

LATHROP [00:00:02] Welcome to the Judiciary Committee. My name is Steve Lathrop. I'm the state senator from District 12 in Omaha. We have a few ground rules I generally cover before we start, if that's all right. On the table inside the doors when you came in you'll find yellow testifier sheets. If you're planning on testifying today, please fill out one and hand it to the page when you come up to testify. This help-- helps us keep an accurate record of the hearing. There is 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're not testifying in per-- 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 before the hearing. We'll begin testimony with the introducer's opening statement. Following the opening, we will hear from proponents of the bill, then opponents, and finally we'll hear from anyone who wants to speak in a neutral capacity. We'll finish with a closing statement by the introducer if they wish to give one. We ask that you begin your testimony, if you choose to testify today, by giving us your first and last name and spell them for the record. We utilize an on-deck chair-- actually, an on-deck row, which is this front row here. If you're going to testify on a bill, we ask that you move to the row when that bill comes up so that we can keep the hearing moving along. If you have any handouts, please bring 12 copies and give them to the page. If you don't have enough copies, the page will make more. We use-- utilize a light system. This is kind of the important part, maybe my favorite part of the hearing. We have a light system. When you begin your testimony, the light on the table will turn green. It will remain green for two minutes. The light will then turn yellow and that's your one-minute warning. When the light turns red, we ask that you wrap up your final thought and stop. So this might be a good time, if you brought prepared remarks, to pare it down to three minutes' worth of testimony. It always gets awkward when I have to interrupt people and ask them to stop. As a matter of committee policy, we'd remind everyone, the use of cell phones and other electronic devices is not allowed during public hearings, though you may see senators use them to take notes or stay in contact with staff. At this time I'd ask everyone to make sure that their cell phones are in the silent mode. Also, verbal outbursts and applause and things like that are not permitted in the hearing room. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill that is before the committee, but senators have other bills to introduce and other meetings to attend to. We-- one last thing, we're holding our hearings in the Warner Chamber while our regular hearing room is being renovated. Please remember, water bottles, soda cans, and cups are not permitted on the desks and that's to avoid water damage. Before we get going, I'll have the committee members introduce themselves and I'll start with Senator Slama to my right.

SLAMA [00:03:16] Julie Slama, District 1, Otoe, Nemaha, Johnson, Pawnee, and Richardson Counties.

LATHROP [00:03:24] Ernie?

CHAMBERS [00:03:25] Ernie Chambers, District 11, Omaha.

BRANDT [00:03:28] Tom Brandt, District 32, Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster County.

DeBOER [00:03:35] I'm Wendy DeBoer. I'm from District 10, which is Bennington and the surrounding areas in northwest Omaha as well.

PANSING BROOKS [00:03:43] And I'm Patty Pansing Brooks right here from the heart of Lincoln, District 28.

LATHROP [00:03:48] Assisting the committee today are Laurie Vollertsen, our committee clerk. Neal Erickson and Josh Henningsen are our two legal counsel. And committee pages are Alyssa Lund and Dana Mallett. They do a great job, both students from UNL. And with that, we will take up our first bill which is Senator Hilgers and LB179. Welcome, Senator Hilgers.

HILGERS [00:04:12] Thank you, Chairman Lathrop. It's good to be in front of the Judiciary Committee. Good aft-- good afternoon everyone. My name is Mike Hilgers, M-i-k-e H-i-l-g-e-r-s. I represent District 21, which is northwest Lincoln and Lancaster County, and I'm pleased to open this afternoon on LB179. LB179 is intended to, more or less, keep the status quo on interlocutory appeals of denials of-- of immunity challenges in state cases. Well, what does that mean? So essentially in-- in a typical case you cannot-- you cannot generally appeal denials of order-- of-- of motions that happen throughout the case. And the reason is, is there's sort of an idea that we-- for judicial efficiency you want to get everything sort of wrapped up with a final order and then the whole package of orders that the judge may have taken throughout or issued throughout the case can be appealed at once, and that makes good sense in a lot of cases. Now there has been an exception recognized for decades in federal and state courts, including Nebraska, for certain types of interlocutory appeals, and that just means an appeal that can take place in the middle of the case. And one of those exceptions are for challenges-- or denials of challenges based-- denials of motions to dismiss or dispositive motions based on an immunity, so sovereign immunity, qualified immunity, and the like. And so for decades in federal and state court, including Nebraska, an exception to this final order rule has been recognized for when someone moves the beginning of the case, does-- to dismiss the case based on their-- an assertion of immunity. If the court denies that motion, that party can appeal it immediately and not have to wait two years and the-- and the sort of common-- in my view, commonsense policy rationale is that the whole point of having immunity is to avoid having the suit and having to go through the entire suit. So if you have to go through two years of a lawsuit and then appeal it and ultimately the court said, well, you had immunity, you should never have been here in the first place, you sort of

lost in many ways the value of the immune-- of the immunity. So that has been the case in Nebraska, and I mentioned this is a status quo, in my view, bill, and the reason is, is that a year ago the Nebraska Supreme Court in the Bellevue Public School district decision for the-- had said that essentially-- and this is a common law-- generally is a common law doctrine. And the court said that, look, we don't have jurisdiction over this unless the Legislature has explicitly said we can hear these appeals. And this-- that was a sovereign immunity case. It wasn't qualified immunity; it was sovereign immunity. What that would mean if it would-- applied more broadly-- well, to-- narrowly to sovereign immunity cases as well as more broadly to say qualified immunity cases, it would mean, if you follow that logic, that what has been the rule for 20 or 30 years in the practice would no longer be the practice. And so a denial of a motion to dismiss or a motion for summary judgment, based on these immunity grounds, could be appealed but it would be appealed at the end when there's a final order if it's ever appealed and the case isn't settled before. So what LB179 would do would be put explicit. In my view, I don't think the court explicitly invited the Legislature to do this, but I do think that it's embedded in the decision. That court said, hey, we don't have statutory authority, and so sort of LB179 is to accept that implied invitation to provide the statutory authority to allow defendants to do sort of what has been done over the last 20 or 30 years. There are some folks behind me who can go into some specific details as to their experience with these types of appeals and some of the policy rationale and maybe some of the other cases that apply. And I'm-- but I'm-- I'm certainly happy to ask any-- answer any questions that the committee may have at this time.

LATHROP [00:07:42] Senator Chambers.

CHAMBERS [00:07:43] Welcome, Senator Hilgers.

HILGERS [00:07:44] Thank you, Senator Chambers.

CHAMBERS [00:07:46] If you were going to look at this from the standpoint of conservation of judicial resources and judicial efficiency, a critical question like this perhaps should be resolved because, as you pointed out, there could be a lot of back-and-forth in a-- in the rest of the trial only to find out that there was immunity. Have you talked to any judge about this? I don't mean in the context of a pending case.

HILGERS [00:08:17] I have not spoken to any judge about this particular bill. I may have--

CHAMBERS [00:08:22] The concept of it.

HILGERS [00:08:25] You know, I clerked for a federal-- the answer your question is I can't recall. I did clerk at one point for a federal appellate judge where this doctrine was recognized. We may have had some conversations about it but, no, I don't-- I can't recall any conversation, Senator Chambers.

CHAMBERS [00:08:37] And see, since we're not a court, we can speak whenever we want to. I think it's a very good bill. As a matter of fact, I wasn't aware that this was one of the issues that could not be appealed until the entire case was over. So I'm going to give my decision before all of the evidence is in. I support this.

HILGERS [00:08:57] Thank you, Senator Chambers.

CHAMBERS [00:09:02] That's it.

LATHROP [00:09:02] I don't see any other questions, none. OK. You'll be here to close?

HILGERS [00:09:06] Yes, sir.

LATHROP [00:09:07] Thanks, Senator. First proponent. Good afternoon.

DAVE LOPEZ [00:09:16] Good afternoon. Chairman Lathrop and members of the Judiciary Committee, my name is Dave Lopez, D-a-v-e L-o-p-e-z. I serve as deputy solicitor general and appear on behalf of the Attorney General's Office in support of LB179. Several of the folks that are going to testify behind me will touch on sovereign immunity issues. I'll focus my testimony on qualified immunity. Qualified immunity is a vital part of American civil rights law for public servants ranging from police officers and teachers to administrators making good-faith decisions at the highest levels of government. It attaches when a public official's conduct does not violate federal rights which are clearly established in the circumstances. As the-- as the U.S. Supreme Court has repeatedly explained, the justification for the doctrine is that where an official's duties legitimately require action and which clearly established rights are not implicated, the public interest is served when officials can act independently without fear of the consequences of a lawsuit. Those consequences are not limited to money damages. They include all of the costs of litigation, distraction from official duties, and deterrence of good people from public service. Even discovery is to be avoided if possible, or at least limited, as it can be particularly disruptive of effective government. The court itself has stressed the importance of resolving immunity questions as early as possible in the litigation. To give effect to this protection, it is a black-letter feature of qualified immunity law that a denial of a QI assertion can be immediately appealed even though such an order is, as Senator Hilgers explained, almost never a final order disposing of the entire case. This finds easy application for qualified immunity, for example, because QI is an immunity from suit altogether, not merely a defense to liability. I recognize there is a lot of legal jargon in this description, but it is this procedure that protects something of enormous practical and substantive importance to everyday Nebraskans who serve in positions that expose them to federal law claims. If a cop or a teacher or a doctor makes a meritorious qualified immunity assertion but the district judge just flat gets it wrong, that official must be able to get that decision reviewed immediately, for if they must go on

and endure the burdens of the litigation through to adjudication, it's cold comfort to learn on final appeal that they are immune after all from the start. The immunity from the suit is already lost. That hurts more than just government defendants. It hurts the public by diverting public resources from where we intend them. It strains courts by forcing protracted and unnecessary litigation. And it hurts plaintiffs and their attorneys themselves who should want to know whether they are on the winning side of a QI analysis as early as possible lest they devote time and resources to taking a case all the way, only to find out that the appeals court disagrees with their view of whether the law was clearly established. This brings me to our support for LB179, and I-- I will be brief. Until nearly two years ago, we understood that the immediate appealability of immunity denials to be firmly established in Nebraska's common law, just as it is in the vast majority of states and in every federal circuit in the country. But in a series of cases, most recently the 2018 Bellevue Public Schools decision which I have provided copies with portions highlighted to the committee, it is clear that the court is tightening the requirements for appellate jurisdiction. The court's reasoning is that it may only exercise the appellate jurisdiction which you, the Legislature, provide in statute. And since our ability to appeal immunity denials is qualified, is common law, or judge made, that, in the court's view, is now an insufficient basis for these appeals. To conclude, given the myriad justifications for the immediate-- immediate appealability of immunity denials, the Legislature should maintain the status quo by expressly permitting appeals from immunity denials. Otherwise, Nebraska will become a significant outlier in this area of law and our public servants, cash-strapped counties, and even tribal defendants will lose a key tool they rely on to defend incredibly expensive, burdensome lawsuits.

LATHROP [00:13:07] Thanks.

DAVE LOPEZ [00:13:07] Thank you for your time, and I'm happy to answer any questions.

LATHROP [00:13:10] Senator Chambers.

CHAMBERS [00:13:12] Who did you say you're with?

DAVE LOPEZ [00:13:13] The Attorney General's Office, Senator.

CHAMBERS [00:13:15] He said he's happy to answer questions, so I want to make you happy.

DAVE LOPEZ [00:13:18] I always am.

CHAMBERS [00:13:19] If I had known that before I gave my decision-- no, on an issue like this, it doesn't matter the origin of it. Now this is a very inexact analogy, but let's say that a lower court erroneously said that it had jurisdiction when in fact it didn't, then on appeal the court that is listening says, we cannot even deal with this because there is no

jurisdiction, so there is nothing before us. Now if the issue of a court's jurisdiction comes up at the trial level and the court for some reason says the court lacks jurisdiction, that would mean in a sense that's final, so that could be appealed, couldn't it?

DAVE LOPEZ [00:14:06] That would be a final order. That wouldn't be affected by this because it would be a final order.

CHAMBERS [00:14:09] Right. I'm trying to get an analogy so that if people read the transcript and they're not trained in the law, they might get a clear understanding of what's being said here. Have you been involved in any cases where the issue was raised, it couldn't be appealed, and then after the case was completed it was found one way or the other?

DAVE LOPEZ [00:14:32] So, Senator, let me answer that in two ways, not in the wake of these recent decisions that have done away with what's called the collateral order doctrine, which is the common law basis for how we've taken qualified immunity and other immunity denials up on appeal in the past. We have had qualified immunity assertions in state district courts where we-- we obtained a denial in the district court. We saw fit to appeal it under the collateral order doctrine. And the collateral order doctrine, the three requirements for it are basically that you have a significant question that is wholly separate from the merits that will be effectively-- that cannot be reviewed if you don't decide it early, which, of course, if you punt an immunity decision until trial, you've lost it. But to continue with the answer, we have had qualified immunity disputes go up to the Court of Appeals and the Supreme Court where the appeal has been kicked back on jurisdictional grounds because it wasn't a pure question of law that the court was presented with. The court found that there were still factual disputes such that they needed to remand it to the trier of fact, whether it's a jury or the District Court sitting as-- sitting in a bench trial, to make fact findings so that they can resolve questions of law. And I know that's a fairly dense answer, but it-- it-- we haven't specifically been denied yet on a qualified immunity appeal where we've taken up a question of pure law, which until last year it would have been doubtless that we would have been able to take those up to the Nebraska Supreme Court, just as we do in federal court all the time and just as you can in any federal circuit in the country.

CHAMBERS [00:16:17] And I'll say to you similar to what I said to Senator Hilgers. In this case, I believe prevention is better than cure. And when a legitimate, serious legal question comes up and the court has taken the posture that it has, the Legislature is the place to bring the matter so that we can get some kind of resolution. And it would be better to do it before something serious develops and the worst thing happens, whatever that might be. So I appreciate your coming. And you can let the Attorney General know that when it comes to his and my little set-tos, that has nothing to do with my ability to

look objectively at issues, even when they originate in his office. But I think it was wise that he sent somebody instead of coming himself. Thank you.

LATHROP [00:17:12] Well, the entire committee is grateful that you came instead of the Attorney General.

DAVE LOPEZ [00:17:17] Thank you, Senator. I-- I agree with the first part of your question entirely.

CHAMBERS [00:17:24] I got you.

LATHROP [00:17:24] OK. I think that's it, Mr. Lopez.

DAVE LOPEZ [00:17:25] Thank you.

LATHROP [00:17:26] Appreciate you being here today.

DAVE LOPEZ [00:17:27] Thank you.

LATHROP [00:17:28] Next proponent. Good afternoon.

BRANDY JOHNSON [00:17:39] Good afternoon. My name is Brandy Johnson. That's B-r-a-n-d-y, last name J-o-h-n-s-o-n. I am here in support of LB179 and I represent Nebraska Intergovernmental Risk Management Association, which is often known by its acronym, NIRMA, N-I-R-M-A, and I have practiced in this area involving cases that immunities are asserted in both state and federal court for a number of years now, about ten years, and I just would like to raise a few points in support of the legislation. First, to just underscore the testimony of Mr. Lopez, this legislation does promote uniformity and consistency between state and federal law, but also I wanted to point out that it promotes uniformity between states. I have personally had the opportunity to do some legal research on the position taken by different states on this question, and my research indicates that there are over 30 states that have determined through some kind of procedural mechanism that these interlocutory appeals should be made available, so this legislation would put Nebraska squarely within the majority of states. Another point I wanted to raise is that in the absence of legislation like this, I think that forum select-- traditional forum selection considerations can be really undermined. There are a number of reasons that litigants may want to remain in state court, but I think as a practical matter this-- in the absence of this legislation, it creates a category of cases, namely claims-- federal claims brought in state court that involve qualified immunity that would by defense practitioners such as myself be removed to federal court, and that consideration would-- the availability of Interlocutory appeal would override traditional considerations like the convenience of witnesses and things like that, and traditionally it is a plaintiff's choice of forum. And I would finally just point out that the legislation here

does support the longstanding immunities that exist under both state and federal law under the Tort Claims Act under federal law with qualified immunity. In my litigation experience, I think it's very important for those to be decided at the earliest possible stage of litigation. To just parlay on Senator Chambers' earlier question to Mr. Lopez, I can think of one case in particular that I was involved in, it was called Blaser v. County of Madison, where we asserted immunity at the trial court stage on behalf of the county. It was denied. Because we didn't have this right to interlocutory appeal, we proceeded to a bench trial. There was a verdict in-- against the county. We took that final order up on appeal. The Supreme Court determined that there were unresolved questions regarding immunity that needed to be remanded. On remand, the trial court found that immunity should have applied. Plaintiff then took a second appeal of that case up and the Supreme Court ultimately determined that the immunities did apply. So to my mind, that's a case where the plaintiffs were essentially deprived of a verdict at the appellate stage after a full trial on the matter, and there would have been years of expense, cost, and-- and burdens to all parties involved had there been a right like this. I thank the Committee for its time. I am open to questions.

LATHROP [00:21:15] I got a question for you. So the bill would permit an-- an appeal from a motion to dismiss, a motion for judgment on the pleadings, or a motion for summary judgment. Don't we run the risk by just having a motion for-- a motion to dismiss that-- that you may need some facts and some discovery to flesh out whether or not there is-- the immunity is applicable or it's available to the state or the political subdivision?

BRANDY JOHNSON [00:21:47] Senator, I think that--

LATHROP [00:21:48] It seems to me like this ought to happen after a summary judgment on the issue of immunity giving the plaintiff an opportunity to develop whatever facts they want, as opposed to you filing a motion for-- a motion to dismiss claiming that there is immunity. And there may be-- some of that stuff, discretionary function, when we get into those immunities, may need to be developed through some discovery.

BRANDY JOHNSON [00:22:18] Of course, Senator. I can answer that from a personal perspective that very few cases-- in my experience, immunity assertions are litigated at the motion-to-dismiss level. I think there are rather rare cases where it's appropriate to litigate immunity questions at that level, but much more often, as you say, those questions are litigated at a motion-for-summary-judgment stage, and so I think the bulk of appeals would fall into that category.

LATHROP [00:22:44] But just as a matter of changing it though, if we leave those three opportunities to appeal, you could-- as representing a political subdivision, you could file a motion to dismiss and say we have immunity in this circumstance, Your Honor. And the judge looks at it and it's like, well, I can't tell if you do or you don't, so I'm going to deny it. And this bill would allow you to appeal it at that point-- right?

BRANDY JOHNSON [00:23:09] OK.

LATHROP [00:23:09] --as opposed to waiting until you've had some discovery that may be-- may lead to a record that would allow the court on appeal to dispose of it. I mean I get what you're trying to do, but it seems to me like it ought to be limited to a motion for summary judgment on the question of immunity, which you can file, what, immediately after you file your answer.

BRANDY JOHNSON [00:23:36] I-- I respect your view on that, Senator. I-- I see very few cases where-- where immunity is litigated at the motion-to-dismiss stage, but it is possible. I think there are appropriate cases in-- involving frivolous litigation and things of that nature that unfortunately do occur where-- where I think that right to interlocutory is-- of appeal is needed even in those cases.

LATHROP [00:24:00] I get that but one of the-- one of the problems with this is it can also be abused by the political subdivision, right?

BRANDY JOHNSON [00:24:09] Right.

LATHROP [00:24:09] I-- it may not even be a close question but if you lose it, now we're going to go up to the Supreme Court or the Court of Appeals and back down, and in the meantime the plaintiff is waiting.

BRANDY JOHNSON [00:24:19] I-- I understand that position. It's just not something I've personally experienced.

LATHROP [00:24:23] That's OK. OK. Thank you.

BRANDY JOHNSON [00:24:26] Thank you.

LATHROP [00:24:26] I do not see any other questions for you. Thanks for your testimony today--

BRANDY JOHNSON [00:24:29] Thank you.

LATHROP [00:24:30] --for being here. Good afternoon.

MEGHAN BOTHE [00:24:45] Good afternoon, Senator Lathrop, committee members. My name is Meghan Bothe. That's spelled M-e-g-h-a-n, Bothe is B, as in "boy," o-t-h-e. I am a deputy county attorney in the civil division of the Douglas County Attorney's Office and I am here testifying today on behalf of the Douglas County Attorney's Office and the Nebraska County Attorneys Association as a proponent of LB179. A lot of my comments

will echo those of others who have testified before you this afternoon. Qualified immunity is not just a defense to liability. It's actually an immunity from suit. There is extensive controlling law from the United States Supreme Court in the Eighth Circuit Court of Appeals that states that a denial of qualified immunity is immediately appealable as an interlocutory appeal. This is how it's done in federal court, where a lot of my cases against Douglas County proceed, and how it really should be done, in the state courts, as Senator Hilgers referenced the Bellevue school district Opinion, the Nebraska Supreme Court has referred to appellate jurisdiction in Nebraska as being statutory. And I think this bill is really just to codify what is really already practice in federal court, which there is ex-- controlling law on. I-- in response to one of-- one of Senator Chambers' earlier questions, I believe this bill does conserve judicial resources. It helps clear backlog-- backlogged dockets of trial courts by being able to address something on an appellate review that should be handled early in the case. It may also assist with speedy resolution of the case depending on how the appeal goes. It will either dismiss a government defendant and thereby may resolve the case itself, or, depending on how the appeal goes, it may influence potential settlement discussions between the parties. So the appellate review is really a solid avenue to facilitating the process of a lawsuit. Further, if the lawsuit proceed-- if the immunity is denied and the case proceeds to trial, the immunity is effectively lost because immunity from suit is really immunity from trial, and you can't appeal the dispositive motion after the trial. So it's important to address these issues early on. It also helps either eliminate or curb onerous discovery that government defendants face in these cases. That can be, you know, hours of depositions, taking government employees away from their duties to prepare for depositions, conduct depositions, produce thousands of pages of discovery that's, you know, reams of paper, toner, the time reviewing, identifying documents, scanning, copying. I know it sounds silly, but it-- there really are a lot of factors to consider and it's one of the reasons the appeal process is so important. And I can see I'm out of time, so I'd be open to questions from senators.

LATHROP [00:28:07] I don't see any questions, but I think we get it too.

MEGHAN BOTHE [00:28:10] I know I'm out of time, Senator, but may I address the question that you asked--

LATHROP [00:28:14] Yes.

MEGHAN BOTHE [00:28:15] --previously?

LATHROP [00:28:16] Yeah.

MEGHAN BOTHE [00:28:16] I understand what-- I heard what you're saying. As an attorney who would be defending a political subdivision in those cases, I would tell you that I have asserted immunity a handful of times on a motion to dismiss. I have at this

point never appealed denial of immunity at a motion-to-dismiss level. I've only appealed on a summary judgment. I think there can be times where, depending on how the complaint is pled, you can tell whether clearly established law exists in the area, so you can make an argument regarding immunity. However, I do think, you know, it comes down to discretion of attorneys in the offices about what to appeal and not to appeal. Often you can also get a feel of your judge, what he or she is telling you from their order denying your motion. And based off this, in my practice, at least, I have experienced that, you know, then it is better to proceed to the next level and conduct discovery, get to the summary judgment before pursuing an appeal. So I think while it's important to pursue-- to preserve the avenue of appeal, I don't think that means it's necessarily taken.

LATHROP [00:29:28] So as a practical matter, a motion to dismiss, that's denied, and then you go to a summary judgment, drop a couple of affidavits if you don't need discovery, and then you have your final or-- then you have a-- an order that-- that won't go up to the Supreme Court to have them say we don't really know what the facts are, we can't say--

MEGHAN BOTHE [00:29:50] Right.

LATHROP [00:29:51] --because that won't help the process.

MEGHAN BOTHE [00:29:53] And I can't speak for all attorneys, certainly, but I know in my practice what I have gone through with summary judgment, I mean, and it includes going through discovery. I brought numbers. You were talking about one of the cases that I'm on that's currently pending before the federal court. In that case, after a motion-to-dismiss round, we did proceed to discovery and summary judgment. In that case, the plaintiff produced almost 4,000 pages of discovery. The two county defendants produced 6,760 pages of discovery.

LATHROP [00:30:26] So to be clear, however, once you file an answer, you have the right to file a motion for summary judgment.

MEGHAN BOTHE [00:30:32] Yes.

LATHROP [00:30:33] The plaintiff then-- and then you have to offer affidavits in support of your motion for summary judgment basically saying--

MEGHAN BOTHE [00:30:38] Yes, there would have to be evidence.

LATHROP [00:30:40] --here's-- here's the undisputed facts.

MEGHAN BOTHE [00:30:42] Um-hum.

LATHROP [00:30:42] The plaintiff then can offer whatever they want to offer, or they can ask for some time to develop a record. What we're doing here is giving you a shortcut to the appellate court. And as a plaintiff lawyer, that will-- that means that we can get rid of the immunity issue early on, and then I can invest in the case and put a bunch of time into it. But I don't want to go up to the-- I-- a plaintiff doesn't want to go up-- neither one of us do-- want to go up to the Supreme Court and say we need some facts before we can decide the immunity issue. Then it goes back down, then you develop the facts, then you're back up--

MEGHAN BOTHE [00:31:18] Right.

LATHROP [00:31:18] --and you're four years before you're even doing discovery on the underlying case.

MEGHAN BOTHE [00:31:22] Yes. And I agree with that and I think that goes back to, while I understand it's possible depending on the facts and what's pled in the complaint, I think it's important to preserve the avenue, but I have not done that in practice in my office.

LATHROP [00:31:35] OK. I appreciate that. I do not see any questions. Thanks for being here.

