WAYNE: Good afternoon and welcome to the Judiciary Committee. My name is Senator Justin Wayne, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. I serve as the Chair of the Judiciary Committee. And we'll start off by having members of the committee and staff do self-introductions, starting with my right.

BOSN: My name is Carolyn Bosn. I represent District 25, which is southeast Lincoln, Lancaster County, including Bennet.

IBACH: I'm Theresa Ibach. I represent District 44, which is 8 counties in southwest Nebraska.

McKINNEY: I'm Terrell McKinney. I represent District 11, north Omaha.

JOSH HENNINGSEN: Josh Henningsen, committee legal counsel.

ANGENITA PIERRE-LOUIS: Angenita Pierre-Louis, committee clerk.

DeBOER: Hi, everyone. Good afternoon. My name is Wendy DeBoer. I represent District 10 in northwest Omaha.

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

DeKAY: I'm Barry DeKay. I represent District 40, which consists of Holt, Cedar, Knox, Antelope, northern part of Pierce, and northern part of Dixon Counties.

WAYNE: Also assisting us are our committee pages, Isabel Kolb, from Omaha, who is a political science major and pre-law major at UNL, and Ethan Dunn, from Omaha, who is a political science major. This afternoon, we will be hearing 7 bills, and we'll be taking them up in the order outside the room. On the table to the right, over here next to the column, there are blue and gold testifier sheets. Please fill out a blue, blue testifier sheet if you are planning to testify so we can keep accurate records. If you would like to let your position be known but do not want to testify, or somebody says the exact same thing in front of you, there is a gold seat over there, and you can still be recorded as being present in your position. Also, I would like to let everyone know it's the Legislature's policy that all letters of record must be submitted and received by the committee by 8 a.m. on the day of the hearing. Online comments are to be submitted in lieu of testimony, in-person testimony. Any handouts, testifiers will be-- any handouts will be included as part of the record. Please make

sure you have at least 10 copies. If you don't have 10 copies, our pages will be able to provide you with 10 copies. Please get copies before you come up and testify. Testimony for each bill will begin with the introducer's opening statement. After the opening statement, we will hear from the supporters of the bill, then from those in opposition, followed by those speaking in neutral capacity. The introducer of the bill will then have an opportunity to make closing arguments if they wish to do so. We begin-- we also remind you to please state your first and last name and spell them for the record. We will be using the 3-minute light system today. When you testify, it will be green. It turns yellow with 1-minute mark. And then it will be red, and I'll ask you to stop or wrap up your thoughts. I would like to remind everyone, including senators, to please turn off or vibe-- or silent your cell phone. With that, we will begin with AM2534. Senator Brewer, you are here to open. The floor is yours.

BREWER: Thank you, Chairman Wayne and members of the Judiciary Committee. My name is Tom Brewer, T-o-m B-r-e-w-e-r. I'm here representing the 43rd Legislative District of central and western Nebraska. And I'm here to open on AM2668 to LB253. I probably need to start by giving you some background. This bill originally started as an attempt to build a western Nebraska law enforcement academy. We had a number of issues where our officers were not able to get into the academy, and we were short law enforcement officers, not just because of hiring challenges, but because of inability to find seats in the academy. Unfortunately, that become a bridge too far and too expensive. And it was [INAUDIBLE] that I had a conversation with Senator Wayne, and he had an idea that I thought was the right path ahead. And so that's how we came up with AM2668. As you know, I retired at almost 37 years. Spent most of that time as an infantryman, airborne Ranger. With that, you get many opportunities to, to deploy. As a commander at, at company through brigade level, you had a chance to see a lot of different situations. What I came to the realization is that, that many of the servicemen, that when they finished their time in service, left the military, and become very active contributors to their communities. They were very anxious to start new businesses, and start a business at a higher rate than the average. But what I also come to the realization of is that these value-added individuals or communities sometimes were left with scars, both physical and some that are invisible. And it was those scars that derailed their lives. And so, it become a challenge, as a commander, to see individuals that you served with, who were amazing NCOs, that, that did things that risked their lives to, to save other lives. But

yet, when their time was done, they would leave the military and not be able to adjust. Some of that was because of the injuries, which varied, everything from just physical wounds from, from being injured or, or wounded, to traumatic brain injury, post-traumatic stress. And through that process of seeing how those live spooled out of control-- and many times, individuals who had excelled in the military and you knew their potential, spooled into a situation where they ended up either in jail or homeless or committing suicide, left you in a, in a hopeless position to look on that and not be able to do something to help them. I struggled, actually twice. In-- 12th of October of 2003, I was wounded in Afghanistan. I was shot 6 times in 1 night. I always liked to over-excel a little bit. And then on the 12th of December in 2011, a rocket propelled grenade landed next to me, and spent the next 2 years staring at the ceiling of a hospital and going through surgeries. Well, if you spend a lot of time around wounded soldiers, you, you, you get a better understanding of their needs, their, their issues, and, and what works and what doesn't. And what you come to the realization of is the, the VA is very good at handing out meds. The problem is, a lot of times meds lead to more meds. And sometimes, those meds get mixed with alcohol. And the result, unfortunately, is a lot of suicides or lives that are derailed. So the idea behind AM2668 is really pretty simple. When a veteran is accused of a crime, I think our court should, should hold them accountable. I think that being a veteran should give you some extra opportunities, but not a permission slip to commit crimes. I, I think that we need to make sure that the system works to address those issues that are specific to these veterans. We, we have a couple of decades of history with problem-solving courts here in Nebraska, and I think we can build on that. I wish I was a lawyer. I wish I had more experience in this. Unfortunately, my experience is dealing with the people who have had the system fail for them. So when Senator Wayne came to me with this idea, I feel bad that it, it wasn't on my radar, because I didn't understand what I didn't-- what I didn't know. I didn't understand how to get to where we needed to be. So again, I appreciate the fact that this idea of this amendment has come along, because I think AM2063 [SIC]-- create a veterans justice program in each of the jurisdictions here in Nebraska. It would tell the courts that when a veteran should be eligible for a veterans justice program. Let me, let me be clear, though, that if a judge thinks that putting a particular veteran in a program would be unsafe for the public, this legislation lets the judge make the call. But these programs are not supposed to be a cakewalk. There, there would be a, a detailed plan for each case. This plan would be developed by the court with the input from probation and

other experts. The case plan would contain specific supervision and treatment goals. The plan-- the case plan would include rules that the veteran has to follow to successfully complete the program. If the veteran successfully completes the program and meets all the objectives, at the end of the process, his case would be dismissed. If the veteran does not follow the plan successfully, the court is going to be in a position to find him guilty and sentence him. There is no free ride with this bill. This bill also recognizes that in the cases where there's a victim, the victim has rights to be heard by the court during this process. In any case, where a veteran is convicted of a crime, this bill would tell the judges to consider a veteran's service as a factor when it comes to sentencing. So let's look at those factors. Individual awards for merit and service. All right. That's fairly simple. If you serve and you receive, say, a Bronze Star, a Meritorious Service Medal, that's going to indicate that, that you were a high performer in the military and that you have a record there that should carry over. Overseas deployments. Now remember, with overseas deployments, there are different flavors of those. There's a combat and non-combat. So a non-combat deployment, for example, would be the deployments that we're doing right now, to Poland and places like that. Exposure to danger. That would fit more under the combat zone. So say you're deployed to Iraq, to Syria, places like that, that would be exposure to danger. And then service-connected disabilities. Now, when you hear that, don't think about a Purple Heart every time. There's a lot of service-connected disabilities where you're injured in a combat zone, just doing your day-to-day work. And, you know, something happens, where you receive some type of injury and it's not an injury that you can recover from or easily recover from. This amendment would also direct the state court administrator to keep track of some things. Participation in these programs, including the success rates, housing, and emp-- and employment status of these veterans, and further detail on the types of offenses and other factors. The state court administrator will file an annual report with the Judiciary Committee and include all that data in it. Please understand that this bill is probably not perfect. We were rushed when we put the bill together, but I think we're in the 90 percentile and that, we'll look at any necessary tweaks to this, but let's focus on the concept. Let's, let's focus on the idea of what this, this end product would be. I think that if we make our criminal justice system better and we understand how to, to work with veterans, this is, this is good for veterans.This is good for our communities. This is good for Nebraska. With that, I will take any questions.

DeBOER: All right. Are there questions for Senator Brewer? Senator Bosn.

BOSN: Thank you. Thank you, Senator Brewer. I want to start by thanking you for your service and the sacrifices that you've made. And I can't say that loudly and firmly enough from my perspective, so thank you. I also did not receive a copy of the amendment that you introduced on, so I was looking at AM2534 until about 2 minutes ago. So any of the questions that I ask that are answered in the new amendment, my apologies for that. Are you familiar with the current veterans courts that are available in Nebraska?

BREWER: I am, somewhat. I, I read a summary of the way they currently are, and, and I think I have a general understanding.

BOSN: Can you tell me what it is that is lacking in the current veterans courts that is addressed by this amendment?

BREWER: Well, I think the guys that follow me are going to go into a little more detail. One, I think is, is there's avenues for funding. Because there's VA resources that could be brought to bear that right now, we're looking at solely at, at Nebraska resources. So that's, that's a, a plus, because from what I can tell, the thing that continually limits our ability with many of these programs is simply funding, judges, prosecutors, the ability to, to bring these together in a special circumstance, separate from the regular system.

BOSN: OK. So the funding would be increased, essentially.

BREWER: I think the idea is if we can figure out a way to establish them, then we, we would look at how to fund them, and avenues that aren't currently available.

BOSN: And so, is it your position that they wouldn't be able to be funded under the current status?

BREWER: No, no. No. No. Please don't, don't go there. I am not an expert on this funding, of course.

BOSN: OK. OK.

BREWER: So do not use me as, as an expert on that. OK. So if you're going down that road, wait and let's find someone who, who understands how that process is used.

BOSN: OK. Fair enough. And I appreciate that, that, that position. Are you aware of-- with veterans courts, as they stand right now, that it is at the discretion of the prosecutor?

BREWER: Correct.

BOSN: And under your, your new amendment, I anticipate in both copies, that discretion would be removed from the county attorney's office.

BREWER: It would be the discretion of the judge.

BOSN: OK. And how would-- tell me what you see the benefit of that being.

BREWER: Well, I think that, I think that the, the judge should ultimately be the one that makes the call on it. So, I mean, I, I understand where you're coming from because that's your background, but I don't necessarily think there's harm in the fact that the information on the case is given to the judge. And the judge then becomes that person who ultimately makes the decision on sentencing or how they're going to handle what that individual has to do for sentencing.

BOSN: Correct. But you would agree that the charges that the individual is facing are brought by the county attorney's office.

BREWER: Well, yeah, if they're going to be charged. I mean, it has to start somewhere, so that, that would be, I mean, the, the beginning process. You've committed a crime. Then the-- you know, the-- there has to be the process to get the charge made into the court. The way I understood it was that the judge ends up being more in the position to make the determination than the prosecutor. Is that-- does that sound close?

BOSN: That-- I guess that would be my concern, is that we have county attorneys who are elected and held accountable by their constituents for the county, as to making those discretionary decisions who should and shouldn't be a candidate for problem-solving courts. Whereas under this bill, my concern or the concern I'm bringing to your attention, is that by removing that discretion from the county attorneys and that accountability that they're held to, and giving that to the judges to make the determination, they become the prosecutor and the judge in one fell swoop. And that, that is a concern of mine. Is that something that you're willing to work on to address that concern?

BREWER: Well, I think if, if it is, you know, an issue that, that will make the, the veterans court unmanageable, we have to look at it. But I guess if we look-- and, and there will be others who have seen this in progress other places that probably have more of a, a real world pulse on all this. They can say if, if it works in other states or not. I mean, what I don't want to have is a situation where you say, listen, this is the way we do it in Nebraska, and we're always right. And we're not going to look at anybody else's way of doing it, because this is the only way that is reasonable.

BOSN: OK. And I can appreciate that and, and understand that. The other thing, and I understand in, at least the copy that I have-- had, that this takes into consideration the perspective of the victim and being able to submit a written statement at a final hearing where program completion is determined. But under the Nebraska Victims Bill of Rights, we have to take those victims' perspectives into consideration when even determining eligibility for problem-solving courts. And so, are you willing to add that as one of the factors for--

BREWER: I, I, I don't think-- if it's something that, that we have in statute that we need to correct, I don't, I don't think we're opposed to changing things to, to make the bill better. Don't, don't get me wrong there. I-- I'm just trying to take the idea, the concept, and, and use the example where it's been used in other places, and try and bring it here so that we have something similar.

BOSN: OK. Have you spoken with any of the county attorneys or judges who oversee the current veterans courts programs in developing this?

BREWER: I spoke with the Lieutenant Governor and some attorneys, but not county attorneys. But keep in mind, from the time I've seen this until now, is, is really a very short, short time. So we're still kind of in that process of, of getting our arms around everything that we have.

BOSN: OK. OK. I will probably follow up with some of the individuals that you've alluded to having more background.

DeBOER: Thank you, Senator Bosn. Are there other questions from the committee? I don't see any. Thank you, Senator Brewer.

BREWER: I will stay for close.

DeBOER: OK. We will now invite Secretary Hagel up. Welcome, sir.

CHUCK HAGEL: Thank you, Madam Chairman, and I appreciate an opportunity to address this committee today, as I did about an hour ago, to the full-- or at least a, a number of other state senators who are not on this committee about, what we want to talk about today. I have brought with me 2 individuals I represent, as chairman of the National Justice-- Veterans Justice Commission. And I brought Colonel Jim Seward with me, who is director of the Commission, as well as one of our advisors to the Commission, Brock Hunter, who is a nationally recognized specialist in these areas. Let me just go back a year and a half and explain very briefly how I got involved in this issue. I was contacted by General Pete Chiarelli, who was a former Vice Chief of the United States Army, a 4-star Army General, who I've known through my association as former Secretary of Defense, as well as United States Senator representing Nebraska, and years I've had working with veterans groups. He said to me, we want to form a commission of experts in this area. And we're going to be passing out the specific individuals on the Commission, so the committee would have a chance to see who's on it-- of experts in this area of veterans who have been incarcerated. And it's, as I said about an hour ago to other members of the Legislature, this is, this is not a new issue. We've seen this after World War II, after the war that I was in. My brother and I, Tom, we served in Vietnam in 1968. We saw it after Vietnam, but in particular, we're seeing it now, as Senator Brewer said, after 20 long years of war, the 2 longest wars the United States has ever been in. And for the first time, the United States has fought a war with an all-voluntary force, meaning the same individuals, same men and women, keep going back and back and back. So, for example, when I was Secretary of Defense, not unusual to see men and women who-- still in service and those out veterans who had been redeployed 5, 6, 7 times. What that does to individuals is, is pretty dramatic. Now, again, I go back to our veterans of all wars. We-- we've had this issue of incarcerated veterans that we've always dealt with. And you go back in history and that's not new. But it is new, in the sense that the sophistication of this issue-- and also, what was most dramatic to me and, and really influenced my decision to chair this Commission was really, we've done nothing about it. We all love veterans. We all acknowledge the service of veterans, and we say nice things about veterans. But when some veterans get in trouble and they commit a crime, courts in this country, judges in this country, prosecutors in this country have very few options other than to sentence a veteran, regardless of their background, regardless of is this the first offense, regardless of what kind of offense. And what this commission was set up to do is take a, a look at the facts and really understand

what we're dealing with here. Are there options? Are there things that we can do that we haven't done to give veterans more opportunity and to take into consideration for the courts. Is this a first offense? What's the background of, of this veteran? Has this veteran been a model soldier? As Senator Brewer noted, PTSD, traumatic brain injuries, abuse of alcohol, of drugs, they, they probably picked up somewhere along, along their time in the service, if for no other reason than we just keep sending them back and back and back. This affects suicides-- record suicides, and also divorces, domestic issues with their families. And I know my red light is on, but the Chairman said I can take an extra minute or 2 before I ask my, my colleagues to come up here and get into specifics. And I noted a number of your very good questions, and we want to address those, those issues, too. Because what we have done in the first year and a half, is we've come up with recommendations in, in what we reference as Veterans Justice Act. And when Chairman Wayne, Chairman Brewer and Senator Linehan organized a, a conference call about 2 or 3 weeks ago, which we had to explain this. And I give much credit to Senator Linehan for really organizing this. And I think most of you know, Senator Linehan and I have worked together over many, many years. And she understands it, too, because the last year of my time in the Senate, she went to work for the State Department and was in Iraq for a year. And so she understood it. Her son is in the military. So she understands this about as well as, as anyone. So that's what we're going to be talking about today. And that's what I'm going to ask my colleagues to-- Colonel Jim Seward to come up next, and then Brock Hunter next. And then we'd be very happy to entertain whatever questions you have. Thank you.

