex acts against their will. We have laid the foundation to help identify victims and to hold buyers and traffickers accountable for their crimes against human beings, and our next step as a state is the passing of LB1132, which not only creates a pathway for service providers like myself to help victims heal from trauma, reintegrate into the community, and rebuild their lives without the weight of charges, fees, possible jail time, and criminal records. It recognizes the egregiousness of this crime and the extreme level of violence against another human being. It acknowledges that a trafficker who believes that another human being can be owned and sold for sex against their will can also inject that human being against their will with illegal substances, creating dependency; that a person who will tattoo their name or brand on a human being to demonstrate ownership and power will also force that same person to sell drugs and weapons to protect themselves. It shows that a trafficker who will bruise bodies and break bones to ensure a constant threat of life...constant threat on life will also force that same person to shoplift, sell stolen items, or rob others as they are ordered to do so. We will...a person who will sell a developmentally delayed human being to make quick money will also coerce that same victim to lie to police or provide false information. The passing of LB1132 also demonstrates our understanding of trauma endured by trafficking victims, which goes beyond rape and sexual assault. It acknowledges that a person who's held against their will and conditioned to believe that there's no place to go for protection might drive a vehicle without proper documentation. It acknowledges that a person who's separated from their family and relies on shelter and food from their trafficker might deliver drugs or weapons to stay alive. I

know this happens and it has happened to the 28 people that continue to be eligible for our services. They have told me so. Their crimes include disturbing the peace, prostitution, theft by receiving, driving on suspended license, drug possession, shoplifting, theft. And with that, I ask that there's support for the passing of...or moving to the next place with LB1132. [LB1132]

SENATOR EBKE: Thank you very much. [LB1132]

JESSYCA VANDERCOY: Any questions? [LB1132]

SENATOR EBKE: Questions? I see none. Thank you. [LB1132]

JESSYCA VANDERCOY: Thank you. [LB1132]

SENATOR EBKE: Next up, Julie Shrader. [LB1132]

JULIE SHRADER: (Exhibit 14) Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Julie Shrader, J-u-l-i-e S-h-r-a-d-e-r. I am the president and founder of Rejuvenating Women, a faith-based organization that seeks to promote healing and restoration for adult survivors of human trafficking and exploitation. We support LB1132 because having convictions directly related to trafficking is a hindrance for the survivor's healing and restoration. Instead of focusing on gaining tools to aid in leading a healthy and independent life, the survivors are focused on convictions or charges. In essence, they are being revictimized. Rejuvenating Women has served 45 survivors since the Restored, the residential program, the home that we have currently opened in June of 2017. Out of the 45.6, or wait, I'm sorry, out of the 45, 6 were arrested with charges directly correlating with being a victim of human trafficking. That's 13 percent of the victims that we've seen since June. I have personally worked with a survivor who was forced to carry drugs by their trafficker under her shirt and under her bra from one state to another. So if there was an arrest, they were pulled over, she got arrested. She got in the most trouble instead of him. The trafficker will force and manipulate survivors to carry drugs, shoplift, and etcetera, so if there is a bust or a survivor is caught the trafficker is not held accountable. We respectfully request the Judiciary Committee approve LB1132. Thank you for your time and consideration. I'd be happy to answer any questions. [LB1132]

SENATOR EBKE: Thank you, Ms. Shrader. Any questions? I see none. Thank you. Next up, Sheriff Dunning. [LB1132]

TIMOTHY DUNNING: (Exhibit 15) Good afternoon, Chair Ebke and members of the Judiciary. Timothy F. Dunning, T-i-m-o-t-h-y D-u-n-n-i-n-g. I'm the Douglas County Sheriff. I'm here today in support of LB1132. Law enforcement interacts with many sex trafficking victims. This is definitely an issue we see here in Nebraska, and both the volume of victims and the magnitude of trauma that they face indicate to me the extent that support for victims is needed. I will let the numbers of victims, as identified by the Creighton University study that you'll hear I think last on the list, speak for themselves. This is not an Omaha problem. This is a statewide problem no matter how small your community may seem. I've seen firsthand how cyclical trafficking is. I've seen victims escape their trafficking situations and later return to their traffickers. Victims are incredibly vulnerable to being retrafficked and measures to help prevent that from occurring would only help us decrease the number of victims. Additionally, allowing victims to set aside their convictions can aid us in bringing traffickers to justice. Victims have knowledge crucial to finding traffickers and enabling their prosecution. However, it can be difficult for victims to cooperate with law enforcement. Research has shown that it's easier for law enforcement to build trust with victims and obtain information for prosecution when victims feel safe and respected. Victims are more willing to cooperate with law enforcement when they're treated like victims rather than criminals. LB1132 has the power to support survivors and to empower them to assist law enforcement in bringing traffickers to justice. Human trafficking is a quickly evolving issue that's difficult to tackle. As a result, it's crucial that relief is available multiple times for victims. Human trafficking is a newer issue for law enforcement and it's an issue that's evolving quickly as traffickers change their strategies and law enforcement responds. Over the last few years, through considerate efforts at raising awareness and specialized human trafficking training, we have made progress through educating our law enforcement officer community who have begun to recognize that the old model of prosecuting human trafficking cases is an old one and needs to be changed. With this progress toward trauma-informed, victim-centered prosecutions, one day we hope not to need laws like LB1132. Victims are often unable to comply with law enforcement--another reason why that's...that relief exists at multiple levels for victims. Sex trafficking is a complex and difficult issue because victims either, one, do not realize they are being trafficked or, two, have been so abused by their traffickers that they are manipulated into

fearing those of...fearing those of us trying to protect them. When victims have endured that level of abuse, they are understandably not always willing to cooperate with us out of fear for their safety and fear for their lives. As a result, we may not know to grant them immunity. I believe these victims will still deserve to have their charges set aside later. They need to be able to obtain employment without the stigma of prior prosecutions that they were unable to avoid due to their circumstances. I see no issue with convictions being set aside and, in my professional opinion, I doubt that citizens will be able to falsely fabricate trafficking backgrounds. Having worked with numerous trafficking victims directly and heard these victims' stories, I doubt that citizens who haven't been trafficked could lie and use this law to vacate their convictions. I urge you to support LB1132, and would be happy to answer any questions you might have. [LB1132]

SENATOR EBKE: Thank you, Sheriff Dunning. Any questions? I see none. Thank you. [LB1132]

TIMOTHY DUNNING: Thank you. [LB1132]

SENATOR EBKE: Next up, Denise Gaines. [LB1132]

DENISE GAINES: (Exhibit 16) Good afternoon. I am Denise Gaines, D-e-n-i-s-e G-a-i-n-e-s, and I am a behavioral health professional with Renew (phonetic) Safe House here in Nebraska. We have served 27 survivor victims of sex trafficking in the past year. Currently, about 98 percent of the survivors we serve are either from Nebraska or have been trafficked in the state of Nebraska. Our clients range in age from 19 to 62 years old. Ninety-five percent of our overall client population have been arrested at least once for crimes they committed in the course of being trafficked. In other words, had they not been trafficked they would not have committed these crimes. We support LB1132 because we see firsthand the devastation and the toll that forced crime has on these victim survivors. When the survivors come to us, they often come with just the clothes on their back. They are scared, exhausted, and broken. After some time of rest we support them by providing case management services that focus on physical and mental health, finances and housing. However, the vast majority of survivor victims report being forced to commit crimes that has had a negative impact on their records, thus, making it difficult for

them to lead productive lives. One brief example that I will share includes a 20-year-old victim I will call Anna. When she came to the Safe House, she was fleeing her trafficker who used her as a drug mule. She was forced to smuggle bags of meth in a cavity of her body. While transporting some meth she reported that one of the bags burst inside of her. Days after being treated at the hospital she came to the Safe House. At the time of her stay Anna disclosed that she had pending felony drug charges to include three counts of possessions of meth, possession with intent to deliver, possession of a concealed weapon. She also reported that over a three-month period in 2017 she was arrested and charged with three other drug possession charges which occurred in two different counties. Anna shared that she did not want this lifestyle but was scared of her trafficker. These charges will definitely create barriers for employment and housing for her, all because one human being used another for commodity trade and capital gain rather than recognizing her as a person and human being. Setting these charges aside and having her record sealed could reduce recidivism and give her an opportunity to gain economic security and restore her dignity. Survivors are being convicted of crimes they were forced to commit. We respectfully request the Judiciary Committee to approve LB1132 and restore the lives and freedoms of these women and survivors. Thank you for your time and consideration. [LB1132]

SENATOR EBKE: Thank you, Ms. Gaines. [LB1132]

DENISE GAINES: (Inaudible) questions? [LB1132]

SENATOR EBKE: Any questions? I see none. Thanks. Okay, my next one says UNL Law School. I presume it's not the whole Law School but... (Laughter) [LB1132]

ASHLEY FISCHER: I have a name. [LB1132]

SENATOR EBKE: Okay. [LB1132]

ASHLEY FISCHER: I'll spell it for you in just a second. [LB1132]

SENATOR EBKE: Okay. [LB1132]

ASHLEY FISCHER: Madam Chairperson, Senators, my name is Ashley Fischer, A-s-h-l-e-y F-i-s-c-h-e-r. I am a senior certified law student at the University of Nebraska College of Law where I colead the Civil Clinic's Clean Slate Project. I am testifying here today not as a private citizen...not...as a private citizen, not as a representative of the university. Today I am not here to just tell you about the horrors of human sex trafficking. Today I am here to tell you another story, one that is not told often enough. I am here to tell you about the struggle that follows when you must continue your life as a victim of sexual violence. Unfortunately, this is a story I know all too well. One night when I was alone in my bedroom, a man broke into my home and tried to rape me. After that night my life was not and never will be the same. And I was lucky. That was just one night. The women LB1132 aims to protect aren't so lucky. For them it isn't just one night. Instead, they must endure weeks, months, even years of repeatedly being beaten, drugged, and raped. Night after night their bodies are sold to countless men, countless strangers. Even knowing what I know, knowing my terror, I cannot begin to imagine what it is like to live through repeated acts of brutal sexual violence and rape. What's more, I can't fathom what it is like to go on, to put the pieces of your life back together and to persevere, to persist, to get a job, to go to work, to get up in the morning and encounter men you don't know. Nevertheless, we do. Even though every night when I am alone in my bedroom I still remember that night. I remember his hands, his face, his smell, and I wonder if I am safe. Nevertheless, we get up, we keep going, and we keep doing what we are supposed to do even though we must carry the memories of our trauma with us wherever we go. It has taken me years to get to where I am today, and I was lucky. I have friends who love me. I have a family that encourages and supports me in everything I do. I have never had to look into the eyes of a landlord and explain my prostitution conviction was a product of rape, because unlike these women I was not convicted of a crime as a result of my sexual assault. This bill will help these women erase this history and return to their lives that were so egregiously interrupted. These women are not criminals; they are victims. We failed to protect them once. The least we can do is provide a remedy to help them deal with some of the consequences that impede them from getting the fresh start that they deserve. Thirty-four states in this country have adopted laws that allow victims of sex trafficking to vacate, seal, or otherwise have their crimes removed from their records. Please make Nebraska another one of those states. Vote in favor of LB1132. Thank you. [LB1132]

SENATOR EBKE: Thank you, Ms. Fischer. Any questions? Seeing none, thanks. Next up, Spike Eickholt. And then it says there's an unknown testifier if needed. I don't know, is there really an unknown testifier? [LB1132]

SPIKE EICKHOLT: I just wanted extra time. [LB1132]

SENATOR EBKE: Oh, okay. (Laughter) So you get to be unknown too? [LB1132]

SPIKE EICKHOLT: No, I'm kidding. [LB1132]

SENATOR EBKE: Okay. [LB1132]

SPIKE EICKHOLT: (Exhibit 17) Madam Chair, members of the committee, my name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t, appearing on behalf of both the Criminal Defense Attorneys Association and the ACLU of Nebraska in support of LB1132. You've heard from a number of testifiers. You have a copy of my written statement. I'm not going to read it to you but I would just echo some of the points that you've heard already and just point out to the committee a couple of things. First, this bill is consistent with a number of other bills that you've heard not only this year and actually this week. Senator Lindstrom has one that's similar to this bill in some respects, that Senator Hansen had one last year that provided for set-asides. And the theme that is consistent with this bill is that this is a bill that provides for someone or people who have a criminal past, a criminal record, to give them a chance to move on, to give them a chance to separate their past from their present and their future and begin again with a clean slate or a clean record. This bill is also very important because this bill addresses a particular type of victim, and that is a sex trafficking victim. And the provisions in this bill are specifically related to victims of this horrific, horrific crime truly moving on. A criminal record for a sex trafficking victim, as you've heard, is not just a blemish on their past but in many respects it is humiliating in and of itself just due to their criminal charges. For instance, many times there are prostitution convictions, prostitution-related type crimes. But it's more complex than that, and that's why the bill, I think, is not just limited to those types of offenses. As a sex trafficking victim, you are many times convicted of all sorts of crimes that are indicative or part of your lifestyle as a victim of exploitation. And for many victims, as you heard before, their record is not just a criminal

entry on their past. It's representative of their status as a victim. And maintaining that record is further exploitation of those victims. So we encourage the committee to advance the bill and we will cooperate in any way that we can and work with the other stakeholders to advance the bill from committee in good form. [LB1132]

SENATOR EBKE: Thank you, Mr. Eickholt. Any questions? I see none. Thanks. [LB1132]

SPIKE EICKHOLT: Thanks. [LB1132]

SENATOR EBKE: Okay. Do we have an unknown testifier or are we going to go straight to Karen? Okay. [LB1132]

KAREN BOWLING: And I won't ask for extra time. [LB1132]

SENATOR EBKE: Okay. Thank you. [LB1132]