MEGHAN BOTHE [00:31:41] Thank you very much, Senators.

LATHROP [00:31:43] We appreciate hearing from the Douglas County Attorney's Office. Anyone else here to testify as a proponent? Anyone here in opposition to LB179? Anyone in a neutral capacity? Seeing none, Senator Hilgers to close. And while you're getting yourself comfortable, we have one letter of support from Mark Laughlin.

HILGERS [00:32:05] Thank you. I'll be very brief, Senator Chamb-- or Senator Lathrop. And, Senator Chambers and members of the committee, thank you for your time this afternoon. I-- I hear your-- the logic of your point, Senator Lathrop. I see exactly where you're going. There very well might be either an answer that already sort of exists, which is, you know, that-- that there's already sort of institutional reasons why a defense attorney wouldn't want to do that and there-- or it may very well be that there's some case law there that might sort of make that concern not play out the same way in practice, or it might be that we would want to tweak the bill. So that's-- I will consider that issue and talk to some of the stakeholders and folks who practice in this area and see if we can resolve it.

LATHROP [00:32:41] Good. Glad you brought it to us.

HILGERS [00:32:42] Thank you.

LATHROP [00:32:42] Thanks, Senator Hilgers.

HILGERS [00:32:43] All right. Thank you.

LATHROP [00:32:44] I do not see any questions. Thanks--

HILGERS [00:32:46] Thank you.

LATHROP [00:32:46] --for being here today. Next bill. That will close our hearing on LB179 and bring us to LB595, Senator Albrecht.

ALBRECHT [00:33:16] Hi there.

LATHROP [00:33:16] Good afternoon, Senator.

ALBRECHT [00:33:17] Good afternoon.

LATHROP [00:33:17] Welcome to the Judiciary Committee.

ALBRECHT [00:33:19] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Joni Albright. It's J-o-n-i, Albrecht, A-l-b-r-e-c-h-t, and I represent Legislative District 17 which includes Wayne, Thurston, and Dakota Counties. Today I'm introducing LB595 on behalf of the Office of Dispute Resolution which is under the Supreme Court of Nebraska. The Office of Dispute Resolution was created in-- created by the Dispute Resolution Act in 1991. Since its creation, the Office of Dispute Resolution has implemented six approved centers across the state with the mission of enhancing and advancing the use of medic-- mediation and alternative dispute resolution in courts and communities. The Office of Dispute Resolution has successfully implemented a restorative justice program since 2015 with grant funds. LB595 would solidify these successful practices into our statutes and provide a future for restorative justice under the Office of Dispute Resolution. Restorative justice is implemented as a method to repair the harm caused by individuals on other individuals or the community. Restorative justice empowers victims by giving them an opportunity to both ask questions of and explain to the offenders the real impact of the crime. Offenders are held to account for what they have done and encouraged to take responsibility and make amends. The restorative justice practices are grounded in a wide body of research and evidence demonstrating that an individual who has caused harm to another or the community and participates in restorative justice programs are less likely to reoffend or better able to make amends to the victims, including payment of restitution, and better able to contribute to the community's safety and well-being. Restorative justice practices or restorative justice programs include, but are not limited to, victim youth conferences, victim-offender mediation or dialogue, family group conferencing, victim or community panels, and community restorative circles. The victims are never required to attend

meetings and in some cases may have the opportunity to send a victim advocate to participate for them. Members of the affected community may be able to attend as well to meet with the offender. In order to statutorily incorporate restorative justice into the Office of Dispute Resolution, LB595 would make seven changes to the Dispute Resolution Act. First, the bill would amend legislative findings to include the benefits of mediation and restorative justice. Second, the bill would change the name of the Office of Dispute Resolution to the Office of Restorative Justice and Re-- and Dispute Resolution. The third, the bill would add to the deputy director for restorative justice and describe the director's duties. The director would be tasked with assisting the mediation centers in the operation of restorative justice practices, coordinating restorative justice training sessions for restorative justice facilitators and staff of approved centers and the courts, promoting public awareness of the restorative justice dispute resolution process under the act and seeking and identifying funds from public and private sources for carrying out new and ongoing restorative justice programs. Fourth, LB795 would include restorative justice as a scope of services provided by approved Office of Dispute Resolution mediation centers. Fifth, the bill would describe the restorative justice case types that may be accepted by the mediation centers. When cases are determined to be appropriate for restorative justice mediation, LB595 would allow the mediation centers to accept the following case types: juvenile offenses and disputes involving juveniles; disputes involving youth that occur in families and educational settings and in the community at large; and adult criminal offenses and disputes involving juvenile, adult, or community victims. Number six, the vic-- the bill would provide qualifications for facilitators of restorative justice, and these qualifications, in Section 15 of the bill, would only apply to facilitators at the Office of Dispute Resolution mediation centers. And number seven, LB595 would amend confidentiality and privilege provisions to include restorative justice conferences. After receiving the original bill draft, we became aware of other sections of the statute that include references to the Office of Dispute Resolution and restorative justice, including the Parenting Act and the juvenile code. In an attempt to harmonize the statutes, we included additional sections, beginning with Section 26, which starts on page 18, line 22. Some unforeseen issues with the additional sections arose and we have been working closely with county judges, county attorneys, the Bar Association, nonprofits and others to come up with an amendment that addresses the concerns that have been brought up. We have discussed several potential amendments, and those who are following me with testimony can explain those potential changes to you. Restorative justice already has and will continue to make incredibly positive impacts on our communities. LB595 would allow restorative justice practices to be another tool of the Office of Dispute Resolution to achieve the goals of reducing recidivism, and especially with juveniles, improving communities and benefiting the lives of the victims. I will be followed by the Office of Dispute Resolution and other experts that can talk more on specifics of the bill and amendments but am happy to answer any questions you may have and happy to work with the committee and interested parties on any amendments to make this bill the best that it can be.

LATHROP [00:39:43] Very good. Thank you for that introduction. Senator Chambers.

CHAMBERS [00:39:48] Senator Albrecht--

ALBRECHT [00:39:49] Yes, sir.

CHAMBERS [00:39:49] --if somebody else would be the one to ask, then I-- I'll accept that. Now the victim comes to these meetings voluntarily. On page 11, it talks about the individual who caused the harm and that individual's supporters, whether voluntarily or by court order. Will they order an alleged perpetrator to attend these meetings or is that person somebody who's already been convicted?

ALBRECHT [00:40:21] Well--

CHAMBERS [00:40:21] And if you're not sure, I'll ask that of somebody else.

ALBRECHT [00:40:23] I'll attempt to, but if I-- if I mess up, I'm sure someone behind me will tell me. When they came to me with this bill to-- to address the situation, a county judge would have to say, I think this particular individual deserves a chance to go through mediation because it's their first offense. OK? So we'll give you an example of some children or some students that were graduating, decided to go to-- to school on the last day and they wanted to bring some water balloons and some shaving cream and have a little bit of fun inside the school. And they had some balloons leftover at the end of the day and they decided to drive around and throw them, the balloons, at homes. So one of the balloons went through a plate-glass window of an elderly woman who had just lost her husband, so you can imagine the way she felt. She hid in the closet for two and a half hours and they found the young man that did it, the car that was driving around or the truck and-- and he admitted that, yes, he had thrown it through that window accidentally and just having some fun. So he has to go before the county attorney and the county attorney decides that, you know what, this was a-- just a-- not a very good decision for him to have made when he did it. So his mother and he, because he was, you know, a-- in a single-family home, they got to go to mediation. So he hasn't been really convicted of anything. He was picked up and he admitted that he did it, and they just want to try to get the first offenders to have a chance. So, yes, his mother attended this mediation along with the elderly woman whose home was-- was vandalized. And that young gentleman got to hear her side of the story. And that was voluntary for her to come, the victim, and the parent of the child was able to come with him and-- and got to hear how she felt. And they worked through the fact of what she felt when she had been vandalized and been victimized, and then they were able to make amends and the young man decided to help her out with a few chores around the house and probably paid for her deductible and as long as all parties agree to it, yes, then I'm sure everything's fine.

CHAMBERS [00:42:53] Well, on-- I will ask this question of somebody who follows.

ALBRECHT [00:42:55] OK.

CHAMBERS [00:42:55] OK, thank you.

ALBRECHT [00:42:55] Very good. Sorry for the long dissertation.

LATHROP [00:43:00] I don't see any other questions.

ALBRECHT [00:43:01] OK. Thank you.

LATHROP [00:43:01] Thank you, Senator Albrecht. First proponent of LB1-- pardon me, LB595. Good afternoon.

COREY STEEL [00:43:22] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l. I am the State Court Administrator for the Administrative Office of Courts and Probation under the Supreme Court. I'm here today to testify in support of LB595, a bill whose primary intent is to integrate restorative justice into the 1991 Dispute Resolution Act. I want to thank Senator Albrecht and her staff for all the work that they've put into this bill. I also want to thank separate-- separate-- or, excuse me, Sarpy County Separate Juvenile Court Judge Larry Gendler for his review, edits, and support of the bill. Lastly, I want to thank Bill Mueller and the NSBA, Nebraska State Bar Association, on their continued input and work to get this bill right, as Senator Albrecht has-- had discussed. The 1991 Dispute Resolution Act created within the Nebraska Supreme Court the Office of Dispute Resolution, or ODR, and a statewide network of six regional mediation centers. The purpose of the 1991 act was for ODR and the mediation centers to provide mediation and conflict resolution for Nebraska residents in order to decrease acrimony and hostility and to increase lasting and realistic resolutions to disputes both in the court system as well as in the community. LB595 would amend the Dispute Resolution Act by adding restorative justice as a foundational function of ODR and the statewide mediation centers. Other testifiers will go into more detail about the restorative justice work and the OD-- and the work that ODR centers have performed to date and how restorative justice practices improve outcomes for both victims and juveniles. Senator Albrecht told my story that I had told her early on about the young individual-- as a-- as I started in this work a little over 20 years ago as a juvenile probation officer, that was one of my cases where an individual threw a water balloon against a window-- and how I as a young probation officer was engaged in that restorative justice process-- practice here in Lancaster-- Lancaster County. I was very successful and it left an impression on me, so when Debora Denny, our director of the Office of Dispute Resolution, came forward with this process, I was on board. With the success 20 years ago, we want this success to continue in a comprehensive way which is now outlined in LB595, and we want to ensure those practices continue into the future. Chief Justice Heavican in-- in his January 11, 2019,

State of the Judiciary Address to the Legislature called attention to the court's restorative justice efforts. He stated: Victim youth conferencing involves the convening of a meeting, conducted by a trained professional, between low-risk delinquents and victims of their wrongdoing. During the process, emphasis is placed on reparations for the victims and appropriate rehabilitation-- rehabilitation for the juveniles. I respectfully request the committee to vote LB595 on to the floor for General File. I just also, while I have a few seconds left, want to let the committee know that we're continuing to work. I think there's going to be some amendments coming on this bill. And again, we want to make this right so that NSBA and all others involved are engaged in the process to-- to make this successful. I'm happy to answer any questions you may have.

LATHROP [00:46:39] Senator Chambers.

CHAMBERS [00:46:40] Do you have a copy of the bill?

COREY STEEL [00:46:43] I don't have a copy, and I did listen to your question, and I can answer it, but I think the best answer is going to be Debora Denny, who has helped write the bill. She's going to testify probably either in the next one or two people, and she'll, Senator Chambers, be able to answer specifically your question--

CHAMBERS [00:46:55] Thank you.

COREY STEEL [00:46:55] --so I don't muck it up.

LATHROP [00:46:57] I've heard some concerns expressed by some lawyers that do mediation that are retained outside of this process. They'll be accommodated?

COREY STEEL [00:47:08] Yeah, I think in discussing with-- with Bill Mueller, we can come to a compromise where basically the goal is that we get juveniles another opportunity to be able to work through the process of the issues that they got-- got themselves into trouble. So I think we can come to some-- some compromise that we can make everybody happy on this piece of legislation.

LATHROP [00:47:34] OK. I do not see any other questions. Thank you for--

COREY STEEL [00:47:35] All right. Thank you.

LATHROP [00:47:36] --your testimony today. Good afternoon.

DEBORA DENNY [00:48:06] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Debora Denny, D-e-b-o-r-a D-e-n-n-y. I'm the director of the Nebraska Office of Dispute Resolution in the Nebraska Supreme Court, and I'm here today to testify in support of LB595, which the senator has outlined. I've devoted my

career to develop better ways for people to constructively resolve conflicts and disputes. My efforts have been to create both systemic and community-based pathways that would empower people to grow and progress as individuals, as well as to reduce acrimony and misunderstandings that do create barriers to solving problems. As a longtime mediator, I have assisted people through a multitude of problems within the home and family, the workplace and public forums, and community at large. But most significantly for me and our great state of Nebraska is the fact that three branches of government, the legislative, the executive, and the judicial, in all of our collective wisdom, enacted the '91 Dispute Resolution Act which formed this office and created the structure to integrate mediation and conflict resolution and peacemaking across the state through these six regional nonprofit mediation centers. My office approves and oversees the practice of quality, informed, ethical mediation and restorative justice practice. I was the director of one of those six centers for 14 years, serving 24 counties and 4 tribes in northeast Nebraska. Since 2005, I've had the distinct privilege to serve our state as the director of the Office of Dispute Resolution. It's been profound. It is in this capacity that I was encouraged to branch out and create this new pathway in restorative justice for both youth, adults, and victims involved right now in the juvenile justice system. So I have colleagues here who will testify with more specifics about our work and the mediation centers that have undertaken to develop and implement restorative justice practices for youth over the past four years. And I am convinced, and the research proves out, that restorative justice approaches, versus retributive, keep youth out of the school-to-prison pipeline and increase the trust and gratitude of victims for access to the justice that they want to seek. I thank the committee for its time and urge that this bill be voted out of committee and onto the floor. And as Corey mentioned, we are working diligently with others, including the Bar Association, to clarify some concerns that have come up in the bill.

LATHROP [00:51:30] Very good. Senator Chambers.

DEBORA DENNY [00:51:33] Yes.

CHAMBERS [00:51:33] And you do have a copy of the bill?

DEBORA DENNY [00:51:35] I do.

CHAMBERS [00:51:35] OK. Would you turn to page 11?

DEBORA DENNY [00:51:37] Um-hum.

CHAMBERS [00:51:42] And starting in line 22 it mentions what restorative practices may consist of and so forth. Then, beginning in line 26, I'll read about five lines, or maybe six. "Restorative justice programs may involve restorative projects or classes, facilitated meetings attended voluntarily by the victim, the victim's representatives, or a victim surrogate and the victim's supporters, as well as the youth or adult individual who

caused harm and that individual's supporters, whether voluntarily or by court order." Who would be ordered by the court to appear at one of these meetings?

DEBORA DENNY [00:52:33] That, Senator Chambers, would be the offender.

CHAMBERS [00:52:36] And why would they-- has the defendant been convicted at this point?

DEBORA DENNY [00:52:43] No, not necessarily, re--

CHAMBERS [00:52:46] But why are they going to make somebody who's under charges--

DEBORA DENNY [00:52:48] Well, you're right. If-- they would have had to have been under court order to be-- to be court ordered. So if-- if they're not in the-- in the juvenile justice system, if it's handled in diversion, for example--

CHAMBERS [00:52:59] Would you come a little closer to that microphone?

DEBORA DENNY [00:53:02] Sure. There. Yes. The-- the language in it could-- might need to be cleaned-- clarified and cleaned up. A lot of our youth right now are participating through diversion and through voluntary and they're not under the court jurisdiction at all and-- so go ahead.

CHAMBERS [00:53:24] Well, if the defendant did not want to attend, then a court could order that defendant to attend?

DEBORA DENNY [00:53:34] Senator, what the practice has been is that the court could order the defendant, the offender, to be referred to-- to restorative justice and then our centers interview them and see if it's appropriate to go forward or not.

CHAMBERS [00:53:56] Let me ask the question a different way. If a defendant did not want to attend, what is the significance of this court order that would be telling that defendant to attend?

DEBORA DENNY [00:54:09] Um-hum. To my knowledge, we have not encountered a situation where the judge would court order a defendant to attend and-- and I don't have a good answer for you. I-- I do see the issue here with the way this is worded.

CHAMBERS [00:54:30] And here--

DEBORA DENNY [00:54:31] And I know Jim Jones is here and I-- is Jim still here?

JAMES JONES [00:54:35] Yeah, I'm still here.

DEBORA DENNY [00:54:36] Maybe you could answer that, not right now.

LATHROP [00:54:38] Not right now.

DEBORA DENNY [00:54:39] Yeah.

CHAMBERS [00:54:39] Somebody else will come?

DEBORA DENNY [00:54:41] Yeah, um-hum.

CHAMBERS [00:54:42] OK, because I'm not trying to have a "gotcha" situation.

DEBORA DENNY [00:54:45] Right.

CHAMBERS [00:54:45] But I don't want anybody who is facing charges to be compelled to go to a meeting and talk to anybody.

DEBORA DENNY [00:54:53] I understand that, yeah.

CHAMBERS [00:54:54] OK. Now there are two ways to look at a court order.

DEBORA DENNY [00:54:57] Um-hum.

CHAMBERS [00:54:57] The order could be a directive that the person show up and participate, or it could be an order in the sense of the judge approving the defendant's participation--

DEBORA DENNY [00:55:08] Um-hum.

CHAMBERS [00:55:08] --where there is no compulsion. But for me, reading the language, it's not clear--

DEBORA DENNY [00:55:14] Right.

CHAMBERS [00:55:15] --which since the-- the court's order should be understood.

DEBORA DENNY [00:55:18] I understand, yeah, gotcha.

CHAMBERS [00:55:21] OK, just so whoever comes who might answer would understand what I'm trying to get at.

DEBORA DENNY [00:55:24] Yeah. OK. Thank you.

CHAMBERS [00:55:26] OK. That's all I have. Thank you.

LATHROP [00:55:28] I see no other questions. Thank you for your testimony today.

DEBORA DENNY [00:55:32] Um-hum.

LATHROP [00:55:32] Next proponent.

DEBORA DENNY [00:55:35] Juliet, yeah, um-hum.

LATHROP [00:55:35] Good afternoon.

JULIET SUMMERS [00:55:35] Good afternoon, Chairman Lathrop, members of the 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 to support LB595. Youth need age-appropriate treatment to develop into healthy, productive grownups, and when teens commit crimes, we are all better served when they receive needed intervention swiftly and fairly in ways that are going to create positive behavior change without leaving lasting damage. Since most adolescents will naturally age out of risky criminogenic behaviors without any intervention at all, lengthy court processes and unnecessarily heavy-handed responses can backfire to produce rather than prevent recidivism. We support this bill as it would infuse restorative justice into our juvenile system and thus increase access to alternative restorative processes for youthful misbehavior. You've already heard broadly what restorative justice is, but most modalities of it involve some form of conferencing or mediation to seek a result, rather than looking at who committed a crime and how they should be punished, to ask who was harmed and how can that harm be repaired. And so the mediator, victim, offending youth, their respective families or support persons will sit and circle to come to a reparative plan. We have studies, and in fact, metastudies, of restorative justice practices that have shown promising results in terms of recidivism rates, perceptions of fairness by the youth offender, and simultaneously, satisfaction with the process and perception of fairness by the victim. I think overwhelmingly results from these studies show that victims prefer to go through a restorative justice process than the traditional criminal process, and we get that benefit in addition to it being swifter and fairer from the perception of the youthful offender as well. So I do have one note. I'm one of the people who brought the senator an-- a proposed amendment, and that's going to the effect of restorative justice is fundamentally different from our adversarial process and we need to be cautious as we're moving forward that it remains so, so that we can reap these benefits. And so to that end, I did propose one suggestion to Senator Albrecht and she suggested I come and speak to you today about it, and I appreciate that, as you deliberate on this bill. It's on page 30 of the bill draft. It currently allows a county attorney to unilaterally overturn a reparative agreement made through a restorative process, and I'm a little concerned that this would weave the adversarial process too closely into

restorative justice, into a restorative approach, sort of allowing county attorneys to circumvent the will of the victim and the holistic process potentially to achieve a particular desired sentence without affording the youth offender due process of law through the court. So I do have in my written testimony the proposed language that I had sent to the senator which I think would leave discretion for the appropriate reparative plan outcome in the hands of the victim and the restorative justice circle but would still ensure the county attorney is able to check for compliance and proceed accordingly. And at the very least, I would recommend including a requirement-- oh, I've got a red light, so you've got the rest of my testimony. Thank you for your time.

LATHROP [00:59:05] We do. We do. Thank you for your testimony. Senator Pansing Brooks.

PANSING BROOKS [00:59:10] Thank you. Thank you for coming, Ms. Summers. So what-- what is the solution? Did you talk with the county attorneys and with Senator Albrecht? Is she amenable to this?

JULIET SUMMERS [00:59:19] I haven't spoken to county attorneys about this. I-- I did CC Ms. Denny with the Office of Dispute Resolution, as well as Senator Albrecht and her staff, and I-- my sense was they were generally supportive and wanting to work to make the bill as good as it has-- you know, as strong as it can be, to make sure that when we implement, as we implement more restorative justice into our system, that it's true restorative justice and not criminal justice by another name. So I-- I gen-- definitely got the sense of-- of supportive in terms of working on it, but I don't want to speak for the senator or her office on whether it's A-OK, a go. They did just suggest that I come speak to it to you today.

PANSING BROOKS [01:00:04] And could you tell me, what's your opinion that "contrary to public policy" really means?

JULIET SUMMERS [01:00:09] I think it's a vague term. I think that's part of my hesitation that it's-- you know, a county attorney who-- who is looking at a proposed reparative plan may think that "contrary to public policy" means this wasn't a harsh enough outcome against the youth. But if the victim through the re--restorative process has determined this will make things whole for me, that's the point of restorative justice. I do-- I have an example from a restorative justice program that I've heard about in another state where a young man had, I think, stolen a woman's car and-- and when they went through the restorative justice circle, the victim was talking about, you know, what-- how this had harmed her, you know, what a difficult outcome it was. They talked about making reparation, you know, a restitution payment, and his mom in the circle was saying, he'll never be able to afford a car for you, he can't-- he can't pay that off, and the-- the-- the-- you know, he wants to do art, art is never going to make enough money. And the woman said, if he paints me a Tinker Bell as tall as me on my wall, we'll call it square. I don't

know why that was her request, but he did and-- and that satisfied her, and they-- they built a relationship from it which was sort of the ultimate repairing of harm. So I could easily see a county attorney looking at that outcome and thinking, he stole a car and he's just painting a Tinker Bell, that's not good enough, that's not in the interest of public policy, when it had satisfied the victim and it had made things right. So that's where my concern comes from.

PANSING BROOKS [01:01:52] Thank you very much. I appreciate it.

JULIET SUMMERS [01:01:55] Yeah. Absolutely.

LATHROP [01:01:54] I see no other questions. Thank you for your testimony today.

JULIET SUMMERS [01:02:00] Thank you.

LATHROP [01:02:01] Next proponent. Good afternoon.

ANIYAH TUCKER [01:02:23] Good afternoon.

LATHROP [01:02:24] Thanks for being here.

ANIYAH TUCKER [01:02:23] Hi. My name is Aniyah Tucker, A-n--

LATHROP [01:02:28] Can you move that mike a little closer?

ANIYAH TUCKER [01:02:32] Aniyah Tucker, A-n-i-y-a-h T-u-c-k-e-r.

LATHROP [01:02:36] OK.

ANIYAH TUCKER [01:02:37] I just want to talk about my experience in restorative justice with the youth and-- transitioning from middle school to high school is a big milestone in everybody's life. And you hear neat things about high school like students get out every Tuesday and juniors and seniors get to leave the school to eat lunch and you get excited, and you--

LATHROP [01:03:00] Mr. [SIC] Tucker, move-- can you move that-- oh, I'm sorry, Ms. Tucker.

ANIYAH TUCKER [01:03:04] Closer?

LATHROP [01:03:04] Can you move that mike a little closer so we can hear you a little bit better? Yeah. Thank you.

ANIYAH TUCKER [01:03:18] OK. Oh, sorry. Should-- should I start over?

LATHROP [01:03:24] You're fine.

ANIYAH TUCKER [01:03:21] OK. So you think that ninth grade is the year that you want to make yourself known, so you talk to everybody and you hang out with like all the groups and you meet people who disagree with you and that's when fights happen, and that's when mediation comes in. It's like a wakeup call for teenagers who haven't gotten around to seeing that the world revolves around more than just themselves and their friends. Mediation is short, it's two sessions, and it's good for forgive-- reviewing what happened, the how and the why, and for deep self-reflection. The mediation process becomes-- sorry. The mediation process allows you to avoid leaving high school with a-- with a bad record, and that's a positive. It acts like a warning to kids that are in their "starting trouble is cool" phase, and it's not cool to be constantly in trouble, and it moves you through that phase. Also, it shows you that there are consequences for your poor choices. I've been through this process. I was nervous before the sessions, and I found them enlightening. I was stuck in my own growing emotions and didn't think about what I was doing when I had an altercation with another person. I wasn't thinking about much trouble that I would get into and I wasn't thinking about other people. I was just thinking about who had seen the fight and if they had thought I won or if she would keep making trouble with me. I wasn't thinking about how my actions affected myself and others until mediation. Mediation helped me see that there are more important things than people noticing how you fight or how loud you talk in the hallway or how many friends you have. The mediation process helped me to examine what led up to the fight, how I felt right after, and what I felt after getting into trouble, also what I learned from the whole situation. I'm glad I went through it. It helped me to build a whole new outlook on how to approach my years in high school. I still have the personal reflection letter that I wrote for the program and I can read it anytime I need my support and to consider the behaviors that I choose. When I successfully completed my program, I was given the opportunity to train and become a youth surrogate, and youth surrogates give a youthful perspective to a mediation session. Many times I have noticed other teenagers in the session. They-- it helps them to open up, just having another young person there. I recommend-- I recommend the restorative justice process for any youth that gets in trouble to learn and take responsibility to make things better for now and in the future.