DeBOER: Thank you, sir. Can you spell your name for the record?

CHUCK HAGEL: Yes. Chuck Hagel, H-a-g-e-l.

DeBOER: All right. Thank you. And now, we'll see if there are questions from the committee. Do we have questions for the Secretary?

CHUCK HAGEL: I will certainly take questions and I'll take any that you've got now. But I think in the interest not only of time, but I want you to hear from a couple of experts--

DeBOER: OK.

CHUCK HAGEL: --who are far more expert than I am about this. But I wanted you to understand why I am involved and why I got into this,

and why I think this is a very important point and issue and challenge for our country.

DeBOER: Thank you very much, sir. Oh, Senator McKinney has a question for you.

CHUCK HAGEL: OK.

McKINNEY: Thank you, Senator DeBoer. Thank you, Mr. Secretary. Quick question. What, I think, took away your concerns or alleviated your concerns about judges making these decisions and not county attorneys?

CHUCK HAGEL: Well, that-- that's a good question. And, and I think your colleague's questions about this are very appropriate. I'm going to let Brock Hunter address this in, in great detail because he's a real expert, and you'll understand why when you hear him. But from my point of view, starting with a veteran leaves the Defense Department. And I was very involved in this when I was at, at Department of Defense. The, the transition point and process is where it begins. And we do not do a good job of transitioning out our veterans. We say we do, and we, we say, well, we're giving it more time and we have, but we really don't. And, and one of the reasons is, is because when commanders have responsibilities of doing their job and their mission, the last thing they need is, is to lose some of their people who are transitioning out, to time spent in sessions about what, what you're going to be dealing with as you get on the outside: challenges, VA benefits-- what are your benefits? That's one issue. But more important to that-- and there are many issues in this as to what leads veterans to get into trouble. And by the way, if someone has committed a crime, they've committed a crime. So we're not in any position to apologize for that. And say, well-- what we're saying, to give judges the option to have options, to take into consideration, is this a one-time offense by a veteran? What's the veteran's record? Was he a model soldier, did everything he was supposed to do? One of the things that I did when I was the Secretary, I instructed all the, the services to review all so-called bad paper discharges. Not honorable discharges, not dishonorable discharges, but bad paper discharges for whatever reason. A lot of men and women who served, and especially those who had many deployments overseas in combat areas, were really treated unfairly with bad paper. And so there-- the Defense Department is still reviewing a lot, lot of bad paper. That-- that's helped them because that's giving them options. And if you give a judge the option, not without consulting with a prosecutor, absolutely not, take-- not taking responsibilities away from a prosecutor, but giving

judges more options, more availabilities to deal differently with veterans. So that would be my, my answer and my approach to this, which I, I think is, is really important. They don't have that-- most courts don't have that option today. I'll let Brock Hunter go into it in more detail, because he's, he's the expert witness.

DeBOER: Thank you, Senator McKinney. Senator DeKay.

DeKAY: Thank you. Thank you, Chair. Thank you, Secretary Hagel, for being here. When you were talking about considerations and you was talking about a soldier's record and what kind of soldier he was, part of the considerations, would that be the severity of the crime?

CHUCK HAGEL: Sure. I mean, that has to be part of it. But there-- there's not one definite answer, easy answer, specific answer to each situation. And I think those of you who have experience in this area understand that very well. Every situation is a little different. Not, not to say that every criminal act-- isn't that the same? Yeah, it is, but the circumstances leading up to that, the background of the indicted individual-- a little different, so on. That's one of the, the points that we make in the Veterans Justice Act that I think has, has been missing. And judges, we think it would be helpful to the community, it would be helpful to the judge, it would be helpful to the prosecutor if there were more options and the judge had more leeway in, in some of this. I'll go back to my own experience. I was President Reagan's first Deputy Secretary of the Veterans Administration. And even before that, as I said, coming out of Vietnam, I've seen this for years and years and years. We say we're going to help the veterans. We say we're going to have a system to help veterans and, and give courts more options to deal with, with veterans, but we haven't done it. And that's why I started with my comments about America loves their veterans. They let them go first on airplanes. They buy them drinks at the bar at airports. But really, when it comes to dealing with this kind of an issue, what you're all talking about, what we've been talking about, there's been very little progress made. Very little. So I don't know if that's a good answer to your question, but, at least that's where I am. Thank you.

DeKAY: Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here today, sir.

CHUCK HAGEL: And, and I'll be available, too, if, if-- once we have the other 2 witnesses, if there's anything else I can add to it or answer, I'll [INAUDIBLE].

WAYNE: Thank you so much.

CHUCK HAGEL: Thank you very much.

WAYNE: Next, we'll have Mr. Seward. Welcome to your Judiciary Committee.

JIM SEWARD: Thank you and good afternoon. My name is Jim Seward J-i-m, not G-y-m, S-e-w-a-r-d. It's really a great honor and pleasure to be here today. My background is as an elected district attorney, as general counsel to Governor Dugard in South Dakota, as an enlisted M-1 tanker in Germany for many, many years, and now, as a JAG officer, I still serve in the National Guard in Kansas. So I'm from South Dakota. I live in Wyoming, and I'm in the guard in Kansas. We almost have you surrounded. I, I have, for several years, served on the board of directors at the Council on Criminal Justice, which is a nonpartisan think tank and invitational membership organization. I left the private practice of law a few years ago, when they asked me if we could form a Veterans Justice Commission to study the nature and extent of veterans in the criminal justice system in the United States and to develop evidence-based policy recommendations that would focus on the health, safety and justice of veterans. The Veterans Justice Commission was launched in August of 2022, and they're focusing on 3 areas of study: The front end of the criminal justice system, policing through sentencing, the back end of the justice system, sent-- corrections and reentry, and then transition from the military. And I'd like to start today, talking about the model policy, the Veterans Justice Act, and explain that it does not change the operation of the veterans treatment courts. The model policy does not. And as I understand your amendment, it does not change the operation of the veterans treatment courts you have today. Where did this idea come from? How did we get here? Brock Hunter, who's the chair of the All Rise veterans treatment committee, the, the national organization that oversees and works with veterans treatment courts, Brock Hunter's the chair. He's sitting behind me. He's worked on this issue around the country for many years. Judge Robert Russell, the godfather of veterans treatment courts, helped build this model. Scott Tirocchi, the director of Justice for Vets, helped build this model. In March of last year, the Commission released a report and said that we should, we should build a model that would have alternatives to prosecution

and incarceration. One, because veterans treatment courts across the country only exist in 14% of the counties in America, 43% of our veterans treatment courts in America don't allow someone that is charged with a serious violent felony, like Hector Matascastillo, who was arrested in his front yard with his 2 unloaded handguns, and a quarter of our veterans treatment courts in America don't allow a veteran with an other than honorable discharge. So this, this group of national experts that stands behind veterans treatment courts and built veterans treatment courts across America, said that we needed a model that would expand the access for veterans that were falling through the cracks. John Flynn, who, at the time was president of the National District Attorneys Association, was on our committee that helped build the Model Policy Framework that ALEC then used to launch or release the model policy that your staff looked at to develop your amendment here in Nebraska. The, the Commission and the committee both believed that veterans treatment courts are a favorable development in the U.S., and that they complement veterans treatment courts. Veterans treatment courts would continue to operate just as they have operated. But this provides those other options in the other counties and in those counties where they operate, where a veteran perhaps is not high risk, high need or the prosecutor says this individual is not allowed in the veterans treatment court, the judge would have that ultimate decision in those counties where the veterans treatment court exists today, and in the counties where one-- where they don't exist and will never exist because of economies of scale. As, as we look at the numbers across America, our veterans are falling through the cracks. The Department of Justice estimated that veterans treatment courts in America are catching about 10-15% of the veterans coming through the justice system. Only 10-15%. This just provides another option. Certainly, both sides, defense and prosecution will make their case. The judge is the finder of fact and will determine whether or not a case is appropriate. And with that, Mr. Chairman, I'll stand by for questions before my red light goes on.

WAYNE: Any questions from the committee? Senator DeBoer.

DeBOER: Thank you. Sorry. So have you-- do-- is there a version of this in effect anywhere already?

JIM SEWARD: It is currently-- of course, no state has an exact duplicate copy. It's, it's being considered in many states in the legislature this year. Minnesota has probably the closest and it's been in operation for a few years. And I would defer to Mr. Hunter,

who helped draft that, over the last-- his last 25 years of working with veterans in Minnesota.

DeBOER: OK. The-- there's apparently a rebuttable presumption that would allow the veteran to go into this program, and that the only way to overcome the presumption is based upon the assessment of the judge that participation would not reasonably ensure public safety. Can you take me through how you sort of came to that mechanism for deciding who should be in or not in the sys-- the program?

JIM SEWARD: Certainly. Now, I will tell you that the committee that the commission appointed with, 5 or 6 prosecutors, a couple defense attorneys, a couple judges, some impacted veterans, they built what we call the Model Policy Framework. And that's available on the Veteran Justice Commission website at the counciloncj.org. That Model Policy Framework walks through the concepts, the evidence-based factors. And then ALEC, the American Legislative Exchange Council adopted the model policy that I believe Nebraska used to consider this legislation. The, the debate at ALEC, I was present at the committee meeting. I don't recall them specifically getting into debate over this rebuttable presumption, but the, the concept is just as Secretary Hagel discussed. In, in almost all criminal cases that are before a court, the judge has the ultimate decision on the findings of fact, unless it's a jury case. Right? This, this would be-- this would be another instance of that, where the judge, who is, I would argue, also responsible for safety in their communities and concerned about that, is going to weigh and balance whether or not this is an appropriate defendant, an appropriate case, whether or not there is a nexus with the individual's service, and make that ultimate decision after hearing from all parties involved.

DeBOER: The judge who would make the decision, I guess, in sentencing, or something about how to weigh public safety versus the individual, you're just putting that back in their hands at an earlier point. Is that kind of what you're doing here, with making them the arbiter of who gets to go through the program and who doesn't?

JIM SEWARD: Well, I would tell you that in the model policy, the, the committee tried to keep the system consistent with the system we have today. If you have 93 counties in your state and 2 or 4 of them have a veterans treatment court, the other counties don't have that option. And in those counties, that judge, in all the other criminal cases, is making the decision today, I would imagine. And, and that's really-- when they talked about the model policy, they, they could not drill

into the specific laws in each state. They had to-- it's like a uniform law that the Legislature sees every year. And sometimes, you need to revise something in that uniform law so that it matches your state. But the committee tried to set it up so that it would mirror the system you have today, whether it's a civil case or a criminal case, where the judge makes the decision on those findings.

DeBOER: Thank you.

WAYNE: Any other questions from the committee? Senator Bosn.

BOSN: Thank you. Thank you for being here. So, to sort of follow-up on that, given that that is-- the overarching principle is to have that consistency. Currently, our statutes for problem-solving courts, which, I consider a veterans treatment court a problem-solving court, is that the prosecutor makes that determination. Does that ruin what's going on-- what the intent of this bill is, is to keep-- if we keep that consistent and we have the prosecutor be the determiner of eligibility, does that ruin the intention of the bill?

JIM SEWARD: Mr. Chairman?

WAYNE: Oh, it's a question. You can answer it.

JIM SEWARD: OK. Sen-- Senator-- I, I forget. Sorry. Some states require you to go through the chairman, and--

WAYNE: [INAUDIBLE].

JIM SEWARD: --out of habit. Senator, I don't believe it ruins the consistency. As, as I talked about, the, the nation's leading experts in veterans treatment courts helped build this model policy. And they believe that the Veterans Justice Act is complementary and works alongside veterans treatment courts. So if I have a veterans treatment court working in Omaha, and there's a case that isn't referred to the veterans treatment court or is referred to the veterans treatment court, but for one reason or another, it does not go through the veterans treatment court-- as you're probably aware, vets for Justice and All Rise, formerly the National Association of Drug Court Professionals, would say if Jim is arrested in Omaha, but Jim is not high risk, high need, Jim is probably not getting into the veterans treatment court. For instance, an individual, maybe it's their first DUI. Maybe they don't have-- maybe they don't have a long record or a serious enough offense, and they're not high risk, high need, and they're not going into the veteran's treatment court, the judge could

still have this option. And some would say, why would, why would the veteran choose that option, because it's a lot more work to go through AM2668 than, than just taking, taking the, the fine, right-- pleading guilty and taking the fine and walking out the door. If Jim's got a defense attorney, if, if Jim thinks through it-- and the judge decides, you know what? I understand this case did not get accepted by the, by the veterans treatment court board, whether it was a veto or the board decided or the committee decided we're not going to take this case because it's not high risk, high need, the judge could hear from both sides and could say, I think this case should. And Mr. Hunter can speak more intelligently about this. But one of the ways it's operating is that that case could then be referred by the judge to the veteran's treatment court, or the case could just stay-- and that, that would probably be a policy decision that would have to change outside of this committee or this Legislature, on whether or not your veterans treatment courts would want to take a case referred by the judge-- or the judge could just keep the case, much like the judge does with a normal probation case. Put the veteran through that more long-term treatment program and really try to change their behavior, so that we don't have Jim re-offending again with another DUI or other narcotics, or getting involved deeper into the criminal justice system, and try to get Jim back on the, on the being a hero status again, like when he came home from war. That's really the thought behind it.

BOSN: So I, I appreciate the answer. I guess, in some states, judges are elected, right? And in Nebraska, judges are appointed. And so, the difference being that accountability-- the public elects them so they have that accountability versus here, we do retention, but you were never elected by, by the people. And so those-- the, the prosecutor, who is uniquely positioned, because they are going to be accountable. If I let a veteran on and it's a bad decision, that's on my shoulders. If I don't let someone on and that's a bad decision, that's on my shoulders. But additionally, with our problem-solving courts in Nebraska, the way they're run is that we-- if a prosecutor agrees to let an individual go on to the drug court program, it's their decision. And then-- and often, there's a review process if you deny someone. But in any event, let's say we let them on and they complete the program. The way that it works then, is the county attorney filed a motion to dismiss the case altogether. The case is just gone. It's done. And if we take that discretion away from the prosecutor, we have no ability to come back and say, will you sign this motion to dismiss this possession of a controlled substance with intent to deliver,

because he completed veterans court. The prosecutor says no, I didn't agree to let him go. Then what do we do? So then we, we have a trial after that fact, because we didn't have an agreement to begin with? So our-- and perhaps it is just the fact that our state runs some of these programs differently, but that's how it's always run. And so I appreciate that you-- I think the way you worded it was we want the model to be consistent with your current standards. But I think that with that, we have to consider that consistency with our drug courts, our DUI courts, our mental health courts, our diversion programs, of that-- the prosecutor is the gatekeeper, in terms of making the decision for accountability of that individual. And in those circumstances, they also have to take into consideration the victim's wishes, which is what is required currently under our Victims Bill of Rights.