KAREN BOWLING: (Exhibit 18) Good afternoon, Chairwoman Ebke and members of the committee. I'm Karen Bowling and I am the executive director of Nebraska Family Alliance and am testifying on their behalf. In 2007, Nebraska Family Alliance began to include in our research and education efforts the issue of trafficking. We were grappling with the concept that victims of trafficking existed in our very own backyard. In August of that year we intentionally moved to our current location six blocks south of the State Capitol. We began hosting neighborhood forums in our facility to meet our neighbors and law enforcement. Listening to their concerns, we discovered from local police that the very property that we had purchased had been used as, quote end quote, a sex brothel. Our team was beginning to understand trafficking as modern-day slavery in which people profit from exploiting others through force, fraud, coercion, and deception. I'm going to skip, in honor of time, just some of our advocacy efforts that we have done. But traffickers' maintain control of their victims through a variety of violent tactics. As a result of this violence, 99 percent of sex trafficking survivors/victims report negative physical health consequences and 98 percent report negative mental health consequences. Over 80 percent are raped and 42 percent of survivors/victims attempt suicide during trafficking. We have thousands of pages of research that I could provide before this committee. But in closing I

want to tell you the story of Debbie. In 2007 I met Debbie. She is a survivor of trafficking who lived adjacent to our facility and the recipient of our...we have a benevolence fund providing assistance with practical and professional needs. Debbie, quote end quote, schooled me on trafficking. I learned about the supply and demand for the sale of sex, the Interstate 80 corridor called the loop where she was trafficked and much more. I went to visit her in jail after an arrest for drug and prostitution charges. In one of my last conversations with Debbie, she asked me to copy her Social Security card and keep it on file. She feared she would come up missing some day and she wanted one person to know that she really did exist. Debbie isn't a minor, a beautiful young woman who had been trafficked. Debbie is my age. She's a mother and grandmother. She knows firsthand the trauma of being treated as an object for someone's personal gratification and their willingness to control her every move through psychological manipulation and physical harm. Since then I've had the honor of meeting several "Debbies" serving on the Rejuvenating Women board. I want to thank Senator Patty Pansing Brooks for bringing this bill and I encourage you to advance LB1132. [LB1132]

SENATOR EBKE: Thank you, Ms. Bowling. Questions? Thanks for being here today. [LB1132]

KAREN BOWLING: Thank you. [LB1132]

SENATOR EBKE: Next up, Dave, is it Lemoine? [LB1132]

DAVID LEMOINE: Yes, ma'am. [LB1132]

SENATOR EBKE: Okay. [LB1132]

DAVID LEMOINE: My name is Dave Lemoine, D-a-v-e L-e-m-o-i-n-e. I'm a retired FBI agent and I have extensive experience in working cases involving human trafficking. I want to answer a question that everybody here has probably been asking themselves because I asked it when I first started working it: Why do girls go with them in the first place? What I learned through interviewing over 70 girls that...was that all of them except 2 had been sexually abused as children. And by the time they turned about 14, they ran away from the abuse. But unfortunately, they were physically mature but still had the minds of children, and these pimps are very skillful

at spotting vulnerability and they would convince them that they loved them, which they'd never heard of that, and they were going to be just like Julia Roberts in Pretty Woman. And as soon as he got them out of town they learned what the truth was. The pimp would take their identification from them and he would tell them it was because he didn't want them to have ID with them when they got arrested so that they wouldn't know who they were. But it was also so they couldn't go anywhere, and also so that they wouldn't know that he knew their address so he could find them if they tried to run away. Now, you know, they control these girls by beating them, raping them, and they set a quota on how much money they're going to make when they go out that night. And if they don't make their quota, they're not supposed to come in until they have that quota. And if they do, they get the hell beat out of them. One young girl I knew wasn't making her quota and her pimp...one night she came in, she was short. He told her to make $500; she didn't make it. He stripped her, tied her on a bed spread-eagle and raped her with a hot curling iron. They used the other girls to beat up these girls to keep them in line. And you know, you have to understand how totally dominated these girls are. And I compare it to a 120-pound jockey getting on top of a 1,200 thoroughbred and beating the hell out of it and making it run till he almost drops. You know, a horse could throw him off anytime, but he's just...he's totally dominated in his mind. And that's how these girls are. It's like a friend of mine told me one time, Somebody was telling him about how smart their horse was. And he says horses ain't that smart. If they were, they'd all be bucking horses. And it's the same way with these girls. They are so terrified, and they know that these pimps are capable of anything, that they will do anything that they tell them to do. I mean, you know, you got to figure when you got the control over somebody where you can tell them, go out there and have sex with a total stranger and bring me back the money, how much of a stretch is it to say, call this guy up or this guy is going to come to meet you at a hotel room, when comes here take this gun and rob him? They will do anything the guy tells them to do. I mean if a girl will sell her body, she'll do anything. And so it's total, total psychological control that they have over them. Thank you for your time. Are there any questions? [LB1132]

SENATOR EBKE: Thank you, Mr. Lemoine. Questions? Thank you for being here today. [LB1132]

DAVID LEMOINE: Thank you. [LB1132]

SENATOR EBKE: Appreciate it. Crystal (sic) Price. [LB1132]

CRYSTA PRICE: (Exhibit 19) My name is Crysta Price, C-r-y-s-t-a P-r-i-c-e. I'm the codirector and chief data scientist of the Human Trafficking Initiative at Creighton, where our research focuses on the prevalence of sex trafficking as well as policy solutions to combating it. As a member of the task force, I work alongside anti-trafficking stakeholders across the state. This multidisciplinary work has led us to an uncomfortable truth. There have been clear situations of trafficking that have been missed. As a result, victims have been arrested repeatedly for prostitution, drugs, theft, or unlawfully having a weapon to defend themselves from violent sex buyers who would sometimes purchase them. While we continue to work towards creating a system that's better at identifying and responding to the issue, the dynamics of trafficking render it unlikely that we will ever be able to fully guarantee that an individual being arrested, prosecuted, convicted, or incarcerated is not a trafficking victim. Thankfully, because these challenges are not unique to Nebraska, we're able to benefit from the experience of other states. Rather than reinventing the wheel, LB1132 leverages postconviction relief law across the country and crafts it to work for Nebraska, specifically outlining evidence for status as a victim. In my research I've reviewed these laws in detail. Thirty-four states provide postconviction relief for trafficking victims. These policies almost always provide for convictions to be vacated or set aside and for all records of the conviction to be sealed or destroyed. The general requirement is that you are a victim of trafficking who would not have participated in the offense but for the fact that you were trafficked. While there's not a single state that requires official documentation of a survivor's status as a trafficking victim, in most states having such documentation shifts the burden of proof off the survivor to make it easier for those who have already been officially confirmed to obtain relief. There's one key element to this policy that shifted over time as states have learned from the experience of other states--the scope of crimes eligible for relief. The early model adopted by states restricted vacatur to prostitution-related offenses while also allowing the court to take additional action that it deems appropriate. These laws are responding to concerns that the floodgates would open. As time passed and these laws were hardly being used, it became clear that they were too narrow and created too re-traumatizing a process. Recognizing this, states began to move away of this model and toward a broader, more comprehensive approach that includes offenses other than prostitution. For instance, Ohio's 2012 law was restricted to prostitution-related offenses and they're currently amending it to include nearly all offenses. This

is similar to what Florida, New Mexico, and Kentucky have passed. Idaho and Wyoming unanimously passed laws allowing for any offense to be eligible, and it's still the case that the floodgates have not been opened. Traffickers work hard to shield themselves from criminal liability by placing it on to the victim who racks up charges until someone in the system recognizes that this is trafficking. At that point, we rely heavily on victims viewing the system as their ally in order to help us bring their perpetrator to justice. We should not expect this to happen when at the end of it all the survivor is still stuck with a criminal record that severely restricts one's ability to legally provide for themselves. LB1132 is a critical component to a comprehensive anti-trafficking effort, and I respectfully request the Judiciary Committee to advance it. Thank you for your time and consideration. I'll take any questions. [LB1132]

SENATOR EBKE: Thank you for being here. Any questions? I see none. Okay. [LB1132]

CRYSTA PRICE: Thanks. [LB1132]

SENATOR EBKE: And that concludes the planned testimony. So next proponent, do we have...come on up. [LB1132]

ANNA SHAVERS: Good afternoon. My name is Anna William Shavers, A-n-n-a S-h-a-v-e-r-s. I am a professor at the University of Nebraska Law College. I think I'm going to be the last Law College person that appears. [LB1132]

SENATOR EBKE: Okay. [LB1132]

ANNA SHAVERS: I would like to speak in support of LB1132 in my capacity both as a professor where I teach a number of gender-issue related courses and focus on human trafficking, I've also served a member of the Governor's task force and I've also been chair of the UNL Interdisciplinary Conference on Human Trafficking, an annual conference that we've held. In looking at the laws over the past decade-plus, one of the things that is clear is that all of the laws regarding human trafficking have three primary goals, and that's also including the laws of Nebraska, and that is the prosecution of traffickers, the prevention of trafficking, and the protection of victims. And almost uniformly the criticism of the laws has been with respect to the

third aspect of these goals and that is protection of the survivors and victims. And I believe LB1132 goes a long way to addressing this gap in the law here in Nebraska with respect to protection of victims. In consideration of the research I've done and also with respect to our various conferences, we've talked to many survivors and victims, both here in Nebraska and other states, and realize that many of the things that people have testified to already today, such as the lack of access to housing and jobs, goes a long way to not getting the protection they need. It's been advanced more with respect to many survivors' groups, creating safe places for some of these victims. But LB1132 will go a long way to helping that. I guess that's all the comments, formal comments I have. I'm willing to take questions, but thank you for the time and I urge you to advance this bill out of committee. [LB1132]

SENATOR EBKE: Thank you, Professor. Questions? I see none. Thank you. [LB1132]

ANNA SHAVERS: Thank you. [LB1132]

SENATOR EBKE: Next proponent. And if there are any other proponents, move this way. If you aren't a proponent and you're an opponent, move this way as well so that we can keep the transition moving. [LB1132]

TOM VENZOR: (Exhibit 20) Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Tom Venzor. That's T-o-m V-e-n-z-o-r. I'm the executive director of the Nebraska Catholic Conference, which represents the mutual public policy interests of the three Catholic bishops serving in Nebraska. Just yesterday the Catholic Church observed the third annual international day of prayer and awareness against human trafficking. On February 8, Catholics across the world are encouraged to host or attend a prayer service to create greater awareness about human trafficking. Through prayer we not only reflect on the experience of those who...of those that have suffered through this affront to human dignity but also comfort, strengthen, empower survivors. Notably, this day of prayer and awareness coincides with the liturgical feast day of Saint Josephine Bakhita. Josephine was recognized as a saint in 2000 by Pope John Paul II. She is also the patroness of victims of human trafficking. A patroness or patron saint is somebody who has been designated by the church as a special intercessor and advocate before God on behalf of particular people. Saint Josephine Bakhita was born around

1869 in Sudan. She was kidnapped by Arab slave traders, and over the next 12 years she was bought and sold over a dozen times. Eventually, Saint Josephine was bought by an Italian man. While her, quote unquote, owners went away for a time, Josephine was placed in custody with the Canossian Sisters, a community of religious sisters in Venice. During her time with the Canossian Sisters, Josephine was deeply moved toward a love of God and refused to return to slavery despite the wishes of her mistress. The religious community of the Canossian Sisters acted on behalf of Josephine and sought justice for her through the Italian judicial system. Josephine was eventually declared free and delivered from her slavery. With her freedom, Josephine remained with the Canossian Sisters. She was known for her gentle, charismatic, and loving character. Saint...Sister Josephine died in 1947 at the age of 78. Today it is estimated that there are 20 million human trafficking victims worldwide. As we have been finding out more and more in Nebraska, trafficking occurs in our own backyard. Each month somewhere between 600 and 700 individuals sold on-line for sex in Nebraska have indicators of being human trafficked. Some of these victims of human trafficking have also been coerced into committing other crimes through violence or threats of violence. Such crimes stay with the victim moving forward, but these crimes, arising out of the injustice of human trafficking, can too easily become barriers for basic goods, such as housing, employment, and education. LB1132 provides an opportunity to overcome these barriers with set-asides. Victims of human trafficking have already experienced slavery. They should not continue to experience the effects of this slavery. As Saint Josephine Bakhita was able to experience freedom from slavery and the sins of humanity, we hope that victims of sex trafficking can further experience freedom from the slavery of human trafficking. We ask the Judiciary Committee to advance LB1132 to General File. Thank you for your time and consideration. [LB1132]

SENATOR EBKE: Thank you, Mr. Venzor. Any questions? See none. Thanks. [LB1132]

TOM VENZOR: Thank you. [LB1132]

SENATOR EBKE: Any other proponents? Opponents. [LB1132]

SHAWN RENNER: Good afternoon, Senator Ebke, members of the Judiciary Committee. My name is Shawn, S-h-a-w-n, Renner, R-e-n-n-e-r. I'm a lawyer with the Cline Williams law firm in

Lincoln. I'm appearing at this hearing today on behalf of Media of Nebraska, Inc. As I indicated this morning in earlier testimony, Media of Nebraska is a nonprofit corporation comprised of members of the print and broadcast news media in the state of Nebraska. Media of Nebraska takes no position on the bill in terms of what it's trying to accomplish in terms of setting aside convictions. That's a policy matter that the news media has no interest in. I'd like to comment on two provisions of the bill that does interest the news media though. The first of those allows for sealing or expungement of criminal history information, records relating to arrests, convictions, etcetera, for the crimes which would be set aside. I won't take a lot of the committee's time, but, as I indicated this morning, the other side of sealing or expunging records is it removes records of how our government operates on behalf of the public generally. And as a general principle, the news media uses those records in its job of reporting to the public. I would like to provide a little bit more commentary on one provision of the bill. I'm not entirely sure exactly how this would work, but what the bill says is at the election of the sex trafficking victim who is looking to have the conviction set aside, the evidentiary hearing on that motion, that is, the hearing at which evidence will be offered and received, contested, considered by the judge, may be held in camera, at the election of the victim. I think that's of questionable validity under both Nebraska and federal law. We've got a 150-year history in the state of Nebraska of courts being open to the public for attendance. The Nebraska Supreme Court has a rule on when courts could be closed to the public. At least the current iteration, that rule does not contemplate this sort of hearing and, in fact, I think it generally doesn't contemplate that an evidentiary hearing could be closed to the public completely except in a couple very limited circumstances that wouldn't apply here. Both the Nebraska Supreme Court and the United States Supreme Court have recognized a common law right of access to the courts. I won't tell you I've researched this in any depth. I haven't. But I think under those two lines, separate lines of authority, state and federal, it would be questionable whether you could close an evidentiary hearing to the public completely. And finally, the United States Supreme Court has indicated, as a matter of the First Amendment of the United States Constitution, that it is unconstitutional to close courts to the public except in very limited circumstances, and I'm not aware of a circumstance in which the United States Supreme Court has indicated that you could close an entire evidentiary hearing to the public under the First Amendment. [LB1132]