LATHROP [01:05:41] Well done. Thanks for being here. Let's see if anybody's got any questions. I don't see any questions, but thanks for coming here. We-- we're glad to hear from you--

ANIYAH TUCKER [01:05:50] Thanks.

LATHROP [01:05:50] --and your perspective having been through it. Next proponent. Good afternoon.

ALISHA JIMENEZ [01:06:10] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Alisha Jimenez, A-l-i-s-h-a J-i-m-e-n-e-z, and I'm the restorative justice program analyst for the Nebraska Supreme Court's Office of Dispute Resolution. Prior to my work with ODR, I conducted evaluations for the Office of Probation Administration with Dr. Richard Wiener, professor of law and psychology at the University of Nebraska-Lincoln. And I'm here to testify in support of LB595, and to describe the rigorous research that ODR is conducting to assess restorative justice outcomes of his victim youth conferencing initiatives. This testimony is a brief summary of data which is contained in part in the October 2018 Victim Youth Conferencing Report which is being circulated to the committee. We have collected data since 2015 when ODR and the mediation centers began work with the University of Minnesota's Center on Restorative Justice to evaluate Nebraska's evidence-based restorative justice program, called victim-offender mediation or victim youth conferencing, hereafter "VYC." In 2017, ODR began work with Nebraska's Crime Commission to collect VYC data for diversion services as part of the community-based aid program. An evaluation of an 18-month pilot from 2015 to 2017 demonstrated promising outcomes consistent with national findings. Given positive outcomes of the pilot, ODR was awarded a three-year grant to expand VYC across the state. The mediation centers and ODR worked Dr. Anne Hobbs, the director of the Juvenile Justice Institute at the University of Nebraska-Omaha, to collect data on the program's impact. Last year, over 221 VYC cases were opened, serving a diverse population of youth, including 16 percent black, 14 percent Hispanic or Latino, 46 percent white, and 23 percent other. As many as 580 individuals participated in 162 VYC conferences. Every conference results in a reparation plan, a reparation agreement, with 88 percent of the reparations agreements having been successfully fulfilled by the youth offenders. A detailed breakdown of participant characteristics is described on page 2-- on the two-page VYC evaluation executive summary for year one, which is the one with all the charts on it, which is also being circulated to the committee. Notably, VYC conferencing demonstrates a significant positive impact on rates of juvenile recidivism, keeping kids out of the school-to-prison pipeline. Applying the Supreme Court's rule for juvenile recidivism, 85 percent of youth who participated in the VYC program between 2015 and February of 2018 were not adjudicated for a new offense. This Nebraska data shows that ODR's restorative justice initiatives are effective, and a vote to advance LB595 out of committee will support reducing recidivism of youth and increasing restoration for victims. I thank the committee for its time and will answer questions.

LATHROP [01:09:04] Thank you. Senator Brandt has got a question for you.

BRANDT [01:09:09] Thank you, Chairman Lathrop Thank you, Ms. Jimenez, for appearing today. Just as a point of clarification, on the opening they stated adults and minors were-- were helped by this program. Can you give me an idea of-- of what percent this serves that are minors and what percent are adults?

ALISHA JIMENEZ [01:09:30] Sure. Currently, so the victim youth conferencing program that I was just speaking about is-- the grant that's funding it is actually geared towards juvenile offenders. There have been some outreach from different referral-- referral sources in different counties who have [INAUDIBLE] centers to-- to facilitate some victim-offender mediation with adult offenders, but it's a very small population right now, less than-- I would say less than 5 percent. It's currently directed towards juveniles. However, the bill is trying to be future thinking and we've received so much positive feedback from conversations with entities like adult probation who would like to use some more restorative justice programming and are currently using restorative justice programming, and so that's where we incorporated the adult piece. But it's-- this program that we're currently evaluating is a youth program.

BRANDT [01:10:31] OK. Thank you.

LATHROP [01:10:33] Thank you.

ALISHA JIMENEZ [01:10:34] Thank you.

LATHROP [01:10:34] I see no other questions for you today.

ALISHA JIMENEZ [01:10:37] OK.

LATHROP [01:10:37] Thanks for being here.

ALISHA JIMENEZ [01:10:38] Thank you.

JAMES JONES [01:10:45] Good afternoon, Senator Albrecht and--

LATHROP [01:10:47] Good afternoon.

JAMES JONES [01:10:47] --Committee Chair. It's good to see you guys. My name is James Jones, the executive director of the Community Justice Center, J-a-m-e-s J-o-n-e-s. The Community Justice Center is a restorative justice agency founded in 2001. To date, we've served over 8,000 adult offenders with our restorative justice intervention which uses surrogate victims, not the direct victims, but just to make that clear. I have personally over close to 30 years of experience working with juveniles in restorative justice, as well as adults. Our agency serves the needs of the victim, offender, and their communities to repair the harm and damages caused by crime. We work to reduce recidivism rates and increase public safety. Our program results were just recently published in the International Journal on Offender Therapy and Criminology. No one that I know of has been published in that journal under that category. It was conducted by UNL and published in January. Restorative justice is based on the fundamental truth that crime does more than break the law. It hurts everyday people in communities. We involve

victims, offenders, and the communities in recognizing and repairing and finding solutions to crime. The Community Justice Center has been working with adult probation for the last 13 years and the Department of Corrections for the last 19 years doing programming in institutions across the state of Nebraska. Restorative justice works. Participants are held directly accountable while learning the true extent of the harm they've done to their direct and indirect victims. Victims' voices are elevated within the justice process and our communities are made safer in addition to saving tax dollars. The Community Justice Center supports LB595 and works to recognize restorative justice as a fundamental component addressing the harm, promoting healing, and improving public safety for the community members of the state of Nebraska. Thank you for your time, and I would be happy to answer any, any questions by the committee.

LATHROP [01:13:13] Senator Chambers.

CHAMBERS [01:13:14] Mr. Jones, I'm sure you have a copy of the bill.

JAMES JONES [01:13:17] No, I do not, Senator, but I have looked through it. Which page would you like me to refer to?

CHAMBERS [01:13:25] Page 11, and I'm going to start reading in line 26.

JAMES JONES [01:13:35] Yes, sir.

CHAMBERS [01:13:36] So when you have it--

JAMES JONES [01:13:38] We go-- good.

CHAMBERS [01:13:40] "Restorative justice programs may involve restorative projects or classes, facilitated meetings attended voluntarily by the victim, the victim's representatives, or a victim's surrogate and the victim's supporters"--

JAMES JONES [01:13:55] Correct.

CHAMBERS [01:13:56] --"as well as the youth or adult individual who caused harm and that individual's supporters, whether voluntarily or by court order." Who would be under a court order to attend these activities?

JAMES JONES [01:14:14] I have seen across the country where juveniles and adults are both court ordered, but it's primarily used with juveniles at the diversion level, like Senator-- Miss-- the other, earlier individual says, but it can be done by both. It's a grossly used-- a grossly underused program, all restorative justice in general. So what they've been doing recently is expanding the benefits of it to also include the ones who've been adjudicated. So anyone who is in the juvenile justice system who has been

court ordered, they can go if they would prefer, but they can also deny it. They can-- they can go back. They can say, you know what, this just-- I don't want to do this program. And then the judge will say, well, OK, if you don't want to do it, fine, and they do another sanction of some sort. Adults, they do the same thing.

CHAMBERS [01:15:04] You-- you answered. The-- the issue that I have, all of these kinds of programs, to be effective, have to be voluntarily participated in. And if somebody does something under coercion or compulsion--

JAMES JONES [01:15:20] Then it's not restorative.

CHAMBERS [01:15:21] --he or she might be there, but there's going to be nothing of value.

JAMES JONES [01:15:24] There's nothing restorative about it.

CHAMBERS [01:15:26] So I was concerned if somebody who did not want to come was ordered and then would be punished, not for what he or she had done but punished for not wanting to attend. But if I understand you correctly, all the individual would have to do is say, I'd rather not participate, and then that person is free not to participate and will not be punished further by virtue of having declined [INAUDIBLE]

JAMES JONES [01:15:52] In most-- in most cases the judge will say, OK, well, we'll do another sanction, we'll find a community service, we'll do-- do a report, we'll do-- there will be some consequences because it's-- you know, you're not doing what I ask you to do, the judge, you know. So there's other consequences, but it's-- it's not punitive in that-- in that raw sense, no, it's not. They will try another-- they will find other means of other programming, other mental health, other services to address the needs of the offender.

CHAMBERS [01:16:20] But here's what I'm getting at. Whatever sanction that juvenile would have been confronted with--

JAMES JONES [01:16:27] Correct.

CHAMBERS [01:16:28] --and then the judge or whoever felt that he or she could benefit by participating in the program, and the individual chose not to participate, then the sanction would not be made harsher--

JAMES JONES [01:16:47] No.

CHAMBERS [01:16:48] --because. OK, now [INAUDIBLE]

JAMES JONES [01:16:49] In my 30 years I've never seen that happen.

CHAMBERS [01:16:51] --the language of the bill because I have to go by that. "Voluntarily or by court order," if one volunteers to come, that person will be there. But when you add, after "voluntarily," "or by court order," the court could order that person to come whether he or she wanted to or not. And if that's not what is meant, then I think we ought to strike out "or by court order" and just leave "voluntarily." But I'm willing to discuss that with Senator Albrecht. But if there is any compulsion, then I think it's a devastatingly harmful program because the judge is going to take offense that the child did not want to attend and is going to punish the child. So if I'm involved and I'm facing a harsher punishment and I'm in the clutches of this judge--

JAMES JONES [01:17:44] Right.

CHAMBERS [01:17:44] --I'll say, OK, I'll do what you tell me to do. And then I'd go and I'd sweat it out.

JAMES JONES [01:17:48] Sure.

CHAMBERS [01:17:48] And I don't want it to become that kind of program--

JAMES JONES [01:17:50] That's-- that's--

CHAMBERS [01:17:51] --just so that whoever talks to me will know what my concern is.

JAMES JONES [01:17:55] Sure.

CHAMBERS [01:17:55] And with the language here--

JAMES JONES [01:17:56] We need to correct it.

CHAMBERS [01:17:57] --even though I understand what you mean, I don't think the language says that--

JAMES JONES [01:18:00] I agree. I agree. It's--

CHAMBERS [01:18:02] --because it says voluntarily or under court order.

JAMES JONES [01:18:05] Correct. Any solid restorative justice program is victim centered. So the-- it's on their call, it's on their wishes, it's addressing their needs, number one. The offender's needs are number two with regards to-- in priorities, and then the community. So if it's not addressing the needs of all three-- and that's the basic definition of restorative justice. You address the needs of the victim, the offender, and

the community all at the same time. It's also called the balanced approach but with victims number one.

CHAMBERS [01:18:40] I'll talk to Senator Albrecht. But, see, when I was a child, I used to go to church. And as Paul said, when I became a man, I put away childish things. That's my opinion. But what churches would do, and it didn't seem right to me then, they would make children come in front of the church and say what they had done wrong. And all these people are standing there or sitting there judging, looking. The child is humiliated and in that situation, the child has no choice but to do it. So when the community is going to be sitting there, then it's like that shaming element, which I don't want to see.

JAMES JONES [01:19:24] It's creating harm, Senator. It's creating harm. And restorative justice at all costs does not cause a small harm. That's the number-one directive.

CHAMBERS [01:19:34] OK. So then you're like the physician: First do no harm.

JAMES JONES [01:19:37] Correct.

CHAMBERS [01:19:38] OK.

JAMES JONES [01:19:39] And that's where a lot of people, when they talk about restorative justice, it gets widespread and all these other thoughts and other meanings get involved and it-- it just makes it really, really hard. Just keep the simpler definition, offenders-- victims, offenders, and community, the balanced approach, and address the needs, and you're good.

CHAMBERS [01:19:58] I'm more at ease now. Thank you.

JAMES JONES [01:19:59] You're welcome, Senator.

LATHROP [01:20:00] Very good. Thank you-- is-- Mr. Jones.

JAMES JONES [01:20:04] Thank you.

LATHROP [01:20:06] Appreciate it. Anyone else here as a proponent? Good afternoon.

CASEY KARGES [01:20:17] Good afternoon. I'm Casey Karges. I'm the executive director of the Mediation Center, also the president of the Nebraska Mediation Association. Name: C-a-s-e-y, last name Karges, K-a-r-g-e-s. I'm here-- our center has been part of the pilot projects for the past couple years and Lancaster County has really been a leader in restorative practices and has been doing an awful lot of these types of cases. We've been working with the schools, working with diversion, also working with court-ordered cases. Last year we did almost a hundred of these cases at our center. A lot of times what's

happening is let's say kids get in a fight. They're at school. They go to the officer and it gets to the county attorney and decisions are now about ready to be made. A lot of times, kids have just made a mistake and it's an opportunity for them in a restorative justice practice to get together, possibly meet with the other person, if everyone agrees, for them to work out, is there a way for them to pay back the harm? A lot of times it's working with the parents and the youth for them to realize the mistakes they've made and then to focus on what they could do differently. And so when we work with youth, it's really important for the persons to be appropriately trained, so at the mediation centers, a lot of this bill is to putting that down of what we'll do for the training. And then with Aniyah that was here, one of our youth that went through this process, we're getting more and more youth to want to participate within their schools, and so people can make decisions differently. So I would recommend and we are in favor of LB595.

LATHROP [01:21:50] Very good. Senator Chambers.

CHAMBERS [01:21:56] A comment.

CASEY KARGES [01:21:56] Yeah.

CHAMBERS [01:21:57] I am reassured by the people who have spoken on this bill. I don't think anybody connected with the program, and if they did, they wouldn't be connected long, would deliberately do anything to harm any of these children or the occasional adults who might, based on what the law says, be involved. But since I'm looking at the language of the law, I still might want to eliminate some words that are troubling to me because you may not always be there. Brother Jones is a kid under me, but he may not even live as long as I've lived so far.

CASEY KARGES [01:22:35] Yeah. Yeah.

CHAMBERS [01:22:35] So when we're making laws, we cannot put trust or reliance on the good people who come before us asking for the law. We have to look at the language of the law and what somebody whose motives may not be what they ought to be could make use of the words actually in the law and do something different.

CASEY KARGES [01:22:55] Right. And I like where you're going. And just part of our process is before we do anything in mediation or these facilitations, we meet with people first. The first thing we're trying to figure out, are they appropriate, meaning, do we think it would be benefit for them to go through the process and are they ready to do it? We have had youth that we've met with them once and they just weren't there. And then we decide what-- you know, in these particular cases, we go back to the county and everybody agrees this probably isn't going to be a helpful process for this youth, and they find other processes that might be helpful within the-- within the system. So that meeting with that-- that youth at the very beginning is hopefully getting at-- and I like

what you're talking about, probably to get some wording in there where people would feel comfortable of if it's not appropriate for that person to go through the process, or, like you say, they don't want to go through it, for a way for them to not go through the process.

CHAMBERS [01:23:45] Since you're the director, I'm putting this question to you.

CASEY KARGES [01:23:49] Um-hum.

CHAMBERS [01:23:49] Would you object to the removal of that language "or by court order" when you're talking about the one who may have caused the harm, but you don't have "by court order" for the victim or the victim's supporters. So if it is not going to be a directive that you show up whether you want to or not, why have "or by court order"?

CASEY KARGES [01:24:18] Yeah. And you would know better than me. We get some cases through diversion-- through probation, and they-- and in probation, they get a listing of a bunch of stuff that the judge would like them to do, and sometimes we're put into that. I think language where we can get at this would be language, if someone would choose not to do this, that it would not look bad on them. And like where I'm going is if we would meet with them and they don't want to do this, we don't want them to do this. Is there a way for us to get a court order from probation saying one of the things that the judge would like to see is this, if that doesn't work out, then how do we make sure it's not something that would harm them in some way?

CHAMBERS [01:24:58] Now I'm going to wrap up what I said.

CASEY KARGES [01:25:00] Yeah.

CHAMBERS [01:25:01] Earlier I had pointed out that there are two ways to interpret the two words "court order." The court order could simply be an order issued by the court giving its approval of this child's participation.

CASEY KARGES [01:25:16] Yep.

CHAMBERS [01:25:17] Or it could be directive saying you shall participate whether you want to or not. But maybe with our discussion--

CASEY KARGES [01:25:26] Yeah.

CHAMBERS [01:25:26] --that would be enough to make sure that it's not interpreted to mean that the person-- but it says, "whether voluntarily or by court order." If it's voluntary, I don't see where we need a court order for anything because the only way this

individual is going to participate voluntarily is if the court agrees. So-- well, we'll talk about that because [INAUDIBLE]

CASEY KARGES [01:25:54] Yeah. Yeah. I like-- I like where you're going. If someone doesn't want to be a part of the process, they are not going to be successful and we-- we don't want to move forward with them. Yeah. Thank you.

CHAMBERS [01:26:01] That's all that I have. Thank you.

LATHROP [01:26:04] OK. I don't see any other questions. Thank you. Anyone else here as a proponent?

CONNIE EDMOND [01:26:19] Good afternoon, Senator Lathrop and committee members. My name is Connie Edmond, C-o-n-n-i-e E-d-m-o-n-d, and I'm here in support of LB595. When my husband and I were raising our two sons, there were times we had to impose consequences for their actions, or lack thereof. As a mom, I didn't want to listen to the-- to their reasons or excuse. I just wanted to punish and take every-- take away every benefit known and enjoyed by my children. My husband, on the other hand, wanted to sit down and discuss with them their actions, who it impacted, how it impacted them, and how they could make amends. Typically, I fondly-- fondly remember my husband's conversations with our sons going like this: You've upset your mother for not doing your chores, now Mom's not happy and the whole house is unhappy. So our sons grew up, for the most part, asking if they could talk about situations and present their case. What I experienced from raising children was that at times I was party to conflict. I played the victim because my needs were not met and at some times refused to listen. What I learned was that our sons did not like to be reminded when they made a mistake or to be defined by that mistake, and that it was important to seek resolution, maintain a healthy relationship, and move forward. My sons have both graduated from college and continue to use those childhood lessons in their adult lives. Unfortunately, some of their peers weren't taught those skills and as a result, are still living those consequences in their adult lives. I wish I would have been more of an advocate for those children. Being successful requires the ability to learn effectively. When our youth fail at successfully handling their problems, perhaps because some of their basic needs are not being met, it should be our responsibility to provide them with tools and help educate and navigate them to make proper choices and seek appropriate resolutions to resolve their problems and to restore and maintain healthy relationships. Project Restore, along with the Mediation Center, provides that platform for our youth and allows those that have been offended to be heard, be restored, and to be-- move forward. When given this opportunity to do so, young people can turn their energy and creativity to solving today's challenges and tomorrow's problems and giving you, Senators, all a break. When a youth makes a mistake, it's an opportunity to empower them to be accountable for appropriate behavior in the future. Therefore, every youth should be automatically referred to restorative justice, youth conferencing with some exceptions. The Office of Dispute Resolution

mediation centers should be accountable for facilitating restorative justice. Our youth are our most valuable resources. Youth represents dreams, innovation, and opportunities. Simply put, youth represent the future. I would like to share this quote from Franklin D Roosevelt: We cannot always build the future for our youth, but we can build our youth for the future. In support of LB595 and leveraging one of our most valuable resources, let's be a community about restorative opportunities for our youth. Thank you.

LATHROP [01:29:45] Very good, Ms. Edmond. Senator Chambers.

CHAMBERS [01:29:49] Those many decades ago when I did go to church, there's one word I remember from that which meant you cannot improve on what was said, and that word was "amen," Sister.

CONNIE EDMOND [01:30:02] Thank you.

LATHROP [01:30:07] Amen. [LAUGHTER]

CHARLES LIESKE [01:30:20] I am Charles Lieske, C-h-a-r-l-e-s L-i-e-s-k-e. I am executive director of Mediation West in Scottsbluff. We are the ODR-approved center that serves 15 counties in western Nebraska, including the Panhandle. I've been in that position since June of 2015 and prior to that I was a program specialist serving probation, two years directly with probationers in Seward and York County and then two years in administration. I was originally trained in restorative practices back in 2009 and affiliated with the Mediation Center here in Lincoln before I moved out west for my current role. During the ten years that I've done this work, I've had the opportunity to continue my training and serve as a facilitator and mediator in various restorative cases, and I'm very excited with the advances that our field has made in refine-- refining our processes and better serving victims, communities, and those who have caused harm. One such change is the use of surrogate victims in cases where the actual victim is unable or unwilling to participate in a joint meeting with the person or the persons who caused harm. And using surrogates allows us to help those who have caused harm see that their actions were more than violations of statute, but that they had a real impact on real people in their community. And this realization helps change behavior because people realize that they haven't just broken a law or broken a rule of the state, but they've adversely affected another person's life. One of the directions that's unique for the restorative work at our center is that we are including using restorative practices with adult defendants. Similar to the work being carried out in the victim youth conferencing, we see moments of realization with these adult defendants, healing for the victims, and an increased sense of community. Along with my testimony, we have submitted statements from victims in one of those cases, an individual who received substantial financial restitution, as well as a statement from our restorative practices director that recounts the healing experienced by an adult offender and a brother of a victim who lost her life in a traffic incident. Another unique direction that we're taking is expanding our VYC to evidence-based,

family-centered models of restorative justice. We're currently operating a pilot project with Scotts Bluff County Juvenile Assessment Center that is using these types of processes in two types of cases, one where the youth is too young to be charged with an offense in juvenile court and filing a petition against the parents would not be helpful, so like a preteen who's shoplifted or something of that manner. The other type of case would be youth where there's an option to file but you would unlikely get the kind of result that you would want. That might be assaults within families by juveniles, truancy, or runaway issues. And approaching these family issues with restorative mediation is a way to really help identify those challenges with the family, help them create plans that address those challenges with a system of-- of support rather than focusing on the statutory offense of the juvenile, which is often a symptom of the greater problem rather than being the problem itself. And I'd be happy to answer any questions, and even the court-ordered questions because we've had that happen at our center.

LATHROP [01:33:57] OK. Senator Chambers.

CHAMBERS [01:33:59] You said you would address the court order question?

CHARLES LIESKE [01:34:01] Yes. Yeah.

CHAMBERS [01:34:03] Would you?

CHARLES LIESKE [01:34:03] So we've had two different ways that cases have come to us through court order. One is we have a county judge who wants to utilize bench probation on a greater scale. And in the past he's seen watching school attendance and watching grades as being the conditions of that bench probation and he felt like that didn't have a lot of teeth. And so he has used ordering youth to the program at the center. And if I'm remembering the wording in the order correctly, it might give us some-- some thoughts on how to change the language in the law and that the juveniles were referred to the Mediation Center for assessment, for participation and restorative programming. And in these cases thus far, all of the juveniles have been a part of the process and been successful. Yeah.

CHAMBERS [01:34:59] Would it hurt or weaken it if, instead of saying court order, you said court-- court referral? Would that serve the same thing or do you need that word because the judge, even if it's a voluntary participation, does so by means of an order? We can talk [INAUDIBLE]

CHARLES LIESKE [01:35:19] Oh, yeah. Off the top of my head, I don't see a problem with replacing "order" with "referral." The other way that we've gotten court orders is when the judge has made it a condition of probation. That did happen to us in an adult case where the adult offender came to us. We assessed the situation and determined that it was not going to be a good idea to move forward with a joint session. So what we did is

we provided a mediation status report for the probation officer and for the court that said the offender in the case came to the mediation center and had the initial assessment and it was not appropriate to use a surrogate in the case, and so the probationer fulfilled all the obligations of- of that order and-- and--

CHAMBERS [01:36:06] Since we're engaging, let me ask you--

CHARLES LIESKE [01:36:08] Yeah.

CHAMBERS [01:36:08] --a few more questions. Do any of these children have legal representation?

CHARLES LIESKE [01:36:15] Sometimes we do get referrals for people who have defense attorneys or also for juveniles that have GALs assigned.

CHAMBERS [01:36:23] Has any attorney, to your recollection or knowledge or having heard, objected to the child being referred as a condition to probation or anything like that?

CHARLES LIESKE [01:36:38] We-- I don't recall any that we've had an adverse reaction to. In fact, we have gotten referrals from defense attorneys where we've-- the defense attorney of the juvenile has contacted us and said, I think this program would be beneficial for my client, could we look into it?

CHAMBERS [01:36:55] Thank you. That's all that I have.

LATHROP [01:36:58] I see no other questions.

CHARLES LIESKE [01:37:00] All right. Thank you.

LATHROP [01:37:00] Thanks for being here today. Good afternoon.