JIM SEWARD: Thank you, Senator. In addition to some of the other crazy parts of my career, I got to serve 4 or 5 years on the judicial qualifications commission in South Dakota, where our judges are appointed. And I, I would tell you, those appointed judges would probably argue that they're, they're-- they are, too, accountable to their communities. But that's really an aside. The-- living in Cheyenne, Wyoming, and being from the Black Hills, I've had a couple thousand occasions to drive through western Nebraska. I have yet to find a metropolitan area that would be sufficient to support a veterans treatment court. And so I don't disagree with you, that where you have a veterans treatment court, the elected prosecutor who, under the national model that's been built, has traditionally been called the gatekeeper. I, I helped build the first veteran's treatment court in South Dakota, when I was an elected DA. I don't disagree with that proposition. And as I said to start my testimony, this does, this does not change that. In those locations, those few locations where you have a veteran's treatment court, the prosecutor is still the gatekeeper. This can work alongside that. And the judge has the authority to, perhaps, whether it's-- you plead guilty and, and the judgment is deferred, I believe is how you say it in Nebraska. The judge has that authority in, in other areas across your state now. And so, this would be consistent with that. And give the judges, the prosecutors, the defense attorneys, the communities-- in Alliance, Nebraska, that community could have something similar to a veteran's treatment court in a community to improve public safety, where they will probably never have specialty courts because of economies of scale.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here, sir.

JIM SEWARD: Thank you very much. I greatly appreciate your time.

WAYNE: Next proponent.

BROCK HUNTER: Good after-- good afternoon, Mr. Chair, members of the committee. My name is Brock Hunter, B-r-o-c-k H-u-n-t-e-r. I'm an attorney and also, a veteran. And I served as an Army scout 30-odd years ago. And since leaving the military and, and becoming a lawyer, I have focused my practice, my professional life, first and foremost on defending fellow veterans in the criminal court system. But then, also, I'm doing policy advocacy, initially through my own nonprofit, the Veterans Defense Project, but then ultimately, through All Rise, formerly the National Association of Drug Court Professionals and its subsidiary, Justice for Vets, where I've served on the board of directors for the past 6 years, and currently chair the Veterans Treatment Court Committee of All Rise. And I was honored to be invited to serve as an advisor to the Veterans Justice Commission, which, I can tell this committee is the most significant development in the area of veterans justice in this generation. Nothing else even approaching this has been undertaken as the Council on Criminal Justice has with this commission. I would like to start my comments by noting that, for as long as veterans have returned from war, most have returned home stronger and wiser from their service, immediate assets to their communities. They are the majority. We're in no way wanting to paint a picture that most veterans come home and pose a risk to the public or fall into the justice system. But I think it's important for us to recognize that as we look back historically now, we recognize very clearly that for as long as our veterans have returned from war, some of them have brought their war home with them. In fact, a pretty significant percentage of them over the years have brought their war home with them, in the form of invisible injuries that today, we call post-traumatic stress and traumatic brain injury. And untreated, we also recognize that these echoes of war have manifested, when they're untreated, in self-destructive, reckless, and sometimes violent behavior that reverberates through society, destroying not only the lives of these returning heroes, but often their families and the communities that they risked their lives to protect. In this way, large numbers of veterans-- American veterans of past generations have fallen into and been left behind in the criminal justice system upon their return home. Some of the best data we have on this relates to the Vietnam War, in a study done by the VA in the 1980s, that found

that at that point, roughly a decade after the war ended, half of the veterans the VA was treating for post-traumatic stress had been arrested at least once. A little over a third had been arrested 2 or more times, and nearly 12% convicted of felonies, in just that first decade after Vietnam. And today, after 20 years of war, as Secretary Hagel noted, we have a modern generation of veterans returning from our longest wars in our country's history, that they have been fighting simultaneously. We've been doing it without a draft, asking volunteer soldiers to serve over and over and over again in combat, like we've never done before in our country's history. As Secretary Hagel noted, it was common, when he was Secretary of Defense, to find veterans who had served 4 or 5, 6 combat tours. And I can tell you from my work with thousands of veterans in the system across the country, it is not uncommon to find veterans who have served even more than that. Hector Matascastillo, the veteran we heard about during our noon-hour presentation, served 13 combat deployments with Army Special Operations, as well as ultimately, the National Guard. We have other clients in my practice who have served more than 10 deployments. And they're always careful to point out that they're nothing special. Within the special operations community, there are now many veterans who have served more than 20 combat deployments, post 9/11. This is important to understand, because this level of redeployment of individual soldiers is simply unprecedented in our country's history. It translates into higher rates of post-traumatic stress. It higher-- it translates into higher rates of veterans bringing their horn-- home-- their war home with them, and higher rates of them falling into the justice system than ever before in our country's history, posing the very significant risk, I believe, of an unprecedented public health and public safety crisis in the years ahead, if we don't find ways to embrace these troubled veterans, get them the help that they need, and successfully reintegrate them back into their communities. This modern generation of veterans is also the most lethal in our history. They are the beneficiaries of modern American military training and conditioning that has made them the most lethal soldiers we've ever deployed. And then, many of them have honed those skills on the battlefield over multiple deployments. Again, we don't want to minimize the idea that they are a public safety risk, but acknowledge it head on and recognize that, unless we intervene with them when they come into the justice system, get the help that they need, they're going to continue to pose a risk to public safety going forward. Now, you've heard already, already about the Veterans Justice Act. And I will just hit on some of the high points here. The Veterans Justice Act, as has been noted, is not intended to interfere with existing

veterans treatment courts. What's wrong with existing veterans treatment courts, quite simply, is there just aren't enough of them. And the vast majority of veterans coming through the justice system simply do not get an opportunity for therapeutic justice through a veterans court, because their jurisdiction doesn't have one, or they're in a jurisdiction that has one but they've been denied access to therapeutic justice for one reason or another. The Veterans Justice Program in this act is intended to create an alternative pathway, one that in-- will exist in counties that don't have any veterans treatment court at all, to provide some kind of approach of therapeutic justice for veterans there. But in counties where there is a, a veterans treatment court, we recognize that those courts are in the best position to determine what veterans are appropriate for them, how much resources they have available, whether the veteran is a good fit for the program. But for those who are not, this program provides an alternative to veterans court, so that we are still taking a therapeutic approach with more veterans than we currently do.

WAYNE: Let me see if there's any questions for you, sir.

BROCK HUNTER: Thank you.

WAYNE: Any questions from the committee? Senator DeBoer.

DeBOER: Thank you. So one of the previous testifiers said that you would be someone I could ask about Minnesota's program. How similar-- have you had a chance to review the amendment that we're talking about today?

BROCK HUNTER: I have, Senator.

DeBOER: How similar is the Minnesota program to the one that we have outlined here, and how different?

BROCK HUNTER: It's-- Mr. Chair and Senator DeBoer, it's pretty close. We passed, in Minnesota, what we call our Minnesota Veterans Restorative Justice Act, in 2021. It is modeled very similarly, I would say, to the act before you today, with the exception that Minnesota, we don't have the data collection piece, which we very much wish we had. And we're going back this next session to work on getting that. But in, in many other ways, it is, is very close in law.

DeBOER: And when did you pass that one? You may have just said.

BROCK HUNTER: 2021 is when it became a law.

DeBOER: And have you seen rehabilitative success since then?

BROCK HUNTER: Absolutely. We have seen-- though, again, we don't have the data collection to have hard numbers. But anecdotally, I can tell you that veterans all across the state of Minnesota are getting therapeutic justice in a way that they never did prior to the passage of the law. We've even seen in counties that have veterans treatment courts, the number of veterans in the courts has increased. Even though there, the prosecutors remain gatekeepers, they have embraced this and, and are working with their courts to expand their resources and capacity and bring in more veterans into their programs. And there are veterans who are on probation to individual judges through this therapeutic path, as well, who were not found to be a good fit for particulars counties-- excuse me, a particular county's court.

DeBOER: So you're saying that the-- you have a, a system of veterans courts, that the gatekeeper would be the prosecutor in those instances. And then for the rest that fit with this model that you've outlined here, the judge is the gatekeeper, and you've been able to reconcile those 2 systems, side by side?

BROCK HUNTER: Mr. Chair, Senator DeBoer, yes, we have. Yes, we have.

DeBOER: OK.

BROCK HUNTER: And I would, I would also note that in Minnesota, the county attorney's association in Minnesota ultimately full-throatedly supported the passage of our legislation. So this was something that they-- a number of key county attorneys participated in the drafting of that bill. And, and ultimately, the association itself supported passage.

DeBOER: And how are judges-- are they appointed, elected? How does that work in Minnesota?

BROCK HUNTER: It's a bit of a mix. It's-- there's appointments and then there are elections, as well. As well as judges, every 4 years, have to all run for re-election.

DeBOER: Retention or re-election?

BROCK HUNTER: Re-el-- well, retention.

DeBOER: OK. OK. Thank you.

WAYNE: Any questions from the committee? Senator Bosn.

BOSN: Thank you. OK, so in Minnesota-- you practice in Minnesota?

BROCK HUNTER: I do, Senator. Yes.

BOSN: OK. So they have-- place-- in the same jurisdiction, they have veterans courts run collaboratively with prosecutors, defense attorneys, treatment providers, and judges, and simultaneously have this program, the Veterans Justice Act program. What would make one defendant go one way and one defendant go another?

BROCK HUNTER: Well, it is up to the defendant, Senator, to, to seek eligibility under our act in Minnesota, as it would be here. And I can tell you in my practice with my clients, the first place that we go and check is the veterans court, to see if we can just get an agreement to get the veteran into that program. And if so, the act doesn't really ever come into play. It's those instances where they're found not to be a good fit for the court, that we then petition the judge, the-- in the regular criminal court, for eligibility under our act. And, and then, that individual judge, if they find that the veteran meets the criteria under the statute, can-- sometimes, what happens is they will re-refer back to the veterans court to see if they will give it a second chance, to, to see if the court will take that individual veteran. But if they don't, the judge can put that veteran onto probation with the same set of criteria, as far as accountability, requirements to get all recommended care through the VA. The treatment program that the veteran undergoes in veterans court versus under the program is basically the same. It is what the VA believes is the best fit for that individual veteran. But again, in the veterans treatment court world, and I speak about this as a member of the board of All Rise, we increasingly are recognizing that veterans treatment courts, quote unquote, are the ideal fit for, for veterans that we consider high risk, high need, that need intensive supervision, intensive amounts of resources, and, and that they're focused there. But the veterans courts have a limited number of resources and a limited number of spots for veterans in their courts. That leaves a whole lot of other veterans that don't meet those criteria, that, in the status quo, don't have access to restorative justice, don't have access to that same kind of pathway. And what this act would do is provide that alternative, that there is something else in a jurisdiction other than the veterans treatment court that may be a good fit.

BOSN: So you, you talked about eligible criteria to go through the Veterans Justice Act. Is their eligible criteria mirror the language in the amendment that we received today?

BROCK HUNTER: Yeah. Yes. It's very similar.

BOSN: So there-- any crime is eligible?

BROCK HUNTER: I should say-- I should, I should designate there is-- the Veterans Justice Act and I, I believe, the, the Nebraska act differs a little bit from the Minnesota statute in, in that in Minnesota, we bifurcate, essentially, veterans into those veterans with offenses that, under Minnesota sentencing guidelines, are considered probation-eligible offenses. So that's misdemeanors, gross misdemeanors, and low to moderate-range felonies would be eligible for what, in the Nebraska bill, would be called the Veterans Justice Program. They're going to be given an opportunity if the judge deems them eligible, to do everything expected of them and avoid a criminal conviction. Under Minnesota's law, if the offense is considered a presumptive prison commit under sentencing guidelines, that veteran would fall more into what you have as Section 5, sentencing mitigation territory, where the veteran is not going to have the opportunity to avoid a conviction. They're going to have a felony conviction on their record, but the judge can use their military service as a basis to consider mitigation of that sentence, either to less time in prison or probation instead of prison. But that veteran would still have a conviction. I don't believe the language of Nebraska's current act separates all of that out quite the same way that Minnesota's does.

BOSN: OK. So the amendment that we received today, AM2668, takes away the language that you just referred to, as it relates to el-- an offense eligible for probation. And so we-- this proposed amendment that we're debating today doesn't even require that it's an eligible-for-probation offense. And you're telling me that your recommendation is based on a presumption that it has to be a probation-eligible offense?

BROCK HUNTER: The reason, Senator, that we didn't get into the weeds on our model bill is because states have such vastly different mechanisms from state to state, regarding the determination of whether offense is presumptively probation or presumptively prison. And so, it remains silent on that particular issue. I-- the one other thing that I would note about Minnesota's statute is that we created a separate third category of offenses at the very highest end of the range here,

homicides, criminal sexual conduct, offenses that in Minnesota, we call predatory registration required offenses, that are excluded altogether from our statute. So there's a category of offenses that just aren't going to be eligible, regardless. A category of offenses just below that, that are presumptive prison, that are not going to have a chance to avoid a conviction but may have an opportunity to avoid prison or have less prison, and then the lower end of the range, where they would have an opportunity to avoid a conviction.

BOSN: Thank you. That actually answers a lot of my questions because as this bill is written right now, you could be charged with first degree sexual assault of a child, and it would be a presumption only overcome by a judicial finding that you're in. And you're telling me that's not the case in the state that you've modeled this after?

BROCK HUNTER: That is correct.

BOSN: And you could be charged with manslaughter, and you would be-- presumption shall only be overcome under this-- and your position today is that that's not what's happening in Minnesota, and that you agree that's probably needing some tweaking.

BROCK HUNTER: I, I could speak to what happened in Minnesota. And I think there was a logic to it, is what got the county attorneys on board in Minnesota, was seeing that we had some differentiation in the level of offenses. I think the key here is that none of what we are trying to do with the Commission is, is in any way, trying to endanger public safe-- or increase the danger to public safety. Quite the opposite. We just want to take an open-eye view that very often, military service-related trauma, when undiagnosed and untreated, drives criminal conduct. That if we want to avoid that veteran continuing to re-- recidivate for the rest of their life, pragmatically, it makes sense to get them the help that they need and give them a period of supervision and accountability, and, wherever possible, an incentive to get them on board with this process. Many veterans who come into the system with untreated trauma are angry. They feel separated from the rest of the society. They feel they've already been discarded. And they're not always eager to go to the VA and get treatment because the treatment itself is traumatic. To talk about the worst day of your life again and again until you've processed it is asking a lot of them. And many of them would rather go sit in a cage and, and do jail time, or self-medicate with alcohol and drugs for the rest of their life than to confront those demons. And so, the, the policy behind giving a wider range of offenses than in

many jurisdictions do, the opportunity to avoid a conviction is that incentive, to give that, that veteran a path to redemption. Give them a chance to earn their way out of that conviction, giving the judge discretion on both the front end, as to whether this is a viable thing for public safety, and on the back end, to determine whether the veteran met all of the requirements of what was expected of them before that veteran walks out of the process without a conviction. So this is absolutely about protecting public safety better, in both the short and the long-term.

BOSN: And I, I can appreciate all of that. And certainly am-- have been and am a strong supporter of problem-solving courts. You also mentioned that-- how you got the county attorneys on board. Are you aware of whether or not the county attorneys in Nebraska were a part of the drafting of this at all?

BROCK HUNTER: I-- I'm not aware of the process at all, Senator. I, I-- as I think we've all heard, this has happened very quickly over the last couple of weeks. And I'm not sure how and by whom all of this drafting was done, but we're here to just provide our feedback regarding the language of this amendment and, and how it fits within the Veterans Justice Act and, and our policy intentions.

BOSN: Do you support having their feedback before we would implement this program in Nebraska?

BROCK HUNTER: Certainly. I think wherever possible, all of the stakeholders in the system should be part of the conversation, to make sure that we're all on the same page and that the intent of, of what we're trying to accomplish is, is effected.

BOSN: Thank you.

WAYNE: Any other questions from the committee? I'll just note for those who are at home or those who are reading this later on, AM2534 references only those eligible for probation. And the reason why that was included-- because when you include deferred judgments, there are no domestic violence or DUI charges available for deferred judgment. AM266 [SIC] removes that reference. And so Senator Brewer has both of those for the committee to, the committee to present. But ultimately, it is up to the committee to come out with an amendment that will move on the floor or die on the floor. Any other questions? Senator Ibach.

IBACH: I just have one quick one. Thank you, Mr. Chair. I live in one of those districts that Mr. Seward refers to, in western Nebraska. And I just noted a few similarities in the, in the amendment. But one, one kind of strikes me as-- it reads, each district or county court shall establish a veteran justice program. And being from one of those very rural districts, can you tell me how it works in Minnesota, where you have-- I know you have similar districts. Do they combine? How is that structured?