SENATOR EBKE: (Exhibits 1, 2, 3, 4, 5, 6, and 7) Thank you for that. Questions for Mr. Renner? Don't see any. Thanks for being here today. There any other...is there any other opponent testimony? Anyone testifying in a neutral capacity? Going to read letters in while Senator Pansing Brooks comes up. We have letters of support from Marcia Blum of the National Association of Social Workers, Nebraska Chapter; from Shared Hope International; from Ivy Svoboda with the Nebraska Alliance of Child Advocacy Centers; from Robert Sanford of the Nebraska Coalition to End Sexual and Domestic Violence; from the Coalition on Human Trafficking from Mary Fraser Meints of Youth Emergency Services; and a neutral letter from Todd Schmaderer from the Omaha Police Department. Senator Pansing Brooks. [LB1132]

SENATOR PANSING BROOKS: Thank you, Chair Ebke. Well, I can't thank the people who testified today enough. These are people that have made an incredible difference in our laws, that have worked vigorously and tirelessly over the past few years to really work to make a sea change in our laws to help them, help us all understand that we need to be protecting people that we had been arresting previously. I can't thank all the wonderful groups who are really making a difference in the lives of Nebraskans. Mr. Renner came up. I just want to briefly speak. I know that the media, Nebraska media wants to be able to have access to everything possible, but we have to balance the first amendment against the ability of people to move on with their lives. The victims have been exploited more than enough and I don't think that the media should be able to further exploit victims. And I'm not...I know that's not what he's saying but that is, in effect, what would happen if everything is open. And clearly, the other states have in camera proceedings. And he said they're used in limited circumstances. That's correct. It would be in limited situations where the trafficking victims need to have it confidential and private. They are concerned if the traffickers hear them or find them speaking, and it's just further protection against (sic) people who have been victimized over and over again. So it is up to the courts to help understand that, but, again, the goal is to use it in limited circumstances. And I would say in the case of trafficking victims, that would be a limited circumstance. This is something we've all been working on together and it shows an understanding of the new paradigm, and I'm grateful for the Legislature and my colleagues for understanding that new paradigm as well. Human trafficking has taken place for thousands of years so the phrase "the oldest profession in the world" I think should now be understood to actually be rephrased as "the oldest myth in the world." This is not something that women want. This is not something that...that people want to

be abused and victimized. So I would ask that you help us to protect these victims who are convicted of ancillary crimes while they are trafficking victims and help us to help these victims to start afresh and have lives that are filled with hope rather than despair. Thank you. [LB1132]

SENATOR EBKE: Thank you, Senator Pansing Brooks. Any questions? This closes the hearing on LB1132. And we will move on to LB988 in just a minute. I'm going to ask people to...I'm going to ask people who are leaving to leave. Okay. Thank you. Let's open the hearing on LB988. [LB1132]

SENATOR PANSING BROOKS: (Exhibit 8) Thank you, Chair Ebke and fellow members of the Judiciary Committee. For the record, I'm Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I...sorry. Okay. I'm introducing LB988 today to create a "yes means yes" standard so that victims of sexual assault are better protected under the law. The "yes means yes" standard is also often known as affirmative consent. I felt it would be particularly appropriate to bring this bill in light of the #MeToo and #ItsTime movements that are going on this year. As Chandler Delamater said in the Albany Law Review, "Affirmative consent is a knowing, voluntary, and mutual decision among all participants to engage in sexual activity. Consent can be given by words or actions, as long as those words or actions create clear permission regarding willingness to engage in the sexual activity. Silence or lack of resistance, in and of itself, does not demonstrate consent. The definition of consent does not vary based upon a participant's...sexual orientation, gender identity, or gender expression." This bill is more of a...more than a definitional change. This bill is about empowering survivors of sexual assault who seek justice from their attacker. It does not change the intimacy of consensual sexual activity. Instead, it reframes the way our legal system will approach situations in which individuals did not give voluntary, conscious, and mutual consent in sexual encounters. I'm honored to bring this legislation to this committee as it gives a voice to those men and women who, for far too long, have felt voiceless. LB989 (sic: LB988) establishes that consent is present when it is voluntary and freely given, either verbally or through overt actions. When there is no indication through words or conduct that someone is willing to engage in an intimate encounter with another, consent will be deemed as not having been given or having been withdrawn. It is important to remember that consent must be continuous and can be withdrawn at any time if either participant feels unsafe, threatened, or

violated. Regardless of previous or current relationships, consent must be present before engaging in sexual activity. This bill also confirms that consent is not based off of an individual's clothing. Further, when someone is incapacitated, either due to drugs or alcohol, they're incapable of agreeing to sexual activity, meaning consent has not been given. When sexual activity was a product of force, fraud, or coercion, consent has not been freely given. While the historic standard of consent is currently "no means no," LB988's provisions are not an unrealistic expectation for healthy sexual relationships. In fact, on October 1, Montana enacted a law very similar to the one before you today as their statutes at the time did not account for victims who were unable to consent due to freezing during an attack. Well, if you freeze, I guess you clearly can't say no. Missoula Deputy County Attorney Suzy Boylan has pointed out that offenders were able to take advantage of victims who were...who neither said yes or no before Montana implemented their affirmative consent law. For those of you who may think that is...that not think that that is a relevant problem, I want to take a minute to stress the importance of action on this issue. Delamater has stated in the Albany Law Review, "It is still the case in many jurisdictions today that a mere lack of consent is insufficient to establish rape." A constituent of mine recently reached out to my office on this piece of legislation to express her support. She explained that as a juror in a sexual assault case that her jury had trouble convicting the alleged attacker in the case due to the fact that the victim never said no, though she also never said yes. Consent is not passive. The current "no means no" standard presumes that when there is not a no, that there must then be a yes. This is based on an erroneous mind-set that many people have, mostly men, I'm sorry to say, who cannot fathom that a woman wouldn't want to have sex. It implies that an individual, often a woman, is constantly willing to have sex unless she is able to say no. I understand that some may feel that this does not get rid of the "he said/she said" instances that problemetize these cases. My response is that LB988 does empower victims to come forward sooner, which, in turn, could ensure that physical evidence is gathered before it is lost. Others may claim that it puts the burden of proof on the person who has been accused. To that I think we have to turn to Bobbie Villareal, executive director of the Dallas Rape Crisis Center. She perfectly explained that "Rape is the only crime in which we turn the lens onto the survivor, the victim, and not onto the perpetrator. When someone gets shot, we don't ever ask them, why didn't you get away from that bullet?" Right now, the burden of sexual assault falls squarely onto the shoulders of those victims of this terrible crime. This bill will empower survivors to come forward with the knowledge that they will be protected under better standards for consent and

will not have their cases dismissed because they were so brutalized, unconscious, or threatened that they could not say no. Finally, Senators, I want to end on this note. For those of you that may still be struggling with this, I want...I will refer you to a video that I'm going to be texting each of you. I have also "screen-shotted" this video and I've provided it to you in printed form with subtitles. So that this simple concept of consent can be part of the legislative record, I am going to read this graphic explanation into the record and I hope you will read it with me. It's called Consent: It's Simple as Tea. This is what it looks like. Okay. If you're still struggling with consent, just imagine instead of initiating sex, you're making them a cup of tea. You say, hey would you like a cup of tea? And they say, oh my god I would love a cup of tea, thank you! Then you know they want a cup of tea! If you say, hey would you like a cup of tea? And they're like, uh you know I'm really not sure--hmm. Then you can make them a cup of tea, or not. But be aware that they might not drink it--meh. And if they don't drink it, and this is the important bit, don't make them drink it. Just because you made it, doesn't mean you're entitled to watch them drink it. And if they say no thank you, then don't make them tea at all. If they don't want tea, don't make them drink the tea. And don't get annoyed at them for not wanting tea. They just don't want tea, okay? They might say yes please, that's kind of you! And then when the tea arrives, they actually don't want the tea at all. Actually, no tea. Sure that's kind of annoying as you've gone to all the effort of making the tea but they remain under no obligation to drink the tea. They did want tea: Mmm...tea! And now they don't: Actually, no tea. Some people change their mind in the time it takes to boil the kettle, brew the tea, and add the milk. It's okay for people to change their mind, and you are still not entitled to watch them drink it. And if they are unconscious, don't make them drink tea. Unconscious people don't want tea, and they can't answer the question, "do you want tea?" because they're unconscious. Okay maybe they were conscious when you asked them if they wanted tea, and they said yes. But in the time it took you to boil the kettle, brew the tea, and add the milk, they are now unconscious. You should just put down the tea. Make sure that the unconscious person is safe, and this the important part, don't make them drink the tea. They said yes then--when they're sitting up and able to talk--but unconscious people don't want tea. If someone said yes to tea and started to drink it and then passed out before they'd finished it, don't keep on pouring it down their throat. Take the tea away, and make sure they are safe. Because unconscious people don't want tea, trust me on this. If someone said yes to tea at your house last Saturday, that doesn't mean they want you to make them tea all the time. They don't want you to come around to their place unexpectedly, and make

them tea. And force them to drink it saying, "but you wanted tea last week." Or to wake up to find you pouring tea down their throat saying, "but you wanted tea last night." If you can understand how completely ludicrous it is to force people to have tea when they don't want tea, and you are able to understand when people don't want tea, then how hard is it to understand when it comes to sex? It's the same with sex. Consent is everything. So I would like to thank you for letting me do that. I want to thank Brodey Weber, who is an amazing young man who was my intern last session, and he brought this issue to me and has done incredible research on this. And in closing, I would ask you to advance LB988 to General File so we can better protect victims of sexual assault. And I would be happy to answer any question. [LB988]

SENATOR EBKE: Questions for Senator Pansing Brooks right now? I don't see any. [LB988]

SENATOR PANSING BROOKS: Thank you. [LB988]

SENATOR EBKE: First proponent. First proponent. [LB988]

BRODEY WEBER: (Exhibit 9) Thank you, Chair Ebke and members of the Judiciary Committee. For the record, my name is Brodey Weber, B-r-o-d-e-y W-e-b-e-r, and I will be speaking in favor of LB988 today. In fact, this bill is quite personal to me, as I have been working closely with Senator Pansing Brooks and her talented staff to pass LB988. I would like to share why I care so deeply about the affirmative consent standard. I proudly attend the University of Nebraska-Lincoln as a sophomore political science and communication studies major. And starting college last year was both an exciting and intimidating challenge. Luckily, because of my great network of friends, I had a strong support system. My friends were always there for me, and I in turn always tried to be there for them. One of my best friends, who is an incredible person and has always been my rock, needed me to be there for her. For the interest of her privacy, I'll call her "Olivia." Last May, I had to be there for Olivia after she became another addition to a terrible statistic. She was sexually assaulted by an acquaintance, someone who all my friends knew personally. While attending a social event off campus, Olivia and our friends ran into this person, while I was studying for my very last final. That next morning, I woke up around 5:00 a.m. to a phone call, and it was not a normal phone call. Olivia did not have her bubbly tone or her infectious optimism or her knowing humor. For the first time since I met

Olivia, she sounded broken. I knew something was wrong. Later that day, she had to undergo tests and interrogation that I would never wish upon my worst enemy. When I asked her why she would not go to the authorities to seek the justice she deserved, it was because she did not say no while the assault was occurring. I asked her if she had said yes and she did not. Olivia was unable to say anything. And while her voice was unheard, she was attacked. While her voice was unheard, she was failed by our justice system. I find this loophole both disturbing and unacceptable, and I'm not here just for Olivia, But I'm here for every survivor whose is silenced and coerced by the violence of assault and a system that will not fight for them. It is not too much to expect that these individuals who are engaging in intimate activities reach a clear and voluntary agreement to do so. It is a change, given our history of the "no means no" standard. But it actually is quite simple, as Senator Pansing Brooks alluded to. For example, when you vote on this piece of legislation, you will have...abstaining is not enough to pass this bill. You will have to give a clear yes in order to support this bill. And so if you deny this bill, I wonder if you could look at survivors like Olivia in the eye and tell them why you are denying them their justice. Finally, Senators, I want to leave you with just one last thought. Every day you have the privilege to walk these halls and you have the incredible opportunity to make history. Today, you have a choice. You get to choose if you are on the right side of history, and you get to choose if you will fight for survivors and the justice that they deserve, or you can choose to maintain a system that leaves far too many voiceless. I have confidence in all of you to make the right choice for Olivia and other survivors out there. Thank you so much for your time, and I truly welcome any questions you have. [LB988]

SENATOR EBKE: Thank you, Mr. Weber. Questions? I don't see any. Thanks. [LB988]

BRODEY WEBER: Thank you. [LB988]

SENATOR EBKE: Next proponent. [LB988]