DIANE AMDOR [01:37:25] Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Diane Amdor, D-i-a-n-e A-m-d-o-r, and I'm testifying in support of LB595 on behalf of the Nebraska Mediation Association. The Nebraska Mediation Association has over 200 members. Our mission is to promote creative and constructive engagement through professional development, collaborative partnerships, facilitation, mediation, restorative justice, and conflict engagement training to practitioners, professionals, and others throughout the state of Nebraska. Nebraska Mediation Association supports this bill because we have seen the seeds that have been planted over the last few years in the restorative justice field here in Nebraska by the mediation centers and by others and we want to see those seeds continue to be planted and continue to grow and we think LB595 will help accomplish that goal. In addition to

being a member of NMA, I am the restorative justice coordinator at The Resolution Center, one of the six Office of Dispute Resolution-approved mediation centers across the state. We serve 16 counties in southeastern Nebraska. I would like to tell you a little bit about my position and the work that we've been doing in the last year or so. I started working full time at The Resolution Center about a year ago with funding from the grant that was mentioned by previous testifiers. I was trained to facilitate restorative justice dialogue in 2015 when I was still working at the Legislature as legal counsel for the Judiciary Committee. Some interesting information about the work that we've done over the past year at The Resolution Center, we've gotten 17 referrals since May of 2018, so we're not on the scale that Lancaster County is at quite yet. We've worked with 12 youth who caused harm and 13 individuals who were harmed. Six restorative justice dialogue sessions have been held in response to a variety of harm, including multiple broken windows, a fight that resulted in a serious injury, arson, property damage to a business, and threatening statements that were made at school. We've received three referrals for truancy cases as well. As a result of our dialogues, over \$8,000 in reparations have already been paid to individuals who have been harmed. Over 125 hours of services to people who have been harmed will be completed as a result of these dialogues. Eight people have cried. In addition to our work with juvenile restorative justice dialogue, I've had the opportunity to cofacilitate a class on restorative justice at the State Penitentiary and at Tecumseh State Correctional Institution. We've taught two rounds of the class at NSP with 20 individuals completing a ten-week, 40-hour course, and one round of the class at Tecumseh with 25 individuals completing a ten-week, 20-hour course. As I noted before, NMA supports this bill because we want to see this restorative justice work continue to grow throughout the state and we think LB595 will help accomplish that goal. I want to help-- thank Senator Albrecht for introducing the bill and thank all of you for your time. I'm happy to answer any questions.

LATHROP [01:40:36] Very good. Senator Pansing Brooks.

PANSING BROOKS [01:40:39] Welcome back, Ms. Amdor.

DIANE AMDOR [01:40:41] Thank you.

PANSING BROOKS [01:40:42] I-- I just-- could you explain to me, is this-- is this used as a form of diversion across the state? Can you answer that?

DIANE AMDOR [01:40:51] Yes. Several of our-- most of our referrals, actually, have come from diversion offices.

PANSING BROOKS [01:40:55] OK. And so can you talk to-- tell us about the access to that across this state.

DIANE AMDOR [01:41:05] It varies pretty much county by county. We've-- we've currently been working with about three different counties so far, but it-- it-- it really varies county by county.

PANSING BROOKS [01:41:17] I think I should have asked this of Ms. Denny, but anyway, thank you for coming. Appreciate it.

DIANE AMDOR [01:41:24] Thank you.

LATHROP [01:41:24] Diane, I don't see any other questions, but good to see you again.

DIANE AMDOR [01:41:30] Likewise.

LATHROP [01:41:31] Thanks for being here today. Professor.

RONALD VOLKMER [01:41:54] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Ronald Volkmer. That's R-o-n-a-l-d V-o-l-k-m-e-r. My address is 2539 North 55th Street, Omaha, Nebraska. I am appearing as a private citizen. My background is a professor of law at Creighton University, where I taught, and I actively supported the mediation-- development of mediation within the state partially through efforts in our curriculum at the law school to introduce mediation so that-- back in 1995 it was practically unknown, and I'm proud to say that that started a development which has continued to the present day so that at least persons graduating from law school had the opportunity to learn about mediation and the opportunities provided by an alternative form of dispute resolution. And I am acutely aware that it's late-- it's-- we've had many testifiers, and I have prepared a written statement which I've given to you. And so I'll just-- and some of the previous testifiers have mentioned items that I included in my testimony, so I'll try to make this as brief as possible. It was in 1991 that I appeared before this committee when the original Dispute Resolution Act was introduced, and that was introduced by Senator Dave Landis, and it was the result of many efforts. And I'm proud to say that when I testified as a representative for the Bar Association, we had the support of a lot of folks and the bill passed unanimously. And so since 1991, it's actually a dream come true for me to see the-- the development that has occurred in mediation in Nebraska. And Deb Denny just mentioned to you that it's an example, I believe, of the three branches of government working together and cooperatively to problem solve. And I would say in our society today, many citizens are not happy with our governmental system because they don't see that happening. So as a Nebraskan, I'm very proud of what our judicial branch, our executive branch, and our legislative branch has done together cooperatively, working together to develop a system. Now when I taught, in the first class, I asked students to think about the big picture. And I know as kind of deciders of public policy, you're big-picture thinkers, and you need to be, and at the same time you're very astute at looking at details because the devil is oftentimes in the details. So I salute you and I want to again commend the members of the Legislature, Chief Justice

Heavican and the Nebraska Supreme Court, and the members and the departments of the executive branch of government. The mediation centers work extensively with Department of Health and Human Services in the area of child welfare cases. And so we worked hand-in-hand, the mediation centers, all three branches of government. And as I say, it was a dream, literally, in 1991 to envision that that could come about. And so again I want to thank you personally, and all the members of the respective branches of government, for improving the climate in Nebraska. One of the original goals of dispute resolution-- Dispute Resolution Act was the need in our society to reduce acrimony and improve relationships among people in conflict, which has a long-term benefit of a more peaceful community of people. And I know that some people thought this was an idealistic dream, but I believe, through a lot of people's efforts, we do have certainly examples of persons in conflict being able to work through their-- through their differences and come to a peaceful resolution. And so this, to me, is my definition of how we bring about a more peaceful society within the state of Nebraska. And again, so many people have had a hand in that, including countless numbers of volunteers. And I'm a volunteer. I'm one of them. I've been a part of the Concord Mediation Center in Omaha for 20 years as a board member. Previously mentioned was, in the testimony of Corey Steel, the January 17 address of the Chief Justice to you. And in my testimony, I quote his language that he spoke on the floor of the Legislature to you about restorative justice programming. And again I'm-- I'm thankful for Senator Albrecht for bringing this bill to show how we can further the development of restorative justice programming in-- in Nebraska.

LATHROP [01:46:48] Ron--

RONALD VOLKMER [01:46:50] I also realize that the-- oh, excuse me, Senator.

LATHROP [01:46:55] Yeah, we're-- you're probably past your three minutes.

RONALD VOLKMER [01:46:57] OK.

LATHROP [01:46:58] Let's see if there's any questions for you.

RONALD VOLKMER [01:46:59] All right. Senator--

LATHROP [01:47:00] But we appreciate your enthusiasm and your--

RONALD VOLKMER [01:47:02] --again, I've given you my statement.

LATHROP [01:47:05] Yeah.

RONALD VOLKMER [01:47:05] It's my pleasure and opportunity to present this testimony as a private citizen who has worked diligently over the years for this goal.

LATHROP [01:47:14] Good.

RONALD VOLKMER [01:47:14] So again, thank you for your efforts.

LATHROP [01:47:17] Yeah, we appreciate all the work you've done too. Senator Chambers has a question for you.

CHAMBERS [01:47:21] Did I understand you to say that you taught at Creighton Law School?

RONALD VOLKMER [01:47:25] Yes, Senator Chambers. You may have a bad memory--

CHAMBERS [01:47:29] Yeah, I--

RONALD VOLKMER [01:47:30] --you have a good memory--

CHAMBERS [01:47:29] I'm just going to tell you that I graduated from there, and you gave the best "I'm going to run for President" presentation I've heard. So on either party's ticket, if you decide to run for President, I will be your campaign manager. You talk about the three branches working together to produce a positive result, and I might be paraphrasing, do away with some of the acrimony and work together for the common good. That would be a very good message to be heard all over the country at this particular time. I want you to know that I heard it and I appreciate it.

RONALD VOLKMER [01:48:02] Senator Chambers, thank you very much. I appreciate your efforts on your behalf to reach the same goal.

LATHROP [01:48:07] I think that's it. Thanks for being here. It's good to see you again. Anyone else here as a proponent? Welcome.

KELLEE KUCERA-MORENO [01:48:29] Hello. I'm Kellee Kucera-Molina [SIC]-- Moreno-- I'm married-- K-e-l-l-e-e K-u-c-e-r-a, hyphen, M-o-r-e-n-o. and I would just like to suggest that people-- constituents do come up here and testify. I don't have well planned-- I speak from my heart, from my head, and from my experience, my experience as a recovering person since 1986. I-- I have not used drugs or alcohol since 1986, so I have an extensive recovery history, personal history. My husband is incarcerated needlessly because he's been in recovery since 2005. We are a clean, sober, recovering couple. However, the justice system does not work. What I've noticed is probably at all levels, people need to have a different mindset and make changes. I guess I would like to say, for the purpose of it-- it being documented, the Legislature, the Judiciary Committees, have done so much for restorative justice. People have come from the outside. They've made decisions on what things need to happen, and it's time that it happens. My wish and hope is that

Scott Frakes and the Governor hear this because restorative justice is where we need to go. I'm sitting over there and ironically, I was-- met James who told me about this bill and-- or about this agency and what's going on. I have been really disappointed. I just met you senators last year. I fell in love with all of you. There-- there is three people-- this is for the Governor and Scott Franks also-- there-- there are three people that I think at this stage should just have a pointer and point to where we need to go and what we need to do. That's Senator Chambers, Senator Pansing Brooks, and Senator Lathrop. They know what we need to do for the criminal justice system. We could save a lot of time by just doing what we need to do. For the newcomers, too, welcome. If you don't know what recovery is, talk to somebody about it. I-- thank you for everything you do. The answer to court ordered is we don't like that, but guess what? People are-- are being sent to solitary confinement. They're getting punished, punished, prejudiced prosecution, preconceived notions, beliefs, and opinions. All these negative things are happening. I have simplified it to the "Rs": rehabilitation, recovery, relapse, recidivism, restitution, and restorative, and that's where we need to go with this. The victims aren't getting recognized. When you're locking people up in solitary confinement, nobody is benefiting from this. Thank you.

LATHROP [01:51:43] Very good. Thanks, Kellee. I see no questions. Anyone else here as a proponent? Anyone here in opposition? Anyone-- oh, are you in opposition? Neutral. Anyone here in a neutral capacity? Welcome.

WILLIAM MUELLER [01:52:16] Senator-- thank you. Senator Lathrop, members of the committee, my name is William Mueller, M-u-e-l-l-e-r. I appear here today on behalf of the Nebraska State Bar Association. We have been working with Senator Albrecht's office and Debora Denny on an amendment to this bill. When the Bar Association looked at this bill, an issue was brought to our attention, and that issue is, when can the parties in a Parenting Act situation choose a mediator to have that mediator mediate the Parenting Act parenting plan? You're aware that in 1991 the Dispute Resolution Act was adopted. In 2007, the Parenting Act was adopted that required that parties to a divorce come up with a parenting plan that would address issues like child custody, parenting time, and support. And this act referred to who could mediate those acts or those-- those-- those parenting plans. There is a statute that says that the parties can agree to a mediator provided that it's approved by the court, but then in that section of statute it also refers to the Supreme Court Administrator developing a process to approve mediators. We do have approved mediators that have a certain amount of education. They must act as apprentices. They must provide reports. We also have private lawyers who are mediating matters and-- and parties want to hire those mediators to help them work through their Parenting Act. We are working on an amendment that would clarify that the parties can choose a mediator to develop these Parenting Act. I should have started by saying the Bar Association is fully supportive of restorative justice mediation. We are simply here because the Parenting Act is part of this bill. This question has been the subject of two Nebraska ethics advisory Opinions for lawyers, one in 2013 saying that a lawyer couldn't

do this unless you were approved. The second one, in 2017, said, well, under certain circumstances a lawyer can do it. We need to clarify that. The statute is unclear. I'd be happy to answer any questions you may have.

LATHROP [01:54:48] That clarification would be important to me. As you know, I've heard from someone that I highly respect as a mediator. And it-- it only makes sense that if two people want to voluntarily choose somebody of the skill of a guy like Mike Mullin, they should be able to.

WILLIAM MUELLER [01:55:05] We agree. We agree.

LATHROP [01:55:10] OK.

WILLIAM MUELLER [01:55:11] We-- we will work on an amendment.

LATHROP [01:55:12] Right. Thanks.

WILLIAM MUELLER [01:55:13] Thank you.

LATHROP [01:55:14] I appreciate it, and thanks for being here today. Anyone else here to testify in a neutral capacity? If not, Senator Albrecht to close. We do have letters of support from Judge Gendler, Sarpy County juvenile court judge; Christon MacTaggart from the Women's Fund; Jon Woodard; Judy Amoo, Midwest-- Mediation Midwest [SIC] and Jennifer Blevins from the Center for Restorative Justice and Peacemaking. Senator Albrecht.

ALBRECHT [01:55:47] Well, thank you, Senator Lathrop and the committee, for being so kind to listen to all of the folks that came before us. I am certainly amenable to talk about the amendments with any and all that have come before us and just to make the bill better. That's it.

LATHROP [01:56:05] Very good. Senator Brandt has a question for you.

ALBRECHT [01:56:09] Yes, sir.

BRANDT [01:56:09] Yeah. Thank you, Senator Albrecht. And I guess maybe I should have asked this on the open, but on the fiscal note it has it coming out the General Fund. Is that money coming out of the General Fund or do they have grants that will cover the costs to these people?

ALBRECHT [01:56:23] Well, at this time-- and we had talked about it previous that there was not going to be a fiscal note because they have private funds that they're using, so we are still working on not having a fiscal note for this.

BRANDT [01:56:37] OK. Thank you.

ALBRECHT [01:56:41] Thanks.

LATHROP [01:56:41] OK. I think that's it. Thank you, Senator Albrecht.

ALBRECHT [01:56:43] Thank you for having us.

LATHROP [01:56:44] Thanks for being here and presenting LB595. That will close our hearing on LB595 and bring us to Senator Cavanaugh and LB690. Welcome once again, Senator Cavanaugh.

CAVANAUGH [01:57:16] Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Machaela Cavanaugh, M-a-c-h-a-e-l-a C-a-v-a-n-a-u-g-h, and I am lucky enough to represent District 6, west-central Omaha, here in the Nebraska Legislature. I am also the second member of the Cavanaugh family you have had in front of you today, so just excited about that. I am here to introduce LB690, the Healthy Pregnancies for Incarcerated Women Act. LB690 will prohibit the shackling of inmates known to be pregnant, especially during labor and delivery. Between 5 and 10 percent of women who enter prison or jail do so while pregnant. With an average of 2,000 babies born to pregnant inmates each year across the country, I can assure you, each of you, that pregnancy is difficult enough outside of prison. But because no law can anticipate every possible scenario, the bill does allow for the administrator of the correctional facility to make individualized decisions that restraints are necessary due to extraordinary circumstances. I'm also working with corrections officials around the state to craft some additional language to ensure the bill-- this bill doesn't compromise the safety of their staff, inmates, and healthcare providers. I'm bringing LB690 because the shackling of a pregnant inmate is incredibly harmful to the inmate and the baby. Leg and wrist restraints increase the likelihood that a pregnant inmate could trip and they compromise their ability to brace against a fall, risking miscarriage and injury. Heavy belly or waist restraints can bruise a pregnant inmate's abdomen and pose a risk to fetal health. Additionally, shackling of a pregnant inmate poses significant risks to their mental health and is associated with an increased rate of post-traumatic stress disorder. When it comes to labor and postpartum, the danger becomes even more pronounced. To quote the American College of Nurse Midwives, labor itself is a restraining condition. Impairment of movement should be avoided to prevent injury and to aid the medical staff in providing care and facilitating position changes necessary for labor and birth. Additional restraints are unnecessary, dangerous, and make labor, something we all know is not exactly an easy process, even more difficult for everyone involved. After giving birth, restraints on inmate-- on the inmate places them at a higher risk for-- I'm going to say this wrong-- thromboembolic disease which can lead to the heart-- to a stroke or heart attack, and post-partum hemorrhaging which, if you need more

information on this, I suffered from postpartum hemorrhaging and I'd be happy to give you a detailed account of it. The restraints can also injure the newborn while being handled by their parent and dis-- and disrupt the bonding process that is so critical to newborn development. I want to close by note-- noting that the majority of incarcerated women are nonviolent offenders and there has never been a record instance of an unshackled inmate even attempting to escape during labor and delivery. I did want to bring your attention to the fiscal note, which caught my eye. It is zero. However, if you look at the text, it does state that DHHS put in that the Geneva center falls within the provisions of this bill. It-- this facility houses female juveniles. HHS states they would need to alter procedures to comply with the bill, but these changes would be internal and, therefore, no fiscal impact to them. I was not aware that they were restraining pregnant teenagers, so I'm happy that this encompasses that. I will be doing more research into that because I just became aware of this, so there's a potential that I would bring an amendment. But right now, hopefully, this covers that.

LATHROP [02:01:14] OK. I do not-- oh, Senator Slama has a question for you.

SLAMA [02:01:17] Thank you for bringing this bill and being here today, Senator Cavanaugh. I was just wondering what the prevalence of these restraints and injuries happening because of these restrain-- restraints are in Nebraska prisons.

CAVANAUGH [02:01:31] Thank you so much for that question. They are not prevalent at all. Director Frakes has assured myself and Senator Howard, who I had initial discussions with this on, that this isn't a commonly used practice. And we just discussed and I felt that it was important to bring it into state statute that it's not a practice that we will be using moving forward, which, again, based on the fiscal note, I'm glad that I did this so that I discovered that maybe it's happening in a different way, so-- but it's not prevalent.

SLAMA [02:02:05] Thank you.

CAVANAUGH [02:02:08] Yeah.

LATHROP [02:02:08] OK. I see no other questions. Thanks, Senator.

CAVANAUGH [02:02:10] OK. I will not be staying for closing. I'm sorry.

LATHROP [02:02:13] No, I understand you have other bills to introduce.

CAVANAUGH [02:02:15] Thank you.

LATHROP [02:02:16] First proponent.

SCOUT RICHTERS [02:02:25] Good afternoon. My name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s. I'm here on behalf of the ACLU of Nebraska. I wanted to thank Senator Cavanaugh for bringing this bill. I'm circulating written testimony but I'll just briefly summarize it here. Shackling pregnant women, especially during labor and delivery, is unnecessary, is contrary to the Eighth Amendment, and the practice hurts Nebraska women and their children. Passing this kind of legislation is consistent with state and federal trends. We have a roadmap from other states that have passed laws and have internal policies on this issue. Nebraska is actually currently one of only eight states without any such laws or policies banning this practice. Additionally, the recently passed First Step Act that passed with strong bipartisan support prohibits federal correctional authorities from shackling incarcerated women during pregnancy with some narrow exceptions. Nebraska women who are pregnant while incarcerated deserve to be free from unnecessary restraints that are increasingly recognized as harmful. Courts, including the Eighth Circuit, have determined that cases of shackling female prisoners during childbirth can amount to cruel and unusual punishment. For example, Shawanna Nelson was shackled during childbirth while incarcerated in Arkansas. She appealed her case to the Eighth Circuit Court of Appeals and then eventually won her jury trial in 2009. I also did want to highlight that this practice especially burdens poor women and women of color who are overly represented in the prison and jail systems, and we do know that women are the fastest growing population behind bars. So we urge your support of LB690 and I would be happy to answer any questions.

LATHROP [02:04:25] I see no questions. Thanks for being here.

SCOUT RICHTERS [02:04:28] OK. Thank you.

LATHROP [02:04:28] Appreciate your testimony.

KELLEE KUCERA-MORENO [02:04:36] Thank you. Kellee Kucera-Moreno, K-e-l-l-e-e K-u-c-e-r-a-M-o-r-e-n-o. There would be a lot of people behind me if they weren't working and-- and-- and wanted to speak on this. I can't believe we're even doing this. The fact that women are being shackled during pregnancy, I mean, that's just crazy that you guys even have to discuss this. Human rights are a given and at this stage in Nebraska, the only thing I can say is that we need to have a different mindset. People aren't recognizing that these things are violations. My thought is we probably do have to have more mediation. We probably do have to have more, as Senator Hilgers said earlier today, unnecessary litigation. People need to go to-- to court and challenge these things. If-- if we want the court system backed up, keep-- you know, keep having human rights violations. My husband had a surgery while incarcerated and he was shackled. When you're-- when you have a back injury, a neck injury, you're probably not going to run away. Plus, the fiscal note got your attention? They have also a prison guard there with you at the same time. So I don't know. Either use shackles or use a prison guard, but I don't think you probably need both. Thank you.

LATHROP [02:06:03] Thank you for that testimony. Anyone else here as a proponent?
Good afternoon.

MARION MINER [02:06:34] Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Marion Miner, M-a-r-i-o-n, Miner, M-i-n-e-r, and I'm here on behalf of the Nebraska Catholic Conference which advocates for the public policy interests of the Catholic Church and advances the gospel of life by engaging, educating, and empowering public officials, Catholic laity, and the general public. And I'm here to testify in support of LB690. LB690, as you've heard, would forbid the use of restraints by a Nebraska state prison, county or city jail, or other detention facility on a prisoner known to be pregnant, while in labor and delivery, and during postpartum recovery. It would also provide that no detention facility employee would be present in the room during labor and childbirth unless requested by medical personnel. It does make sensible exceptions to the restraint prohibition for situations where the prisoner is a substantial flight risk or where restraints are necessary to protect the safety of the pregnant woman or other prisoners. It's the conference's understanding that our Corrections Department already abides by these standards with the possible exception of Geneva, as Senator Cavanaugh mentioned, and does not put restraints on pregnant woman as it is. LB690 would simply codify this good practice which is consistent with-- with what we believe to be in the best interest of incarcerated mothers, whose dignity and worth remain inviolate despite their crimes, and in the best interests of their unborn children, who are themselves innocent. Where we can take steps to prevent injuries to pregnant women and their unborn children without risking public safety, we should do so. Where we can avoid the humiliation inevitably endured by a woman who gives birth to a child while in handcuffs or other restraints and in the prison-- presence of prison guards without adverse consequences, we should do so. Since LB690 advances laudable goals for the protection of vulnerable life and respect for the dignity of mothers with little or no additional risk to public safety, we encourage you to advance the bill to General File. Thank you for your consideration.

LATHROP [02:08:46] Thank you. I see no questions. Appreciate it. Anybody else here to testify as a proponent? Anyone here in opposition to LB690? Anyone here to speak in a neutral capacity? Seeing none, we have five letters of support: Darci Garcia from the League of Women Voters; Sarah Hanify from the National Association of Social Workers; Tiffany Seibert Joekel, Women's Fund of Omaha; Sofia Jawad-Wessel, herself; Janice Banther, Birth Behind Bars, Inc. That-- Senator Cavanaugh has waived her close. That will close our hearing on LB690 and bring us to LB377 and our own Senator DeBoer.

DeBOER [02:09:46] Good afternoon, Chairman Lathrop and members of the committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10, which includes Bennington and parts of northwest Omaha. Today I'm introducing LB377 which allows for agreements to release liability entered into within the first 30 days of a

personal injury or death to be voidable. The victim may void such release up to 120 days from the date of execution of the release. LB377 addresses situations in which an injury occurs, for example, a car accident, and it addresses the situation where someone is injured in such a car accident and is approached with an offer to settle from the other driver's representative within the next-- the first few days of the accident. Many times, this occurs when someone is in-- still in the initial recovery stages and at that point, perhaps all they can think about is that they're missing work, that they don't know for how long, how to pay their bills, or how long they're-- how they're going to feed their family. This settlement comes at a time when people are vulnerable and perhaps before they know the extent of their injuries. After time goes by, they may find out that the damage done is more extensive and require months or maybe years of treatment and longer time off of work. At that point, as a result of the release, they have no legal recourse for the those greater damages. The re-- release wasn't necessarily coerced or obtained under duress or fraud but simply was too soon for an injured person who doesn't have the medical or legal background to understand their injuries and how they might develop. This bill would allow for that release to be voided within 120 days if it were signed within the first 30 days of injury. LB377 encourages a more respectful and a responsible approach to handling situations involving personal injury or death. It allows time to have a full understanding of the situation and the extent of the personal injuries, as well as consulting or having the opportunity to consult with an attorney before acting on it. It also recognizes that signed releases should be something which can be relied upon, which is why the bill limits the time frame to releases signed in the first 30 days after injury and the voidability period to 120 days. This balances the need for certainty when a release is signed with the need to make sure that the injured members of the public have all the information about their injuries and have time to seek information about their rights and perhaps consult with an attorney before signing releases. Thank you for your consideration of this legislation and I would be happy to answer any questions you might have.

LATHROP [02:12:40] I do not see any questions, Senator DeBoer. I assume you'll stay around to close.

DeBOER [02:12:47] I think I will.

LATHROP [02:12:47] All right, good. First proponent.