BROCK HUNTER: Happy to answer that, Senator. In Minnesota, we did not define this as creating a new program. There was no requirement put upon individual county courts from the passage of our statute. It puts the onus on the defendant-- the veteran defendant and, and his or her attorney, to come forward and seek the benefit of the statute. And then it puts on the individual judge to determine eligibility and craft the terms of a probationary sentence. And so it isn't, in effect, a program, as much as it is an additional tool for an individual judge to create, as, as we often say, colloquially, a "one-veteran veterans court" in a rural county, to get that veteran into the VA for treatment and get them the help they need, supervise them, hold them accountable, but give them a shot at redemption. And this is something, even prior to the passage of our law in Minnesota, that we've been doing for years and years across the state, is negotiating similar types of, of arrangements, plea agreements with the prosecutor and the judge, for doing just that. So that-- and our statute just codified it and, and, and created some uniformity. That, that was another thing, is every county was approaching it a little bit differently. And we wanted to create some kind of uniformity of criteria so that as much as possible, the justice a veteran has an opportunity to receive is not dependent on which side of a county line they happen to get in trouble.

IBACH: So, an easy way to say that then, would be if we didn't establish them in every county or every district, they would still have the program as a resource somewhere. And then, our local district or county would have to refer them or could establish the program in the county or district.

BROCK HUNTER: Correct. And the individual judge can just cite to the statute and say, I'm finding this veteran eligible. I'm going to refer the veteran to the VA for an assessment to determine all appropriate treatments. And I think that that's something that can't be overemphasized, is the benefit of integrating the courts with the VA and all of the significant amount of federal resources that can be

brought to bear for this treatment, that then the county does not have to pay for out-of-pocket.

IBACH: All right. Thank you very much. Thank you, Mr. Chair.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

BROCK HUNTER: Thank you, Mr. Chair.

WAYNE: Next proponent. Next proponent. Welcome to your Judiciary.

WEBB BANCROFT: Thank you. I'm Webb Bancroft, W-e-b-b B-a-n-c-r-o-f-t. I'm testifying today on behalf of the Nebraska Criminal Defense Attorneys Association.

WAYNE: You're going to have to speak up.

WEBB BANCROFT: I'm testifying today on behalf of the Nebraska Criminal Defense Attorneys Association. Some of you may remember, I have testified previously about problem-solving courts. Up until September of last year, I had been in our Lancaster County Veterans Treatment Court, basically since its inception, was part of the group, along with now the Lieutenant Governor, now-retired district court judge who established that program in Lancaster County. For the 18 months prior to that, I was doing all of the problem-solving courts for the Lancaster County Public Defender's Office. And that included drug court and the DUI court. I served for over 15 years on the statewide Problem-Solving Court Committee, and I've had the benefit of going to a number of trainings nationally with both the vets and the problem-solving court committees. I think what Senator Brewer said at the onset is how I understand this to be. This is a concept. This is a model. This is a working idea to try to get problem-solving courts and treatment for veterans across the state. We start with the overarching idea that problem-solving courts are successful. They are cost saving. They reduce recidivism. So when we can address a population such as our veterans who have signed, at some point in their life, a piece of paper willing to do anything that they needed to do on behalf of our country. I think the opportunity that we have to assist them when they have made that agreement to do whatever we ask is absolutely important. There are differences. I didn't get the second amendment. So I reviewed them as quickly as I could to try to, to flesh out any differences that I saw. I noted the difference that Senator Bosn pointed out, as well, in regards to the eligible for probation. And I

think the Chair's explanation about deferred judgment and what offenses are eligible for deferred judgment is an appropriate response and a way to understand the framework for these. It's very important that we recognize and certainly, as we have met as a statewide committee, to recognizing the challenges that rural districts have. And judicial districts usually combine and a number of counties are involved in rural districts. And I would think it makes sense, when you consider problem-solving courts or consider these amendments, that that can be a framework for looking at where these programs would exist, and making sure that we have the services available to the veterans. In terms of how-- the framework between the 2 amendments. I think that's something and I, and I heard it said that we are going to wait to hear from the committee about those things that make the most sense from the framework. We're different than Minnesota. We're different from other jurisdictions. We've had our courts operating for some time. But within this framework, the idea of expanding veteran's treatment courts to also include misdemeanor offenses, to making sure that they're available across the state for every veteran who has served, that's the most important thing. That-- the devil, of course, will be in the details.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Next proponent. Next proponent, proponent. We'll start with opposition. First opposition testimony. Welcome to your Judiciary.

DAN ZIEG: Good afternoon. My name is Dan Zieg, D-a-n Z-i-e-g. I'm here on behalf of the Nebraska County Attorney Association to testify in opposition to LB253, as amended. We want to be very clear that we support veteran treatment programs and problem-solving courts. Existing veterans programs in our state have been highly successful and operate under the guidance of the evidence-based best practice standards developed by the Nebraska Supreme Court. We support additional resources to build on these programs and offer them in more jurisdictions. Our opposition is not to the use of specialized programs to address the needs of veterans, but how the bill intends to implement the best-- the use of these programs. The legislation does not follow the evidence-based best practice standards. The amendment places few limitations on what crimes are eligible. Under the current lan-- language, crimes such as sexual assault, manslaughter, possession of child pornography, assault on a police officer, and human trafficking, as a few examples, would require-- be required to automatically be enrolled in the program. Two acts may violate the same provision of the Criminal Code but have vastly different facts,

as they relate to the severity and risk of community safety. The bill would remove any individualized assessment of criminal acts and move to a one-size-fits-all approach. The amendment just handed out a little bit ago may resolve some of these issues, but we also want to make sure there's no procedural quagmires in all this, where a defendant would be required to plead guilty, only then to learn later on they would not be allowed into a treatment court. What this bill lacks but is found in other problem-solving courts is an agreement between the prosecution and the defendant about the resolution of a case after successful completion of a program. Under the current language, is the, the defendant and the court that reach an agreement on what the final resolution of the prosecution's case would be, even if the prosecution will disagree. It is the absence of this language that causes the procedural and legal issues, and serves as the basis of our opposition. Specialized justice programs are an important tool in rehabilitating individuals who have served this country, and are already being implemented in areas of the state where the programs can be adequately staffed and supported. Our association is always willing to work with senators to develop these programs in a manner that will be sustainable and comply with best practices. We believe this bill is a good starting point to have those conversations. And we are willing to work with Senator Brewer and this committee to shape it into a bill that would resolve our concerns and benefit the, the veterans. With that, I'll accept any questions.

WAYNE: Any questions from the committee? I have one, generally. So the, the difference, difference between 2 amendments, so if we just follow the deferred judgment statute, which means that you have to be eligible for probation, would you accept that?

DAN ZIEG: I haven't had a chance to really review it. I tried to read it in the back, but I also enjoyed listening to the other people come up here and testify. I think there's a lot of insightful information that comes from them. And we want to have the best pro, pro-- program that we, we can. And so I want to listen to what they have to say. I would like to go have some more chance to read it and see if that does resolve our, our concerns.

WAYNE: Well, AM2534, which was posted, has the one that-- the, the new amendment doesn't have it. So, so I'm talking about AM2534, that says-- so you have to be eligible for a deferred judgment, which means probation, no DV, and no DUI. So you're-- so is it your position the county attorneys are still against that?

DAN ZIEG: It would, because it would still allow some of those other crimes that I mentioned to be eligible for this program.

WAYNE: I thought we excluded sexual assault and those things from deferred judgment 2 years-- 3 years ago.

DAN ZIEG: I would have to go back, back and read that.

WAYNE: The overall idea of prosecutors having to be in agreement, why is that-- why is that necessary, when, when judges are retained every 4 years? And ultimately, judges carry out the sentence. And so they could still put a person on probation to, to, a, a, a maximum term. So they're already making a decision. Why can't they also order treatment and put them on a deferred judgment? Why, why is that the objection?

DAN ZIEG: I believe our concern is that under the deferred judgment, the case is just dismissed as though it never even happened. I think that's where our concern lies. I've been informed that that issue has been-- actually been presented to the Nebraska Supreme Court, on whether or not deferred judgments are allowed under the Nebraska Constitution.

WAYNE: Correct. And if, if the Supreme Court decides that it's not constitutional, then that gets rid of all of our pilot-- our programs.

DAN ZIEG: I would disagree with that. I think that the difference between deferred judgment and a treatment court is there's an agreement between the prosecutor and, and the defendant. Maybe something as simple as-- like our DUI court. Hey, if you complete this program, we're not going to enhance it. Maybe we'll, we'll dismiss it, whatever the agreement is. The prosecution is agreeing to the outcome of the case versus a, a situation where-- a deferred judgment or the case is dismissed. Either the prosecutor says, I'm not OK with this case being dismissed. I think that's the distinction there.

WAYNE: Can you dismiss after a guilt-- after a guilty plea is accepted?

DAN ZIEG: I don't believe so.

WAYNE: So then, how would you be able to-- so then, what, what difference is it? You couldn't dismiss it either way.

DAN ZIEG: Under the treatment courts, the court doesn't actually accept the-- a guilty plea. The court defers receiving the guilty

plea, or later on, they're allowed to withdraw their, their guilty plea, the case opens back up, and then we can dismiss at that point.

WAYNE: So who files the motion to withdraw their plea?

DAN ZIEG: The defendant does.

WAYNE: OK. So you don't-- you can't dismiss then.

DAN ZIEG: Not until they ask to withdraw their, their plea. Then we can dismiss, at that point.

WAYNE: So I guess I didn't understand your testimony about dismissal, because you can't dismiss today unless somebody withdraws. See, is the main objection that prosecutors aren't the gatekeeper to the in-- people who get in?

DAN ZIEG: I think if you were to kind of pare, pare it down, yeah, that'd be it, is that we need to serve as the gatekeeper for who's going to be coming in-- into a treatment court or something like that, just so there is that agreement between the prosecution and the defendant.

WAYNE: But don't you already serve as the gatekeeper when you charge? You get to pick what charge?

DAN ZIEG: That's kind of hard to answer that, that question. I mean, we, we charge the case to, to start it. But I think there's a letter from the Douglas County Attorney who-- and, and there's times that they actually just say, hey, this person is eligible for our treatment court. But then collectively, as a team, they say no. So-- I mean, we're not really acting as the gatekeeper. We're saying that we're, we're willing to make an agreement with this defendant that if they comply with this program, we'll dismiss their case, we'll reduce the charge, whatever the outcome may be.

WAYNE: So the disconnect for me is that we keep hearing about problem-solving courts, but only 5% of the people who are eligible for problem-solving court are getting into problem-solving court. That's the disconnect that I'm trying, I"m trying to solve. You got any thoughts on that?

DAN ZIEG: I'm not, I'm not-- to be honest, I'm not heavily involved in our problem-solving courts. What I'll, I'll tell you is that we have 2 full-time attorneys who work on these problem-solving courts. That's

all that they do. That's how serious that we take this. This stuff works, and we believe in it. And we're willing to commit to it, but it has to be done the right way.

WAYNE: And having the prosecutor determine is the right way?

DAN ZIEG: I believe that's the way that works the best.

WAYNE: Have you tried another way?

DAN ZIEG: Not to my knowledge, no.

WAYNE: So we only know this way to be the best because that's the only way we know how to do it?

DAN ZIEG: Well, it's the way that also fits with, with the law and the constitution about the separation of powers.

WAYNE: So how is it a separation of powers issue?

DAN ZIEG: Well, we serve as the prosecution. We act as executive branch of enforcing the laws in the state. If we no longer have the ability to enforce those laws because that's stripped of us, that becomes a separation of powers issue.

WAYNE: You're still charging, correct?

DAN ZIEG: We're still charging, yes.

WAYNE: So you're still prosecuting.

DAN ZIEG: Well, we will attempt to prosecute, but if [INAUDIBLE].

WAYNE: So, so if we leave-- I guess I'm not-- I guess the separation of powers will be decided here, pretty soon, by the Supreme Court.

DAN ZIEG: Hope-- hopefully, it does.

WAYNE: But then how does the separation of powers-- I guess, because you guys are conceding, you're in agreement--

DAN ZIEG: Yes.

WAYNE: --that they could, they could get dismissed?

DAN ZIEG: Yes, Senator.

WAYNE: But a judge cannot take their withdrawal plea, right? So even if you agree, a judge cannot agree to anything you agree to.

DAN ZIEG: I just want to make sure I understand your question. If I, I have an agreement with the defendant, that if you do this program, I'll dismiss your case. He says great. He goes and does the program. And then the judge says, I'm not going to let you withdraw your plea. Is that-- am I understanding your question?

WAYNE: Yeah. Yeah.

DAN ZIEG: I mean, I think that's where this is, is, is a team approach, though, is we always involve the judges in this as well. And everyone has to buy into that for these programs to work. Everyone has to agree that this is how it has to be done. I, I suppose technically, a judge could say, yeah, I'm not going to accept your withdrawal, your plea and stuff, but that will have a real chilling effect on how the court could work. Because any defense attorney could say, well, maybe the judge will let you withdraw your plea. Maybe not. We don't know for sure.

WAYNE: So you leave all that in the judge's hand?

DAN ZIEG: In terms of allowing the, the withdrawal?

WAYNE: Yeah.

DAN ZIEG: Unfortunately, it's out of our hands at that point.

WAYNE: OK. I could keep going [INAUDIBLE]. Senator McKinney.

McKINNEY: Thank you. I guess my issue-- and it's an issue I have with like, mentorship programs, where they grab like, the easy kids, like the kids that you are going to save no matter what. And hearing that only 5% of the eligible people for problem-solving courts are getting in, it makes me feel like you're only grabbing those that are easy. If, if the problem-solving courts are meant to help people, then why are, why are we only helping such a small percentage of people?

DAN ZIEG: I understand what you're saying. And I, I would-- I don't think we take just the easy cases. I don't think we do. There are, there are cases out there that are very hard. Sometimes, there's some strong disagreements on it. But I, I would agree. If we're taking just the easy cases, then who are we really helping at the end, end of the day? And the 5%, you know, I don't know how the number is arrived at

or how that's decided. I know that's what's said. I can't explain it, though.

McKINNEY: Do you not-- maybe-- probably disagree, but do you not sense an issue with that being such a low number. If we have all these people who are eligible and only 5% of the people eligible are getting in, shouldn't we rethink and relook at the system to see what is the problem, and why is only 5% of the people getting in?

DAN ZIEG: I'll try to answer the question I, I-- best I, I can is-- I think we, we, we-- if we could help everyone-- I mean, it sounds weird, but my dream would be to be out of a job. There's no more crime. Unfortunately, that's not going to happen. I think if we can expand these programs in a way that allows us to serve more people, that's-- that, that-- that's worth it. You know, unfortunately, in some of these rural counties that was brought up is this stuff isn't always possible, just because of a lack of resources and everything. And, and these programs work.

McKINNEY: But if they, but if they work, is only accepting 5% of the people that are eligible acceptable?

DAN ZIEG: Again, I can't speak to where that, that, that number comes from. I've heard the number. I, I can't tell you how that number is calculated, though.

McKINNEY: But, is it-- do you think it's acceptable? I think it's [INAUDIBLE] yes or no question.

DAN ZIEG: Again, I mean it's-- I haven't seen the numbers behind it. I haven't seen all the information. I just don't feel comfortable saying one way or another on that.

McKINNEY: Because I, because I struggle with you're, you're saying problem-solving courts are great. They're very helpful. They help people. It's a amazing system. We should be the gatekeepers because we're helping people out. But when we're only getting 5% of the people that are eligible, I feel like we should be looking at problem-solving courts again, and figuring out why are we only having 5% of the people go through them? Especially when we have all these issues with our criminal justice system, we should be looking at every point of the system to see what is the issue. Because if it's only 5% of the eligible people, there has to be some type of issue there somewhere. That question has to be answered.

DAN ZIEG: I think there are, there are some groups that are working on, on that to determine why is that happening. We have attorneys in our office who are part of that group, as well, saying, you know, how can we move that number up? It-- you know, why is it becoming a, you know, a, a, a choke point, in a sense? You know that-- why, why-- I got 5%. You know, what would it take to get to 10%? I think that's all stuff that needs to be looked at and explored.