MIRANDA MELSON: (Exhibit 6) Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Miranda Melson, M-i-r-a-n-d-a M-e-l-s-o-n. I am a UNL student and the vice president of PREVENT UNL. I am speaking in support of affirmative consent bill, LB988. In the summer of my sophomore year at UNL, I was on a date with another

student who I met on Tinder, but instead of getting coffee I was raped in his apartment. I filed a Title IX report, which concluded that, "The greater weight of the evidence shows the parties engaged in consensual sexual activity. During the parties' sexual interaction, you did not inform Respondent through words or actions you did not consent to the sexual activity. Therefore no sanction is deemed appropriate or necessary." This finding was despite that my rapist did not ask if I was consenting to have sex once. My rape was dismissed because I did not say "no" explicitly. Turning my head so his kiss landed on my cheek was not considered no. His clothes were already off when I said I was comfortable the way I am, yet he still unbuttoned my shirt. Begging, "Are you sure you want to do this?" right before he raped me was not considered no. Following my Title IX investigation, it became my mission to change the culture around sexual consent. I met Vice Chancellor Dr. Juan Franco and shared my story, while proposing the adoption of affirmative consent on campus. Although my rapist was not charged with anything, Dr. Franco granted my original wish, which was to educate my rapist on how to ask for consent and what consent looks like. This meeting was critical as many rapists are repeat offenders. I also joined and am currently the Vice President of PREVENT UNL, a student-led organization of peer educators. We offer bystander intervention training and sexual and relationship violence prevention to classes and organizations on campus and in the Lincoln community. Affirmative consent changes the attitudes and the norms about how people talk about consent from "How did you hear the no?" to "How did you hear the yes?" While "no means no" has become a well-known slogan, it places the burden on the victims, making it their responsibility to show resistance. "Yes means yes" is based on enthusiasm and ongoing dialogue. However, as of now, silence, passivity, and lack of strong resistance is considered consent. Affirmative consent is not to punish people caught in seemingly ambiguous situations, but to prevent these situations from being as ambiguous in the first place. Men and boys are far more likely to be targets of abuse than to be falsely accused of sexual violence. Affirmative consent rejects traditional sexual scripts, whereby men are the pursuers and women are the gatekeepers of sex. It requires and encourages equal agency for all genders. This bill could spark a cultural shift in how people think about consent and bodily autonomy. The time to act is now. The public is watching rapists and sexual harassers being exposed in the headlines. LB988 can prevent these stories from reoccurring and protect people who do not have the power to speak up. We cannot allow victims to be silenced or tolerate this behavior that is a real threat. The law is responsible for establishing the standard that declares rape is not permittable in Nebraska. My Title IX investigation is closed

and will not be affected by this bill; however, I testify for the other victims. Affirmative consent could have prevented my rape or provided the justice to educate my rapist, who is still at UNL right now. Being asked for consent is a fundamental human right that everyone is entitled to and no one should have to experience what happened to me. I, individually as a survivor and collectively as a member of the student body and PREVENT UNL, ask you to support LB988. Thank you for listening and I am open to answering your questions. [LB988]

SENATOR EBKE: Thank you, Ms. Melson. Senator Hansen. [LB988]

SENATOR HANSEN: Thank you, Senator Ebke. Thank you for coming down and sharing your story, Ms. Melson. I was just going to ask, did you get everything you wanted to share with us in, in your time? [LB988]

MIRANDA MELSON: Excuse me? [LB988]

SENATOR HANSEN: Did you share everything you wanted to share with us? [LB988]

MIRANDA MELSON: Yes, I did. Thank you. [LB988]

SENATOR EBKE: Okay. Any...okay. Thank you for being here today. Next proponent. [LB988]

KATHLEEN UHRMACHER: (Exhibit 10) Good afternoon, Senator Ebke and members of the Judiciary Committee. My name is Kathleen Uhrmacher and I represent the Women's Foundation of Lincoln and Lancaster County. My name is spelled K-a-t-h-l-e-e-n, and last name is Uhrmacher, U-h-r-m-a-c-h-e-r. I'm here today to read a letter that has been submitted and signed by a group of...a very large group of organizations, including ours and many others. And so if you want to look at the bottom of the letter there, you'll see that the names of the organizations are there. And you may note that they are a wide range of organizations that speak to women and women's issues and also represent all ages. We, the undersigned, are organizations in Nebraska focused on issues related to the empowerment of women and girls, gender equity, sexual assault and domestic violence, survivors' rights, sexual and reproductive health, and students' rights on campus. Our shared vision for Nebraska is one where affirmative consent is the norm and the

law. LB988 reframes the way consent is viewed, and thus, moves the onus of proof from victims of sexual assault to that of the perpetrators. A woman should not be presumed to constantly be consenting to sexual activity. In light of the thousands of stories and assaults shared in the #MeToo movement have gained momentum, a complete shift in culture is necessary to put both people on equal footing. LB988 resets the standards in a positive way. By requiring both partners to make a conscious, voluntary, affirmative agreement to participate in sexual activity with one another, LB988 empowers women, sexual assault victims and survivors, and provides clearer guidance as to where a person's boundaries are and what constitutes assault: any action not affirmatively agreed to by both parties. This proposed change removes the idea that a person consented because of what they were wearing, because they were drinking, or because they didn't try to stop it or they didn't resist hard enough. If passed, LB988 will reduce victim shaming and introduce a more sex-positive approach to consent. LB988 also requires partners to obtain affirmative consent each and every time there is a sexual encounter, another important shift that empowers survivors and also ensures clarity of boundaries for all involved. Just because an action or activity was okay once, does not mean it will be again. By shifting in a definition of consent that requires partners to communicate with one another, LB988 ensures that partners understand one another's boundaries each and every time, which will ultimately lead to healthier relationships for Nebraskans and less confusion regarding sexual assault. Therefore, we write today to ask the Judiciary Committee to support LB988. Thank you for your services to Nebraska and for considering our support for LB988. And as you'll see, there are many organizations listed there, including Planned Parenthood, the League of Women Voters, the Unitarian Church of Lincoln Social Justice Committee, UNL PREVENT, the Southeast High School Feminist Club, YWCA-Lincoln, Coalition of Nebraskans Against Gun Violence, Suit Up Nebraska, Voices of Hope. And I'd like to add the Nebraska Wesleyan Gender Advocacy Place. Thank you. [LB988]

SENATOR EBKE: Thank you for being here today. Any questions? I don't see any. Thank you. Next proponent. [LB988]

ALEXIS LIPSON: (Exhibit 11) Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Alexis Lipson, A-l-e-x-i-s L-i-p-s-o-n. I am here today to speak in support of LB988. I have spent the last six years advocating for sexual assault victims

both as a volunteer and as an employee of an agency that provides support to victims, but I'm here to speak to my own experience. My story is far from rare, and that's why this bill is so important. I apologize if I rush or get a little bit shaky. I've not shared some of these details previously. [LB988]

SENATOR EBKE: You're fine. [LB988]

ALEXIS LIPSON: I was raped while I was a student at Doane College in Crete. My rapist was someone I knew, someone I looked up to, and he was someone I'd had sex with previously. I was young and naive, which he most assuredly took advantage of, but I did consent that first time. I say this to emphasize that survivors know the difference between regret and assault. You will have individuals tell you otherwise. This individual was married but claimed he and his spouse were separated. Following this encounter, I felt guilty and I informed him of that guilt. He requested we speak about my guilt in person and I reluctantly agreed. Instead of speaking, he chose to climb on top of me in his car in what he would probably claim was his attempt to convince me to do it again. I resisted at first, but eventually gave in, feeling the only way out of that car was to get it over with. My rapist assumed that since I'd said yes once, I would say yes again. He also assumed that he could push for a yes and that once there was a lack of a verbal "no," he was free to do as he wished. He continued to make contact with me following this, not even realizing that he had taken away my bodily autonomy, taken away my choice in the matter. I've never publicly admitted to having sex with this individual prior to the assault. Rape culture and the stigma around sex in our society told me then and still tells me now that I am to blame. I should never have agreed the first time; I should never have gotten in his car; I should have kept saying no and resisted more physically--the reasons go on and on. Add to these reasons that my rapist was and still is a respected, talented athlete. I had no ground to stand on were I to come forward. The advocate in me today wants to shake the younger me into going to the police, into talking to someone other than our coach, but the unfortunate truth is, until we put the responsibility on assaulters rather than their victims, situations like mine will continue to go unreported. The changes this bill will make to the definition of consent will encourage a change in the stigma around sexual assault. As a survivor, it takes that burden of shame off my shoulders and puts it on the person who deserves to hold it. It tells me that I was not at fault and that I did do enough. It gives victims a better chance at the justice they deserve. Members of the Judiciary

Committee, I ask you to approve LB988. Thank you for your time and consideration. I'm happy to take any questions. [LB988]

SENATOR EBKE: Thank you, Ms. Lipson. Questions? Thanks for being here today. Next proponent. [LB988]

JESSICA McCLURE: (Exhibit 12) Hi. My name is Jessica McClure, J-e-s-s-i-c-a M-c-C-l-u-r-e, and I'm here to speak to you today about LB988. So have you ever been so utterly terrified for your safety, that you completely froze? I've been so terrified of assault, that I froze. The first time I was truly afraid of assault was when I was a freshman in college. I was walking home on my own. A stranger followed me. I tried to make it into my duplex. I panicked. But I don't remember calling out. I was lucky though. My roommates were home that day and they were able to help me out. Not everyone is as lucky. On average, there are over 321,000 victims of rape and sexual assault every year in the United States. The response I had is not uncommon. Freezing in moments of panic has been scientifically studied as a defined series of behaviors called the defense cascade. I'm sure you've heard of the first defense behavior, fight or flight. But the fight or flight doesn't always work in everybody. It's an active defense mechanism. It's your body's response to dealing with threat. Freezing and toxic (sic--tonic) immobility are part of the defense cascade. This human biological response is why I fully support adopting affirmative consent standard in the case of sexual assault. Let me read you a 2015 expert...excerpt from the Harvard Review of Psychiatry: Toxic (sic--tonic) immobility has often been described in the sexual assault literature, where it is referred to as rape-induced paralysis and is frequently seen in survivors of physical assault. According to individual accounts, toxic (sic--tonic) immobility in humans appears to prevent a loss...in humans appears to present as a loss of ability to move or call out and is thought to occur when a person is in immediate or actual danger, when escape or winning a fight is not possible because of a perceived threat. Victims describe subjective experiences of fear, immobility, coldness, numbness, analgesia, entrapment, inescapability, futility, and hopelessness. In other words, stating "NO" is not an option. There is no consent given between the victim because the victim cannot speak. If we move to an affirmative consent standard that requires both parties to consent, we are sending a clear message that sexual contact is actually wanted. Victims deserve more than allowing their silence to be heard as a yes. I think it's our duty to adopt this standard. Thank you so much for your time. [LB988]

SENATOR EBKE: Thank you. Any questions? Okay. Next proponent. [LB988]

MADELINE RODENBAUGH: (Exhibit 13) Thank you, Chair Ebke and members of the Judiciary Committee, for allowing me to speak in support of LB988. My name is Madeline Rodenbaugh, M-a-d-e-l-i-n-e R-o-d-e-n-b-a-u-g-h, and I am from the small town of Harrison, Nebraska, in the northwest corner of the Panhandle. I am a current sophomore at the University of Nebraska-Lincoln, and I am also a member of PREVENT, an organization at the university dedicated to ending relationship and sexual violence through peer education. During my freshman year at UNL, I left a party with someone expecting to be taken home but instead I was sexually assaulted. I did not want sexual contact with this person. I never expressed that I wanted to engage in sexual activity. When the assault occurred, I tried to move away; I cried; however, I never said "no." I never expressed verbally that this isn't what I wanted. I was under the influence of alcohol and I was unable to express in words that this was against my consent. When I initially recounted my story to law enforcement, I was informed that if I chose to pursue legal action, the odds of winning my case were not in my favor. There were no witnesses to corroborate my story. It was "he said, she said" and I never said "no." What LB988 would have given me is the confidence to pursue my case. It would have given me hope that my story would have been believed. This bill does not complicate intimacy; it strengthens it. Intimacy is not passivity; it is not tears; it is not silence. Intimacy is active; it is willing; it is vocal. LB988 provides a clearer definition of consent, it sets a standard for intimacy and healthy relationships, and it takes burden off of victims when faced with reporting their assault. I really cannot express to you how difficult the decision was to not pursue my case. I never want another person to hesitate in reporting their assault, simply because the law may already be placing burden upon them. That is why I support LB988, because it takes that burden of proof off of the victim and instead gives them validation to what they've been through. I sit here in support of this bill because although I never said no, what's more important is that I never said yes. [LB988]

SENATOR EBKE: Thank you. Any questions? I don't see any. Thank you for being here, Ms. Rodenbaugh. Next up. [LB988]

MEG MIKOLAJCZYK: (Exhibit 14) Good afternoon, Chairperson Ebke, members of the committee. My name is Meg Mikolajczyk, M-e-g M-i-k-o-l-a-j-c-z-y-k. I'm the associate general

counsel and senior public affairs manager for Planned Parenthood of the Heartland. Planned Parenthood of the Heartland is a multistate sexual and reproductive healthcare provider with health centers in Nebraska and Iowa. Our Nebraska health centers are located in Omaha and Lincoln, although we do treat patients from, provide education, and advocate across the state. Planned Parenthood of the Heartland's vision is to have communities where sexual and reproductive rights are basic human rights and where every person has the opportunity to lead a healthy and meaningful life. Our vision only can become reality when an individual has bodily autonomy: the right to make decisions about what is and what is not right for that person and their body at any and all times. Planned Parenthood of the Heartland supports LB988 because the purpose of this bill is to return bodily autonomy and respect to all individuals. This bill ensures that all persons involved in sexual activities are willing participants throughout the entire experience. No one should be presumed to be constantly consenting to sexual activity, so a culture shift towards expecting to hear a yes before moving forward, and knowing your partner won't make further advances until a yes is spoken, is crucial. We're appreciative of Senator Pansing Brooks for bringing such an important bill to the Legislature and I know I'm appreciative of all the people willing to share their stories today, as well, so thank you. It's not enough to obtain consent at the beginning of a sexual experience. Both people reserve the right to terminate the activity at any time, and this ensures that all participants are able to set boundaries and have those boundaries respected. Perhaps one of the most important reasons to make this shift stems from the myriad stories we've learned through the #MeToo movement started by Tarana Burke. Seeking permission, instead of assuming consent, is exceptionally important in the many different ways power imbalances present themselves in potential sexual relationships in our country. When there is a power imbalance between two people, one person may fear saying no or actively resisting may negatively impact their entire career, their education, their job, their family, and so on. Requiring the initiator to receive affirmative approval restructures the power dynamic and allows for people to actively set their boundaries. Shifting from a "no means no" to a "yes means yes" framework for determining when sexual assault has occurred may have some challenges at first. It requires law enforcement, lawyers, healthcare professionals, teachers, parents, counselors, and others to think differently about what we were all taught about sexual relationships and consent. But just because this bill requires some new thinking is...that's not a reason to embrace this idea. Affirmative consent leads to healthier and more fulfilled relationships. It makes for a more sex-positive community. It may

lead to more open discussion about potential risks like STDs and pregnancy, and it also challenges stereotypes that rape is a women's issue. Imagine a world where, instead of grilling a sexual assault survivor on the witness stand about what she was wearing, how hard she resisted, and whether or not she audibly said no, these questions were posed to both people: Did you ask? Did they say yes? And I'm out of time. [LB988]