MARK RICHARDSON [02:12:50] Good afternoon, Senators. My name is Mark Richardson, M-a-r-k R-i-c-h-a-r-d-s-o-n, and I'm here today testifying on behalf of the Nebraska Association of Trial Attorneys. The first thing I would note is that this is our first attempt at a bill of this nature. This is a problem that we have encountered repeatedly over the course of the last few years. I could bring up any plaintiff's personal injury attorney that can tell you more than one story of a situation where they met with a client who, it turned out, they'd already entered into a release and it was too late for the attorney to really

provide any help. We repeatedly see efforts by various insurance companies. This is not an issue that's exclusive to any one insurance company, but oftentimes the contact with the injured individual is made within a day or two of the initial injury. A statement is taken, a dialogue starts, and within the first week, we-- there ends up being a release signed for what turns out to be a fairly nominal amount of money. I have provided to the committee the 2010 Maryland-- Maryland code. They have a statute or a-- a law just like this on their books. And as you can see by the way they've drafted theirs, it's much more comprehensive than the initial draft that we've put together for Senator DeBoer, and we would certainly be open to amending this one to more accurately reflect what-- what Maryland has done. For instance, if there is a situation where somebody is actually represented by counsel and they wish to settle the claim within the first 30 days, obviously that alleviates the concern there and there should be no voidability in those circumstances. So I'd give that to the-- the committee for its consideration. You know, one of the cases that always comes to mind to me when I think about this is we had a-- a situation where we had a father and a husband who was driving a car with his wife in the passenger seat and his, I believe it was, 18-month-old son in the backseat. Somebody blew a-- a stop sign, broadsiding their car. Fortunately, the 18-year-old [SIC] son was fine. The-- however, the wife sustained some pretty traumatic injuries and the husband actually lost consciousness for a bit, as well, and had some broken ribs. He ended up sett-- entering into a settlement agreement with an insurance company who got to him within the first couple of weeks that he signed the release three weeks later. By the time they met with us, about two months after it, the husband does-- did not even recall signing the release. He thought he was signing something for his son. It turns out they were also signing something for their son. A couple of months after this, the gentleman developed pretty serious PTSD, anxiety, depression, multiple suicide attempts, and he was left with a \$4,000 settlement as a result of the fact that the insurance company got to him first. We don't think that's how that should work in the state of Nebraska and this is a commonsense approach to fix those situations. Be happy to answer any questions.

LATHROP [02:16:20] I don't see any questions, but thanks for being here.

MARK RICHARDSON [02:16:22] Thank you, Senators.

LATHROP [02:16:25] Anyone else here to testify as a proponent of LB377? Anyone here--

KELLEE KUCERA-MORENO [02:16:31] Sorry.

LATHROP [02:16:31] Oh.

KELLEE KUCERA-MORENO [02:16:44] Hello again. I'm going to have to bring cookies or candy for all you guys for putting up with me. Kellee Kucera-Moreno, K-e-l-l-e-e K-u-c-e-r-a-M-o-r-e-n-o. Common sense, again, this is a common-- I am speaking for constituents. My guess is there's going to be some proponents about this and I want to

just say that there's a lot of constituents behind me on this bill. I-- I saw an example with Senator Pansing Brooks's bill that she brought before on the floor. I don't remember what day it was or what bill it was, the LGBT having rights, and I saw that declined by many senators. And again, that's a-- a common sense. We all have equal rights. And so I hope that-- I hope that when senators take a look at this, that they're not concerned about the judi--- about the executive branch or the legal branch, but that you represent a reminder of us constituents. Thank you.

LATHROP [02:17:59] Thank you. Anyone here-- anyone else here as a supporter or proponent? Anyone here in opposition to this particular bill? Good afternoon.

EMILY BOTTORF [02:18:27] Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Emily Bottorf, B-o-t-t-o-r-f, E-m-i-l-y, so I spell my first name. I'm an attorney at Baylor Evnen law firm. I'm here in opposition to LB377 on behalf of and as a board member of the Nebraska Defense Counsel Association, but I'm not a paid lobbyist. I just want to make a couple of comments in terms of this proposed legislation. I wanted to point out that there are currently a lot of safeguards in place to deal with these sorts of situations. First of all, this bill references settlements involving death claims. Under existing Nebraska law, a personal representative or special administrator cannot settle a death claim without court approval. There is a specific statutory framework contained within Chapter 30 of the Nebraska Statutes. And so to the extent there's some-- some concern that a settlement was unfair or inadequate given the timing in which it was reached and it involves a wrongful death of an individual, a judge will be reviewing that settlement before it can be finalized. Additionally, the claim of a minor child or a minor individually-- indi-- individual cannot be fully settled without a similar court approval process. So again, to the extent we have those concerns, a judge would be reviewing that settlement before it could be finalized. I also wanted to point out that we have codified in Nebraska the Unfair Insurance Claims Settlement Practices Act. This is contained in Chapter 44, Article 15, of the Nebraska Code and pursuant to those sections, there are also rules and regulations that have been promulgated. And that act deals with a whole host of unfair practices, but for the purposes of this bill, I just wanted to point out that it handles misrepresentations of facts or policy provisions, attempting to settle claims for less than an amount to which a reasonable person would believe he or she is entitled after referring to written or printed materials that came along with their insurance application, concealment of benefits or coverages or other provisions that may pertain to a claim. And so we do have a statutory framework that deals with unfair claims practices. Additionally, under Nebraska case law, the general rule is that a release of a claim for relief will not be upheld if it-- you know, if fraudulent, if it was obtained as a result of deceit, oppression, or if someone lacked capacity. A previous example that was given, I think there is serious question whether or not that person had capacity when they entered into that agreement. You know, I-- I think that there are ways under the law currently to deal with that. And I would submit that simply because an agreement or settlement agreement was reached within 30 days of an accident doesn't mean it was

done so under unfair circumstances. And on the flip side, I think this could hurt an individual who does want to settle within 30 days. I would suspect that if this bill became law and a settlement was reached within 30 days, an insurance carrier is not going to pay out any settlement proceeds until after 120 days because they're going to want to wait until the release is valid. And so I know we're-- we're still dealing with a short timeframe. But again, I think you're restricting people from-- from entering into an otherwise valid contract when it may make sense to do so. And so that leads me to my second point just in that this bill is contrary to our existing law which contains a very strong public policy favoring freedom to contract. And so I-- I just would submit that I think there's adequate safeguards in place to handle this, you know, should these situations arise in fraudulent or, you know, deceitful situations. But I'd be happy to answer any questions that anyone has.

LATHROP [02:22:13] I do not see any questions. Thanks for being here today.

EMILY BOTTORF [02:22:16] Thank you.

LATHROP [02:22:18] Anyone else here in opposition to LB377? Anyone in a neutral capacity? Seeing none, Senator DeBoer to close. There are no letters.

DeBOER [02:22:34] Thank you very much. I am happy to work with folks on this issue of the already represented by counsel and maybe looking at how we might have an exception there or something like that. I do think that the temporal issue here, the-- the timing of these settlements is important. I would anticipate that if this bill were passed, it wouldn't be that folks would make contracts for release within the first 30 days and then not do anything about it for the 120 days. I would anticipate that you just wouldn't make these release settlements until after the 30-day period was over. I will answer any questions that you have.

LATHROP [02:23:18] I do not see any questions. Thanks for introducing the bill. That will close our hearing on LB377 and bring us to Senator Morfeld and LB352. Good afternoon, Mr.-- Senator Morfeld.

MORFELD [02:23:44] Good afternoon, Senator Lathrop, members of the Judiciary Committee. For the record, my name is Adam Morfeld, that's A-d-a-m M-o-r-f, as in Frank, e-l-d, representing the "Fighting" 46th Legislative District, here today to introduce LB352. LB352 enhances transparency to protect against false jailhouse witness testimony, a leading contributor to wrongful convictions. You will hear a broad coalition testifying in support of this legislation, including victims, advocates, law enforcement, and the Innocence Project, and is based on a model bill endorsed by the American Legislative Exchange Council, an organization I don't often introduce bills for but this is a good one. It's not often that you see these different groups on the same side of an issue. But this legislation is an important measure that we all should agree that is needed to protect the

innocent, crime victims, taxpayers, and the public safety. Jailhouse witnesses provide testimony about hearing another inmate confess and expect leniency or other benefits for their cooperation. As you can imagine, the expectation of a reduced sentence or other benefits create a strong incentive to lie, which can cause a tragic ripple effect in a criminal justice system. Jailhouse witness testimony played a role in 159 wrongful convictions in the United States since 1989, harming the innocent person-- innocent persons and allowing actual perpetrators to escape justice. Taxpayers are left to cover the economic costs of these injustices, as we've seen in Gage County. Also, victims of the jailhouse witnesses' crimes are denied justice when their assailants get leniency to testify for the state. LB352 improves transparency and protections against false jailhouse witness testimony. First I want to clarify that there is a very narrow definition of the term "jailhouse witness" in this legislation. The bill only applies to incarcerated individuals who offer testimony about hearing an accused person confess to a crime while they're in jail or prison together and receives or reasonably expects to receive benefits for their cooperation. If the witness doesn't expect or receive a benefit, it doesn't apply. The jailhouse witness must actually testify. It does not apply to those who only provide information about a case. And it only applies if the jailhouse witness is going to testify about hearing someone confess to a crime while they're both incarcerated. So if an inmate is going to testify about seeing a crime in prison, this bill does not apply. LB352 does do four things. First, the bill requires each county attorney's office to maintain a central record of cases in which the jailhouse witness testifies and any benefits that they have received. This will provide prosecutors with better information before putting a potential jailhouse witness on the stand. Second, it requires that the state-- that the state-- it requires the state to promptly disclose specific jailhouse witness evidence to the defense. The U.S. Supreme Court already ruled that prosecutors must turn over discredit-- discrediting information on jailhouse witnesses, but there are a few specifics on the timing and kinds of information that must be disclosed. LB352 enforces this constitutional right by specifying that jailhouse witness evidence must be disclosed at least 30 days before trial and should include any benefits offered, their criminal history, previous jailhouse witness activities, and the substance of their statements. Third, the legislation would have judges hold pretrial hearings to screen out unreliable jailhouse witness statements. These pretrial screenings are required before an expert witness can testify and similarly, jailhouse witnesses are compensated for their testimony and need additional scrutiny. Finally, the victims of jailhouse witnesses' crimes would have to be notified if the state offers leniency in exchange for their cooperation. This bill does not prevent jailhouse witnesses from testifying. It simply ensures that prosecutors, judges, and jurors have the information that they need to accurately assess their statements. The entire criminal justice system works better with more transparency and accuracy and LB352 enhances both. I also have an amendment at the request of the County Attorneys Association that removes one section of the bill on jury instruction and adds in a provision that requires victim notification if leniency is offered to jailhouse witnesses. I'd be happy to answer any questions and urge your support of LB352.

LATHROP [02:28:31] Senator Morfeld, did you bring that amendment with you?

MORFELD [02:28:34] I believe I had it-- yep, right here, and I can get it to a page.

LATHROP [02:28:37] Yeah, why don't we hand a copy of that out--

MORFELD [02:28:39] Yeah, you bet.

LATHROP [02:28:39] --while we're going through this hearing.

MORFELD [02:28:40] Sorry, I should have done that at the beginning.

LATHROP [02:28:41] How many people are here to testify in favor of this bill? OK. Anybody have any questions for Senator Morfeld at this point? Seeing none, we'll go on to the proponents.

MORFELD [02:28:53] Thank you.

LATHROP [02:28:54] Thanks. Those that wish to testify, you can come up here in the front row and we'll take the first proponent. Good afternoon.

MICHELLE FELDMAN [02:29:20] Good afternoon, Chairman Lathrop and members of the committee. It's good to see a lot of familiar faces here. My name is Michelle Feldman, M, as in Mary, i-c-h-e-l-l-e, and my last name is Feldman. F, as in Frank, e-l-d-m-a-n. And I'm here on behalf of the Innocence Project and we work to exonerate wrongfully convicted people, and we work with our local partners, the Nebraska Innocence Project, on policies that prevent and address wrongful convictions. And false jailhouse witness testimony is one of the leading causes of wrongful convictions nationally. And even though at this point Nebraska hasn't had any exonerations involving false jailhouse witness testimony, they're used all the time and actually just today in the Omaha World-Herald, there was an article about a jailhouse witness who has been in prison for two years on charges of making terror threats, and he has claimed in those that in those two years, two different defendants in two different cases confessed to murder to him. And he said in the paper-- it says in the paper the jailhouse witness was asked, wouldn't you say it was an incredible coincidence to get not one but two confessions from different murder defendants in a very short period of time, to which he responded no. So this bill would make sure that witnesses like this are telling the truth. It's just all about getting it right at trial. Otherwise, we can have an innocent person being convicted, a guilty person could go free, and the victims and their families can be dragged through endless appeals. So jailhouse witnesses, they know how to game the system. And this bill is to ensure that prosecutors, judges, and juries have all the information that they need on this witness-- on these witnesses to make sure that their statements are truthful. So under the current law in Nebraska, the defense has to file a motion and show that jailhouse witness

evidence is material to their case. Instead of going through that process and litigating it, this bill would require that automatically, 30 days before trial, the state has to disclose specific evidence on the jailhouse witness so that the defense attorney can prepare for trial and cross-examine him and the truth can come out. It would also have county attorneys keep a central list in their offices of jailhouse witnesses who testify and the benefits they got, and that is so individual prosecutors have better information before they put a witness on the stand. There would also be pretrial hearings for judges to promote-- to prevent the most unreliable testimony from being heard at trial. And on the converse side, if the jailhouse witness testimony is admitted, the prosecutor can tell the jurors that the witness passed the judge's evaluation. And finally, there's a requirement that victims of the jailhouse witnesses' crimes be notified if they get leniency for their testimony. And this is based on laws that were passed in Texas, Illinois, Oklahoma, and Florida. And last year a very similar bill was approved unanimously by this committee, but unfortunately we ran out of time. And I think that this year's version addresses concerns that were brought up by the Attorney General and the county attorneys last year. We reached out to them to talk about this year's version but they didn't want to meet with us, so this is based on what they had stated in last year's hearing. So what we did first, the amendment removes the jury instruction which they strongly opposed. Second, we defined jailhouse witness very narrowly so it only applies to incarcerated witnesses who offer to testify about hearing another inmate confess and expect to get a benefit. The county attorneys last year said the bill would hurt their ability to prosecute prison assault cases, and this definition makes it crystal clear that it only applies to inmates who want to testify about hearing somebody confess, not about seeing a crime in prison. Third, we addressed safety concerns by allowing judges to restrict disclosures of information if safety of a jailhouse witness is at risk. And then finally, for the pretrial hearings, there is a clarification that jailhouse witnesses could testify remotely if the judge wants to hear from them directly. And really this measure ensures that everything goes as it should at trial so that we don't have to go through massive costs after trial, including wrongful conviction payouts, new trials, appeals, etcetera. And there's also a cost to victims when you don't get it right the first time at trial, and Christi Sheppard is here and she's going to talk about that. So this bill is really a tool protecting against false testimony, and that benefits the prosecution and the innocent. Thank you.

LATHROP [02:34:29] Thank you. I do not see any questions. Thank you.

CHRISTY SHEPPARD [02:34:33] Hello.

LATHROP [02:34:45] Good afternoon.

CHRISTY SHEPPARD [02:34:47] Good afternoon. Thank you. My name is Christi Sheppard. Do you want me to spell my name?

LATHROP [02:34:50] Please.

CHRISTY SHEPPARD [02:34:55] C-h-r-i-s-t-y S-h-e-p-p-a-r-d. In 1982, my cousin Debbie Carter was murdered and raped there in my hometown of Ada, Oklahoma. Debbie's mother and my mother are sisters and when I was eight years old, Debbie had moved up the street just up the block from where my mom and I lived. Our family has always been really close and she felt, you know, safe in that neighborhood, but her new independence only lasted 60 days. When most children begin to learn that monsters aren't real, I learned that they were. I've lived with the reality that dark shadows come in the night and when they leave, they take your safety and security with them. Nothing will ever be the same for my family. The case went cold for five years and when Ron Williamson was in jail on a bad check charge, another inmate claimed that she had heard him confess to the murder. Dennis Fritz, who was Ron's friend, was also implicated and arrested and while he was awaiting trial, Mr. Fritz also had an-- an-- another inmate who came forward and said that she heard him confess to Debbie's murder. So based on the jailhouse witness testimony and the flawed forensic science, Dennis Fritz was sentenced to life in prison and Ron Williamson was sentenced to death row. While I believe there is never closure when something like this happens to your family, we at least felt like we had moved to another stage of accomplishing justice. But 17 years after the convictions, DNA proved that Mr. Williamson and Mr. Fritz were innocent. The man that found matched the DNA, Glen Gore, was also the last man seen with her. In addition, Glen Gore testified against Ron and Dennis. He was also in jail and traded his testimony to being the only eyewitness to seeing him with her. My family has been revictimized by the failure of a system that vowed to seek justice in her name. The shock soon was replaced by anger when we found out two innocent men went to prison, and Ron Williamson came within five days of being executed. Glen Gore went on to commit a string of other violent crimes against women, including two additional-- or three additional rapes, finally was convicted of kidnapping and shooting at the police. This story may seem somewhat familiar. John Grisham wrote a book called *The Innocent Man* that's now been adapted into a Netflix documentary. I was part of the documentary, and I'm here to-- today because I don't want this to happen to another family. In my cousin's case, these jailhouse informants were rewarded with reduced sentences and favoritism. It's too easy for jailhouse witnesses to lie and send the wrong man to prison. Our justice system can do better for victims. Oklahoma has learned some lessons from this case and now requires specific jailhouse witness evidence to be disclosed at least ten days before trial. If LB352 was in place, I think what happened to my family and to Ron and Dennis's family could have been prevented. Nebraska has the opportunity to really protect its citizens and to deliver justice with this legislation. Thank you.

LATHROP [02:38:40] Very good. Thank you for your testimony, Ms. Sheppard.

CHRISTY SHEPPARD [02:38:44] Thank you.

LATHROP [02:38:44] Appreciate you coming here. Next proponent. Good afternoon.

REBECCA MURRAY [02:38:59] Good afternoon. Thank you. Rebecca Murray, M-u-r-r-a-y.

LATHROP [02:39:08] Go ahead.

REBECCA MURRAY [02:39:09] I'm an associate dean in the College of Arts and Sciences at Creighton University and an associate professor of criminal justice. I'm also a cofounder of the Nebraska Victim Assistance Academy. We give comprehensive training for victim advocates in the state of Nebraska and work with a number of individuals across the state. Our steering committee includes individuals from law enforcement, the Nebraska Commission on Law Enforcement, prosecutors' offices, academics, and advocacy groups. I'm offering my support for LB352 because I believe it's a step towards moving our criminal justice system towards transparency, but more specifically as a person who works with advocates and teaches victimology, because victims suffer in a number of ways when jailhouse witnesses expect leniency or other benefits from their testimony. First, the victim of the jailhouse witness's crimes may be denied full justice for their perpetrator when the state rewards cooperation with reduced charges or sentences. According to the National Center for Victims of Crime, trauma often occurs when victims feel as though they are left out of the justice system and they advocate that, when possible, victims should be kept well informed about criminal proceedings and feel that they have a voice in the process. The provision in LB352 that requires victim notification ensures that victims are made aware when their perpetrator in their case is granted leniency in exchange for testimony. Second, as you heard, the likelihood of wrongful conviction increases. A number of studies suggest, and a number of innocent cases confirm, that jailhouse testimony is often unreliable. This both victimizes the innocent person who was wrongly accused and has the potential to revictimize individuals whose cases might depend on that testimony. Whether that may be when the case falls apart because testimony is unreliable or when a wrongful conviction is discovered after the case is over, as you just heard, the pain of realizing that the wrong person suffered for a crime committed against you is often unbearable for victims. Finally, when unreliable testimony results in the wrong individual being convicted, the community at large is also at risk, as true perpetrators remain undetected to victimize others. LB352 offers protections that will help ensure our criminal justice system is working in the best interest of victims. The victim notification provision allows current victims transparency with their own cases, which they often do not receive. It will avoid putting victims through additional appeals by defendants who claim that the state unconstitutionally withheld evidence at their trial, and the legislation will lead to more reliable testimony which, in turn, creates more just verdicts-- verdicts. It's an important step in delivering true justice for crime victims, survivors, and hopefully the Legislature will pass it in this session.

LATHROP [02:42:07] Very good.

REBECCA MURRAY [02:42:15] Questions?

LATHROP [02:42:13] I see no questions. Thank you for your testimony.

REBECCA MURRAY [02:42:14] Thank you.

LATHROP [02:42:14] We appreciate hearing from you.

TIMOTHY NOERRLINGER [02:42:29] Here you go. Thank you.

LATHROP [02:42:30] Good afternoon.

TIMOTHY NOERRLINGER [02:42:29] Good afternoon. Timothy Noerrlinger, it's spelled N-o-e-r-r-l-i-n-g-e-r, on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB352. By way of introduction, in addition to being a current defense attorney, prior to switching sides, as they would say, in 2013, at the beginning my career, which seems a lot longer ago than I'd like to admit, in 2005, I served as a prosecutor in Jefferson County and then after that for a number of years in Otoe County. So I have spent a fair amount of time litigating criminal cases over the course of my career, both for the state and the defense. First I would point out, with regard to the disclosures that are delineated in this bill, they're already required with regard to jailhouse informants in Nebraska Revised Statute 29-1912, the discovery statute. So with regard to what the state has to disclose to defense counsel, that already exists in this case. Furthermore, as the attorneys on this panel-- I don't know like-- are likely aware, the exculpatory information, including impeachment information, that's required to be disclosed is pursuant to Maryland v. Brady. The good thing about this bill, though, is that it provides a timeline for when that disclosure needs to occur. With regard to Brady and its progeny, with impeachment purposes at times, it is unclear at best as to when the disclosure needs to be made. It just needs to be made sometime before trial, which can obviously be difficult for a practitioner that's trying to form a case to defend a client who is accused of a-- usually a very serious crime where you see these jailhouse informant cases come up. One of the things that I think is particularly helpful as a practitioner in LB352 is this idea of a database being created. As a criminal defense attorney, when you have a citizen accused of a crime, normally the way you learn about whether or not this person has prior experience or done this jailhouse informant before, is usually by way of a deposition where you're asking the jailhouse informant about have you ever done something like this before. They disclose it then, but then they don't necessarily remember exactly where they're at-- where it happened at or the years. So sometimes it creates a problem for we as defense counsel to track down that information or for the state as well. I think this is a good prophylactic step to ensure that due process is followed and the defense has access to all the information they need with regard to the database. The disclosure of 30 days prior to trial is also something we see in criminal cases frequently. When I saw that in this bill. I thought of what the defense is required to

do under our alibi statute at 29-1927 which says that when a defendant is going to rely upon an alibi defense, they have to provide notice of that to the state and they have to do it 30 days prior to trial, so again, not burdensome. It's merely a matter of trying to make the disclosures necessary so that each side has the information they need and a citizen accused of the crime has all the information to be afforded due process by a jury of their peers. And I'm out of time at this point.

LATHROP [02:45:48] OK. Senator DeBoer.

DeBOER [02:45:51] Thank you for testifying today. I just have a couple of procedural questions.

TIMOTHY NOERRLINGER [02:45:57] Sure.

DeBOER [02:45:57] I'm a little rusty because I graduated and had stopped practicing by the time you started so--

TIMOTHY NOERRLINGER [02:46:02] OK.

DeBOER [02:46:04] --you might have to help me through this a little bit. It looks like in Section 6, this is the pre-- the prehearing, the hearing before--

TIMOTHY NOERRLINGER [02:46:11] Yeah. You're talking about the hearing that's required prior to trial that the state has to prove by a preponderance the reliability of the jailhouse informant, I would imagine?

DeBOER [02:46:20] Yes, that's exactly what I'm talking about, and I'm wondering at the way it's set up. It seems to me that that's an automatic hearing. It's not subsequent to a motion in limine-- limine or anything like that. Why-- why is it set up that way?

TIMOTHY NOERRLINGER [02:46:35] Well, it-- when I thought of it, and one of the things Senator Morfeld hit on that I-- I thought of, was it's very similar to a Daubert hearing. I-- I get-- and you're going to tell me that Daubert is-- you have to file the motion, and I get that. The other ones that I thought of that are much more like this are if you look at the rules of evidence with regard to 27-404, which is prior bad act evidence, or 27-414, which is prior sexual assault-related evidence that's specific to those type of crimes, there-- the provisions within those codes require that there be a disclosure that the state is going to rely on that evidence and a pretrial hearing prior to trial to make a determination as is delineated in those-- those two about it. So I-- I would say that at times we already have hearings like that, both under 404 and 414 under the rules of evidence in our-- in our practice.

DeBOER [02:47:33] Does that exclude entire witnesses? The reason I'm asking is because it seems like in Daubert it's-- under a Daubert hearing, you're looking at whether an entire field is perhaps--

TIMOTHY NOERRLINGER [02:47:44] Right.

DeBOER [02:47:45] --an appropriate expertise field, something like that. This feels to me a little more like something that the trier of fact ought to be weighing and thinking about--

TIMOTHY NOERRLINGER [02:47:57] Yeah, and I--

DeBOER [02:47:58] --something that could be handled with a-- you know, with a jury instruction, although I see that you've taken that out with the amendment, so--

TIMOTHY NOERRLINGER [02:48:06] Sure. And there is a pattern jury instruction that deals specifically with credibility of witnesses that's given in every criminal trial I've ever handled. It's a standard part of NJI, so-- but to answer your point, with regard to 404 and 414, under those rules of evidence, the court really does serve as a gatekeeper. The court has to, under 404, determine if there is a prior bad act that's allowed in for a limited purpose. And then the jury will be instructed as to that limiting in purpose before the-- before the evidence would be adduced at trial. And if the court doesn't make a finding that it's been proven, and 404 requires-- there's a burden of proof contained in that, just like there is in this-- in this one. And 414 has three sets of requirements the court has to determine whether or not those come in. And if the make-- court makes a determination under either one of those rules of evidence that the state has not met its burden with regard to them, then it is not admitted and the fact finder does not hear the prior bad act or prior sexual assault evidence, so--

DeBOER [02:49:09] So in those cases it-- it would be--

TIMOTHY NOERRLINGER [02:49:14] In those cases the state has to make a disclosure--

DeBOER [02:49:17] To--

TIMOTHY NOERRLINGER [02:49:17] --that they're going to present that type of evidence.