McKINNEY: Do you think it's only because the prosecutors are making that decision?

DAN ZIEG: I don't think so at all. No.

McKINNEY: Not at all?

DAN ZIEG: I do not.

McKINNEY: All right. Thank you.

WAYNE: Any other questions? I have one-- I have one more. I'm a big-- just to give you my background, big guy on no matter where you are-- I'm a big proponent of no matter where you are, your rights should be the same. OK. Under the current model, a prosecutor, an elected person running on politics, gets to decide what processes-- what problem-solving courts they'll have in their county. Not the judges, the, the prosecutor. So is it fair for rural Nebraska not to have the same kind of options that Douglas County has?

DAN ZIEG: You know, they can get down to the very fundamental sense, like, no. I mean, these things should be available statewide. But practically, I know from talking with attorneys in the rural areas is they'd-- a lot of times, they'd love to have programs like this. They just say, we don't have the providers, whether it be, you know, therapists or people to, you know, do the drug testing. There's problems like that that they will run into and just can't implement it. And sometimes, they themselves have staffing problems. I mean, there is attorney time that's spent on this. And I mean, just this week, I think I saw that we have, you know, well over 15 vacancies, where county attorneys in the rural counties are trying to find attorneys with these programs. And I think this committee heard the bill earlier, that would allow for some tuition reimbursement about-- you know, for that. I don't think you're gonna find anyone in our association who's going to be opposed to these types of treatment

programs in these courts and stuff. They just need the resources to be able to implement them.

WAYNE: And so, that's how I look at this bill. I look at this bill as a resource, another tool in the toolbox for a judge. Now, the county attorneys have always taken the position when it comes to charging 12-year-olds, charging more crimes. We want to give judges more tools in the toolbox. But when it comes to this issue, we want to maintain total control over how we charge and who gets into treatment. I understand the how you charge, but who gets into treatment and what their punishment should be or lack thereof-- so right now in rural Nebraska, a county attorney is saying, I'm having a hard time finding attorneys so I don't have the ability to start a problem-solving court. Doesn't this give the judge the tool to say, well, you may not have to. I have the ability to do it, and put somebody on probation, and make sure they have the resources. Because trust me, the judges are going to charge us a fiscal note on this. Trust me. So they're going to be able to do-- they're-- if they're going to do it, they're going to have resources.

DAN ZIEG: Again, it kind of circles back to the issue of is this a violation of the separation of powers, as well? There's always the community safety thing. And then, again, if we have a treatment court, that could also lead into kind of the procedural quagmire, as well. The defendant goes in there and says, hey, I want to go into this program. I'm going to plead guilty, and the courts are going to consider it. And the prosecution, you know, gives all the police reports, all the criminal history, all the contacts this person's had with law enforcement over the years. And the judge ends up saying, you know, you're right. This person should not be going into a treatment court. Let's this-- let's go and set this for a bench trial, then. That puts the defendant in a tough spot, then, then, too, is they are somewhat having to put themselves out there and take the risk that they're going to end up having all their facts out there for the factfinder to eventually hear. That's where we want some time to look at this and work with Senator Brewer, to avoid those types of issues where the defendant can, you know, have the opportunity to go into treatment without having to make some of those harder decisions.

WAYNE: That's inconsistent, because you've also been against juveniles being able to tell their whole truth and not be used against them later on.

DAN ZIEG: I believe our position was that if they later on contradict their statement as part of the--

WAYNE: Now that was later on down the road, you got there. But your-- the initial position at the hearing was, no, they should be able to be used for anything. So, so-- I mean, now you say you care about what they-- you know what? It's not-- it's your assoc-- you don't personally have these opinions. So thank you for being here. I don't want to-- it's not you. I understand. Any other questions from the committee? Seeing none, thank you for being here.

DAN ZIEG: Thank you.

WAYNE: Next opponent. I had to remember where I was. Next opponent. Moving on to neutral testifiers. Welcome.

DEB MINARDI: Good afternoon. Chairman Wayne and members of the Judiciary Committee, my name is Deb Minardi, D-e-b M-i-n-a-r-d-i. I am the probation administrator for the Supreme Court Administrative Office of the Courts and Probation. And I testified today in a neutral capacity on LB253 as amended by LB2534. And I just would make note that we have not had much of an opportunity to look at the most recent amendment that's being discussed, as well, AM2658. First and foremost, I'd like to thank Senator Wayne and Senator Brewer for their support of problem-solving courts and our veterans. The judicial branch agrees with the expansion of problem-solving courts and believe they are highly effective. We also embrace providing special services to our veterans throughout the state, and we currently have 4 treatment courts operational and look forward to more in the coming years. The Supreme Court has worked very hard over the past 10 years to create best practice standards and rules for each of the different problem-solving courts. It's important that this structure remain in effect to ensure fidelity. Currently, the judicial branch is in the process of convening a group of stakeholders that would include judges and county attorneys, defense attorneys, service providers, and law enforcement to discuss the path for problem-solving courts into the future. This will take place in May, with technical assistance from the National Center of State Courts. We anticipate the results of this convening to be an app-- to be a comprehensive, but more importantly, a collective approach to the future of problem-solving courts, including expansion, examining both priorities and the challenges. We would offer after this convening, the Judicial Branch will be equipped to provide this body in the upcoming legislative session an informed design that clearly articul-- articulates optimum locations, target

populations, barriers, return on investments for your consideration in the further expansion of veterans treatment courts and other problem-solving courts. So with that, thank you for your time. I'm happy to answer any questions.

WAYNE: Any questions? Senator McKinney.

McKINNEY: Thank you. Thank you for your testimony. How can we support problem-solving courts going further, or the expansion of them when only 5% of those eligible are getting in?

DEB MINARDI: Senator McKinney, if I could speak to that for just a second. In 2022, the, the Supreme Court did an assessment of problem-solving courts to just-- and that's where that figure is being use-- coming from, is in relationship to that 5%. In that assessment, what that determined is that when you look at all of the arrests that occur in the state, approximately only 5% of those ultimately end up in problem-solving courts. Now, take in mind-- and I'm going to use a term slightly different than what we've been talking about here today. But take a-- take an example of-- there's a difference between who is eligible and who is suitable. So this report, in particular, talked about eligibility. So it was looking at that very high level, how many arrests have occurred that would fall into this category of problem-solving courts. It did not get into the deep-- into the grass, so to speak, about who is suitable. As you've heard today, there are certain offenses that are not suitable. As you heard today, depending upon the rules and regulations of a particular problem-solving court, an individual may not be suitable. And that assessment has not occurred, in terms of getting deeper in the weeds. But we do firmly believe that even, even just looking at the 5%, we could considerably grow more. And we support that.

McKINNEY: I guess that's where I find another issue. So we're saying people are eligible, but they might not be suitable. Who makes the-- I guess, the determination of who's suitable, who's not suitable might be the issue.

DEB MINARDI: It could be. It also could be as an example, one of the suitability would be does the person want to participate? So if the person doesn't want to participate, they wouldn't be suitable. They're not considered to-- you know, this is intended to be a, a voluntary engagement in this particular programming. So that's kind of another example. In, in-- sometimes they feel like problem-solving courts are too hard. That having been said, I keep wanting to reiterate, there

are lots more individuals that could be accepted into prob-- problem-solving courts. And we firmly believe that they could be expanded.

McKINNEY: OK. What, what do you think are some things we should be looking at to improve the amount of people that are being allowed into the problem-solving courts?

DEB MINARDI: Well, one of the discussions that we're having right now and, and will likely take place in this convening, as well, is I'll also make a distinction between a court and a track. And what I mean by that is right now, we've talk-- we say that we have 4 veterans treatment courts. That's a full court, that, that court is dedicated on nothing but veterans in that particular court. In other jurisdictions, they use a strategy that's called tracks. So I may be a problem-solving court, and I have 1 track for drug offenders, I have 1 track for veterans, I have 1 track-- and they agree to different tracks within that. We have not gone down that path as of yet, for a number of reasons you've heard, as well. Some of it is resources. Some of it is time. Some of it is, you know, just volume, things to that nature. But that is one of our discussion points moving forward.

McKINNEY: Is there a difference in outcomes?

DEB MINARDI: No, there's really not. As long as you remain-- as long as you adhere to fidelity of the program. So I'll use the example again. We don't want to treat someone in a DUI problem-solving court the same way we would treat a veterans in a, in a problem-solving court. Each has a different model that must be adhered to. And that's part of the-- again, the, the issue, as well, is we have to commit to that fidelity. And we have to make sure that people understand and are trained to that, to that fidelity.

McKINNEY: OK. I guess there was a comment about, you know, judges not necessarily being voted in, and not having the burden of voters and having a responsibility to be held, be held accountable to voters. Do you think judges still feels a lev-- feel-- still feel a level of responsibility when-- if, if it-- if put in that position?

DEB MINARDI: I'm not an attorney and I don't want to speak for judges. I will just simply say, from my own personal perspective and my experience, is that we have a lot of committed judges who have dedicated time-- their time, above and beyond, in order to engage in problem-solving courts.

McKINNEY: Last one. How many judges used to be prosecutors?

DEB MINARDI: Again, I'm sorry. I don't have that off the top of my head.

McKINNEY: All right. Thank you.

DEB MINARDI: Sorry.

WAYNE: One question. Has the court administration-- I know, typically, there's a fiscal note on-- before a hearing. Because it's an amendment, it doesn't get a fiscal note until it's adopted, if-- on the floor. Have you guys, in a range, thought about what it might cost to implement?

DEB MINARDI: Again, I was--

WAYNE: Just a range. I'm not going to hold you to it.

DEB MINARDI: Right. Right. We would ballpark this at somewhere between $6.5, $6.5 and $7 million.

WAYNE: OK. Thank you. Any other questions from the committee? Seeing none, thank you for being here. Any other neutral testifiers? Neutral testifiers. Seeing none, Senator Brewer, as you come up to close, we had 1 letter of opposition. And that's it. Welcome back.

BREWER: Thank you, Chairman Wayne. Well, it has been an afternoon of learning, I guess. And when it comes to issues, especially those specific to problem-solving courts, you probably need to just take a deep breath and look back at where we started from here. All right. So literally, less than 2 weeks ago, we got notified from Secretary Hagel that he was interested in having Nebraska take part in a veterans problem-solving court. And we went to work to try and figure out how to do this. We found a mechanism to do it, and that is what we had the discussion on today. Now, I had hoped that we'd hold off on some of the questions for the ones that were lawyers that understood it, but that's OK. At, at a point they got the questions, and we went back and forth. I got to tell you, I was a little troubled with Lancaster County, just because I expected them to take what they have and say, hey, here's how we can make it better, here's our success, here's our failures. And it just seemed like it was more a true opposition to the concept. And I find that, that troubling, but that's their decision to weigh in that way. Now, as far as the language, if there is "shalls" and they need to be "mays," I believe I said, Senators, this is not a

perfect bill. OK. Part of what this committee will get a chance to do is take a look at what tweaks there needs to be, so that when it comes out of this committee and comes to the floor, that we're, you know, where, where we need to be. But let's not forget that-- the concept. If, if it's about-- you know, if it's about leverage and turf battles, then that's a shame. Because the idea of helping veterans, working with this-- the untreated trauma and, and the needs that are out there, and the idea that we could take assets-- counties don't have the ability to have neuropsychologists, speech therapists, doctors that can come and work with veterans. There are federal assets that could be channelized and used for this. Now they're going to have to be integrated into the program. But to come in negative on a bill where we could take these kind of assets, help veterans-- and we have a lot of bills. I was in here yesterday, and we were talking about a stupid paper permit. Well, I ate up a lot of your time on something that really-- it might make the world a little bit better. But in reality, it really wasn't that big of a change. We got a chance to make a lot bigger change here. It's something that's real. And so, we have an opportunity to move forward with it. The exchanges, I thought, helped us to better understand. I think the right people were in here to help get answers. I think there are some that it does not matter what we say at this point. They've dug in, and [INAUDIBLE] got a position and, and, and the others have a position. And I don't know that we can move that much. But what I'm asking today is that we take a hard look at, at AM2668 and, and see if we can't have this as a tool to help veterans. Thank you, Mr. Chairman.

WAYNE: Any questions from the committee? Seeing none-- I do want to say something. Because I was in your committee, and I do this-- well, I'm going to do it, because it's my-- last time today was in your committee, and you weren't there. So I'm gonna say it here. It's been an honor serving with you. I did 4 years, I think, on General-- Government, with you. I will say that, prior to Africa, going out to the Pine Ridge turkey shoot out, we started having a bond there and started connecting. And I will tell you, the biggest thing that connected us over the years was having the conversation that rural Nebraska is no different than north Omaha when it comes to many issues. And the veterans who are coming home, dealing with PTSD and those kind of things are no different than the people growing up in what I would consider a, a combat zone in north Omaha. I appreciate you being on the other side and making me better. And I appreciate you being many times on my side, helping carry things forward. So, in the country that you owe nothing to and who has taken a lot from your

people, to come here every day and honor this country the way you do, it's a honor to serve with you. And I appreciate it.

BREWER: It's been an honor to serve with you. Thank you, Senator Wayne.

WAYNE: And that'll close the hearing on AM2534, LB253. And we will open the hearing on LB1281. Is he here? All right. We'll take a 3-minute, 4-minute brief until McDonnell gets down here.

[BREAK]

WAYNE: All right. Tim, you are going open. I just talked to Senator McDonnell. He's in Revenue. You're going to open. He'll try to get down here to close, but.

TIM PENDRELL: Sounds good.

WAYNE: This isn't a union job where you can just not work. No, I'm joking. I had to take a jab at Tim. Anyway, Tim, welcome to your Judiciary.

TIM PENDRELL: Cool. You ready? Tim Pendrell, filling in for Senator Mike McDonnell, who is in Revenue Committee right now. In-- 4 bills at the same time. T-i-m P-e-n-d-r-e-l-l. Then I'll just read his opening, and then he should be down here in a minute, hopefully. Thank you, Chairman Wayne and members of Judiciary Committee. This is where he says, my name is Mike McDonnell. That's if he were saying his opening. He's representing LD 5, south Omaha. Today I stand before you to introduce LB1281, a measure borne out of extensive consultations with county staff, the sheriff's office, judiciary and other key stakeholders concerning the urgent need for reforms in our juvenile justice intake process. The genesis of LB1281 is rooted in a growing concern that statutes provide legal loopholes allowing for the waiving of crucial hearings for juveniles being detained or placed in an alternative to detention. Such practices has-- have inadvertently bypassed a critical juncture where comprehensive assessments should be made to determine the most appropriate support systems and placement options for these young individuals. The absence of such hearings undermines our collective goal of not only ensuring public safety, but also offering a pathway for these juveniles to rebuild their lives constructively. LB1281 seeks to address this gap by mandating the holding of a hearing for every juvenile case, regardless of the circumstances that might currently lead to a waiver. This includes

situations where charges are filed and might otherwise lead to an automatic waiver of the hearing. Our proposal ensures that if the conditions in current statute are met, then a hearing for release or alternative detention shall be convened. This legislative move is designed to fortify the checks and balances within our juvenile justice system, ensuring that every decision made is in the best interest of the juvenile involved, the community, and the integrity of our justice system. The essence of this bill is not to add layers of bureaucracy, but to inject a necessary dose of transparency, accountability, and individual assessment, assessment into the process. By mandating these hearings, we ensure that each case is given the thorough consideration it deserves, paving the way for more informed decisions regarding the necessary supports and placements for juveniles. This approach not only upholds the principles of justice and rehabilitation at the heart of our juvenile system, but also aligns with our broader commitment to public safety and the successful reintegration of these young individuals into society. In conclusion, LB1281 represents a critical step towards refining our approach to juvenile justice, ensuring that every decision is made with a full understanding of its impli-- implications for the juvenile, their community, and the state at large. I urge you to consider the positive impacts this bill promises, and lend your support to this passage. Thank you for your attention to this vital matter, and for your ongoing commitment to the betterment of our state's justice system.