SENATOR EBKE: Okay. [LB988]

MEG MIKOLAJCZYK: I would ask you to support this bill. Thank you. [LB988]

SENATOR EBKE: Thank you. Any questions? Thanks for being here today. [LB988]

MEG MIKOLAJCZYK: Thank you. [LB988]

SENATOR EBKE: Are there any other proponent testifiers? Proponent? [LB988]

ELI SHERMAN: Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Eli Sherman, E-l-i S-h-e-r-m-a-n, and I am a student at the University of Nebraska-Lincoln, fraternity liaison for PREVENT UNL and a brother at Sigma Chi fraternity. First, I would like to thank Senator Pansing Brooks for introducing LB988. I have come before you today because I feel more obligation to speak in favor of this bill seeing as that I am a member of the Greek community, a community that, unfortunately, often perpetuates rape culture. While "no means no" seems a sensible way, in theory, for determining consent, it makes victims responsible to act in a time they often cannot. Often, victims are physically unable to vocalize while being assaulted, whether that be due to intoxication, unconsciousness, or simply being too shocked by what is occurring to speak. I respectfully implore the members of this committee to vote in favor of LB988 because only actually giving consent should indicate consent; the absence of resistance should not. Thank you. [LB988]

SENATOR EBKE: Thank you, Mr. Sherman. Any questions? I see none. Thanks for being here today. Other proponents? [LB988]

CALEN GRIFFIN: Good afternoon, Chairperson Ebke and members of the Judiciary Committee. My name is Calen Griffin, C-a-l-e-n G-r-i-f-f-i-n, and I'm here today representing the views of fellow PREVENT members, my Sigma Chi fraternity brothers, the Interfraternity Council executive team, where I currently serve as vice president, and the Greek community students at the University of Nebraska-Lincoln as a whole. Thankfully, I have not personally experienced sexual violence; however, I do believe that it will take the efforts of everyone to one day eliminate sexual assault and rape. The first step to doing this is enacting LB988 and changing from a standard of "no means no" to "yes means yes." Myself, along with two of my other Sigma Chi fraternity brothers, spent the past hour before the hearing today gathering endorsements from other local fraternities at the University of Nebraska-Lincoln campus. In just 30 minutes, we were able to get 66 endorsements and we plan, we hope that in the future, if this bill proceeds, that we'll be able to get far more endorsements to show the support of this from the university's standpoint. I believe it is time we stopped looking for when a sexual assault victim said no and start looking for affirmative consent. Thank you for your time and I hope you enact LB988. [LB988]

SENATOR EBKE: Thank you, Mr. Griffin. Any questions? I see none. Thanks. Are there any other proponents? Okay. Opponent testimony? Come on up. Go ahead. [LB988]

MOLLY KEANE: Thank you. Good afternoon, Senator Ebke, other members of the Judiciary Committee. My name is Molly Keane, M-o-l-l-y K-e-a-n-e, and I'm a deputy county attorney in the Douglas County Attorney's Office speaking here on behalf of the Nebraska County Attorneys Association in opposition to this bill. I know that it may seem odd that I'm here speaking in opposition to this bill as I am a person who focuses on prosecution of sexual assaults within my practice. However, while I admire the motivation behind this bill and everything that this bill is attempting to accomplish, when I actually read the language within this bill, I don't think it accomplishes what it is hoping to, and that is why I'm here today. This, the language within the bill, in my opinion, is extremely confusing the way it's written. I have spoken with other colleagues in my office who focus on prosecution of these crimes and they agree. It's difficult for us as the prosecutor to understand the language within this bill, let alone be able to communicate that to jurors. We need to understand what elements we have to prove in order to prove these cases beyond a reasonable doubt. As someone who works in the trenches of proving these cases

every single day in our office, I can tell you that this language is confusing, that I as a prosecutor will have difficulty explaining it to jurors; I as a prosecutor have concerns about the potential burden shifting that it implies within the language. As a prosecutor, we are responsible for proving each and every element of a crime beyond a reasonable doubt, and one of my fears as it relates to this particular statute, or bill, is that it could be potentially seen as burden shifting, that it's forcing the defense to prove something, that a person was asked a question and gave an affirmative response, rather than forcing the state to meet our burden and prove each of these elements, which we do. I know my time is running short already. But I would also argue that the current law is a better and more complete form of covering sexual assault than the bill as written. Incapacitation is covered by first-degree sexual assault law. These stories we've heard today are heart wrenching (sic). They are stories I hear every day. But many of them, most of them, could be proven given our first-degree sexual assault law as written. One of the ways that first-degree sexual assault can be proven is not only by without consent but incapacitation. When a person...when the defendant knew or should have known that the victim was mentally or physically incapable of resisting or appraising the nature of their conduct, that's another way, an avenue we have to prove first-degree sexual assault. That covers the situations where people are intoxicated or drugged or asleep, those potential situations. Furthermore, I think the law is misunderstood in that no is not required. And I appreciate your time. I'm happy to answer any questions. [LB988]

SENATOR EBKE: Okay, thank you for being here, Ms. Keane. Any questions? Senator Hansen. [LB988]

SENATOR HANSEN: Thank you, Chair Ebke. And thank you for coming and giving your testimony, Ms. Keane. Do you have a copy of the bill available to you? [LB988]

MOLLY KEANE: I do. [LB988]

SENATOR HANSEN: Okay. I guess let me start off with a broader issue. So you...is the County Attorneys Association objecting to the overall concept of an affirmative consent standard or are they objecting to the language specifically as written? [LB988]

MOLLY KEANE: And I can only speak for myself in regard to that question. [LB988]

SENATOR HANSEN: Okay. [LB988]

MOLLY KEANE: And I would say in my review I don't object personally to an affirmative consent standard. I think, though, it should be one of the ways in which we can prove sexual assault. I don't think we should eliminate the other ways because I think they are covered by our current law, which has been modified for years to encompass all kinds of situations that this law as written doesn't necessarily cover. [LB988]

SENATOR HANSEN: Okay. So I guess walking through, are there any particular components of the proposed language that stand out to you as the part that you find the most troublesome or the most...would be the most difficult for an attorney to... [LB988]

MOLLY KEANE: Sure. [LB988]

SENATOR HANSEN: ...prosecutory attorney to prove? [LB988]

MOLLY KEANE: Sure. Okay, so when we look at (2), the definition of consent, which is what we're talking about here today, right,... [LB988]

SENATOR HANSEN: Right. [LB988]

MOLLY KEANE: ..."means words or overt actions indicating a knowing and voluntary agreement, freely given, to engage in sexual contact or sexual penetration..." That's great. I can understand that, wrap my head around it, and encourage jurors to understand that. The confusion I think comes when we get to that next indication because we get into areas of double negatives upon each other, "except that," and that's where it gets confused, because the way this is written, that "except that" relates to every section beyond it. [LB988]

SENATOR HANSEN: Okay. [LB988]

MOLLY KEANE: So "except that...an expression of lack of consent through words or conduct means either there is no consent or consent has been withdrawn," I don't have a problem with that particular section either. I think our law covers that as well. I think it's a misperception to say that as our law currently stands, consent can't be withdrawn. We prosecute those cases all the time where something starts out consensual and then consent is withdrawn. That's still a sexual assault under our law. Going back then, "except that...a current or previous dating or social or sexual relationship by itself, the manner of dress of the person involved with the accused, or the victim's use of drugs or alcohol in the conduct at issue does not constitute consent," I don't think when you read that as a sentence, consent means this except that that...it doesn't logistically make sense. I'm not opposed to these ideas and I think there are other facets of our law that cover these ideas as well: 27-412, for example, our rape shield law, covers some of this. Prosecutors or the state also have other avenues in which to approach these ideas. We can do motions in limine to keep that type of information out. But there are a lot of ways that we address those things and I think they're admirable things to address. I don't think that's the place to put them in this language. "Except that...lack of consent may be inferred based on all of the surrounding circumstances and must be considered in determining whether a person gave consent," I don't know that when you read this and you think of a jury instruction that's going to have to go to jurors to help them understand that, it doesn't logistically make sense the way it's written. And I think that that is also covered by our current law, that lack of...without consent as defined covers having to look at all of the surrounding circumstances. It covers not only words can mean no. You don't have to say no in order for this to be without consent. Our law covers that. It can be expressed through conduct. It can be expressed through a lack of participation. It can be, and we argue that all the time. It can be expressed when a person freezes, as was described here. We can argue that as a first-degree sexual assault because that is not reasonable for the defendant in these cases to assume that the person is consenting if they're frozen like a board and not participating in a sexual act. We can argue that and we do argue that under our law. Our law also covers the amount of resistance that is required. So the victim need only resist either verbally or physically so as to make the refusal known. That’s how the law is currently written. A victim need to resist verbally or physically at all where it would be useless or futile to do so. That is within our current law and that's something we rely on all the time. So those situations of coercion or intimidation or where they...like one of these survivors talked about, they resist and then

eventually they just give in because it's useless to resist. That is covered by our current law. Those cases can be prosecuted successfully and we attempt to do that every day. [LB988]

SENATOR HANSEN: If I could jump in,... [LB988]

MOLLY KEANE: Yeah. [LB988]

SENATOR HANSEN: ...no, I... [LB988]

MOLLY KEANE: Sorry. [LB988]

SENATOR HANSEN: No, absolutely, and I appreciate kind of, I guess, the depth and clarity you were giving. So one of the provisions you had mentioned just now of...it's the stricken language, but is the current standard is there's a...well, it's language you just said that the victim need only resist either verbally or physically so as to make the victim's refusal of consent genuine and real and so as to make known to the actor's victim...sorry. Anyway, the victim is...like I said, so that's the current law. [LB988]

MOLLY KEANE: To make the... [LB988]

SENATOR HANSEN: And so the current law, though, makes it a burden on the victim to resist strongly enough for the person to know they're not consenting? [LB988]

MOLLY KEANE: Either through words or acts or a lack of participation, I would argue, also, can make real to that person that this consent is not actual. [LB988]

SENATOR HANSEN: Okay, so you feel under current law if there's a situation in which there is very clearly no consent, no affirmative consent, and as it was described earlier, maybe just a freezing situation in which there was very little participation of any manner, that is something that is covered and could be prosecuted under our current statute. [LB988]

MOLLY KEANE: I think we can prosecute those cases. I'm not here to say that our law is perfect either. [LB988]

SENATOR HANSEN: Sure. [LB988]

MOLLY KEANE: I'm just...and again, I admire the motivation behind this law and I am for anything that makes these prosecutions easier for victims because they are hard. But I don't think that this law as written is the way to do it. [LB988]

SENATOR HANSEN: Okay. Thank you. [LB988]

SENATOR EBKE: Other questions? Senator Halloran. [LB988]

SENATOR HALLORAN: Thank you, Chair Ebke. It's a tough subject, just like we always get here. And I don't want anyone to mistake what I'm going to suggest or ask as being jocular or trying to make light of this issue, but it's, whether it's "no means no" or "yes means yes," it's a "he said, she said, she said, he said," oftentimes it gets down to, because it's not something in public that's witnessed. So many things in life we have contracts for, right, where we sign off written consent to do something, whether it's is business or otherwise. I'd hate to see that it comes down to this. But I just quickly searched on-line for direct consent for sexual intercourse form. You can take a lot of the spontaneity out of life. But if you had a form that required someone to say in detail...I mean in...by detail I mean that there truly is consent for both parties to sign, otherwise, if you don't have that form signed, you're more at risk, at the very least, of being accused of rape. [LB988]

MOLLY KEANE: Yes. [LB988]

SENATOR HALLORAN: Is that... [LB988]

MOLLY KEANE: I mean a form like that would make my life easy, right,... [LB988]

SENATOR HALLORAN: Right. [LB988]

MOLLY KEANE: ...because these issues... [LB988]

SENATOR HALLORAN: Be a lot less activity. [LB988]

MOLLY KEANE: It wouldn't be argument, argued. [LB988]

SENATOR HALLORAN: Right, right. [LB988]

MOLLY KEANE: But the reality is that that, unfortunately at this point in life in our culture, that is not the reality of sex. And that's what I have to talk about with people every day is not how we wish things worked, but how life works in reality. And in reality, in my opinion, it would be difficult to convince a juror that before a person has sex, they need to specifically say to someone, will you have sex with me now, and that person has to affirmatively say yes. [LB988]

SENATOR HALLORAN: This is a written document I'm talking about. [LB988]

MOLLY KEANE: Right, I know, but the same idea. [LB988]

SENATOR HALLORAN: Right. [LB988]

MOLLY KEANE: And I'm not...I feel as if I'm in a horrible position here... [LB988]

SENATOR HALLORAN: (Inaudible.) [LB988]

MOLLY KEANE: ...because all of those people who spoke, I support them,... [LB988]

SENATOR HALLORAN: Right. [LB988]

MOLLY KEANE: ...I argue for them, I fight for them every day. But just as written, I don't believe this is the way to do it. [LB988]