DeBOER [02:49:19] And then the hearing is about whether to exclude it.

TIMOTHY NOERRLINGER [02:49:23] The-- whether it's allowed in.

DeBOER [02:49:24] Allowed in..

TIMOTHY NOERRLINGER [02:49:24] Correct.

DeBOER [02:49:25] OK. All right. Thank you.

TIMOTHY NOERRLINGER [02:49:28] No problem.

LATHROP [02:49:30] I don't see any other questions. Thank you--

TIMOTHY NOERRLINGER [02:49:32] Thank you.

LATHROP [02:49:33] --for your testimony.

MARK SUNDERMEIER [02:49:33] Good aft--

LATHROP [02:49:34] Oh, good afternoon. I'm sorry.

MARK SUNDERMEIER [02:49:49] I was just waiting. Good afternoon. My name is Mark Sundermeier. The spelling is M-a-r-k S-u-n-d-e-r-m-e-i-e-r. And I'm speaking for myself as a private citizen and as a board member of the Nebraska Innocence Project. I am going to mention that I've been a police officer for 35 years. Twenty-five years of those was with the Omaha Police Department and I retired as a deputy chief. Based on that, I can tell you that no police officer ever wants to see an innocent person convicted of a crime. It's a double, triple, quadruple tragedy in that, you know, an innocent person is being punished for something they didn't do and-- and the guilty person is escaping justice. In my time in law enforcement, there has been an increasing amount of data that we've collected. You know, criminal justice has become more and more recognized as important as a social science, and the data shows that jailhouse-- the use of jailhouse informants has on occasion led to false convictions or improper convictions, and this is a fact that requires a response. Even if you consider the numbers to be fairly minimal, it-- it doesn't matter, 1 or 153 or 153,000. And-- and I think we all have the same goal of protecting the innocent and convicting-- or seeing that the truly guilty are convicted. We know the jailhouse-- jailhouse informant testimony, or at least the odds are, is that it can also be truthful, so this bill does not prohibit the use of jailhouse testimony. What it does is place conditions and codify best practices. It-- it's good in policing to have the rules laid out in advance. I-- I know sometimes we figure out what the rules are on appeal and then we have to create procedures, like in Miranda, which at the time was decried as something that would cripple law enforcement. But as it turns out, in the United States we're pretty good at putting people in jail, Miranda or no Miranda. So police and law enforcement will figure out a way to deal with any burdens that are placed on this, and there may be some burdens placed on them as a result of this, but it does improve fairness, accountability, and transparency. And I personally believe that all sides or all parties involved in the criminal justice system will benefit from the codification of best practices.

LATHROP [02:52:26] Very good. I don't see any questions for you today.

MARK SUNDERMEIER [02:52:29] Thank you.

LATHROP [02:52:29] Appreciate your testimony and thanks for being here.

MARK SUNDERMEIER [02:52:30] Thank you.

LATHROP [02:52:32] Anyone else here to testify in favor of LB352? Anyone here in opposition? Welcome.

JOHN ALAGABAN [02:52:59] Good afternoon. Chairperson Lathrop, to all the distinguished senators and staff, ladies and gentlemen, I am deputy Douglas County Attorney John Alagaban, it's J-o-h-n A-l-a-g-a-b-a-n, and I'm here representing both the Douglas County Attorney's Office as well as the Nebraska County Attorneys Association. And I do thank you for the opportunity to oppose, and I am speaking for and in total opposition of LB352 with respect. The first area that I-- I do wish to cover is that this is an area that is not-- certainly not one that is seen in volume, especially in speaking very specifically over 19 years with the Douglas County Attorney's Office. However, it's important, certainly. The discovery statutes have and are in place. I would note that both Nebraska Revised Statutes 29-1602, which involves the endorsement of witnesses at hearing, so there is a step that requires hearing and that is common practice, as well as the current status of Nebraska Revised Statute 29-1912 in its current form-- once again, I think that was mentioned by one of the proponents-- covers witnesses and motions to endorse, as well as the requirements for discovery. So you have it at the discovery level. As you move forward, as a case proceeds along, there are also safeguards and assurances at the pretrial and actual trial level in what we deal with. You have both motions that would be pretrial motions called motions in limine, and Nebraska Revised Statutes 27-510 covers the identification and the competing interests between whether an informant must be disclosed versus if there's a government interest that's at play. We also, and was-- this was described earlier as well, we are and always under the Brady requirements of having to give up any information that is just, at the very least, potentially exculpatory. Then, finally, we also are-- at the trial level have safeguards and assurances in place because Nebraska pattern jury instructions, as described, in every single case that comes before a jury in the state of Nebraska, instructions must be provided by the court. Here you have both accomplice testimony which must be measured, that's NJI 5.6, credibility of witnesses, NJI 5.2, inconsistent statements made by witnesses at NJI 5.3, and prior convictions of witnesses, NJI 5.11. Certainly what we see when we deal with all of these positions when-- from the discovery all the way through the trial level is that this is a factual issue. They're trying to make what is very specifically a credibility determination when in all levels, from discovery, pretrial, and trial, that's the purview of the trier of fact and the jury involved. And so that's something that is very foremost and when we talk about due process, it is the trier of fact and a jury of our peers that must make those determinations when we bring a case. Finally, in

speaking in opposition as well, we also have what was described as an amendment. This amendment is not representative of the County Attorneys Association completely. It does not fully address our concerns, as mentioned. The statutory sections that involve victim notification already exist, 81-1847, et seq. And so this is-- is really not-- not a representative of what our concerns are. With that, I'd add-- answer any questions that the committee deems and feels appropriate for me.

LATHROP [02:56:53] Senator Chambers.

CHAMBERS [02:56:55] You said you're against it, but why? How does this hurt what the state is trying to do, which is to convict somebody, not to determine true guilt or innocence or the truth?

JOHN ALAGABAN [02:57:06] One of the concerns that we have, Senator Chambers, is obviously that the roles that we all play are important and I-- in reading through this, in talking about a requirement for a-- what amounts to a credibility determination by the judge who is the trier of law, who is the per-- the-- the ability to have law described to jurors is separate from what the trier of fact must determine, and that's of grave concern to us because that shouldn't be taken out of jurors' hands so that when we speak of due process and we speak of an appropriate jury system, that is important. In addition, this talks about items that are already in place, and so to perhaps overlegislate in a situation when there are, as I've described, one, two-- six other areas that covered this same exact information could create additional issues that are unnecessary considering we have our system in place and we've been using it as such. Certainly, the-- the idea that someone is-- is mistried or there is an issue with what happens upon a conviction, that is something that we all should take seriously, and especially someone in law enforcement or someone as a prosecutor. But that in and of itself doesn't mean that there should be such blanket changes, especially to the-- to the roles played versus trier of fact versus the role of a judge.

CHAMBERS [02:58:41] Well, I saw where a few days ago Donald Kleine, and he and I talk, dropped the charges against a police officer who was shown beating a handcuffed man and said he was not going to try it because of something-- I'm trying to think the term he used-- an expert told him. Well, now, if an expert, a layperson who is paid by the police, tells the county attorney something and leads him not to file a charge, then the whole case doesn't go before the judge at all. We're talking in this about a case that is going to become-- going to be brought before the judge. And what we don't want to have happen is a corruption of the sy-- of the system by county attorneys, like what Don Kleine did in that particular case. That weakens the public's confidence. Now it happened to have been a black officer. I knew his relative. It was either his uncle or his grandfather, McClarty. When the public can see what was shown in that video, the cop's own camera, and there is not even a trial, then it becomes clear to the public that the county attorney works too close to the police and is going to protect them. If there was a video of me

doing to a private citizen what this officer did and the citizen was not handcuffed, Don would have prosecuted me. I'm telling you this because I don't know you from having had any contact with you. But from what I observe from Donald Kleine, I think every protection policywise that the Legislature can put in place to ensure the integrity of the system ought to be done. I have never seen a prosecutor come before the Legislature, and I've been in the Legislature probably more years than you've been in the world, arguing for a change in the law so that there can be greater protection for the accused in order that justice may be done, don't rely on a particular prosecutor who may seem to be fair, but build it into the system so that regardless of who the prosecutor is, the system itself, as far as what is on the books, allows a guarantee of a fair trial. And it's up to the defense attorney to make sure that the rules of the game as laid down by the Legislature are followed. Here's what I'm getting to. When people come here representing the County Attorneys Association, the only thing the county attorneys are interested in are convictions. This is why they will overcharge people, took-- wrest from them a confession, a plea bargain. If I had not gotten a bill through the Legislature some years ago that allowed cases to make use of biological evidence that may contain DNA that could be detected now which could not be detected at the time the crime was alleged to have been committed, six people in Beatrice would remain in jail. Not only were they completely innocent, but pressure from the prosecutor and others working for the prosecutor persuaded five people to make a false confession, then testify falsely against the only man who maintained his innocence. After allowing these people to not be facing the death penalty because they made these false confessions, the prosecutor tried to get the death penalty for the one man who did not falsely confess and maintained his innocence. And the judge in effect said, you let all these others off, you're not going to get a death penalty on this man. And had that man in fact maintained his innocence, there are remedies that the other five were able to take advantage of because he maintained his innocence. Had he falsely confessed, too, then there were benefits the state allowed those improperly convicted, there were benefits available to those people which would not have been. I'm sure you read where the U.S. Supreme Court told Beatrice, told that county, forget about this case, now you owe those people that money. There is a lawyer who I think behaved improperly and unprofessionally and ran up a bill of over one million dollars persuading that county to continue appealing, appealing, appealing. When they went before the Eighth Circuit, one of the judges said, we're very familiar with this case. In other words, it's over. The Supreme Court told them that, the same thing, the other day, all of this because of what prosecutors did. When finally the DNA established that there was no evidence of any kind against the six people but there was DNA implicating somebody else who happened to have been in prison in Oklahoma and had died, then Attorney General Jon Bruning invited me to the Pardon Board hearing and it was pointed out at that hearing that had I not possessed the foresight to bring this DNA bill, and there was none like it in the country and it was opposed by prosecutors, those people would not be getting that pardon that day, a complete and total pardon. So when you come here with your testimony, you were sent here by Don Kleine, the county attorneys selected you, and you have to say what they tell you to say, but we don't have

to accept it. We are the policymakers, and I have yet to hear you say why, if we put this bill in place, it's going to hinder any legitimate action by the county attorney. We have somebody from the Attorney General's Office who has been ridiculed by judges, who was called down by a judge in the Supreme Court for inappropriate conduct, comic-book action, and those people come here and testify to us and try to get us to take their word and be as foolish as they have shown themselves to be. So now that I've told you that, I'm going to ask you again, what in this bill would hinder what the job-- first of all, what do you think the county attorney's job is, based on his profession-- his or her professional ethics?

JOHN ALAGABAN [03:06:48] Sir, it always and has been to seek justice and promote the law.

CHAMBERS [03:06:51] To seek justice, right. And because the prosecutor represents the sovereign, there is a higher duty placed on the prosecutor than an ordinary attorney. What in this bill would hinder that prosecutor from carrying out his or her legitimate duties under the law?

JOHN ALAGABAN [03:07:14] Sir, I'd refer back, Senator Chambers, to what I've described earlier. I also do acknowledge that the timing, both the 30 days' description as well as the running the list that was described, could also and po-- potentially would be a hindrance because it's statewide, and the information available for each individual case, all of that's already available. If a witness comes forward to testify and it's endorsed as a witness, letters of what the plea agreement are, letters of what-- of whether a victim was-- was contacted or not are part of the statutory requirement. They're already in place.

CHAMBERS [03:07:54] Then if they're already there, how can this create a problem? If it's-- if he's saying the same thing, how does it create a problem? You already know how to address those issues.

JOHN ALAGABAN [03:08:04] Well, what it does is we have them in place, and I don't believe that a situation where adding a 30-day requirement or, most specifically, putting the judge in a position of determining credibility before the trier of fact, would be appropriate for that matter. And that-- that's a very key component.

CHAMBERS [03:08:21] Would you agree that it's up to the Legislature to establish policy?

JOHN ALAGABAN [03:08:26] I believe that's the case, with valued input from constituents and organizations.

CHAMBERS [03:08:31] We get that all the time and we always know what the prosecutors are going to say. I already know. I probably could have written the script, not that they

should do it, but I know what they've got to say. Now if we decide that there must be more guarantees that we don't when I got a bill like that through, it was called jail-- I called it the jailhouse snitch law. And when I was out the Legislature, a guy named Lautenbaugh got in with the county attorneys and did something to gut it. Well, I'm back now, and I have not been persuaded by what you said that this law is going to interfere with the legitimate work of the prosecutors. But it would protect people from bought and influenced testimony. Are you aware of a case where the county attorney had either given money to people who lived in Nebraska so they could go to Kansas or gave money to people to come from Kansas and testify in a case and when the jurors found out, they said they would have had a different view of that testimony had they known that? Does that ring a bell with you of a case that occurred in Douglas County?

JOHN ALAGABAN [03:09:47] It does not, sir. And I-- just so I understand, talking about something outside of travel expenses and items like that, I'm not familiar with that one.

CHAMBERS [03:09:56] OK. I won't argue that, but I'm not convinced by what you said. And, Mr. Chairman, that's all that I have.

LATHROP [03:10:01] OK.

JOHN ALAGABAN [03:10:02] Thank you.

LATHROP [03:10:03] Senator DeBoer.

DeBOER [03:10:04] Thank you very much for your testimony. I have to say that when I first read this bill, I, too, was thinking about this shifting of the duty of fact finding away from the jury or the fact finder, and particularly in a compulsory pretrial hearing. And then I heard some testimony earlier about other cases where we do have these kinds of situations where we have pretrial hearings determining-- making determinants of facts. Could you speak to those other kinds of pretrial hearings and talk to me a little more about whether or not this is analogous?

JOHN ALAGABAN [03:10:51] Sure. And-- and in terms of the rules of evidence, what we're talking about is, as described, is 403, 404, and 414. The difference, and it's a major distinction, is the-- when you're dealing with other prior bad acts, other prior offenses, there is a litany of-- there's a list of what is to be considered. Does it have something to do with, in this case, MO, modus operandi, with intentionality? Does it have something to do with absence of mistake? So there is a legal consideration and that's where that is a role-- a legal judgment being made about how that evidence shall be heard and then when and if it should be available. Now, separate from that is what I think this bill unfortunately tries to encompass, is a blanket statement about whether there is a preponderance of credibility is-- to pare it down slightly. But those are two different distinctions. There is a legal-- a list of legal considerations that a judge must find, and

there is a series of case law that is appropriate to 404, 403, and 414, and that legal determination is much different than credibility determinations.

DeBOER [03:12:08] Yeah, I was-- I was a little concerned about that as well. However. I also, like Senator Chambers, would like to protect folks from, you know, bad testimony coming in against them because of someone who is in the jailhouse and lied to-- you know, all these sorts of things. So what is the-- what's-- I guess I will ask Senator Chambers' question of you again, perhaps in a different way. What is the real harm that is done if we shift the fact-finding burden, the credibility burden, away in just this one class of testifiers, in this one class of witness? What harm can be done?

JOHN ALAGABAN [03:13:01] You're changing what is at the basis of what the trier of fact-- when they're charged, when the jury-- jurors swear, they step up, they swear an oath before the judge and all the parties that are involved that they shall be the triers of fact. That-- that goes right to the heart of what's going on in the judicial process when it comes to a jury trial in a criminal case. That-- that-- that's a harm. I think to couch this as just-- as saying that, well, it-- it's OK because of the-- the-- it-- it seems that it's just an add-on. Well, it's changing an-- an actual fundamental role, but it's also already covered with what's already in place, and it's happening this week. In Douglas County, there are cases going on that involve these type-- this situation. It doesn't happen that often, but so there are-- the safeguards are in place. So when you put both of those together, I do believe that that-- that role shifting is-- is a fundamental issue with what's going on and making the trier of fact truly a jury of peers who shall make an impartial, independent decision.

DeBOER [03:14:08] Thank you very much for your testimony. I'll have to wrestle with it still.

JOHN ALAGABAN [03:14:11] Thank you.

PANSING BROOKS [03:14:11] Senator Chambers.

LATHROP [03:14:13] Senator Chambers.

CHAMBERS [03:14:15] Thank you. Mr. Chairman, this is an important issue, an important case. Nebraska is not a common law state. Nebraska may make reference to what the common law said, but nothing in this state is a crime unless a statute makes it a crime. Are you aware of that?

JOHN ALAGABAN [03:14:33] Yes.

CHAMBERS [03:14:34] And any statute that is-- that makes a crime and it's in derogation of the common law, that statute is strictly construed for the benefit of the accused. Are you aware of that?

JOHN ALAGABAN [03:14:48] That's always true.

CHAMBERS [03:14:49] And that is because it's acknowledging that the whole panoply of criminal law is a matter of legislation in this state, so we as a Legislature can create any process that we choose, any rules of evidence that we choose. Are you aware of that?

JOHN ALAGABAN [03:15:10] Yes, sir.

CHAMBERS [03:15:11] So what you're really trying to do is persuade us to accept the view of the county attorneys in establishing this change in the policy. Am I correctly stating what your role is here today?

JOHN ALAGABAN [03:15:25] Yes, sir, that-- that is part of my role here, yes.

CHAMBERS [03:15:28] All right. And if we're not convinced what we're doing, if we do it, or what we're asked to do is not going to be ruled unconstitutional by any court because we under the Nebraska Constitution have the power to legislate and we are the only branch given that power by the constitution, so the law is what we say that it is. But if we enact a criminal statute and it is vague or it is uncertain or it can be viewed this way or that way, the courts can strike that down. But they cannot tell us what the burden of proof would be. Do you-- are you aware that we could make the burden of proof in a criminal case even higher than beyond a reasonable doubt and say beyond any doubt? Are you aware that we could enact a law like that if we chose to?

JOHN ALAGABAN [03:16:28] You-- yes, you could.

CHAMBERS [03:16:28] And I'm not saying we would, but I want the record to be clear that we have this power. And if you could persuade me, which you haven't done, then maybe you'd bring me your way. But if what you say this proposal is aiming at is already available, then what we will agree on is that there is an issue here that should be addressed by the law. The difference is that you think it has been addressed adequately and we may think it has not been. But the issue is the same for both of us, the credibility of the testimony, what should be considered probative evidence and what should be considered admissible evidence. And we are considering those issues here today, and you're representing a group which at least one member of the Legislature has no confidence in, especially in view of that Supreme Court decision I mentioned that came down just the other day that these people had been badgered, hounded. And one woman was even so mentally ill that for a long time after the innocence was established, she still insisted that she had participated in the murder, she had witnessed it, and what she said

was true. That's what the county attorney had done in destroying several people. I don't-- I don't see what the problem is, and I think if you had not been ordered to come here by Donald Kleine, you wouldn't be here today. That's my opinion. But that's all that I will ask you. The main thing I wanted to be sure of is that you understand that the Legislature is the one who forms the policy, and our legislation declares what the law is, what items will be left to the judge, which ones will go to the jury, and such things as that. Are you aware that the Legislature could strike down entirely a rule that the Supreme Court establishes as a rule of court? Are you aware of that?

JOHN ALAGABAN [03:18:48] In that very strict construct, but without having us talk about precedents and how we-- how we follow the law, I understand what you're saying.

CHAMBERS [03:18:55] OK. That's all I wanted to be sure of, that we're on the same page, at least, even if we disagree as to what the Legislature ought to do in that regard. And that is all that I have. And by the way, you're a sharp young man. You've acquitted yourself very well.

JOHN ALAGABAN [03:19:08] Thank you.

CHAMBERS [03:19:09] You ought to be the county attorney and Donald Kleine ought to work for you and we'd have more justice--

JOHN ALAGABAN [03:19:13] Thank you. Thank you.

CHAMBERS [03:19:14] --at least more rationality than what is being done. You don't have to comment. I want you to keep your job, so don't comment.

JOHN ALAGABAN [03:19:20] Can I just say, I appreciate the "young" part especially. Thank you. [LAUGHTER]

LATHROP [03:19:23] I hope we didn't hear that you're running against Don Kleine today.

JOHN ALAGABAN [03:19:28] I hope-- we are on-- we are on tape, so--

LATHROP [03:19:30] This is not-- this is not a kickoff or anything. [LAUGHTER] OK. I think that does it. Thank you for your testimony--

JOHN ALAGABAN [03:19:36] Thank you.

LATHROP [03:19:36] --and your time answering questions today.

JOHN ALAGABAN [03:19:38] Thank you, Senators.

LATHROP [03:19:41] Any other opposition testimony? Good afternoon.

COREY O'BRIEN [03:19:53] Good afternoon. Chairman Lathrop, members of the Judiciary Committee, my name is Corey O'Brien. That's C-o-r-e-y O-'-B-r-i-e-n. I'm the criminal prosecution section chief for the Nebraska Attorney General's Office. I appear before you today on behalf of the Attorney General's Office in opposition to LB352. Before taking any action on LB352, I would ask this committee to consider that this very issue involving jailhouse witnesses was almost entirely revamped, in much the same way as being asked in LB352, in 2009 under LB63, and included considerable input from Chairman Lathrop and the Criminal Defense Attorneys Association. It's unclear from the proponents' testimony as to what has happened in Nebraska since 2009 that necessitates the changes sought in LB352. There has not been cited any case since 2009 in Nebraska where the use of jailhouse informer testimony has resulted in an injustice or wrongful conviction. The law-- the laws relating to jailhouse witnesses passed in LB63, along with Nebraska's existing rules of evidence and jury instructions regarding the credibility of witnesses, are working as intended. One case, an example where it worked as intended, was the case of Roy Ellis who was accused of and convicted of the 2005 murder of 12-year-old Amber Harris. Second, LB352 presumes that jurors and defense attorneys are incapable of recognizing and handling the credibility of the jailhouse witnesses on their own. In my 20 years as a litigator, in every case that I've ever participated or seen where jailhouse witness testimony has been presented, and it is an infrequent occurrence, both the defense attorney and jurors are fully cognizant of the potential reliability issues that hover over such witnesses and fully factor in these issues as ordered by law and the lawyers who argue those cases when determining the believability of the information conveyed and ultimately the verdict they arrive at. Finally, I would counter any suggestion that Nebraska law enforcement and prosecutors are quick and careless in their use of information obtained from jailhouse witnesses or do not undertake due diligence when utilizing such witnesses. Currently the-- the Attorney General's Office is prosecuting three extremely high-profile murder cases where we were approached by defense attorneys who represent jailhouse witnesses who wish to-- who wish to supply information that might bolster these ongoing prosecutions. In each of these cases, law enforcement and the prosecutors working on them thoroughly vetted the information conveyed and determined that either the information was less than credible or, if offered at trial, would distract from the other evidence and could potentially compromise the jury's discernment about the other evidence introduced and their ultimate verdict. As a result, the decision was made not to use such testimony, which, in my experience, is a practice routinely exercised not just with the prosecutors in the Attorney General's Office but each and every prosecutor's office in Nebraska. In summary, we would ask this committee to not advance LB352 to General File and I'd be happy to answer any questions I'm capable of answering at this time.

LATHROP [03:23:07] Senator Chambers.

CHAMBERS [03:23:08] Mr. O'Brien, did-- did you, in the comments that I made, recognize yourself as the one I was referring to who had been admonished by a judge of the Supreme Court during a proceeding?

COREY O'BRIEN [03:23:18] Certainly I did.

CHAMBERS [03:23:20] And the reference to comic-book activity, without me going into all the details, unless you want me to, that that involved a case in which you were involved?

COREY O'BRIEN [03:23:30] Certainly I did.

CHAMBERS [03:23:32] A Lancaster County judge, you're aware of that? You're not aware of that case?

COREY O'BRIEN [03:23:38] It wasn't Lancaster County's, no.

CHAMBERS [03:23:38] It wasn't you?

COREY O'BRIEN [03:23:39] No, it wasn't Lancaster County.

CHAMBERS [03:23:41] I didn't hear you.

COREY O'BRIEN [03:23:42] It was not Lancaster County.

CHAMBERS [03:23:43] Well, where was it?

COREY O'BRIEN [03:23:45] It was in Richardson County.

CHAMBERS [03:23:47] So you do know what I'm talking about, don't you?

COREY O'BRIEN [03:23:49] I certainly do.

CHAMBERS [03:23:50] OK. Now--

COREY O'BRIEN [03:23:51] And, Senator, if I might?

CHAMBERS [03:23:52] Sure.

COREY O'BRIEN [03:23:54] I've been practicing law for 20 years. I am highly embarrassed about two sentences that I uttered in a closing argument that was 15 minutes long where I was found to be-- committed prosecutorial misconduct, and I admitted my mistake when

it was recognized by the Supreme Court, and I wish I could have taken it back. To err is human, I suppose.

CHAMBERS [03:24:17] Are you the only person in the county-- in the Attorney General's Office who handles criminal-- criminal matters?

COREY O'BRIEN [03:24:24] No, sir.

CHAMBERS [03:24:24] You are?

COREY O'BRIEN [03:24:25] No, sir, I'm not the only person.

CHAMBERS [03:24:28] Somebody else could have come to testify here today and give the testimony you're giving. Isn't that true?

COREY O'BRIEN [03:24:33] They certainly could have.

CHAMBERS [03:24:34] And the Attorney General could probably anticipate that I would make some comments with reference to you of the kind that I made. Don't you think he's smart enough to anticipate that, or knowledgeable enough to anticipate it?