WAYNE: Thank you, Mr. Pendrell. McDonnell gave me full-- said we can ask any questions you want of Tim. He's, he's been here the entire time.

TIM PENDRELL: Well, you, you did for the last hearing, so-- kind of a problem.

WAYNE: Any-- thank you for being here.

TIM PENDRELL: Thanks.

WAYNE: We'll start with proponents, proponents, proponents. Welcome.

COREY STEEL: Good afternoon, Chairman Wayne, members of the Judiciary Committee. And I am here testifying as a proponent.

WAYNE: OK. Proponent, not neutral. It's OK. We'll-- I'll get by.

COREY STEEL: LB1281, I want to thank Senator McDonnell and Tim, specifically, is-- Tim worked with us on this. When there was

discussion regarding juvenile intake and something that could improve juvenile intake process, we worked with the Sheriff's Office in Douglas County. We met with Don Kleine and Brenda Beadle. And we had discussion regarding the waiver of the hearings that were taking place when a juvenile came in for intake and was released with some sort of-- some sort of sanction or some-- something that was imposed. We do not see it statewide. We see it in pockets of the state. Most of the state, the judges do hold that detention hearing even though that individual has been released. We think that's important that the juvenile is in front of that judge within 48 hours after they've gone through juvenile intake and have been arrested for a crime, so that even though they may be released and they may be on house arrest, they may be in a reporting center, they may be in some after-- afterschool program, that they're still coming in front of that judge, so that the seriousness of that individual action that they did is in front of the judge. And the judge is making that decision and approving that decision or, in some instances, not a lot, but sometimes, a judge will have a different approach and want to add services, or potentially may override the intake decision that was made by the probation officer and say, no, this is serious enough. This juvenile needs to be placed in detention. So we agree that these juveniles need to, need to be in front of the judge within that 48 hours after they've gone through juvenile intake and been released. I think that was the original intent a few years back, when we modified the intake legislation. But it seems that it's now becoming a bigger issue with, if you're not detained, it's an automatic kind of waiver process. And then they would just come back at adjudication 30, 45, 60 days down the road. So with that, I'm happy to answer any questions that you may have.

WAYNE: Any questions? Sen-- Senator DeBoer.

DeBOER: Thank you. Let me see if I get this. The juvenile comes in. They go through the intake. The intake says, don't detain them. They go somewhere else, wherever they go. And then they're supposed to, within 24 hours of-- or is it 48 on this one?

COREY STEEL: That's a great question, Senator DeBoer. I think one of your bills will clarify that this year, whether it's 24 or 48.

DeBOER: At any rate, whatever number of hours it is, they go before the court. And then, if they haven't been detained because the intake said, don't detain them, you're saying that the judge will just waive that hearing?

COREY STEEL: The judge isn't waiving that hearing. There is a request by counsel to waive that hearing. And then the, then the hearing is waived. So now, what we're saying is we don't, we don't want that waiver. We feel the need for those individuals to be in front of the judge and not just come back at adjudication down the road.

DeBOER: OK.

COREY STEEL: It was serious enough to bring them by-- from law enforcement's perspective, it was serious enough to bring them to juvenile intake to determine the best suitable placement for that juvenile. It should be then, in front of a judge within that time frame to either-- to review that information and agree or disagree with that decision, as well.

DeBOER: For an initial appearance?

COREY STEEL: That would be in the adult court system--

DeBOER: Oh, yes. That's right. OK. Sorry

COREY STEEL: Senator DeBoer.

WAYNE: Any questions? I'm just confused, but I don't think it's the court's position. I'll, I'll see if the county attorneys are in favor of this. I want to-- I'm, I'm confused on exactly where Senator DeBoer was going. If we can do this for juveniles, why can't we do it for adults who have jobs? So, that's not a question for the court because court doesn't take policy positions, but I'll wait and see if the county attorney is going to testify. So any other questions from the committee? Seeing none, thank you for being here.

COREY STEEL: Thank you.

WAYNE: Next proponent. Welcome.

DEBRA TIGHE-DOLAN: Thank you. Thank you so much.

WAYNE: Go ahead.

DEBRA TIGHE-DOLAN: Thank you, and thank you for having me today. Good afternoon. My name is Deborah Tighe-Dolan, D-e-b-r-a T-i-g-h-e-D-o-l-a-n. I am a deputy county attorney in Douglas County, and I'm testifying in support of LB1281, on behalf of the Nebraska County Attorneys Association. When a youth is located after committing

a crime and considered by law enforcement to be a serious danger to society, law enforcement transports that juvenile to the youth detention center and requests detention of that youth. At that time, intake probation has an intake officer that considers the law enforcement's request. And through interviews with the juvenile and a series of screening data, intake probation decides what level of detention, if any at all, is appropriate for that juvenile, and they then implement their decision. The juvenile is scheduled for a de-- a detention hearing in the juvenile court, usually within 24 hours. However, the juvenile is currently allowed to file a waiver of that hearing and therefore, avoids going before a judge on the issue of detention. Once that hearing is waived, it could be weeks or longer before a juvenile is brought back before a judge. This proposed change in the statute allows the court to hear and review the criteria that probation used, while allowing the court to be the one to make the final decision regarding detention or their alternatives. This allows the court to hear directly from the juvenile and the juvenile's parents, regarding the decision to restrict the juvenile's freedom in any way. Some of these alternatives are impacted by a family's current situation that might affect their ability to help the juvenile comply. The timing of this hearing can also be imperative, especially when considering a need-- when a request for no contact with the victim or no contact with a codefendant is needed. The way it stands now, it removes the authority of the court and the prosecutor to weigh in, object or make recommendations regarding the decision on a case that they are prosecuting or providing judicial oversight to, and instead, vest it solely in the hands of the probation officer. When you're talking about restricting somebody's liberty or freedom, I believe that should be decided by a judge. And I would be open to any questions.

WAYNE: Senator DeBoer.

DeBOER: Thank you. So, wait. This isn't just getting rid of a waiver. This is saying that under this bill, they go to intake, they cannot be released until they go before a judge, and the judge gets to decide. Is that what it's saying?

DEBRA TIGHE-DOLAN: Yes. The judge would be the one to decide if they are allowed to remain in whatever situation intake probation has already decided would be appropriate for them. So--

DeBOER: If intake puts them-- it says, you don't actually need to be detained at all. Then what happens?

DEBRA TIGHE-DOLAN: We do have situations where juveniles are just released home, and what they do is they waive that hearing the following day. And so they're never brought before the court again until weeks or, or a month after that.

DeBOER: OK. So let's--

DEBRA TIGHE-DOLAN: And so, what, what this bill proposes is the juvenile and the juvenile's family then appears before the court for an actual hearing, for the judge to determine.

DeBOER: So, so initially, what I thought it was, was if intake says in intake's opinion, they go home with the family, they still have to come back. They can't waive the hearing. They have to go before. That's what I think you've just described. But then when I'm looking at the language and other language that folks have been saying, it sounds like intake can't make the decision to just send them home. Is it your position that intake, intake can send them home?

DEBRA TIGHE-DOLAN: I don't want to misspeak, but I'm looking at, the legislative bill, LB1281, and I believe it says while the juvenile is still detained or placed in such alternative to detention, the juvenile then would come to court the next day and have that hearing before the judge.

DeBOER: OK, I'm not a-- I don't practice in this area. I never did. Is alternative to detention, can that be home--

DEBRA TIGHE-DOLAN: Yes.

DeBOER: --with their family? OK.

DEBRA TIGHE-DOLAN: It could be shelter placement. It could be emergency shelter placement. It could be foster placement. A form of detention is also an electronic monitor. So what we're saying is, if you're going to impede somebody's liberty, somebody's freedom, a judge should be the one who makes that decision and signs off on it. And sometimes why that's so important on both sides, is because sometimes kids are detained in the middle of the night. It's 10:00, 11:00 at night, and intake probation decides this kid-- there's, there's nobody that'll take them at 11:00 at night. But maybe by 2:00 the following afternoon when the detention hearing has been held, there's a shelter bed available or there's, you know, there's another alternative that is least restrictive for that juvenile to be able to proceed to. And that would open the door for the judge to actually be able to

implicate or to put in place a less restrictive alternative. But it also gives the family an opportunity to talk to the court and the juvenile. You know, sometimes we see where, because it's in the middle of the night and because people are nervous and, and nobody wants their child in trouble, they want to agree that we will take them home and we will do all this stuff. But at the dawn of light, they realize they're not able to because mom works second shift or-- and they don't want their child to get in trouble. But it might be weeks before they're back before a judge. So it also gives the parents an opportunity to say, he's a good kid. I want him at home, but we need help. Here's, here's what would help us, and for the judge to implement and put that in place. Because a number of these juveniles that are coming through on detentions, they might not be on probation yet. This might be their first interaction with the court system.

DeBOER: So, some might be concerned that this would be a way of sort of taking away the ability of intake to direct the kids based on the assessment tool that they use. I know I've heard that in here before, that they think, oh, we don't like this assessment tool because it doesn't keep enough kids in detention. Is that what we're trying to do here is sort of circumvent the, the, the assessment tool?

DEBRA TIGHE-DOLAN: No.

DeBOER: OK.

DEBRA TIGHE-DOLAN: Not at all. The juvenile court, we are rehabilitative. We are not a punishing court. And we, as Judge Wayne-- excuse me. As--

WAYNE: I'm not a judge.

DEBRA TIGHE-DOLAN: --as Senator Wayne has put forth, we try for the least restrictive and it, it really is about the juveniles. And so what it also does is it creates a record. So when intake probation evaluates a juvenile and they do that rubric that you just discussed, they put together an actual packet of information which lays out how they came upon that decision. And when we come in on a detention hearing, because every juvenile who's actually detained, locked at the Douglas County Youth Center, they actually come in for a hearing. They, they don't waive those. And so what we do is we take that probation packet, as probation has turned it over, and we offer it as an exhibit to the court. And what's so good about that is it actually puts into the record how probation scored that youth, and how they

came upon their decision to detain or put in a different form of support in place. And that's actually entered into a record. When you're talking about somebody waiving-- so maybe it's a juvenile who agrees to go home on electronic monitor, which technically is a form of detention. They waive that hearing. Down the road, there is no record as to why that kid-- how that kid got put on electronic monitor or who made the decision or how that decision was made. So I think when we're talking about treating all juveniles equally, I think that it's important that we have that, that clarity and that we create, create a record as to why this juvenile is on an electronic monitor and this one isn't. And that-- when you are restricting somebody's liberty, I believe it should be a judge who, who makes that decision. In Douglas County, for sure, we are all about trying to do the least restrictive alternative, and work with the entities and organizations that, that can help support these juveniles and avoid detention for those that that is not applicable for. I hope that that answered your question.

DeBOER: I think to the best of the ability to get to it right here in this room, yes.

DEBRA TIGHE-DOLAN: OK. Thank you.

WAYNE: Senator McKinney.

McKINNEY: Thank you, Senator Wayne. But Douglas County is already overcrowded. Our juvenile system is. They are currently keeping 2 juvenile jails open because of it. And Douglas County already does not have enough shelter beds. And what happens when a kid doesn't score for detention? We're just going to hold them. And then, we're also talking about the demographics of these kids. Demographically, most of these kids are black. So I know you said this bill sounds good, but what it says to me is that you're advocating for this bill to basically incarcerate more kids. And I don't know how you're going to make that not sound the, sound the way it does to me.

DEBRA TIGHE-DOLAN: So, when the juvenile court uses the word detention, detention as anything that is an-- constraint on somebody's liberty. So as I was saying, putting somebody on an electronic monitor is a form of detention. It's not actually locking them in the Douglas County Youth Center. For them to be locked in the Douglas County Youth Center, you have to clear the "statutorial" provision that you are considered to be a serious danger to the community. So when intake probation does their rubric and a juvenile doesn't score high enough

to be detained, I believe it's a 12 or higher, then they have to look for an alternative for detention. So that doesn't mean the kid remains locked in the, in the Douglas County Youth Center at all. They could be put at a Boys Town shelter bed, at the alternative placement at Boys Town. We've gone as far as using a shelter bed here in Lincoln to avoid--

McKINNEY: But I think that's the issue. There's not enough beds in the community currently, and we're having an issue with overcrowding because of it. And Douglas County built a new facility that isn't big enough to house the kids, so they're keeping the old facility open. And it's just still creating a lot of issues. So I just feel like the county attorneys are advocating to keep more kids in detention. So I guess my second-- my next question-- probably not my second one, but my next one is, are the county attorneys willing to foot, foot the bill to hold more kids, as well?

DEBRA TIGHE-DOLAN: I think there's some confusion as to what we're asking for in this. It isn't to lock a kid up until they go before a judge again. The same amount of kids who have cleared the level of detention prior to you even looking at this bill would still clear the level of detention that we're seeing. What we're saying is the kids who aren't-- who don't clear that level of detention. Because if you're detained at the Douglas County Center, you, you are coming to court the next day for a court hearing before a judge. But there are kids whose liberty is, is being changed through different alternatives: an ankle monitor, placement at a shelter care, placement with a family member, with therapists coming in and doing things, helping the family in the home. Those are, those are alternatives to detention that actually affect their liberty interest, but it's an intake probation officer who is making that decision and having them sign and having them start those procedures. And they might not be coming in to see a judge for weeks. And so what we're saying is-- we're not saying grab these kids and lock them up. We're saying we probably don't object to what all this is, but a judge should be the one who limits and constrains that liberty.

McKINNEY: But--

DEBRA TIGHE-DOLAN: They can stay at home.

McKINNEY: --but in doing so, you're going to lock them up in the process of it. Because in this bill, it says, shall be determined if they shall be released. So, they're not automatically released.

They're-- it's, it's a process. So they're going to be held in a facility somewhere.

DEBRA TIGHE-DOLAN: I think that the wording-- and I, and I understand sometimes it's a little confusing, because the juvenile court is so different from the adult system. But where it says, while the juvenile is still detained or placed in such alternative to detention-- that alternative to detention could be their home. It could be a shelter placement. It could be in a mental health facility. What they're saying is we're not keeping these kids locked up until they see a judge. If intake probation releases them home on an electronic monitor, they're going home on electronic monitor. What we're saying is, that juvenile should come before a judge the next day. And a judge should say, I've looked over the rubric. I've heard from all parties. And I agree that electronic monitor should stay on. Sometimes we want a juvenile to participate in sports such as, you know, football, basketball, wrestling, but the electronic monitor causes a problem where they're not able to. We want that kid to have the community connections. We want them to do an afterschool program. If they're not a run risk-- the judges and probably county attorney, as well, depending on the safety of the community. But we're going to agree to not make that kid be on an electronic monitor, because we realize we're probably getting more benefit from that kid participating in an afterschool program than we are making them wear an ankle monitor. But that ankle monitor actually impacts their liberty interest. And so for a probation officer, on their own, to say that's what that juvenile needs, and for that juvenile, even for one day to have their liberty interest constrained, is one day too much.

McKINNEY: And another thing that I kind of take issue with was you saying that there needed to be a need to create a record. Can you-- you need to create a record for kids that might not need a record created for.

DEBRA TIGHE-DOLAN: And let me be clear with my wording, because that-- I apologize that that caused confusion. I don't mean a criminal record. What I mean is people need-- people who interact with our juveniles and our youth need to be accountable for what decisions they make. And the way that we do that is-- that intake probation packet, where they determined this ju-- this juvenile needs to go to the Douglas County Youth Center but this juvenile doesn't, or this ju-- this juvenile needs an ankle monitor but this juvenile doesn't. When they say-- when they're willing to say that this kid requires an electronic monitor, a constraint on their liberty, they have to put it

in writing. But if, if, if the hearing is waived, this never gets put before a judge. I think, for transparency, if you're willing to say that that juvenile is dangerous enough that you want an electronic monitor, then that should be entered into evidence, and that should be your word for that judge to rule on. And you need to stand to it. I think that, that, number 1, it is for transparency. But number 2, it ensures that each juvenile that comes before the court is treated equally.

McKINNEY: So if a juvenile goes through the process, waives, and gets an ankle monitor, goes back to court, doesn't the court eventually realize the kid has an ankle monitor?