SENATOR HALLORAN: No, I'm just throwing this out because, you know, in the electronic age we live in, you could have an app on your phone and sign it or not sign it and if you don't sign it, then you're more subject to prosecution otherwise. I'm just throwing that out there. It's a new app. [LB988]

SENATOR EBKE: Okay. Any other questions? Senator Hansen. [LB988]

SENATOR HANSEN: Just I...thank you, Chair Ebke. And thank you, again, for coming, Ms. Keane. While we're talking with that, I mean, one of the situations we're struggling with affirmative consent is consent being withdrawn. So even if we do establish that through words, actions, deeds, or in document in an app, I mean, we still have the situations where consent is withdrawn and not...that withdrawal of consent is not respected. [LB988]

MOLLY KEANE: Yes. [LB988]

SENATOR HANSEN: So even something like that wouldn't help in a lot of cases, correct? [LB988]

MOLLY KEANE: Right, and people are, as someone else said, people change their minds all the time and, they're right, their decisions should be respected. I agree with that completely. [LB988]

SENATOR HANSEN: All right. [LB988]

MOLLY KEANE: But those situations can still be prosecuted. [LB988]

SENATOR HANSEN: Thank you. [LB988]

SENATOR EBKE: Other questions? I think we're done. Thanks. [LB988]

MOLLY KEANE: Thank you. [LB988]

SENATOR EBKE: Yep. Next opponent. [LB988]

SPIKE EICKHOLT: (Exhibits 15 and 16) Good afternoon, Madam Chair and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in opposition to the bill. I first want to state for the people here in the audience that our opposition should not be interpreted as being disrespectful or unsympathetic to anything that any of you have testified to here today that you've experienced or that someone close to you has experienced. Our opposition is based on many of the same things that the County Attorneys Association just got done relating, and I was just agreeing really with everything that Ms. Keane said. And I think that this is the only time this year, probably this biennial session, that the defense attorneys and the county attorneys have appeared on the same side of an issue relating to criminal law. And I think that should be telling to the committee when you consider what to do with this bill. I've passed out copies of the current law, and I know it's replicated in the statute, but the current definition at 28-318(8) regarding "without consent." And as Ms. Keane explained, all the scenarios, at least that I heard today, all the situations that people were talking that relate to this concept, and that's really what I think the motivation is behind this bill, are already covered in existing law. I've also passed out copies of 27-412 and 27-414 and 27-404 which deal with issues of bad acts. There's the rape shield law, 27-412. I've distributed those to the committee because if you look at those statutes and look at the annotated cases you have, and you'll quickly see 30 or 40 years of cases interpreting all these concepts that we've been talking about today: definition of what consent means and without consent, lack of consent, consent not expressed, all of those things related to rape shield law. And I would just suggest that if the committee was to simply strip away the current definition and put in this, and I'm not being critical...well, maybe I am being critical, but only to be personally critical, this convoluted sentence fragment definition of what consent means, I think you're going to cause chaos in this area of the law. And in some respects, that only helps one entity. That's the defendant. And whatever the committee wants to do, and I suspect whatever Senator Pansing Brooks wants to do, is not have a scenario where you have somebody charged with a very serious crime, the judge is unable to instruct the jury properly as to what this means, the jury isn't able to understand what that instruction means, and that will only lead to one result and that's either an acquittal or a conviction that is reversed on appeal. I would suggest that the committee look at some of the law regarding this, consider some of the scenarios that

you've heard here today, and see that the current law satisfies all those kind of scenarios, and we would urge you to not advance the bill. [LB988]

SENATOR EBKE: Thank you, Mr. Eickholt. Senator Hansen. [LB988]

SENATOR HANSEN: Thank you, Chair Ebke. And thank you for coming, Mr. Eickholt. I guess I'll start off with the same question I asked Ms. Keane. Is it...are you in...is the Defense Attorneys Association objecting to an overall transition to an affirmative consent standard or are you objecting to the specific language proposed? [LB988]

SPIKE EICKHOLT: We're not necessarily...we are troubled with whatever is meant by an affirmative consent standard. I think, like Ms. Keane said, implicit in that is some sort of burden on the defendant to somehow disprove or to prove a negative or disprove a negative, or whatever standard is. I think all that sort of affirmative consent standard, to the extent that I understand whatever that phrase means, sort of implies that the defendant somewhere along the line has to prove that he or she was told yes. We have problems with that because it's, one, it's a significant constitutional problem, so we have problems with that concept. With respect to some of the language, you know, I'll be...if you look at page 2, line 11, this notion of "manner of dress of the person involved with the accused," that's not relevant now. That's protected by rape shield law, and I'll give you an example or an instance that happens fairly regularly, and Ms. Keane could probably corroborate, either nod her head or somehow acknowledge that it happens. You'll have a sexual assault charge. The alleged victim won't have perhaps...won't be wearing a bra. The first thing the prosecutor will do is they'll file a motion in limine to prohibit me as the defense attorney from drawing any kind of attention or introducing evidence like that, and I'll lose that argument every time because it's not relevant. Here, you're putting something about dress in statute. I could argue that's fair game then, and that's what I meant by the instance if you do something like this, based on a concept, based on the #MeToo concept, whatever it might be, just put it in the Criminal Code for a serious charge. This is an element for a whole series of serious sexual assault crimes where people go to prison for life. If we do something like that without being very careful, it's going to cause lots of problems in the court community. [LB988]

SENATOR HANSEN: Okay, thank you. [LB988]

SENATOR EBKE: Other questions? Thanks for being here. Next opponent. [LB988]

JEROMY WILSON: (Exhibit 17) Good afternoon, Chairman Ebke and the rest of the Judiciary Committee that's here. My name is Jeromy Wilson, J-e-r-o-m-y W-i-l-s-o-n. My daughter is not in here. She's outside. We are actually here today to testify in strong opposition of LB988. In a whirlwind of sexual violence and harassment that has plagued our society by people who aren't even on the sex offender registry, mind you, we have all been affected by the #MeToo movement. Firstly, I am deeply troubled that the only senators to have their names attached to this bill happen to all be women. Is that coincidence? Not at all. Women are more prone to sexual violence and harassment based on numerous statistics and the reality of the way the world is. This is a foolish bill with huge unintended consequences for our justice system and reform that is not needed. The laws the way they are now do not need to be changed in reference to consent, as the prior testimony has indicated. Under LB988, an accusation from someone can land someone in jail and then the burden of proof lies on the accused to prove their innocence. This holds true to one-night stands, morning-after regret, and outright lying about the entire situation. The accused should not be condemned before guilt has been established and for any senator that feels any other way, then I kindly request that you put yourself in the shoes of the innocent men and women who have spent decades behind bars having been innocent the entire time they were incarcerated. It is the state's duty and responsibility to prove beyond a reasonable doubt that anyone charged with a criminal violation is just that: guilty. Even then, the wrongfully accused still get convicted. How in the hell is there a remote possibility of changing the law knowing these things? Not to mention that the amendment defines what consent is, but completely scratches out the definition of nonconsent. If you define what consent is, shouldn't you also define what nonconsent is? Is it not a societal and judicial standard for someone to be innocent until proven guilty? What is the #MeToo movement? The #MeToo movement is wonderful to get those victimized by sexual harassment and sexual assault to come forward and tell their story and also to hold those accountable for having potentially victimized someone. I get it. I think we all do and we support those who want to tell their stories and heal. We're with you. I'm with you. My daughter is too. What I don't understand is this. #MeToo: Where are the lawmakers sitting when we approach them about commonsense legislation to get affirmative defense in this great state of Nebraska? But yet you're asking for affirmative consent. What makes affirmative consent more important than those victimized by the lack of an affirmative defense? #MeToo: Where are

the cries and pleads for reform in reference to the Romeo-and-Juliet cases where families and children are being victimized by harassment and vigilante justice on a daily? #MeToo: Where do I stand...where do you stand knowing that the democratic leader in California who helped start this movement, Cristina Garcia, is being accused of the same sexual harassment and assault that was argued in this exact same position? #MeToo: Where were you when I was facing 50 years in prison because a young lady decided to lie about her age on an adult dating Web site and wasn't? #MeToo: Where are you when my daughter needs answers? What will you tell her? What would you say? Would you say anything at all? You have a story. She has a story. He has a story. Guess what? Me too. Thank you. [LB988]

SENATOR EBKE: Thank you, Mr. Wilson. Any questions? Seeing none, thanks for being here today. [LB988]

JEROMY WILSON: Thank you. [LB988]

SENATOR EBKE: Okay. Other opponents? [LB988]

GREGORY LAUBY: Good afternoon, Senator Ebke and members of the committee. My name is Gregory C. Lauby, G-r-e-g-o-r-y C. L-a-u-b-y. I oppose LB988 but not because I want to support unwanted sexual conduct. I, frankly, am very encouraged by what has happened over the past year or so whee women have begun to come out in large numbers and disclose what they feel is unwanted sexual conduct made by famous, important, and powerful people. I think that that and then the accompanying hash tag movements and the public displays have led to the point where university students can come forward and admit in a public hearing that they have actually been sexually active themselves, even in unwanted and forced situations. I don't think you would have seen that 10 or 20 years ago, and I think this is a very positive social, cultural change that reflects the educational efforts that had been made by formal education and also just cultural entities. However, I don't know that that justifies removing a core fundamental principle that has existed in western jurisprudence, a protection of the innocence against false accusations. I would suggest, instead, that there be some other actions taken to try and encourage and affirm the possibility and support for people making disclosures and reports and even formal accusations in appropriate cases. One of those is to establish the availability of confidentiality for reports and

disclosures that are made to responsible authorities, whether it be within a particular corporation or business that an incident has occurred or formally to law enforcement. Those confidentiality requirements could be temporary situation to allow the investigation of the complaint before it was disclosed publicly and then that could give the verification to it. Secondly, I could see a civil cause of action being created for retaliation against any type of disclosure by a responsible person who makes that report truthfully. Third, I think that would go a long ways toward balancing power differentials if there was an availability of that type of cause of action. Second...thirdly, I think funding of counseling, perhaps through the Crime Commission, for victims before there has been an official conviction of someone that has committed misconduct, I think that would give them an avenue and lessen the trauma of the event. And third, I would certainly support continue educational efforts by institutions such as the university and public education schooling on what is appropriate and unappropriate sexual conduct and women's rights to both refuse, to say no, and to disclose if inappropriate conduct occurs. Thank you. Any questions? [LB988]

SENATOR EBKE: Thank you, Mr. Lauby. Any questions? I see none. Thank you. [LB988]

GREGORY LAUBY: Thank you. [LB988]

SENATOR EBKE: Other opponents? Do we have any other opponents? Do we have anybody testifying in a neutral? Opponent? Neutral capacity, okay. [LB988]

KENNETH ACKERMAN: (Exhibit 18) Good afternoon, Chairman Ebke and members of the Judiciary committee. My name is Kenneth Ackerman, K-e-n-n-e-t-h A-c-k-e-r-m-a-n. LB988 troubles me deeply. On one side, I want to support my daughter and make sure that no man ever takes advantage of her for other than honorable reasons. But on the other side, I want to protect my son from being taken advantage of by someone who changes their mind or has other than honorable interests with him. My daughter is a free spirit who at 26 has traveled throughout the world, including Uruguay, Peru, Europe, and Mongolia. She has a black belt in Taekwondo and knows how to demonstrate "no means no." My son, 23, wears his heart on his sleeve and shares with others in need. He has even given a jacket off his back to someone who is homeless and cold. His kindness and generosity go with him as he works to earn money to return to hiking the

Appalachian Trail this spring to search for his purpose in life. The far more reasonable answer to LB988 is found in our Christian Bible, telling us that God designed us to leave our parents and become one together with each other in marriage. This witnessed and signed contract nullifies the need for this bill. Unfortunately, our society has progressively moved away from this position with sexual contact and casual intercourse becoming the new norm, my children included. I cringe with the new terms of "hookups," "friends with benefits," "one-night stands." I'm sure there are many more terms that I'm not even acquainted with or would recognize, yet deleting the definition of "without consent" and substituting the burden of understanding a new convoluted definition of consent, including part (2)(c), "lack of consent," is what this bill offers. Although well intended, this will unduly burden our courts and perhaps even fill our already-overcrowded prisons with many new cases of young men like my son for engaging in sexual contact, with or without intercourse, and then have to defend himself because of a new definition of what consent might mean. Better get his consent in writing before any contact, even touching, explained in part (6), or, better yet, get it in writing with a marriage contract or he might end up in prison. Thank you. [LB988]

SENATOR EBKE: (Exhibits 1-5 and 7) Thank you, Mr. Ackerman. Any questions? I see none. Thank you. Anybody else wanting to testify on LB988? We have some letters, letters of support from Kelly Keller of the National Association of Social Workers-Nebraska Chapter; Robert Sanford of the Nebraska Coalition to End Sexual and Domestic Violence; Michelle Zych of the Women's Fund of Omaha; Ivy Svoboda of Nebraska Alliance of Child Advocacy Centers; and, opposed, Vicki Henry of Women Against Registry and Jeanie Shoemaker-Mezger. Senator Pansing Brooks. [LB988]