COREY O'BRIEN [03:24:47] I think he anticipated it and I anticipated it, sir, and--

CHAMBERS [03:24:50] Do you think he sent you here as a form of punishment so that you'll be more circumspect in the future?

COREY O'BRIEN [03:24:57] He may have, but I also recognize my mistakes and my faults and I'm willing to live up to them, and I'm not embarrassed to show up before this committee acknowledging those things.

CHAMBERS [03:25:10] Do you-- do you think he respects you?

COREY O'BRIEN [03:25:13] I think he indicated as such in-- when all that occurred, so, yes.

CHAMBERS [03:25:17] Would you like to speculate why he would send you into he-- this place, knowing my attitude toward his office, toward things he has done, and toward the kind of conduct you engaged in that was reprimanded and described in the way that I said? Why would he send you here knowing that's what you would encounter if he has respect for you and somebody else could have come and given the testimony that you've given so far? If you don't want to speculate, you know you don't have to.

COREY O'BRIEN [03:25:52] Well--

CHAMBERS [03:25:52] But for my sake, why would he send you here for this purpose?

COREY O'BRIEN [03:25:57] I don't want to speculate, sir.

CHAMBERS [03:26:02] I think you ought to talk to him and find out why he would do such a thing. And, Mr. O'Brien, I am obliged to engage with you in this fashion. And you're not the only one I've done it with. The Supreme Court Chief Justice got a rougher ride than what you're getting right now. It's known in this state that I don't have a lot of regard for prosecutors in general, not every single one, but when they step out of line, I'm the one who will file an ethics complaint. And I will have my fa-- my facts in line. You won't believe this. I regretted seeing you walk through that door. It is embarrassing what you went through. And if I had anything to say to your boss, I'd tell him, Pete, don't send him over there, you know what I'm going to be obliged to do, and if you have regard for this man and the work that he's done all of these years, why will you put him through that? You may not believe this now, and then I'm through with you. Now the young man, I didn't have any problem dealing with him. I regret what I'm doing with you, and you might wonder why I do it. But you expected it. Your boss expected it. I'm in a situation where I have no choice. Next time, if something like this happens, I hope you will spare yourself and me. And if he tells you-- oh, no, I won't be in the Legislature. I was going to say I'd give you a job in my office. But that's all that I have.

COREY O'BRIEN [03:27:54] Senator, I-- I just hope that it showed integrity on my part because I reported myself and I didn't have to wait for anybody else to report on my behalf my violation so--

CHAMBERS [03:28:04] And I never cut you off when you want to explain yourself.

COREY O'BRIEN [03:28:07] And I appreciate that, Senator

CHAMBERS [03:28:08] And I'm glad you put that into the record.

COREY O'BRIEN [03:28:10] Thank you.

LATHROP [03:28:12] Mr. O'Brien, I do have a question for you.

COREY O'BRIEN [03:28:14] Sure.

LATHROP [03:28:14] So we've heard the testifiers talk about 27-510, 29-1602--

COREY O'BRIEN [03:28:17] Um-hum.

LATHROP [03:28:17] --29-1912--

COREY O'BRIEN [03:28:24] 1912.

LATHROP [03:28:24] --the Brady rule, a-- number of different statutory provisions or case law that require disclosure of certain exculpatory information to defense counsel.

COREY O'BRIEN [03:28:37] Correct.

LATHROP [03:28:37] What is it about this bill that you think is a new requirement? Are we just bringing everything that's already required into one place? Are we doing something different with the bill that you find objectionable?

COREY O'BRIEN [03:28:48] I think--

LATHROP [03:28:48] If you would, just tell me what the-- what the-- the new requirements are and why they would be objectionable.

COREY O'BRIEN [03:28:55] The new requirements would be-- and-- and until today I wasn't aware that the jury instruction was something that might disappear.

LATHROP [03:29:04] Right.

COREY O'BRIEN [03:29:05] That was obviously something that was highly concerning to us simply for the fact that if you were a defense attorney and I was-- you are required by law to presume that somebody that's a law enforcement officer is telling the truth because he's a law enforcement officer just based on their status, you would have a problem with that. And I think that was our biggest objection is to simply presume that somebody is a liar because they happen to be in a jail cell at the time they--

LATHROP [03:29:40] Now are you talking about the jury instruction or you don't--

COREY O'BRIEN [03:29:41] I was talking about the jury instruction.

LATHROP [03:29:42] OK.

COREY O'BRIEN [03:29:43] So that was--

LATHROP [03:29:43] And that is out.

COREY O'BRIEN [03:29:44] --that was an objection, and I just wanted that on the record in case it goes forward that we--

LATHROP [03:29:47] Sure. OK.

COREY O'BRIEN [03:29:47] --primarily object to that. And-- and the second would be, as Mr. Alagaban talked about, this pretrial determination of credibility.

LATHROP [03:29:57] But doesn't-- doesn't the court do gatekeeping functions all the time, Daubert being a good example--

COREY O'BRIEN [03:30:04] They do.

LATHROP [03:30:05] --motion in limine?

COREY O'BRIEN [03:30:06] They do. But again, those are something where you're considering the legal admissibility of something as opposed to making a factual determination about somebody's believability. And the thing that is really troubling as I read through this bill is, how do I as the prosecutor establish that this is believable, especially in the limited context that's going to take place in an evidentiary hearing on this? And it says you're to consider the factors that are laid out in Section 5. Well, it says that in Section 5 those criteria are, does the guy have a known criminal history? If he's got a known criminal history, he wouldn't be in jail to begin with, so is he automatically out in terms of him being believable or credible because he does have a criminal history? Has he testified before in a case where he acquired information while in jail? Or basically it says, has he testified as a witness before? If they've testified as a witness before, does the judge say, well, that's one of the factors, he must be lying, and it's not credible? So I don't know from what's written in the bill how a judge would ever be able to determine and how I as the prosecutor would ever be able to prove that they are in fact reliable.

LATHROP [03:31:31] That-- that would be your objection [INAUDIBLE]

COREY O'BRIEN [03:31:36] Those-- those two issues, the jury instruction and the pretrial hearing. In terms of the information that's provided, absolutely, we think that we should have to provide that information. And as Mr. Alagaban pointed out, we already have the responsibility to let victims know of any deals, so--

LATHROP [03:31:52] Is there-- sure. Is there anything else to that list that you think could be amended into it as a consideration that would make it something you could live with?

COREY O'BRIEN [03:32:03] The list of information--

LATHROP [03:32:04] The-- the considerations the court goes through in making a determination based on a preponderance of the evidence.

COREY O'BRIEN [03:32:10] Well, I think that-- I think that it would have to be more of a factual determination in terms of, you know, was the evidence corroborated, how was it

corroborated. I mean, I don't know what that fact-- what those factors might look like. But when you just lay out generic terms, what does that mean to the judge in terms of whether or not it's believable? The fact that he's got a criminal record already is a strike against him in terms of the believability. So again, there's no real guidance or instruction to a judge on how they would make that determination. And again, I've never been involved in a case where that wasn't a central theme of any defense argument of-- to-- made to the jury on why you shouldn't believe this guy. And again, our opinion would be that a jury sitting in judgment of the case and hearing the evidence in context and being able to see whether or not it's corroborated with other evidence that's been adduced in-- in trial is the better determining force or-- or body to determine whether or not that evidence is in fact believable or the information conveyed by the jailhouse informant is believable. I just don't know how a judge can make that determination from a limited hearing without hearing every shred of evidence and determining whether or not it's corroborated with other things that are presented in the case.

LATHROP [03:33:36] OK. I think you answered my question. I appreciate it.

COREY O'BRIEN [03:33:39] OK. Thank you.

LATHROP [03:33:43] I don't see any more questions for you. Thanks for being here.

COREY O'BRIEN [03:33:45] Thank you.

LATHROP [03:33:46] Anyone else here to testify in opposition?

KELLEE KUCERA-MORENO [03:33:58] Neutral.

LATHROP [03:33:58] OK. Anybody in a neutral capacity?

KELLEE KUCERA-MORENO [03:34:05] Kellee Kucera-Moreno, K-e-l-l-e-e K-u-c-e-r-a, hyphen, M-o-r-e-n-o. I'm saying I'm neutral because I don't understand le-- you know, the legality-- legality of all of this. But I would just like to quote-- I would like to make a quote. We don't ask for anything but what is right and just, and that is a quote from Red Cloud, Oglala Lakota, who was a warrior and statesman. I think that simplifies it for me. We want what's right and just. And what I hear a lot of things are that people's rights are being violated. That is as simple as it gets for me. I believe that the Innocence Project would benefit from this. I think the only people that would probably be opposed to this that I'm aware of would be the prosecutors and that it probably doesn't benefit-- this would benefit everybody to have a reliable witness. When the name was brought up, Don Kleine, I just read the-- a little bit of the article, and I don't understand this either, but justice was not done for Zachary Bear-- BearHeels. And I don't know what other platform to talk about it except right here, right now, because it just came to my head that why were the prosecutors not looking out for his best interest? I don't understand, you know,

and I'm not looking for an answer, why this injustice happened to him. But it seems like the prosecutors and Don Kleine are-- are wanting to go to any lengths to take a look at this bill unfavorably. I don't understand that. That's all I would like to say. Thank you.

LATHROP [03:36:02] OK. Thank you. Anyone else here in a neutral capacity? Seeing none, Senator Morfeld close. We have one letter in opposition from Matthew Kuhse at the Omaha City Prosecutor's Office.

MORFELD [03:36:18] Thank you, Chairman Lathrop, and thank you for listening on this issue. I'll make my closing very brief. I just wanted to say that in response to the amendment that I passed out, there was some miscommunication between myself and some other folks. That was actually addressing the concerns that were brought up in committee a year or two ago on this same bill that-- that the county attorneys had brought. It was not-- I-- I was inaccurate in saying that it was an amendment that alleviated all of their concerns. So that was made clear to me by my staff and some other folks after, so I want to clear that up on the record. It addresses the concerns that were a year or two ago. It appears as though there's new-- new concerns. But with that, I'd be happy to answer any questions and work with the committee.

LATHROP [03:37:10] The amendment does get rid of the jury instruction piece of this.

MORFELD [03:37:13] Yep, it does, which I think is-- was one of their concerns that they-- they noted. But it-- it's not meant to be-- it was not given to us as a "we're fine with the bill now, here's the amendment," and I want to make sure we clarify that for the record.

LATHROP [03:37:26] Thank you. I don't see any other questions. That will close our hearing. Thanks, Senator Morfeld. That will close our hearing on LB352 and bring us our last bill of the day and our own Senator Pansing Brooks, LB231. It seems like more people came in after we-- pardon me?

PANSING BROOKS [03:38:13] How many are here, just--

LATHROP [03:38:13] Oh, yeah. How many folks are going to testify on this bill? One, two-- two, four, six, probably about eight. You know how to draw a crowd, Senator Pansing Brooks.

PANSING BROOKS [03:38:29] It's so fun.

LATHROP [03:38:31] You are free to open LB231.

PANSING BROOKS [03:38:34] Thank you, Chairman Lathrop 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 to

introduce LB231 today because the constitutional right to an attorney is one of the most basic rights of our legal system. Unfortunately, Nebraska isn't currently fulfilling its constitutional responsibility to ensure this right for those in our juvenile justice system. To rectify this problem, LB231 assures that all juveniles who go to juvenile court are represented by an attorney, regardless of where they live in Nebraska, by establishing that when any juvenile court petition is filed counsel shall be appointed for such juvenile. My education and experience as an attorney has shown me that the right to counsel is one of the most basic rights of our legal system. Fifty years ago-- well, actually, it's now 53 years ago, I think-- the United States Supreme Court extended the right to counsel for juveniles in the case of *In re Gault*. The court stated that youth need the guiding hand of counsel to navigate the legal system. Writing for the majority, Justice Fortas famously wrote: Under our Constitution, the con-- the condition of being a boy does not justify a kangaroo court, unquote. Despite this ruling, there remains a wide gap in juvenile access to counsel across our state. According to Voices for Children data, a mixture of urban and rural counties, like Douglas, Garden, Cherry, Sarpy, Lancaster, Gosper, and McPherson, are providing counsel 100 percent of the time or nearly 100 percent. I would also like to emphasize that many of these counties are providing counsel despite the low number of attorneys. For instance, Cherry County only has 2.1 lawyers per capita. It has an 80 percent appointment rate. Dundy County only has 1.1 lawyers per capita but has 100 percent appointment rate, so many counties have a lot to be proud of. But in other counties, the percent of juveniles with counsel is very low, some as low as 0 percent. Voices for Children has provided a map and spreadsheet showing access to counsel so you can see how each county scores. That a-- that a child's access to counsel is dependent on where they live just isn't acceptable, colleagues. Why should a child in one part of the state have less protection than a child in another? Why should one child have their constitutional rights guaranteed while a child in another part does not, especially when we consider that there are real consequences for a child who does not have legal representation? Some mistakenly think that the charges and conseq-- consequences for juveniles are actually just minor. This is not so. I need to explain briefly why assuring that juveniles get attorneys is so critical. No charge is minor. The juvenile justice system has two tracks. One track deals with issues that are under (3)(a) that go down the track of child welfare and is under the purview of HHS for abuse, neglect, and human trafficking cases. The child in these cases is treated legally as a victim. The second track is the one within the juvenile justice system. I have provided a graphic that illustrates the pathway through that system. Under this system, a court has the entire panoply of dispositional options available, including detention and/or out-of-home placement for any matter. A child may be taken out of the home for something even as insignificant as an-- as a minor possession if the facts surrounding the case so warrant. And-- and we've had discussions about this and some people have said, oh, well, that just couldn't happen from a minor in possession. But if-- if the minor has-- if the minor has an MIP and then in the meantime before the court hearing they have-- they run away from home and they're gone and then they skip school for two weeks, at that point, the judge looks at that case and goes, that kid is totally out of control, we are going to place him out of the home until

we can figure out what's going on, so it has happened and it can. On the juvenile justice side, if the charge is small enough, the county attorney has the discretion to refer the case to diversion without going through the court at all. Such a decision is far less costly to the county and infringes less on the juvenile's rights. No attorney is required at that point if the county attorney sends the case-- sends the juvenile straight to diversion without filing a charge. If the county attorney chooses to file the charges, even if he or she later decides to offer diversion instead, then that child needs an attorney. Anytime a juvenile must appear before a court, I believe it is necessary for them to be represented by counsel. If a county attorney believes that the case is serious enough to warrant being in the juvenile court, where anything can happen to that juvenile, then the case is serious enough for that child to have a lawyer. In our justice system, an adult gets a lawyer if there is a chance that their liberty is going to be taken away. Even if a charge can result in one day of jail time, an adult is offered a lawyer. In juvenile court, charges aren't linked to sentences in the-- in the same way. Regardless of the charge, the judge has every option open to him or her in sentencing. This is why it's so important for kids to have representation. In 2008, the Legislature, recognizing that ju-- that Nebraska's juvenile indigent defense system was in serious need of attention, they commissioned a \$250,000 study of the system. That \$1.4 million study used assessment-- used assessment-watch procedures in court. They found that in some parts of the state that 60 to 75 percent of youth waive their right to counsel and that youth are encouraged to-- to waive their right to counsel by a combination of individual and systemic factors. The report states, "In the counties with high waiver rates, assessment team investigators observed practices by judges that subtly encouraged youth to waive counsel-- for example, giving youth the impression that children who waived counsel would be treated more leniently, or arranging the dockets so that the cases of youth who will waive counsel are heard first, and the youth who follow are encouraged to waive by-- example of the earlier cases. Parents also encourage youth to waive counsel, sometimes applying substantial pressure." One case in the report that was mentioned was especially troubling to me. Quote: A 17-year-old boy appeared before the court with his mother accused of a minor drug charge. In front of a packed courtroom, the judge asked if he understood the rights given to the group at-- at that day's mass arraignment. The youth said yes. The judge then told him he had the right to request the case be transferred to juvenile court. The youth said he didn't want that. The judge then advised him again that he had the right to counsel and the juvenile decided to proceed without counsel. The court entered a guilty plea. This entire exchange happened in about three minutes. Once the youth had pled, the judge proceeded to disposition and asked the juvenile if he planned to go to college. The youth answered yes and named his top-choice school. The judge then said, quote: You realize you have now lost any ability to receive any federal-- federal funding for financial aid because you just pled guilty to a drug offense, unquote. There was an audible gasp from both the youth and from the people waiting for their cases to be called, end the second quote. That is why I brought LB231, because these kids do not have a grasp of our legal system, the complications within it, or the rights that they have, because they are kids, they are children. In 2016, I brought this bill and NA-- NACO, the

Nebraska Association of County Attorneys [SIC] did not object. They told me off the record that they felt there was a moral duty to provide counsel across the state for kids. I-- I was-- I was very happy to hear that, but that same-- at that same time, we had some judges that were coming-- were calling senators and saying this really isn't necessary because they could just fill that role. Finally, we brought an amendment to require that Lancaster County and Douglas Counties would provide counsel 100 percent of the time, but that is not so across the state. We had to come to that kind of agreement. Then, when I brought the bill in 2017, the Nebraska Association of County Officials came in opposed because they thought it would produce an unfunded mandate. I heard on the side that they had heard from some judges and so they decided, well, if the judges don't think that we need to do this, then-- then also I guess we don't need to stand up for that. While I still dispute the notion that they came in because it was an unfunded mandate, and while I still dispute the notion that there will be added costs-- Lancaster County, for instance, has shown a cost savings by implementation of-- of right to attorney for juveniles-- I did add the creation of the Juvenile Indigent Defense Fund to last year's bill and to this year's bill, to be paid for with a \$1 court fee. With this amendment, NACO is not opposed and the juvenile branch has ex-- expressed support on the side for this constitutional amendment this year. This fund would be administered by the Commission on Public Advocacy and used if the counties demonstrated that they incurred additional costs because of the addition of counsel. The addition of this funding mechanism has satisfied the counties. LB231 stipulates that if the family can afford counsel, the family will pay for it. In closing, the Fourteenth Amendment guarantee to right to counsel is fundamental. Let's ensure that that fundamental right is guaranteed no matter where the child lives in our state. Please vote to-- LB231 out of committee. And with that, I'll be happy to answer any questions you may have.

LATHROP [03:49:41] Senator Slama.

SLAMA [03:49:43] Thank you, Senator. Pansing Brooks, both for being here today and for bringing this bill. This is something that I wasn't aware of before coming to the Legislature and I just had a few questions on your bill. So are these cases that you illustrated in your opening of the county attorney permitting diversion for like a juvenile MIP, are those included in your defense statistics? So like the 80 percent you referenced in some counties and--

PANSING BROOKS [03:50:15] Yes. You can-- and you can ask the people that come behind me--

SLAMA [03:50:18] OK.

PANSING BROOKS [03:50:18] --that have done this research.

SLAMA [03:50:19] Cool. OK. Perfect. I'll just save those questions for them.

PANSING BROOKS [03:50:24] OK.

SLAMA [03:50:25] Thank you. Good.

PANSING BROOKS [03:50:26] Yeah, thank you. Any-- Senator--

LATHROP [03:50:27] Senator Brandt.

BRANDT [03:50:29] Thank you, Senator Pansing Brooks. And it's-- it's what you referenced on the fiscal note. I wasn't here last year. But they-- they have in there if we had applied a dollar in FY '18, we would have generated \$332,000. Is that a sufficient amount to take care of this across the entire state?

PANSING BROOKS [03:50:51] Yes. Thank you for-- for asking that question. We were told by-- and-- and I think others can talk about it, too, behind me, but we were told by the court system that-- the Court Administrator's Office that generally it would probably be about \$120,000-150,000 per year necessary. So they said that this will definitely cover what's-- what's needed across the state.

BRANDT [03:51:13] All right. Thank you.

PANSING BROOKS [03:51:14] Thank you for asking that.

LATHROP [03:51:17] I see no other questions. Thanks, Senator.

PANSING BROOKS [03:51:18] Thank you.

LATHROP [03:51:20] Proponents of LB231?

JULIET SUMMERS [03:51:22] Good evening, Chairman Lathrop. Members of the committee, my name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm here from Voices for Children in support of LB231 because every child is entitled to due process and equal protection under the law. We support this bill because it will ensure youth across our entire state have meaningful access to one of the great protections of the American justice system, the constitutional right to counsel. This constitutional imperative is especially important for children who may by their age and their developmental ability fail to understand the grave nature of their actions, the complicated legal proceedings against them, and the potentially life-altering outcomes. Senator Pansing Brooks has already eloquently described all the things that can happen in juvenile court, so you have my written testimony on that and I'll skip that portion but would be happy to answer any questions about what-- what actually goes on in juvenile court in Nebraska. I will point out to you that you do have a letter-- you should have a letter in front of you from a

young man who-- out of McCook County [SIC] who experienced a juvenile court case without counsel. And I-- I know letters-- you get a lot of letters, so I wanted to bring it to your particular attention. He's a really remarkable young man and he-- he pled to some charges that I think frankly were a little specious based on the facts of what happened. And though he's now had his record sealed successfully, those charges will always be on there for law enforcement to see. And if he hadn't successfully completed his juvenile probation, they would be on there for everyone to see, so just wanted to make sure you saw that letter. So I want to talk briefly about the current state of the law, which Senator Pansing Brooks alluded to. So in 2016, the One Hundred Fourth Legislature passed LB894, which identified certain circumstances with particularly grave stakes in juvenile court where counsel may not be waived, and this protection applies statewide. However, there was a compromise amendment on the floor that some of you may recall regarding early automatic appointment of counsel at the time the petition is filed, and that amendment left us with an equal protection problem, in my belief. The statute on its face affords greater protection relating to this constitutional right to children in counties with over 150,000 inhabitants where they-- they get automatic appointment of counsel as soon as the petition is filed. And then in counties with fewer than 150,000 inhabitants, the child must be advised of his or her right to counsel prior to the trial phase, but nothing more than that statutorily, and it's past time to set this injustice aright. So what does the data show? I've handed out to you both a quantitative data sheet with a map and some-- some data that we get from the court administration relating to access to counsel in juvenile court, and then also a qualitative piece. This fact sheet is-- we did a little diving into the Nebraska JUSTICE case management system to identify a couple actual cases where counsel was not appointed, there was no lawyer, and-- and what happened in those cases, to sort of combine both types of information for you. Again, I'd be happy to answer any questions about anything I've handed out to you, but I do want to flag that, as you will see from the map, even though the statute distinguishes between urban counties and rural counties, as it plays out, it's not precisely an urban-versus-rural issue. So some of our counties with 100 percent appointment of counsel are highly rural counties. And so I just want to close by thanking Senator Pansing Brooks again, another year, for bringing this bill, and this committee for your consideration of it, and would strongly urge you to advance it. I'm sorry for running over.

LATHROP [03:55:10] Thank you. Senator Slama.

SLAMA [03:55:11] Perfect. I think you may be a great source of information for a couple of my questions. Again, thank you for coming out and testifying. I was curious, on these statistics, did they include like juveniles who have been already offered diversion for like getting an MIP?

JULIET SUMMERS [03:55:29] So it would depend on how the county attorney runs their diversion program.

SLAMA [03:55:35] OK.

JULIET SUMMERS [03:55:35] So most counties in the state, diversion is pre-court filing, and that's best practice, that's how it should be, that's how the statute encourages it to be, where the county attorney gets a charge or a citation and they make a decision this young person really looks appropriate for diversion, I'm not going to file this charge, I'm not going to start a court case, I'm going to refer them to diversion and if they successfully complete it, I'll-- you know, nothing's going to happen. So in those cases, this bill would not affect those cases because you don't need a lawyer in the diversion process. And it's all-- it's-- nothing's been filed in court. The data that you have in front of you is because it's from court administration, it is actual court cases where a case was filed. So I will say that there are some counties-- I'm not-- I don't know exactly which ones or how many, you know, in-- in this year's data-- where the county attorney will file the case and then refer the child to diversion, keeping the case open in juvenile court as kind of a hammer. And in those cases, this bill would apply because we're-- the-- the intent is, look, if something about this case is serious enough that you've filed it in juvenile court and the child and family is coming to face a judge, then it's-- it's important enough, it's serious enough to warrant advice of legal counsel.

SLAMA [03:56:56] Could you give me just a general idea of what the prevalence of that file-then-refer-to-diversion strategy is?

JULIET SUMMERS [03:57:04] That's a-- that's a really great question. The reason I don't have a perfect answer for you is because I know that our state diversion office has been really strongly encouraging county attorneys not to go that route just for all kinds of reasons-- you know, it's better for the kid, but it also saves the counties money and time. So I think it's less every year. What I will do is I'll follow up with them and see if I can get a precise answer for you of--

SLAMA [03:57:30] Thank you.

JULIET SUMMERS [03:57:30] But I know that the majority do it pre-filing.

SLAMA [03:57:32] Perfect. OK. And just to follow up on Senator Brandt's question to Senator Pansing Brooks, so would this general fund cover all of the fiscal impact from this bill including in both urban and rural counties?