DEBRA TIGHE-DOLAN: After being on the ankle monitor for maybe 45 days, where now the kid's been kicked off the sports team, not able to swim or, or whatever. And maybe the judge is like--

McKINNEY: But there's a--

DEBRA TIGHE-DOLAN: -- this is not a-- this is not a juvenile who runs. We don't need that electronic monitor anymore.

McKINNEY: --but there's a record.

DEBRA TIGHE-DOLAN: It isn't this document as to why somebody--

McKINNEY: It's just not-- it-- it's just not a record to, to your--

DEBRA TIGHE-DOLAN: --as to who--

McKINNEY: --to your liking. But the kid does go back to court because they have the ankle monitor. So a record is created. You're just trying to say you want to create the record faster.

DEBRA TIGHE-DOLAN: Not faster, but more-- if you're willing to constrict somebody's liberty, then you should come to court. And in this case, I will say intake probation should say to the court, we find that this kid is such a danger, we want him to be on an electronic monitor. And, and then, this is put in the evidence. It's not anything that's on anybody's criminal record, anything like that, but it is a court record. So the court knows, here's who decided, and here's how it was decided.

McKINNEY: I guess what raises my red flag alarm, I guess, is that county attorneys are advocating for a kid to get a record faster when

a kid has an ankle monitor already. So I don't know if I'm missing something here. The kid has an ankle monitor. He is going to have to go in front of somebody eventually to get the ankle monitor off. So I don't get-- I'm, I'm kind of-- it feels like something's not being said here.

DEBRA TIGHE-DOLAN: I'm not explaining it very well. And, and so, I-- I'll try just one more time, briefly. So when, when, when most people think about somebody's record, you think about somebody's criminal record. If I went out today and shoplifted and somebody pulled my record, they would see shoplifting there. That's different from a court record, which is the legal file that the judge keeps, which is all of the reports and exhibits regarding a juvenile.

McKINNEY: But, but those records can be used against those juveniles. If they do something in the future, those-- that, that-- this whole fact pattern in the record still can be used against them.

DEBRA TIGHE-DOLAN: Their criminal record. The--

McKINNEY: The, the--

DEBRA TIGHE-DOLAN: --that I went out and shoplifted, yes.

McKINNEY: --the story goes into your-- so let's say the kid ages out of the system. Is a-- the-- it still could be used in their PSI.

DEBRA TIGHE-DOLAN: It'll--

McKINNEY: It could-- still could be seen.

DEBRA TIGHE-DOLAN: The part that will be used in their PSI will be that they were charged and found true of a crime, not that intake probation on that date put him on an electronic monitor. It'll be that they-- and then that they successfully completed or did not complete their term of probation. So it's their record of their, of their crime. It's their criminal background that follows them, if it would be that they would commit a crime as an adult. And then the courts could take that into consideration for sentencing. But the record that I'm talking about is, is not that record. It is the courtroom's-- it's the judge's-- evidence that the judge can say, I agree with intake probation. This kid should be on an electronic monitor, because when I look at this rubric, I see that he scored an 8, and that the family is willing to keep him at home. And he's-- he says he's willing to be on an electronic monitor. So it is a-- it is a packet that literally

explains to the court-- and I'll also tell you, in these packets, that when--

McKINNEY: So do we want the judge to make a decision on whether a kid should or should not be detained, is, is what you're saying?

DEBRA TIGHE-DOLAN: It is for the judge to hear from the juvenile, the family, and both counsel, and receive this. Is this appropriate for this juvenile? And it might be that the judge looks at it. I've been in court both ways, where a judge looks and says, this seems a little steep for a kid for-- enter crime here. And they say, release him without restriction. As long as you promise-- now, kid, I want to see you here for arraignment. And as long as you show up, because you see what people are asking for, I'm going to have them remove that electronic monitor, or whatever words it is. So it gives the judge the final word, as well as hearing that maybe last night there was only 1 alternative for intake probation to implement. But maybe, maybe that morning, a bed opened up at Boys Town, or they got a hold of the mom who works the night shift, and she's willing to have him at home. So it, it, it opens up that for our least restrictive alternatives, as well.

McKINNEY: I'm listening. I guess what I would say is, I think we also should think about the potential unintended consequences of this bill. And one, off the top of my head, is the increased amount of kids being detained in DCYC.

DEBRA TIGHE-DOLAN: I would say that this bill does nothing to change or increase the amount of people who would be detained at the Douglas County Youth Center. I would say that what it is changing-- so the juveniles who are, who are detained and clear that level, they're, they're detained and they will be detained. What this is saying is if intake probation does an alternative, come before the judge and let the judge say you have to wear that monitor, or come before a judge and have the judge say you have to go to a shelter and you can't go to your high school anymore, or whatever constraints of that juvenile's freedom, it should be a judge who says it, not an intake probation officer. So that's the change that this, that this change in legislation is that we're looking for. It literally is so that if somebody has been sent to an alternative to detention, that a judge is the one who says that's the appropriate alternative.

McKINNEY: Do you not trust probation to make the right decisions?

DEBRA TIGHE-DOLAN: So, caveat. I do trust probation. I've worked in the juvenile division, both as a defense attorney, as well as, as prosecutor. And I've, I've done it for a lot of years. But for me, as an attorney, when you are constricting somebody's liberty, when you are constricting somebody's freedom, I think that that is something that should be brought before a judge. And it should be a judge's decision. Because even one day of a confinement of any, of any form, an afterschool program, an electronic monitor, that is, that is one day too much to, to, to step on somebody's freedom. And so I, I believe that that should be a judge.

McKINNEY: And I understand what you're saying. And I res-- I just feel like we want the judges to be included sometimes. And sometimes, we don't. And it-- and I feel like it's, it's very inconsistent coming from the county attorneys. Because we just had another deal where they didn't want the judges to have an opinion, pretty much. So, I don't know. But I, I thank you for your feedback, though. I appreciate it.

DEBRA TIGHE-DOLAN: Thank you.

McKINNEY: No problem.

DeBOER: All right. Thank you. Are there other questions? All right. Thank you so much for being here.

DEBRA TIGHE-DOLAN: Thank you so much.

DeBOER: Let's have our next proponent. Next proponent. Welcome back.

WILLIAM RINN: Hello. Good afternoon. Member of the committee, thank you for seeing me and allowing me to, to participate. My name is William Rinn, W-i-l-l-i-a-m R-i-n-n, chief deputy with the Douglas County Sheriff's Office. We are here in support of LB1231. I have a prepared statement, which I won't read verbatim. But, ultimately, our support is is grounded in our desire to assist with the, the process of having hearings for juveniles who are placed in detention, alternate or traditional, so they, they can be brought before the court, much like was just testified to, to have all facts germane to their detention be heard by a judge. I've seen it both ways, as well, where sometimes, those facts indicate that the decision for a detention, whether it be a full formal detention or an alternative was-- were too hastily made because they had no other options. And I've seen detentions be reduced to-- from full detention, to alternative, to ankle monitor, to at home, for that aspect. As a law

enforcement officer, we are coming at it from the angle of trying to balance public safety with the juvenile process. And we don't want to see where as waiving the hearing is any sort of a gateway to a, a release, that it's ill-timed. We're-- the largest problem we see in Omaha/Douglas County is where there are-- the screening process has alternate placement or lesser placement, and juveniles are becoming involved in recidivism or walking away from their lesser means of-- and getting back associated with those persons who are intent on doing them harm or exploiting them for their juvenile status. So for that aspect, I did hear the comments on the will this have alternate, or unintended needs of detaining more people? The answer is it's not intended that way. I don't know that it won't. But then again, we appreciated it from the balance that it is a public safety in, in having juvenile process. And ultimately, if we can take kind of a layered approach to some of the problems with juvenile justice, that maybe we can address it a little bit at a time, and put ourselves out of business.

DeBOER: OK. Are there questions from the committee? I'll say I was doing better before you came up and testified. And now, I'm more concerned about it.

WILLIAM RINN: OK. See if I can't clarify that for you.

DeBOER: So, my understanding from the county attorneys was that this is going to be a way of just putting it in front of a judge so the judge can assess how-- basically, did the intake do what the judge wants to do, and that they were saying we ought to have it in front of a judge just to keep the criminal justice system sort of consistent. Did hit a kind of a jarring note in light at the last hearing, but whatever. And now you're saying, well, we think they need to go that way because we want more kids to be in the detention.

WILLIAM RINN: That's not what I'm trying to say.

DeBOER: OK.

WILLIAM RINN: So if I said it that way, I apologize. What I'm saying is, we want to make sure that-- much like the, the previous testifier, testifier said, is sometimes, the next day, more information comes in. That information may lead to a more serious detention. It might-- it, it might lead to a release. So.

DeBOER: Couldn't, couldn't more information come in the next day after that, and the next day after that, and the next day after that, that would-- I mean--

WILLIAM RINN: Certainly, but a longer that a juvenile or suspected offender is out in the improper place-- placement, the more vulnerable they are.

DeBOER: All right. Any other questions? All right. Thank you for being here. Next proponent. Are there any opponents?

JULIET SUMMERS: Good afternoon, Madam Vice Chair, members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm the executive director of Voices for Children in Nebraska, here with my registered lobbyist to oppose the bill. You will see on my testimony, on my blue seat, I had initially marked our position as neutral. In light of the introduction and the information that's been presented thus far, we are, are switching on the fly to oppose the bill as introduced, and the reason why is because the effect of this bill will be to detain more children. So there are multiple statutes that address the rights of the child when they come before a court and potentially have their liberty in-- infringed. They can be taken into temporary custody or placed in out-of-home care, including detention. When the youth is placed in detention or placed in out-of-home care, some alternative to detention, due process applies for that child. It is a right that accrues to the child in this kind of case, because broadly speaking, those are infringements on their liberty interest, as you've heard. And again, in America, broadly speaking, the government can't hold someone indefinitely without a hearing or without a charge filed. That is true for both adults and for children. In Nebraska, the Juvenile Code, there are actually a couple separate statutes that address this process. And only one of them is before you today in this bill. And it's actually kind of a later part of the process. So the first one is Nebraska Revised Statute 43-253(c), which requires a hearing before a judge within 24 hours, excluding nonjudicial days, when a youth has been detained or placed in an alternative to detention, which is like the bond hearing in criminal court. At this hearing, this is where the standard rules of evidence don't apply, as you already heard. The judge will receive the probation intake packet, the risk assessment that was performed by the probation officer, any information from the county attorney about possible charging decisions, as well as information from the defense-- child's defense attorney. Subsequent to that-- or I will say in 43-253(c), that detention hearing may be waived. Because it is the

child's liberty interest at stake, they may waive it if they so choose, if placed on an alternative to detention rather than detained. Again, as you've heard, all the kids who are detained, they take their right to hearing to come in and have the judge consider that infringement. This bill, however, addresses Nebraska Revised Statute 43-255, which is subsequent to the detention hearing. This addresses the due process requirement of having a charging document filed in a timely fashion, as part of a speedy trial right. So if the child remains detained or their liberty infringed, under current law, they shall be unconditionally released if that charging document isn't filed. This bill addressing this section of code now adds in a second detention hearing. I'm at red light. I have a little more testimony. I can leave it, but I'm happy to answer any questions. We're concerned that this will be used to detain kids who are currently waiving, to stay on electronic monitor.

DeBOER: OK. Are there questions? Senator Bosn.

BOSN: I'd like to hear what you have to say. I can read it, but I'd like to hear it, as well.

JULIET SUMMERS: Yes. Thank you, I appreciate that. I'd like to put it on the record. And I never talk fast enough. So this really does add a second detention hearing because it hasn't amended 43-253(c), which is the 24-hour initial detention hearing question. So some youth who are detained-- the reason we were going to be neutral, is we do see first, as, as Deb was saying in the proponent testimony, some youth who are detained who had that first detention hearing, they remain detained, the county attorney, then, within 48 hours, under 43-255, has to file the paperwork, the charging decision. Within that 48 hours, there may be time to find a, a grandparent or a package of supports that could get that kid out of detention, safely home, into an alternative services, supervision, etcetera. We perceive, in those cases where the detention hearing is already happening, this required second detention hearing 48 hours later could potentially benefit some of those kids. They do get that extra consideration, if circumstances have changed in that direction. Where our concern is, is because this doesn't still allow for a waiver, which again, is the child's right. If they are choosing to say, I'm OK with EM. Let me stay home, that is essentially-- they would nonetheless be required to come to court 48 hours later or even beyond that, excluding nonjudicial days, when they've been home on EM. Suddenly, 4 days later, you know, Friday to Monday, now they're in court. And potentially, the county attorney is

asking the judge to overturn probation's intake decision and detain the child instead.

BOSN: So were you done? I don't want to interrupt.

JULIET SUMMERS: I was.

BOSN: OK.

JULIET SUMMERS: And thank you. I appreciate the opportunity.

BOSN: Nope. You're good. I appreciate that because you, you lost me at a second detention hearing. So where I followed you was I get contacted by law enforcement, series of thefts, and they're doing my intake, and they say, we think we can put wraparound services and she can be successful in the home. I sign, agreeing to have the electronic monitor. I haven't had a detention hearing.

JULIET SUMMERS: Correct. You're correct, Senator.

OK. So what this-- what I read this to say is that now, I have 48 hours. And, and what I read their intention here to be-- to have me come before the court and say, yep, I'm taking this seriously, to have my mom and dad come in and say, you know, we think this is-- we think this will be a solution that can last until our first appearance in 4 1/2 weeks. And so it's-- that's the first detention hearing.

JULIET SUMMERS: That is absolutely true, Senator. I agree, in those cases where the waiver occurred. However, because this bill is bucketed at 43-255 rather than 43-253(c), the cases where the kids remain detained. Also, this is a "shall" have a hearing. So this is-- those cases will be duplicate detention hearings, upon the filing of the charging document.

BOSN: How do you see this as duplicate instead of they would just happen at the same time. You'd have one detention hearing that's at the same time as the hearing in 255.

JULIET SUMMERS: Because under 43-253(c), that hearing is required within 24 hours of the child being, you know, picked up and gone through intake. And then this is a separate subsequent statute that adds an additional 48 hours after the initial detention decision, which I think is in the language of 43-255. I don't have the bill in front of me.

BOSN: That's OK. So your, your read of this is that they would not be able to happen at the same time?

JULIET SUMMERS: Correct. Yes.

BOSN: OK.

JULIET SUMMERS: At least for-- yes, for those kids who were detained, didn't waive their hearing, the, the 24-hour one.

BOSN: Well you can't waive if you're detained.

JULIET SUMMERS: Exactly.

BOSN: OK.

JULIET SUMMERS: Exactly.

BOSN: So I get arrested on a Sunday. Monday, I have my detention hearing. They-- you're-- some counties apparently don't file the charge of the shoplifter theft on Monday?

JULIET SUMMERS: I think that is the case. Yes.

BOSN: OK. So--

JULIET SUMMERS: So if the county attorney has the charge filed and ready to go, yes. That, that could potentially happen at that one in 253(c).

BOSN: So if that were to happen, would that alleviate your concern? And you would be-- because what I'm hearing you say is you don't like the idea of a second bite at the apple--

JULIET SUMMERS: Yes.

BOSN: --essentially, for a detention hearing. And so, if we somehow combine them, does that alleviate?

JULIET SUMMERS: We like, we like the idea of a second bite of the apple when the child is detained. We also trust probation intake the [INAUDIBLE] process. We believe that they are doing the best they can with lots of information. And we have some data from Douglas County, regarding intakes and waivers, that I think is helpful. All that being said, we do believe this-- the goal here is for those kids who probation has said, let's do electronic monitor, to nonetheless get

around what we already have in the law, in 43-253, with the waiver, in order to be able to to bring it to the judge and say, actually, judge, we, we really would like to detain this child, instead of stick with the alternative.

BOSN: And how, how, how do you read that as the goal here? I guess I-- to me, I see it as this is an opportunity for them to come in-- and sometimes you just need to have a wakeup call as a juvenile. I mean, we've all been kids. And we probably don't want to go back to those days, but you make mistakes, right? And if, if you get contacted by law enforcement, it pretty much escalates pretty quickly. And so, having that follow-up hearing, even if you're on the electronic monitor, I guess your concern is that there's going to be so many cases where a judge disagrees with probation that they're going to be detaining youth?