SENATOR PANSING BROOKS: Thank you, Senator Ebke. Well, I appreciate everybody who came and discussed this. I knew that there would be a lot of people talking about this and, you know, any time you try to make a change it causes people to come forward. The discussion about it being hard to get a person to say yes is so beyond anything I really can understand very well. We're arguing about consent and, you know, I think that a charge of burglary would be easier if the victims had to prove that they had to say no to it. It's still such...it's just mired in a millennium of expectations of women in their sexual roles. I...the county attorneys that come in and say, oh, it's so confusing, it's probably one of the clearest pieces of legislation I've seen. It's

been passed in the conservative state of Montana. They've figured out how to do it. It'd be great if those county attorneys would ever like to darken my door or lighten my door and come and speak to me about whatever issues they have. They're never willing to do that. They just want to come and say no to everything. The discussions about consent is going to be so hard, well, what...the "no means no" standard means that we have a presumption that we are constantly consenting to sexual activity. That's what that standard means. We are constantly consenting to sexual activity unless we say no. So to change it and say, oh, my gosh, we're going to have to have contracts that say...I sort of like that idea, Senator Halloran. I guess if you don't know your partner well enough and don't have enough respect and love for that person that you're like very confused about whether or not they're going to consent, well, then maybe you better stop, maybe you better make sure. How amazing to be at this point! And by the way, prosecutors across the country are wholeheartedly supporting this because it's a standard that's way more understandable to juries. So I don't know what the county attorneys are saying. I did work with the AG's Office on the language. And I'm happy, again, just like the AG comes in and talks, I'm happy to work with the county attorneys on what it is that they find so amazingly objectionable about this. Due process rights still must be met. Again, I think that this is, as Mr. Brodey said, this is the beginning of another change in how we will be looking at our laws in the future. And this may be early, but again, I don't want to give anybody the presumption or the conclusion that I am constantly consenting to sexual activity. You better dang well ask the person that you're with. You better make sure that they want to engage in a sexual activity. I don't think that's an unreasonable standard. So I was just seeing if there's one other thing. Anyway, I hope that we can continue this conversation and I thank you for your time. I thank everybody's passionate response and testimony today and I'll look forward to working with the county attorneys at some point in my career in the Legislature. Thank you. [LB988]

SENATOR EBKE: Thank you, Senator Pansing Brooks. I don't see any questions. This closes the hearing on LB988. We're going to take about a six- or seven-minute break, let staff get up and move around and let us stretch our legs, then we'll start back up at 4:00. [LB988]

BREAK

SENATOR EBKE: Okay. This opens the hearing on LB1013. Senator Pansing Brooks. [LB1013]

SENATOR PANSING BROOKS: Only two to go. [LB1013]

SENATOR EBKE: What? [LB1013]

SENATOR PANSING BROOKS: Two to go. [LB1013]

SENATOR EBKE: We'll be done by 4:30. [LB1013]

SENATOR PANSING BROOKS: (Exhibit 1) Okay. Thank you, Chair Ebke and fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I am here today to introduce LB1013, which amends the habitual criminal law to restrict its application to only serious, violent felonies. The habitual criminal law is Nebraska's version of the three strikes law. As currently written, it provides that if a person has been convicted and sentenced to prison on two prior occasions, that person may be charged as a habitual criminal for any subsequent third offense. If a person is charged as a habitual criminal, it means that the sentence they are facing is at least 10 years to 60 years imprisonment. The ten-year minimum is a mandatory minimum, meaning that the person must serve ten actual years in prison with no good time. As you know, a mandatory minimum sentence means that the judge has very little discretion relating to the sentence. With a mandatory minimum sentence, the judge cannot place the person on probation or impose a lesser sentence than the mandatory minimum. I trust judges to impose the correct sentence in cases. I know many judges and I note that many of them are former prosecutors. None of the judges whom I have known or worked with could be characterized as soft on crime or unwilling to impose significant sentences for deserved cases. Indeed, our high jail and prison population are evidence of that. Under current law, any felony offense can be charged as a habitual criminal. This would include simple possession of drugs, including residue cases; shoplifting offenses; and even felony forgery offenses. In 2014, we had a woman convicted of one criminal conviction, criminal possession of a financial transaction device; two, shoplifting; and three, second-degree forgery. She was given a flat sentence of ten to ten years. I would argue that this was a significant waste of state dollars. LB1013 would allow the habitual criminal law to apply only to serious and violent felonies and certainly not forgery. In my time in the Legislature I've been consistent in supporting significant penalties for violent and offensive

crimes. Just last year I introduced and navigated a bill through the Legislature which greatly increased penalties for child sexual assault, sex trafficking, and related offenses. I did so because our statutes should punish those offenders who prey on our most vulnerable Nebraskans. I worked with law enforcement; prosecutors, including Attorney General Doug Peterson; victims groups; advocacy organizations; the Women's Fund; and many other individuals who supported increasing penalties for this new category of offense, an offense which historically had been focused on punishing the victim for, quote unquote, prostitution rather than recognizing the victim was acting under force, fraud, or coercion. However, I have also supported proportionality and reform in our criminal justice system. We need to make a distinction between offenders who truly deserve to be put away for most of their lives and those who do not deserve to be placed in the same category of the truly bad actors. We need to make a distinction between the offenders whom we fear and want locked away for the safety of our communities, and offenders with whom we are most angry and frustrated. Many states have reformed their three strikes laws and mandatory minimum laws in the last several years, particularly with regard to drug laws. In 2016 alone, 17 states scaled back, at least in some part, their versions of mandatory minimum sentencing or three strikes laws. This bill is similar to an effort that Senator Chambers led in 2015. In 2015, he introduced LB173, which limited the habitual criminal law to a select category of felony offenses. LB173 was advanced to Select File and was considered by many to be a companion piece to LB...to LB605 and other reforms. But due to opposition from prosecutors and other groups, LB173 was not advanced. LB1013 offers a similar proposal to what was considered in LB173, but it keeps the habitual offender law for a number of serious felony offenses. I have distributed a list of those offenses that would be retained and be available for habitual criminal designation. I believe this bill strikes the proper balance of reforming our Criminal Code while keeping the habitual criminal law available for prosecutors to use for our most serious crimes and most serious offenders. With that, I ask you to advance LB1013 to General File. And I'd be happy to answer any questions. [LB1013]

SENATOR EBKE: Thank you, Senator Pansing Brooks. Any questions? I see none. First proponent. You guys have split up, right? It's like court. [LB1013]

JOE NIGRO: Good afternoon. Senator Ebke, members of the committee, I'm Joe Nigro, J-o-e N-i-g-r-o. I'm the Lancaster County Public Defender. I appear on behalf of the Nebraska Criminal

Defense Attorneys Association in support of LB1013. I want to thank Senator Pansing Brooks for introducing this bill. The purpose of the habitual criminal allegation was to incarcerate career criminals for a longer period of time. If you're convicted of a felony and you have two prior felony convictions for which you have served prison time, the penalty increases to 10 to 16...60 years. The ten-year minimum is a mandatory minimum, so someone found to be an habitual criminal must serve ten years before they begin to earn good time. It's an extremely harsh penalty. I believe it is too harsh to attach this to nonviolent felonies. Opponents may say that the habitual criminal allegation isn't filed that often, but the biggest problem is that prosecutors frequently threaten to file the habitual criminal allegation in order to coerce pleas. For most felonies, especially low-level felonies, a defendant cannot risk a trial, knowing they will serve ten years in prison before they can even start to earn good time. When judges feel that the habitual criminal penalties are too harsh, they will sentence someone to ten to ten years. In this situation, that means someone will get out of prison without being placed on parole. And as we have discussed on other legislation, people placed on parole are less likely to reoffend and so that doesn't happen when you see people serving ten to ten. The habitual criminal allegation limits judicial discretion. This bill will still allow for habitual criminal allegations to be filed against people who have committed violent offenses with a proven history of violent felony convictions. Now opponents may also say that this change will allow someone who keeps committing property or drug offenses out...to get out of prison too early. I would rather let 100 people out too early than to keep 1 person in prison too long, and the reality is that we're keeping 100 people in prison too long to keep 1 person in who might need to be there. I've seen people convicted of habitual criminal allegations for crimes as minimal as possession of residue of a controlled substance and I've seen many more instances where people plead to felonies to avoid doing at least ten years in prison. Please end this abuse of the criminal justice system. People convicted on nonviolent felonies can still receive plenty of time in prison. This bill will help reduce our prison population and, more importantly, will make the system more fair. I urge the committee to advance LB1013. [LB1013]

SENATOR EBKE: Thank you, Mr. Nigro. Any questions? I don't see any. [LB1013]

JOE NIGRO: Thank you. [LB1013]

SENATOR EBKE: Thanks for being here. Next proponent. I don't see anybody jumping up. Okay. Opponents. [LB1013]

JIM MASTELLER: Good afternoon. My name is Jim Masteller, J-i-m M-a-s-t-e-l-l-e-r. Pardon my voice, I'm still sick. I'm here on behalf of the Nebraska County Attorneys Association and the Douglas County Attorney's Office. I'm here to testify in opposition to LB1013. I was back here in 2015 testifying in opposition to LB173, and I will say that LB1013 is a vast improvement over that bill. LB173 identified only seven felonies as violent felonies. LB1013 identifies 60, so in that sense it's a step in the right direction. However, I do believe it's a good faith attempt to identify all of the violent felonies in our code. I think there's been some things overlooked, though, for example, the inchoate crimes. For example, 28-201, which is criminal attempt, that's not incorporated into the crime...or the violent crimes. So, for example, if I were to go outside and shoot someone ten times, they don't die, I'm convicted of attempted murder, that would not be considered a violent crime under LB1013. Also the inchoate crime of conspiracy, we've had...I've convicted people of conspiracy to commit robbery where we've had individuals coordinate to commit bank robberies with firearms. A conspiracy to commit a violent crime would not be itself a violent crime under this LB. I'd also note that burglary is not considered a violent crime under LB1013. It's actually considered a violent crime under the federal Armed Career Criminal Act and it's also a predicate offense for felony murder under 28, Nebraska Revised Statute 28-303. So I think that's also an omission. She does, the senator does include use of a deadly weapon to commit a felony as a violent crime. However, I would submit that not including possession of a deadly weapon by a prohibited person is a significant omission since that is a violent crime that we deal with regularly. I was looking back at the last two people that I had filed an habitual criminal on. Reginald Parnell, Mr. Parnell, he went to prison back in 1990 for theft by receiving stolen property; went back to prison in 1994 for possession of a firearm by a felon; went back in, in '96 for possession of a firearm by a felon; and went back in, in 2005 for possession of a deadly weapon by a felon. He actually had the habitual criminal filed against him in 2005. He served ten years on that, got out in 2014, and then in May of 2015 he was breaking in, in the middle of the night to his ex-girlfriend's house with a knife and a gun. He ended up being convicted at trial by me of terroristic threats, false imprisonment in the first degree, and burglary, for which the habitual criminal was imposed. Under LB1013, he would not have been eligible for the habitual criminal due to the fact that none of those convictions that I just listed

are violent crimes as defined by LB1013. I'd be happy to answer any questions you might have. [LB1013]

SENATOR EBKE: Thank you, Mr. Masteller. Senator Baker. [LB1013]

SENATOR BAKER: Thank you, Chairwoman Ebke. So your main objection, as I take it, is that there are other things that should have been included in the list of violent felonies. [LB1013]

JIM MASTELLER: Our position is that the criminal...habitual criminal statute is not broken; it does not need fixing. However, in...if I wanted to simply comment on LB1013, those are the specific things I see objectionable with LB1013. [LB1013]

SENATOR BAKER: Okay. Did you, by any chance, contact Senator Pansing Brooks about them? [LB1013]

JIM MASTELLER: I have not because we don't think it needs fixing. [LB1013]

SENATOR BAKER: Thank you. [LB1013]

SENATOR EBKE: I see no other questions. Thank you. Other opponents. Welcome back. [LB1013]

COREY O'BRIEN: Good afternoon one final time today. My name is Corey O'Brien, C-o-r-e-y O-'-B-r-i-e-n, and I am the criminal prosecution, I'm sorry, the Criminal Bureau chief in the Nebraska Attorney General's Office, appearing on behalf of the Attorney General's Office in opposition of LB1013. To talk a little bit about what Mr. Masteller talked about, there's a time in the criminal justice system where the goals of deterrence and rehabilitation, restitution, and even deterrence lose their effect. And constantly my office, and I'm sure Mr. Masteller's office, is getting calls from constituents saying, they're out again and they're stealing from me again, something needs to be done to prevent them. And that's where incapacitation must take place. As I've testified before this body on numerous occasions, the least fun part about my job is putting somebody in jail, but sometimes that's the only way that we can prevent repeated victimization.

As Mr. Masteller said, we object to changing the habitual criminal statute. Currently, as of this morning, there's 182 prisoners in our correctional facility, which is 3 percent of the entire population, doing an habitual criminal statute sentence. Many times these statutes are used even in nonviolent settings to take down violent gangs. There's been occasions where we've prosecuted people for things such as tampering with a witness, which is not covered under LB1013, because they have terrified witnesses into not testifying. And we've had to use and be creative to use habitual criminal along with the terroristic threat, I'm sorry, the tampering with a witness statute to incarcerate them. In 2012, I prosecuted one of the most infamous rapists in the history of the state of Nebraska. He has a panache of raping elderly women. He was on trial for raping and murdering a 98-year-old woman. During the course of the trial, he threatened a witness on the witness stand and threatened to kill him. For various reasons, his conviction was overturned and a retrial couldn't take place because that witness would not testify, among other issues in the case. I ended up prosecuting him for tampering with a witness and habitual criminal. There's not a day that goes by that I'm not glad that I did because I have no doubt in my mind that had he gotten out of prison he would have raped and killed, maybe killed, another elderly woman because that was his history. So sometimes we have to get creative with our laws to protect society, and that is the benefit that the habitual criminal can serve, is that it allows us to do the things that must be done when other traditional means aren't available to us. If the members of the committee have any questions, I'd certainly be happy to answer them. And as Mr. Masteller said, I think this is a significant change to what we saw in LB173 and perhaps there is some things, if this goes forward, that we can work upon. [LB1013]

SENATOR EBKE: Thank you, Mr. O'Brien. Questions? I see none. Thanks. [LB1013]

COREY O'BRIEN: Thank you. You all have a nice weekend. [LB1013]

SENATOR EBKE: (Exhibits 1, 2, 3, and 4) Happy weekend. You too. Someday we'll get to go home. Okay, any other opponents? Anybody testifying in a neutral capacity? Senator Pansing Brooks. We do have some, I've got to find them, we do have a number of letters. In support: Spike Eickholt of the ACLU of Nebraska, and Ivy Svoboda of the Nebraska Alliance of Child Advocacy Centers. And opposed: John Wells of the Omaha Police Officers' Association, and Todd Schmaderer of the Omaha Police Department. [LB1013]