JULIET SUMMERS [03:57:49] I'm optimistic that it will for the reason of the-- there's language in the bill that if counties see their costs increase as a result, so counties that are already covering appointment of counsel through their own budget would not see their cost increase as a result of this bill, if that makes sense I also-- I think that I'm reassured that the senator has heard from court administration that they anticipate that it'll-- that it'll be enough. And I think that if you look at the table on the back, you'll see

that a lot of counties, the numbers are not huge. You know, there are-- there are a couple counties on the back where there's over 100 kids and a low rate of appointment of counsel. I would anticipate those counties are going to see, you know, see some impact from this. But so many of the counties, we're talking about a handful of kids and-- and probably cases that are-- are not going to be super involved from the-- hopefully, cases that will not be super involved from the defense attorney standpoint. But then I would also say that the counties that are doing this, and in particular the-- the urban counties that had to start doing it after LB94, have seen efficiencies because lawyers in fact can frequently save money. So we once did an analysis of the cost of an hour of a lawyer's time compared with the cost of a night in detention. A good lawyer who's appointed is going to try to get their client out of a detention facility as soon as possible, get that case moving? On average, detention costs over \$200 a night. The cost of an hour of a lawyer's time is about \$90 on average statewide. And so there is-- there is dynamic savings that we can see from getting lawyers involved in cases to-- to reduce the fiscal impacts down the line. It's just harder to do that dynamic forecasting.

SLAMA [03:59:47] Sure. So beyond just the fiscal hurdle on this one, I-- also, I know you pointed out that a lot of these counties are just facing very small numbers of juvenile court cases, but would-- would we run into a personnel issue in some of these rural counties in handling these cases?

JULIET SUMMERS [04:00:05] I know that obviously access to justice is a huge issue in Nebraska more broadly than this bill. We do have some initiatives. We have the rural attorney initiative which get-- you know, gives essentially my-- my-- financial assistance to attorneys who are going to go practice in rural Nebraska, and I know this has been a real effort. As the senator noted in her intro, some of our counties with our-- with our, you know, highest appointment of counsel for juvenile cases are ones where there is a really low attorney-per-capita ratio. So I really am genuinely of the belief that if we-- you know, if we do it, if we require it, there are lawyers in our state who are going to be able to make this work.

SLAMA [04:00:50] Thank you. I appreciate it.

JULIET SUMMERS [04:00:51] Yeah. Thank you for your questions and I will follow up on that data piece for you.

LATHROP [04:00:55] Very good. I don't see any more questions for you.

JULIET SUMMERS [04:00:57] All right. Thank you.

LATHROP [04:00:57] Thank you for your testimony. Good evening, Your Honor.

PATRICK McDERMOTT [04:01:10] Good evening. My name is Patrick McDermott, P-a-t-r-i-c-k M-c-D-e-r-m-o-t-t. I've appeared before you before this year on behalf of the Bar Association. I want to make it crystal clear I am appearing today on behalf of the National Council of Juvenile and Family Court Judges, of which I am a member and former director. I am also presently on the law advisory committee of that organization. In 2016, in cooperation with the National Juvenile Defender Center, we received a grant to develop a bench card to guide judges on the appointment of counsel, and that card generally defaulted to every child should have a lawyer. Now in Nebraska, we do that in one class of cases. In all of our welfare cases, we automatically appoint, on filing or on removal of a child, an attorney for that child, an attorney for each of the involved parents, so that there is an attorney in place whenever a child is taken out of home. In my practice with juvenile justice kids or delinquency kids, I probably appointed, whether they asked for it or not, in about 90 percent of my cases where I saw other barriers. I mean, we focus so hard on indigency and with juveniles, particularly, I served the Colfax County area, which is enormously Hispanic, and there is a lot of other barriers for these children and their families that we have to look at, things like language, culture, race and ethnicity, intergenerational trauma, the status of immigrant children and their parents, and any indication of mental health or emotional disturbance on the part of a child or parent. And that would apply also in a justice case because a lot of my colleagues relied on parents to guide. While foreign-born parents are not familiar with our system and that probably was not fair. Anecdotally, I can tell you these cases go cheaper and faster if you have attorneys in there at the very beginning and you avoid those things where a kid is convicted of assault for pushing somebody in a school lunch line and that assault can be a disqualifier in the future for things like tuition assistance. Granted, sealing of records can overcome some of that, but still, if you don't have an attorney, you probably are not going to be well versed in sealing, although seal is much more automatic than it used to be. But kids need lawyers and they need it right out of the box if we want to be truly fair in the way we deal with it. And young people, juveniles, at the very beginning, if they have a good lawyer, that lawyer will redirect more often than even a judge will. Lastly, I think this is sufficiently serious that, although retired, I now work part time in Saunders County, Nebraska, as a juvenile public defender. I do only juvenile cases, but I think they are an underrepresented class. Any questions? I'd be happy to answer.

LATHROP [04:04:49] I don't see any questions but thank you for your service, sir--

PATRICK McDERMOTT [04:04:52] Thank you.

LATHROP [04:04:53] --and your testimony today. Good afternoon.

EVE BRANK [04:05:04] Good afternoon-- evening, Chairman Lathrop and members of the Judiciary. My name is Eve Brank, E-v-e B-r-a-n-k. I'm not here officially representing the university, but I am a professor of psychology and a courtesy professor of law at the University of Nebraska-Lincoln, and I'm also the director of the Center on Children,

Families, and the Law, and I've been conducting psycho-legal research for more than 20 years on topics related to juvenile law. So I'm going to speak specifically about the importance of juveniles being represented by attorneys and why in particular they should consult with their attorney before they waive that right. So psycho-legal research consistently demonstrates that juveniles lack understanding of basic legal concepts and lack the executive functioning or maturity to fully appreciate potential outcomes. Juveniles struggle-- juveniles struggle with procedural and technical terms and often see themselves as passive parties in the court process. One study using legally involved juveniles found that more than 80 percent exhibited ten or more erroneous beliefs about just their Miranda rights that could have certainly compromised their legal decision making. One of these erroneous beliefs involved confusing the word "indigent" with "indictment," which obviously could have some pretty serious consequences. In another study, legally involved juveniles believed that remaining silent and exercising this right would make them look certainly guilty to the police. Still another study found that interrogations of approximately 300 juveniles charged with felonies waived their Miranda rights within 15 minutes or less of questioning. Some researchers have noted that children know about the legal system. A lot of what they know about it comes from what they watch on television, and television portrayals in the courtrooms are of a trial process for adults. And so that may be leading to some confusions for juveniles in terms of terminology. Yet still other studies have found, even when juveniles know the basic terminology, they don't understand the larger appreciation of what is happening to them and those legal concepts. In some research actually that I conducted with a graduate student, we gave legally involved juveniles something like a knowledge test about their knowledge of the juvenile court process. We found-- we focused on questions, things like key players in the court, possible outcomes of a case, roles of attorneys, types of hearings, in-court behavior. Based on traditional grading scales, our samples scored around a 63 percent, or a D. And although most juveniles in our sample indicated they would let the judge know if they didn't understand what's happening in court, almost 20 percent believed that they-- if they didn't understand, they should keep quiet to show respect to the judge or ask someone after the hearing, which is obviously far too late. Importantly, other research-- research has demonstrated that juveniles struggle with understanding the role of an attorney. Some juveniles in a study equated the role of their defense attorney with a social worker. Some indicated they believe the attorneys could tell the judge and probation officer information from private conversations. Others were not confident in the attorney-client privilege and thought the attorney could tell the judge or their parents what they had said. Some juveniles even believed if they told their attorney they were guilty, that the attorney would no longer be able to defend them, all of which I think highlights why juveniles should have the opportunity to consult with an attorney and learn about the attorney's role before they decide to waive their right to an attorney. Thank you for the opportunity to address you.

LATHROP [04:08:25] That was perfectly three minutes. [LAUGHTER] I do not see any questions for you.

EVE BRANK [04:08:31] Thank you.

LATHROP [04:08:31] Thanks so much. Good evening.

SCOTT PAUL [04:08:54] Good evening.

LATHROP [04:08:55] Thanks for your patience.

SCOTT PAUL [04:08:56] You're welcome. It's not lost on me that the committee hasn't taken a break this entire time. We appreciate your pushing through.

LATHROP [04:09:03] Yeah.

SCOTT PAUL [04:09:04] My-- my-- my name is Scott Paul, S-c-o-t-t P-a-u-l. I'm a lawyer with McGrath North in Omaha. My practice is in civil litigation. I'm current president of the Nebraska State Bar Association, and so I'm here today, individually and on behalf of the Nebraska State Bar Association, to testify in support of LB231. In determining whether the State Bar Association decides to support a bill or not, we look at the impact on access to justice and the administration of justice. We think that clearly LB231 would improve access to justice for juveniles, and so for that reason alone we are in support of the bill. I won't take time to repeat some of the things that have already been said, but suffice to say, we think that there are significant equal protection and due process concerns if the-- this law-- if the right to counsel for juveniles is not provided throughout the state on a uniform basis. We think that this law would do that. As for funding, we think the grant process would-- is a-- is a welcome opportunity to get more funding into the system for court-appointed counsel for juveniles. I would also note that the \$1 fee that's provided for in the statute I think is de minimis. I don't think it would have any effect or chilling effect on the filing of any type of lawsuits in-- by other parties in other-- in-- in other courts. I'd just like to address a couple other things that are in the bill that haven't been brought up. First of all, the court-- the bill requires that the juvenile be advised at the first court appearance, the first hearing, of their right to counsel, and I think that's important because we don't want to have decisions made by the juvenile at the initial proceeding or at-- and until they're apprised by the court of the need for or their right to have court-appointed counsel. And so I think it's good that this bill does provide that expressly to be at the first hearing that the-- the juvenile attends. The other thing I would point out is that it provides for rescission of waivers. In the event that a juvenile has waived the right to counsel, this act expressly permits the judge to allow the-- the juvenile to rescind the waiver. I did some research before I came down today and according to the report of the National Conference of State Legislatures, children nationwide often waive the right to counsel without truly understanding the consequences. According to the National Juvenile Defense Center, juveniles who waive counsel are more likely to enter guilty pleas without offering arguments or mitigating

circumstances to the court and are more likely to be sent to detention facilities. So if there has been a waiver, it's imperative that the juvenile be reminded of their right to rescind that waiver, which this law does. So I won't burden the record any further with any further-- further comments because I think they've already been made by the proponents of the bill. I would like to take this opportunity to-- to thank Senator Pansing Brooks for bringing this legislation to the Legislature over the last couple of years. We would urge that it be advanced. Thank you. Any questions?

LATHROP [04:12:21] I do not see any questions. Thanks for being here.

SCOTT PAUL [04:12:23] Thank you.

JENNIFER HOULDEN [04:12:30] Thanks.

LATHROP [04:12:31] Good evening.

JENNIFER HOULDEN [04:12:32] Good evening I'm Jennifer Houlden. That's J-e-n-n-i-f-e-r H-o-u-l-d-e-n. I'm a deputy Lancaster County public defender. I've been so for a little over 11 years, the beginning-- I'm here as a proponent of LB231. At beginning of my career, the first few years, I had the privilege of representing youth in juvenile court here in Lancaster County, and I also want to echo but not repeat some of the really important points that been-- have been made by the senator and other persons testifying. I think there is a real equal protection concern when we're granting constitutional rights to persons based on categories involving county of residence or population. I think that's important not to lose sight of when we're talking about constitutional rights that flow through the Fourteenth Amendment to our youth here in Nebraska. I am thrilled to hear Judge McDermott so clearly be in support of this from the bench, knowing that it's important for youth to be represented by counsel. As an attorney for youth in a juvenile court delinquency proceeding, which is a law violation, we are the only person in the room who does not have an obligation to look out for the best interests of the child. We have an obligation to look out for the child's stated interest, their experience, their perspective. My primary concern in reviewing the prior testimony on this bill were judges who felt that they could hold themselves out as substituting for that role. Judges have a hugely important role and it requires them to consider the best interest of the child and it requires them to be a neutral fact finder in the juvenile court system, where there are no juries. They cannot step outside of that. It is in defiance of their obligation to the best interest of the child to seek to advise the child and to give them counsel. That must be done because substantial rights of the children are impacted in exactly the way that Senator Pansing Brooks explained, and adjudication of any kind can result in placement at the highest level of care in the youth treatment and rehabilitation and treatment services. Why the current categories of counsel are not adequate is because case law in Nebraska sets up either an exhaustion or a prior effort scheme for placement at higher levels of care. So you cannot simply appoint a lawyer at the latest stage of detention or

when there is an out-of-home placement sought because the evidence has already accrued to support that placement. And if we are serious about the due process rights of our youth, we need to provide counsel at all stages which are critical in meeting those goals. I think that's important not to lose sight of as well. Competency is also required. I think it's important for this committee to know that individual young persons with IQs of 42 and below have been repeatedly detained in Lancaster County based on disruptive behavior and without the assistance of their assigned counsel at my office, they would have remained in detention until their next hearing was set. It took the qualified and continuous representation of the attorney in my office to bring to light the prior medical findings that there was no reasonable expectation of competency and the legal findings, and I just ask you to consider the welfare of those children. And I certainly could answer any questions.

LATHROP [04:15:52] Senator Brandt.

BRANDT [04:15:55] Thank you, Ms. Holden for testifying today. And-- and I'm the only nonlawyer in this group so I-- I need a little clarification. So you would represent a minor and you said that you represent, what, not their best interests but their concerns, is it--

JENNIFER HOULDEN [04:16:11] Their stated interest.

BRANDT [04:16:12] Their stated interest. So what happens if you have an impaired individual of a very low IQ or, you know, where they're really not competent to make that judgment for themselves? What happens in that situation?

JENNIFER HOULDEN [04:16:24] As counsel you have a duty to bring that to the court's attention, and that's exactly the category of individuals that I was referring to. So as counsel, if you-- and this applies in criminal cases as well-- if you have any concerns about the competency of that individual to stand trial, it's very similar to the criminal procedure standards. You file a motion seeking evaluation of that individual and then the court, upon any reasonable basis to believe that there is concern, has an obligation to order an evaluation, which is typically an MD or a psychologist. So I think it's important not to lose sight of that competency is also required in juvenile court and that would-- that duty falls on the prosecutor and the court equally, but obviously assigned counsel is going to be in the best position to be aware of that and at the soonest opportunity.

BRANDT [04:17:16] And I guess that's my concern is if you have an incompetent individual telling you some crazy stuff, that you would be obligated to represent that point of view, and you would not because the court would rule [INAUDIBLE]

JENNIFER HOULDEN [04:17:29] I think those are-- from my perspective as counsel for youth, those are very different things. Concerns about competency are-- can usually be enunciated with regard to intelligence, cognitive functioning, mental health. There are

like traumatic brain injury incidents that-- that prevent the individual from being able to process and receive legal advice and to be able to make decisions. I think regularly the stated interest of a youth or any other person may not be in line with their best interest, and that is what is so important about counsel for juvenile here, is that there's no one else in the room with the obligation to consider the stated interest of the child. And I think that when you think about the real setting that this happens in, it's in an open, public room where the judge says, very similar to the example that was given, do you understand? The child doesn't understand a lot, but they do understand that the judge makes the decisions, and so there is such implicit pressure to be cooperative. And I think that the court must be concerned about getting information that it should consider for best interest through counsel because that child knows that bringing their concerns about physical abuse in the home or mom doesn't want me to go to counseling or actually this is what's happening, this fight was a result of bullying, if no one is actually taking the time to talk to that youth one-on-one with a clear explanation of your role to advocate for whatever they want, even if it is from an adult, parent, or judge perspective perhaps absurd or unrealistic, that information is not coming into the process. And that is something you develop over time is the difference between immature, unrealistic ideas and goals and competency concerns. So I think that that's an important part of representing any individual in proceedings like this is developing a sense. And often we-- I think we tend to err on the side of overcaution and have someone evaluated. And with youth, there's a unique condition that it's possible that they are not competent at this time but it's only because of development. They're simply-- haven't advanced in their--

BRANDT [04:19:50] Right.

JENNIFER HOULDEN [04:19:51] --neurological maturation to be able to be competent but they could be later.

BRANDT [04:19:54] All right. Thank you.

JENNIFER HOULDEN [04:19:56] Yep. Thank you.

LATHROP [04:19:59] Senator Slama.

JENNIFER HOULDEN [04:19:59] Yes.

SLAMA [04:19:59] Thank you for coming out today. First off, I'd just like to clarify for the record, I'm not an attorney either. But how does this bill and how we're treating legal defense of these kids now compare to other states in your experiences, if you have any?

JENNIFER HOULDEN [04:20:18] Well, I don't know the answer to that question. I practice here. I'm from here. But certainly I have attended a similar conference, the National Juvenile Defender Center, and there's no question that best practice nationwide is to

appoint counsel automatically and to have a high burden for waiver, in fact, a much higher burden for waiver than an adult because we have to consider the natural limitations of youth.

SLAMA [04:20:43] Sure. Thank you.

JENNIFER HOULDEN [04:20:44] Yep. Thank you.

LATHROP [04:20:46] I see no other questions.

JENNIFER HOULDEN [04:20:47] Thank you very much.

LATHROP [04:20:47] Thank you for your testimony and your time.

KIM HAWEKOTTE [04:20:55] Good afternoon, Chairman Lathrop-- or good evening, sorry. And, members of the Judiciary Committee, my name is Kim Hawekotte, K-i-m H-a-w-e-k-o-t-t-e, and I am the executive director at the Foster Care Review Office. You're getting-- you're handed two documents. One is my testimony. The second is our quarterly report which just came out on March 1. In that is information regarding probation youth being placed in out-of-home care. I also just wanted to say there is a special study in that report with regards to adoption and guardianship cases and their reentry into out-of-home care and why it's important we need LB388 and LB389. OK, I'm done with that one. As many of you know, I've been a practicing attorney in juvenile court for-- for over 25 years. In our role as the Foster Care Review Office, we do review all probation youth in out-of-home care. We know that as of December 31 of 2018, we have 620 youth that are in out-of-home care through our Office of Probation. We know that 30 percent of those youth are under the age of 16. So as you're thinking of legal counsel, think about the age and think about, as this list shows, these six 12-year-olds and their need for an attorney, OK? Also broken down on page 2 is the district that each of these youth are from, and then also the type of placement because for us the type of placement is very important. You will notice that 77 percent of the probation youth placed out of home are in a group-care setting, not in a family-like setting. So the type of placement is very different, even with very young age. I'm not going to go into all the reasons. It's been spelled out very well why we need legal counsel for these juveniles at the very beginning. I will tell you we have reviewed 242 youth from May of 2018 to February of 2019. I am happy to say that out of the 152 that lived in Douglas, Sarpy, Lancaster, 100 percent of them had attorneys from the very beginning. The bad news is for the 90 youth that lived in the rural counties, we have almost 16 percent that didn't have-- did not have an attorney and they had been out of home for six months or longer and most of them had been out of home for years with no attorney. So we know the law currently is not working the way it should be working. We also know that out of those that have been out of home, 25 percent of them are under the age of 16. I have it broken down in my testimony by county so that you can get a feeling for which counties are appointing attorneys and

which are-- are not appointing attorneys for children in out-of-home care. I think the difficulty I have, Senators, is that our current law pretty much states that if you're going to place a child in out-of-home care, there needs to be an attorney. And obviously it isn't happening, so we need to push it further up into the system to ensure that our youth have the rights that they need. I support the bill and if you have any questions, I'm more than willing to answer them.

LATHROP [04:23:49] I don't see any questions. Thanks for being here, Kim. Good evening.

SPIKE EICKHOLT [04:24:07] Good evening, Chairman Lathrop and 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 the ACLU of Nebraska in support of LB231. You've got a copy of my testimony, so I'm not going to read it, and many of the points I wanted to make have already been made, but I just wanted to state on the record that we do support this bill. The present distinction, if you will, between counties of 150,000 and less-- or less that do not require a court-appointed attorney at the time a juvenile petition is filed, as Senator Pansing Brooks explained, was really only done as an accommodation to advance a bill that was being fought primarily against by the rural senators to what she wanted to do statewide. And I think that her solution to that that would address some of the concerns that the smaller counties, and western counties primarily, had was to provide for a court fee that would reimburse those counties if they were to suffer any additional fiscal cost by the requirement to appoint attorneys at the time a juvenile petition is filed. I just wanted to make one point really clear so it's for the record. It's been a long time since I practiced in juvenile court and some of the other testifiers mentioned this, but I like to say it really explicitly, and that is even if a youth is cited or charged in juvenile court with a relatively minor offense, it's not like if they were charged as an adult with a minor offense. And I say that because if somebody is charged with an MIP and they're 19 years old, you have to have-- be 21 to have alcohol, so you're going to be charged as an adult with an MIP. Your first offense, you're only looking at a fine and once you pay the fine, you're done with it. You might have some collateral consequences, it might be on your record, but you're done. You don't have to go back to court. When you're in juvenile court, the goal is rehabilitation and the judge-- the juvenile judge will ultimately do whatever is in the best interest of the child. So a youth might come into the juvenile court system with a relatively minor charge like an MIP, and the judge will make just a quick decision-- I'm not going to appoint that person a lawyer, I think the parent is kind of looking out for the kid's best interest. But then after three or four months, the youth continues to drink. The juvenile court realizes there are some problems at home with the parents and substance abuse and the child is then moved out of home. As the earlier testifiers mentioned, then an attorney is appointed. What's that attorney supposed to do at that point? The kid has already admitted to the underlying law violation. You could try to take it back and relitigate back when you realize that kid's got a defense or something like that. But it just is not efficient. And as Lancaster County has indicated, they actually save money by

providing for that. And if you think about somebody going to court, if you ever go to court as a lawyer or otherwise and you see people who are pro se, not represented, trying to navigate, it is just such a time constraint and impact on the courts. It really doesn't make any sense to have it this way. I'd urge the committee to advance the bill and I'd answer any questions if you have any.

LATHROP [04:27:00] I do not see any questions tonight.

SPIKE EICKHOLT [04:27:03] Thank you.

LATHROP [04:27:03] Thanks though. Appreciate your testimony. Anyone else here in support of LB231? Anyone here in opposition? Anyone here in a neutral capacity? Good evening.

JON CANNON [04:27:28] Good evening, Chair Lathrop. Distinguished members of the Judiciary Committee, my name is Jon Cannon, J-o-n C-a-n-n-o-n. I'm the deputy director of the Nebraska Association of County Officials, testifying in a neutral capacity on LB231. And I should have meant that to say that we're at a neutral-plus capacity. We certainly appreciate what Senator Pansing Brooks has done to make a funding mechanism. She's worked with us, she's heard our concerns, and I-- and I believe she's made a good-faith effort to try and address that in this bill. The concern that we always have is-- is going to be cost, of course. And again, the funding mechanism largely takes care of that. However, I will note that what this is, is a fixed fee. And as I think most of the practicing members of-- of this committee would understand, costs are actually fairly dynamic. I think 20 years ago, we would all recognize that the cost of litigating, bringing something to trial, is probably going to be much lower than it is currently. So there-- I don't see that there's-- while, as Senator Pansing Brooks had said, the \$320,000-- \$332,000 expenditure that is indicated as part of the fiscal note probably more than adequately covers the costs that we have currently, we don't know what that's going to be in the future. And the question that we would have is, if for whatever reason the Juvenile Indigent-- Indigent Defense Fund was ever exhausted, what happens as far as reimbursement to the counties, is that going to be prorated or is it going to be on a first-come-first-serve basis? Again, we appreciate the underlying point of the bill. We certainly appreciate Senator Pansing Brooks having brought it and having worked with us and heard our concerns. And I'd be happy to take any questions you might have.

LATHROP [04:29:05] I don't see any questions but thanks for being here, Mr. Cannon.

JON CANNON [04:29:09] Yep. Thank you.

LATHROP [04:29:09] Any other neutral testimony? Seeing none, Senator Pansing Brooks to close. And as you get yourself situated in the testifier's chair, we have some letters of support from Sarah Helvey, Nebraska Appleseed; Josh Reed; Amy-- pardon me, Mary

Ann Scali from the National Juvenile Defender Center; Peg O'Dea Lippert, National Association of Social Workers; Christine Henningsen, UNL's Center for Children, Families, and the Law; Sherry Miller, League of Women Voters of Nebraska; John Pollock, National Coalition for a Civil Right to Counsel; and in opposition, Sara Kay with the Nebraska County Attorneys Association.

PANSING BROOKS [04:29:52] Thank you. I just want to, number one, thank everybody for coming today. I really appreciated their strong testimony. I appreciate all of you being here for this bill. Again, I feel very strongly that this is an important constitutional right for kids, as well as adults, and I-- we continue to hear that the cost savings that-- that we get by not having a second hearing after the kid first says, no, I don't need counsel, and they have to come back because they do want counsel, then that cost savings is going to be in a couple of years saved. And as we've heard, the pot of money is larger than anyone expects that it will be needed. And at that point, the state can re-- reconvene and figure out, you know, what to do and if we need more or what we need to do at that point. But all-- all the people and all the professionals and all the experts with whom I've spoken say this will be sufficient. Thank you for your time tonight.

LATHROP [04:30:52] Very good. I don't see any--

SLAMA [04:30:55] I'm sorry. Just one real quick.

LATHROP [04:30:56] Oh, wait a minute. We got a closing question.

SLAMA [04:30:58] Sorry, just the question I asked, I may have waited too long before I thought of it, but do you have any info or could you send any info on how other states, especially our neighboring states, handle it?

PANSING BROOKS [04:31:10] Yes, I'd be happy to, and I-- I actually cochaired a very bipartisan committee for the Nebraska Council-- or National Council of State Legislatures on best practices in juvenile justice and across the nation. It is very clear that right to counsel is-- is a priority for many states, and then other states are doing it, so we'll get you that information.

SLAMA [04:31:35] Thank you. Appreciate it.

PANSING BROOKS [04:31:35] Thank you.

LATHROP [04:31:37] OK, I think that will do it. That will close our hearing on LB231 and our hearings for today. Thank you.

PANSING BROOKS [04:31:44] Thank you.