SENATOR PANSING BROOKS: Thank you, Chair Ebke. And thank you members of the Judiciary. Again, I appreciate your question. No, they don't want to come and talk. And, yes, if they don't see something that needs to be changed, that's something to come and talk to us about too. We have made a good faith effort to put in, I don't know, nearly 60, I don't know what the number is, violent crimes that could be subject to it. And again, and there was a discussion that attempted murder, it's already 1 to 50. But no matter what, that's already included. But no matter what, I'm happy to sit down with people and if they think there's a crime that's been forgotten or some sort of felony that is so necessary to be able to really go after these criminals then come and talk to me about it. The other idea is to put money into programming so we aren't releasing people and they come back right away. There's one really good idea. And the thing that is slightly aggravating is that the prosecutors continue to just come in and say no. They know that we have a looming emergency that we have to deal with. And, yes, this is 3 percent of the population. But every single thing that has been suggested so far--the one-third rule, the juvenile mandatory minimums, the habitual criminal prioritization--they just come in and say no to all of this. But these are limitations that the prosecutors had already placed on LB605 because these things were discussed back then. And we know that 605 is not doing what it's supposed to do. So again, the prosecutors have one job, we have another job, and ours is looming in 2020 with trying to figure out what we can do about this overcrowding crisis. And, yes, this is a little thing and...but if you start adding up all the little things, it might add up to making some sort of difference. So again, I look forward to someday speaking with county attorneys in a positive and productive manner rather than always being on opposite sides and having them come in and just oppose everything. So I will look forward to that. I am able to work quite well with the Attorney General's Office and I do appreciate the fact that they generally do come in and discuss their concerns with me, which is a lot better than some others. So thank you for listening. I appreciate it. [LB1013]

SENATOR EBKE: Thank you, Senator Pansing Brooks. This closes the hearing on LB1013. We will move on to LB925. [LB1013]

SENATOR PANSING BROOKS: The last one. Okay, last one. [LB925]

SENATOR EBKE: Go for it. [LB925]

SENATOR PANSING BROOKS: Thank you, Chair Ebke and fellow members of the Judiciary Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I am here today to introduce LB925, which increases several penalties related to child abuse and sexual assault of a child. Given my previous bills related to habitual criminal and mandatory minimum statutes, it may surprise some of you that I might bring a bill that increases penalties. It shouldn't. I don't believe that there is anything inconsistent with saying that certain crimes warrant higher penalties than others, and also saying that sentences should be structured in ways to encourage rehabilitation and earlier parole opportunities when a person is sentenced to prison. Our Criminal Code needs review, and CSG said the same thing. We need a healthy discussion of what crimes are the most egregious, which...with which offenders are we most mad or frustrated, and which are the offenders whom we most fear and want locked away for long periods. For me, offenses that harm a child are acts that warrant special differentiation. Our believe our Criminal Code should reflect the severity of child sexual assault and abuse. LB925 increases the penalty for sexual assault of a child in the third degree from a Class IIIA felony to a Class IIA felony. It also increases the penalty for negligent child abuse resulting in death from a Class IIA felony to a Class II felony. LB925 also increases the penalty for child abuse committed negligently and resulting in serious bodily injury from a Class IIIA felony to a Class IIA felony. LB925 goes on to extend the statute of limitations from three years to seven years for labor or sex trafficking an adult, possession of child pornography, or possession with intent to distribute child pornography. Finally, this bill increases the statute of limitations indefinitely for the offense of labor trafficking or sex trafficking of a minor, and manufacture or distribution of child pornography. For the record, the Attorney General's Office brought this bill to me and a representative of the AG's Office is here to testify and answer questions about why we need these enhanced penalties. By bringing this bill I hope we can start a valuable discussion of our Criminal Code and how we envision punishing the crimes. In closing, I would be glad to answer any questions you may have or refer them to the people behind me. [LB925]

SENATOR EBKE: Thank you, Senator Pansing Brooks. Questions? Okay. First proponent. I think there may extra copies of things we already have two copies of. [LB925]

SANDRA ALLEN: Good afternoon, Chairwoman Ebke and members of the Judiciary Committee. My name is Sandra Allen, S-a-n-d-r-a A-l-l-e-n, and I am the Prosecution chief for the Attorney General's Office and am here to support LB925 on behalf of the Attorney General's Office and Attorney General Doug Peterson. Been a prosecutor for 17 years. I've had many, many child sexual assault cases, too many to count, including third-degree sexual assault cases. I've seen lasting effects of victimization of these young children who have been assaulted. Prior to the adoption of LB605, third-degree sexual assault of a child was a IIIA felony, with the sentencing range of zero to five years. Post-LB605, it is still a IIIA felony, with a sentencing range of zero to three years possible sentence. Just this week I filed third-degree sexual assault contact case, and in that particular case I had the unusual opportunity to actually see the sexual assault of this child because the perpetrator decided to videotape himself assaulting an eight-year-old little girl. And I was left with, after watching that tape, thinking, wow, the most that this person is going to be able to get based on his horrendous conduct was three years, which means 18 months later this man is going to be walking the streets again. These children are the most vulnerable of victims in our society. These children are the ones who need to be protected in our society. We need to do a better job of protecting these children and we need to do a better job of obtaining justice for these kids. Three years for sexually assaulting a child by contact is not justice in this state and we need to raise the level of the offense of third-degree sexual assault so the penalty is commensurate with the action. That is all I have. I would be willing to entertain any questions. [LB925]

SENATOR EBKE: Any questions? I see none. [LB925]

SANDRA ALLEN: Thank you. [LB925]

SENATOR EBKE: Thank you. Next proponent. Go ahead. [LB925]

MOLLY KEANE: Thank you. Good afternoon, Senator Ebke and other members of the Judiciary Committee. Again, my name is Molly Keane, M-o-l-l-y K-e-a-n-e, and I am a deputy county attorney in the Douglas County Attorney's Office who leads a team of attorneys who prosecute exclusively sexual assaults and crimes of violence against children, as well as sexual assaults of adults. I have been doing this for...I've been a prosecutor for 17 years now. I have

been leading this team for eight years, so this has been my day-to-day, every day for the last eight years. I am here in support of this motion, I'm sorry, this bill because, as the prior individual from the Attorney General's Office indicated, the potential penalties left under LB605 for third-degree sexual assault of a child are insufficient given the nature of conduct that it covers. The dynamics of sexual abuse are such in children that when they do disclose abuse they're often unable to delineate specific time periods, days that this happened. They're unable to delineate a particular number of times that the contact may have happened, most often at the hands of someone that they love and trust. Because of those limitations in their ability to describe these things, because of limitations in how memory works and that many of them are left with script memories of how things happened when instances have happened over and over and over again, they describe it in terms such as, well, usually it happened this way, or sometimes it happened that way, in extreme detail but just unable to say, you know, on this date he did this exactly, on that date he did this. And that leaves us, as prosecutors, unable to charge these individuals many times with more than one count even though we know that this child has been subjected to ongoing, repeated abuse. And therefore, when they're convicted of that crime, we're left with judges whose hands are tied in terms of what they can do in response at a limitation of three years under the IIIA law. Moving on then, because I know time is short, child abuse resulting in serious bodily injury is another situation and example where these...the potential penalty is insufficient at this time, and I think that's best illustrated by an example. I prosecuted a case last year of an individual who was out drunk driving, intoxicated. It was actually his fifth offense, DUI. In doing so, in the middle of the afternoon on a Monday, he put his three children--an eight-year-old, a six-year-old, and a one-year-old--in his car. He drove off through the streets of Omaha and he got in a wreck, got in a collision in which all three of those children were injured. Instead of stopping for help, calling 911, he fled that scene, pulled into a parking lot a few blocks away. And when the police responded and found him there, he was busy throwing his beer cans into the garbage can rather than attending to his children. And I know time is up but I'll try to finish if that's okay. When they responded and saw the children in the backseat, they were significantly injured. The eight-year-old girl, his own daughter, was left in a persistent vegetative state as a result of his actions that day, which is serious bodily injury. He was convicted of negligent child abuse resulting in serious bodily injury. And for doing that to his own daughter, someone who would never recover, who doctors said should be removed from life support as a result of these injuries, he faced a maximum penalty on that charge of three

years in prison. And in my opinion, in I believe the court's opinion, that was not enough. And I know in the jurors' opinion, because I spoke with them afterwards, it was not enough. And that's just one example of a multitude of cases. [LB925]

SENATOR EBKE: Thank you. Any questions? Okay, thanks. [LB925]

MOLLY KEANE: Thank you. [LB925]

SENATOR EBKE: Are there any other proponents? Okay, now we'll move to the other side of the room, go to the opponents. [LB925]

SPIKE EICKHOLT: Back in the normal rhythm of things, so to speak. Madam Chair, members of the committee, my name is Spike Eickholt, appearing on behalf of the Criminal Defense Attorneys Association. My name is spelled S-p-i-k-e, last name is E-i-c-k-h-o-l-t. We are opposed to LB925 for the reason that we stated in our opposition to other bills, because this does increase penalties for a series of different crimes. These penalties were adjusted for these existing three crimes, were adjusted by default, if you will, in LB605 in 2015. As the county attorney or the deputy attorney general, assistant attorney general testified earlier, prior to LB605 the one child abuse charge was zero to 5, a sexual abuse charge was zero to 5, and the more aggravated, more serious child abuse charge was 1 to 20. Those were lowered by default and that was done deliberately so. When the Legislature passed LB605 there were a series of crimes that were exempted from the default adjustment, 12 or 13 or those. We had an extensive debate. I know Senator Pansing Brooks was there. It was across the street over there at the Law Hruska Center. We had a lengthy debate over all kinds of things, was laws to include the one-third minimum, habitual criminal, everything. And the consensus that the Legislature was made under the guidance of CSG was to leave these penalties as they are. Now we've undone some of the things that CSG told us to do and perhaps that's just what's going to happen. We're just going to start piecemealing boosting up penalties back again. I would strongly urge this committee not to do so. First, the proposed increases go beyond what LB60...what the law was before LB605. Secondly, and perhaps you saw when you looked at the handout that Senator Pansing Brooks gave for the earlier bill, there are all kinds of crimes. There are all kinds of overlapping criminal offenses that can be charged. When you look at these individual offenses and you think, wow,

zero to three years is not that big of a deal, you're forgetting the big picture and that is there's other crimes. And I can give one here that came to mind when I'm sitting here in the audience. When the deputy or when the assistant attorney general testified earlier, she says that, and she represented to this committee, that the crime that she charged week this week, that in 18-months that person will be walking, when she gave the factual narrative she left out the fact that that person apparently committed a crime of manufacturing child pornography, which I think is a ID felony or at least a Class III felony. A ID felony is mandatory minimum of 3 to 50 years. So to represent to the committee somehow that 18 months that person is going to be walking and there's nothing they can do about it is just not accurate and it's just not candid. So I would urge the committee not to advance this bill, not to undo some of the comprehensive reform that you did just a couple of years ago and to not do that. I would also just add that both...two committees on the Legislature's own, LR127 and LR34 that Senator Pansing Brooks chaired, one of the conclusions, one of the recommendations both those groups did was that we look comprehensively at our Criminal Code and not just drive up crimes based on issue, reaction to a specific case. Because what you have now is just a hodgepodge mess of criminal offenses really throughout, with no sort of organization, no sort of interproportionality. And adding new crimes and boosting new offenses piecemeal is not going to solve that problem. [LB925]

SENATOR EBKE: (Exhibits 1, 2, 3, 4, and 5) Thank you, Mr. Eickholt. Questions? I see none. Do we have any other opponents? I don't see anybody rushing up here. Anybody speaking in a neutral capacity? Again, we have some letters. Senator Pansing Brooks. We have letters of support from Robert Sanford of the Nebraska Coalition to End Sexual and Domestic Violence; Todd Schmaderer of the Omaha Police Department, Ivy Svoboda of the Nebraska Alliance for Child Advocacy Centers, Michelle Zych of the Women's Fund of Omaha; and opposed, Spike Eickholt with the ACLU of Nebraska. And before Senator Pansing Brooks closes, I would just like to say one thing. I want to thank my colleagues who have stuck with this. You know we've had nine, nine bills today. We started at 9:00 this morning. This is pretty amazing. Thanks to the sergeants who have been around and the State Patrol and to our pages. And Laurie Vollertsen gets a huge props from me because she managed to get all of these books put together, get everything put together with a short...in short amount of time for a full day of hearings instead of having...and we had hearings last night until 7:30. So I want to thank you all for being here. And now you can go, Senator Pansing Brooks. [LB925]

SENATOR PANSING BROOKS: And I want to thank everybody as well, since this has been dubbed Patty Pansing Brooks day in Judiciary. (Laughter) [LB925]

SENATOR EBKE: But you brought us cookies, so that's... [LB925]

SENATOR PANSING BROOKS: I did bring cookies that say "recess schmecess." Anyway, I do want to thank everybody, all the Red Coats and the troopers and the pages and everybody, and including my staff who felt they were being punished by the number of bills we have. [LB925]

SENATOR EBKE: But see now they won't have any to do the rest of the session. [LB925]

SENATOR PANSING BROOKS: Yeah, they do have some. [LB925]

SENATOR EBKE: Oh. Okay. That's right, you have at least one. [LB925]

SENATOR PANSING BROOKS: So anyway, thank you all. I appreciate it. And thank you to everybody who came to testify and to work on this. Again, I just want to close by saying it isn't an intention on my part at all to increase penalties except on the most egregious crimes against children. And if you look at the reasoning regarding the fact that you go basically from a zero to 5 to a 1 to 50, there's...some of the in-between penalty prioritization is not exactly what I think it should be, should happen in a stairstep manner. So that's why I agreed to bring this bill forward. And I appreciate your time tonight. Thank you. [LB925]

SENATOR EBKE: Thank you, Senator Pansing Brooks. This concludes the hearing on LB925 and the Judiciary Committee will not meet again until next Wednesday. [LB925]