JULIET SUMMERS: I-- frankly, Senator, I am concerned with that. Not that-- not so many cases, but to the county attorney's point, any cases, if-- especially in a case where if the child has been already home on EM and they're doing OK. The reason for the concern is more of a-- is not necessarily on the face of the language so much as the history here, with the changes to our detention statute and how that's rolled out in Douglas County, as well as the court coming in and expressing their support after discussing with the Douglas County Sheriff's Office. We know there is a push from those institutions to detain more kids rather than fewer. And we come from a position of detention really being utilized as the last possible option. It is the most restrictive setting and harmful for, for most kids. There was-- this is not in statute, but one thing that was implemented through case processing work in Douglas County over the years has been a case call-- I'm so sorry. I'm facing entirely away from you. But there's been a case call process, which is supposed to happen the-- at-- any time a child is detained or, or, or up on the detention list, where the parties will, will call, they'll put their heads together there, they'll go over the probation intake decision and the packet of information. And then the, the goal is to try to make a plan to keep that child out of detention. And what we-- I have not been a defense attorney in Douglas County for some years, but we remain very-- in communication with them. And I think a defense attorney is following me. Our understanding is oftentimes that phone call conversation devolves into probation recommended EM the county attorney says, you know what? I'm still asking for detention. And then if the child's attorney doesn't have their act together to go into the courtroom, that's the information that the judge receives. So it's really, it's

been a labor of love to try to get juvenile defense attorneys to step up and file the waivers, when their client is saying, I'm willing to waive this right to have the hearing because I'm happy here at home on EM. And I don't want to risk it.

BOSN: I guess my concern with that is that what we're saying is, is that people shouldn't be allowed to second guess their decisions, or the court, who is going to be ultimately accountable for rehabilitating this juvenile, shouldn't have eyes on, because the probation officer is better suited to make those decisions without the input of the judge.

JULIET SUMMERS: No, this is not at all to-- my perspective, Senator, is not at all to institute always and forever the probation officer's decision instead of the judge or rather than the judge. However, there's a, there's a whole number of, of statutes at play and when it ultimately comes down to is that this is the child's liberty right that is being infringed. We have information, based on our risk assessment tool and our process, that the child's liberty could be infringed to this extent. And if the child is willing to say, OK. I'm OK with that, then that is where we would leave things lie.

BOSN: OK.

DeBOER: Any other questions for this testifier? I don't see any. Thank you so much. For being here.

JULIET SUMMERS: Thank you. I appreciate your time.

DeBOER: We'll have our next opponent. Welcome.

JENNIFER HOULDEN: Thank you. Good afternoon. I'm Jennifer Houlden, J-e-n-n-i-f-e-r H-o-u-l-d-e-n. I'm the chief deputy of the Lancaster County Public Defender's Office, Juvenile Division. So we represent the kids charged with law violations. I supervise those attorneys. I have a lot to say. I have a lot of response to some prior questions, but I think we're really overlooking some fundamentals of this process. A hearing is not the only way the judge decides, right. The judge is always deciding if there is an infringement of liberty. The intake process is a gathering of information by the Office of Probation, which is put into an intake document. They do make a recommendation. And unless Douglas County is completely avoiding the entire court system in their action, which is difficult to believe, that information goes to the prosecutor. And the prosecutor has an

opportunity to weigh in on whether they are in agreement with that. They can file a motion for detention, even if monitor is recommended. They can, they can ask for what they want. They're the party. They're the driving force. They're the prosecutor. The judge always has to approve what happens to the child. Probation has no authority to restrict the liberty of children. Their authority flows only from the authority of the court. They have a role, as juvenile probation, in assessing risk, in measuring things, but they are not deciding on their own. The prosecutor has a role. The judge always decides. A hearing is not necessary for the judge to decide. And I think we're-- by-- and I agree that the placement in the statute is problematic. But what we're really overlooking is that we already have parties who are able to get further judicial attention when necessary. Waivers do not have to be accepted by the judge. If the judge wants to have a hearing, we're going to have a hearing. If the prosecutor doesn't like what probation said, they can file a motion for a different thing. It's important to consider that when we talk about waiver, it is a waiver of the juvenile's right to contest what is being sought by the prosecutor. It is not-- a juvenile can't avoid review by the judge if the judge wants to hear it. But the reality is, is that we have highly-trained juvenile probation officers who work directly with the judges, who the judges trust and who the juvenile prosecutors trust. So a lot of times, everyone's in agreement. And to, in this overly rigid way, say there needs to be a hearing in court with people, when all of these people already have the ability to state their position, I believe is, is somewhat misleading. I don't practice in Douglas County. I don't know the answer to that. But this is a court system, driven by parties. And judges order restrictions on liberty. So if the county attorney doesn't like it, they can file a motion. Sure hope I have questions. Thank you.

DeBOER: Senator Bosn will ask you a question.

BOSN: If you'll finish.

JENNIFER HOULDEN: Oh. Thank you. Well, I, I got a lot. I got a lot to finish.

BOSN: OK, well, then don't finish. It's 4:30, so-- it's your position that the prosecutor can file a motion for continued detention, even if the probation officer says electronic monitor?

JENNIFER HOULDEN: 100%, can do.

BOSN: What do they use as their affidavit?

JENNIFER HOULDEN: The same fact gathering. They just ask for a different outcome.

BOSN: What, what, what is it? What is their information from the fact gathering? Because [INAUDIBLE].

JENNIFER HOULDEN: It's the, it's the intake. It's the same document.

BOSN: So I haven't been in juvenile court as recently as you have, but it used to be you had to have an affidavit-- sworn affidavit.

JENNIFER HOULDEN: It is not necessarily a sworn affidavit. There's been a revision of the processes.

BOSN: OK.

JENNIFER HOULDEN: There is a 2-page, sort of, single-spaced, categorized document that involves law enforcement's perspective, the parents' perspective, the juvenile's perspective, if they're on probation, probat-- the probation office-- signed probation officer's perspective. And so, all of that information is gathered. And the juv-- and there is a screening tool which can be overridden. It does not determine what happens. It can be overridden in either direction. That is the fact gathering that probation does. But a motion must be filed to limit the use-- liberty. And that's where prosecution, as is always true, gets to decide what they're asking for you-- they absolutely do not have to agree with probation. I regularly have cases where probation is recommending go live with your aunt, whatever, be on a monitor, whatever. And the prosecutor says, I don't agree with that. I want detention. It is true that a hearing then has to be set, but, but that happens within 24 or 48 hours. It's-- I, I think that the way that this is structured overlooks all of the actual operating parts. You don't have to be in court to have the judge review things. Does that-- if that makes sense.

BOSN: That does. Because I practiced in that space enough--

JENNIFER HOULDEN: Yeah. Yeah. Yeah.

BOSN: -- to know that. Is it your position that the judge cannot accept the waiver?

JENNIFER HOULDEN: Can-- yes.

BOSN: How would they do that?

JENNIFER HOULDEN: Or they can accept the waiver and set a different hearing that wasn't waived. I mean, the-- I think that's sort of a hyper-formalistic. Should they reject a waiver? There's arguments around whether if you, if you hold the right and you want to waive it, but the waiver gives up the right to contest the infringement of the liberty. The waiver doesn't say you're not allowed to decide what happens, judge. The judge always decides.

BOSN: OK.

JENNIFER HOULDEN: And if the prosecutor is not-- we do have judges, where I practice, that don't accept what probation recommends, they don't accept that the prosecutor agrees with it, and they set a hearing anyway. I mean, that absolutely does happen. So I think that identifying this rigid must have a hearing, must have a hearing overlooks the fact that parties drive these cases and that all these players are already impacting it. I do think that the way that it impacts kids is very, very different when it's actual detention and a detention alternative, I think those issues get really sort of colluded. And so, I think that-- where it's sort of judicially inefficient is when there's a detention alternative that everybody agrees with that now, we can't change until we have a hearing, under this reading. Right. Because it's a civil court. Motion practice is entirely accepted. Parties are actively working on these cases, whether or not we're court. And so the idea that a kid who's at Cedars Shelter in an emergency placement to stabilize, he's been there a couple weeks, mom's now got him set up for therapy. Things have changed. Whatever. Everyone's in agreement that this kid can go home with additional supports. If we have to wait to come into court for the judge to, in a live hearing, consider that instead of consider that on written pleadings that's taking that bed at that shelter. That's where the sort of keeping kids in detention increases, because we're using resources that everyone agrees and the judge gets to decide. Right. We can agree they get out of shelter and go home. If the judge doesn't like it, they can deny it. They can set a hearing. That's what judges do. But the artificial requirements of a hearing, when the judge already gets to decide, is using up resources that does have the impact of continuing detention. Because we will have kids in detention that are approved to be released to shelter as soon as a bed is available. They're on that waiting list. And so the time of coming-- instead of a judge that would want to sign an order because we've already had 2 hearings. We know all about this case. Let this

kid out of shelter, move the kid from detention to shelter, that's delayed. And those delays are real. I asked for a hearing 2 days ago and got a hearing in 2 weeks, and that was the soonest that the court could accommodate. And my client is detained. I mean, those, those are real costs. So that's 2 weeks that a kid, who a judge has already found appropriate to be at shelter, is sitting in detention waiting to go to shelter, because this kid, who everyone agrees can go home, has to appear in court in person. And that hearing-- that idea of hearing just misleads, I think, how these processes actually work and how active the parties are in doing motion practice in juvenile court.

BOSN: And I agree with-- I, I mean, I remember some of those experiences, but I think that this is narrowly tailored to those initial filings within 48 hours, having to come before the court when an alternative to detention has been authorized.

JENNIFER HOULDEN: I guess I don't agree with that reading. It says if at any point.

BOSN: Within such period of time.

JENNIFER HOULDEN: And you think that's limited to what period of time?

BOSN: The, the 48 hours that are referenced on line 6.

JENNIFER HOULDEN: I think that the-- this, this section was designed to ensure that kids who are not charged don't languish in detention. That's the structure of this. The 48 hours is you have 48 hours to charge them and to file something to hold them. I don't-- I guess I don't agree that the 48-hour limitation, which is actually a duty to the prosecutor, that 48 hours-- gives 48 hours to hold them. I don't think that that limits the later language that says, if at any point, while the-- unless within such period of time-- that language is grabbed from the prior statute. And so, I don't agree with that while the juvenile is still detained or placed in alternative to detention-- these things, right-- a hearing shall be held. To me, that reads that if my kid is on a, a monitor, still in such alternative to detention, and I want him released from that, I can't, I can't with the agreement of all the parties, file pleadings for that.

BOSN: You're telling me you read if at any point within such period of time to not mean within such period of time of 48 hours that's--

JENNIFER HOULDEN: Yes.

BOSN: --referenced in the line directly above it?

JENNIFER HOULDEN: I mean-- with-- yes. I don't, I don't think that that's-- yes. That's--

BOSN: OK.

JENNIFER HOULDEN: I just don't also think that that would be-- that wouldn't make any sense if it was only 48 hours. Right. I just think by adding this sec-- this term to this particular section, that it's accomplishing what it sets out to do. And I feel like I understand the intent is that we want judges to decide, we want judges to have the ability. We don't want probation to decide. I don't think probation is deciding. I think the prosecutor is deciding whether to file, and the judge is the only one that can restrict the liberty. And I feel like that's already built into the system. This idea that the judge needs to decide is already happening, because probation can't detain a kid, right, on their own order. Probation, their power flows from the court. And so, I think that this overlooks that, I guess.

DeBOER: Thank you, Senator Bosn. OK. Anyone else have questions? I have one short one. Give me 3 words or less.

JENNIFER HOULDEN: Oh.

DeBOER: So the right to the waiver is the right of the juvenile, the judge, the prosecutor. Who is the-- who has the right to the waiver? Who can do the waiving?

JENNIFER HOULDEN: Well, that's an inver-- I can't do it in 3 words. That's an inverse way to ask, to ask the question. Because the question is who holds the right? And the right is the juvenile. And arguably, in much due process jurisprudence, if you hold a right, it's your determination whether to exercise that right. So the answer is: the juvenile.

DeBOER: So that's what I think. The answer, I think I heard in this discussion that you all had, that the right is held by the juvenile. So it doesn't make any sense to me to say that the juvenile can't opt to right-- to waive their own right.

JENNIFER HOULDEN: I agree with that. I just think we need to identify that the right is to have a hearing to argue against what the prosecutor wants.

DeBOER: Yep. Yep. I think-- OK. I think we understand now. Any other questions [INAUDIBLE]?

JENNIFER HOULDEN: Thank you.

DeBOER: Thank you. Any other opposition testimony? Anyone here in the neutral capacity. That will end our hearing on-- as Senator McDonnell comes up, I will announce for the record that LB1281 had 2 letters of support. Senator McDonnell.

McDONNELL: Apologize I was late. I thank Tim Pendrell for opening. I appreciate everyone that testified. Again, is there always ways to improve legislation? I believe so. Here to answer your questions.

DeBOER: Any questions from Senator McDonnell. Seeing none, that ends the hearing on LB1281, and opens our hearing on LB1282. Senator McDonnell, to open.

McDONNELL: Thank you. My name is Mike McDonnell, M-i-c-k-- M-i-- M-i-k-e M-c-D-o-n-n-e-l-l, represent Legislative District 5, south Omaha. LB1282, this bill proposes to establish a groundbreaking framework for addressing the needs of our most vulnerable youth population, high-risk individuals under the age of 18 who, who are entangled in the juvenile justice system. And due to the complex behavioral, mental health, or substance abuse issues, find themselves without adequate placement options. During our discussion last year, it became evident that there was a significant gap in our juvenile justice system. Over 20 young individuals had received a court authorization for release, yet they remained confined due to the absence of a suitable service provider equipped to manage their complex, high-risk needs. This highlighted, highlighted a pressing need for the novel category of facility, one that operates under a distinct set of rules and regulations tailored to secure environments aimed at effectively serving these youth and by extension, our community. Our ambition with this legislation is not to endorse any specific provider or existing facility, but rather to lay down a robust legislative foundation that will enable us to develop a successful model. This approach is inspired by numerous effective examples across the nation, underscoring the potential for positive outcomes when such facilities, facilities are thoughtfully implemented. The primary objective is to forge a legislative framework that paves the way for the establishment of a facility uniquely designed to meet the needs of high-risk youth, there-- thereby filling a critical void in our current system and contributing to a safer,

more nurturing community environment. The intention behind LB1282 is to enrich the existing continuum of care by introducing a novel category of facility designed to complement, rather than disrupt, the programming currently available. This initiative is specifically aimed at accommodating youth whose complex and intensive needs surpass the capabilities of existing options, therefore-- there-- thereby ensuring that these unique requirements do not compromise the efficiency of a program serving other youths. This addition to our juvenile care infrastructure is about broadening our ability to cater to all youth effectively, particularly those who find themselves at the crossroads of high-risk factors and limited suitable interventions. The cornerstone of LB1282 is the creation of a new category of care provisions, termed "youth renewal centers." These centers are envisioned as specialized, secure facilities dedicated to treatment and rehabilitation of high-risk youth operated by either state, local government, or private entities. Selected by a local county board, these centers aim to fill a, a critical gap in our current system by providing a structured environment where intensive therapeutic intervention can take place, serving as an alternative, alternative to traditional detention or incarceration. Youth renewal centers will cure to individuals under juvenile court jurisdiction eligible for pretrial release, to those on juvenile probation who have been identified as meeting-- as needing more than the conventional interventions. The primary goal of these centers are multifaceted, focusing on comprehensive mental health treatment, behavioral therapy, and rehab-- rehabilitation services, all within a secure setting. This approach is not merely about containment, but about transformational-- transformation and rehabilitation. The proposed bill outlines a detailed framework for the operation of these centers, including: (1) assessment of the diagnosis-- the initial diagnosis, initials-- initial and ongoing evaluations to understand each youth's unique challenges and needs, forming the basis for personalized treatment plans; (2) therapeutic interventions, a spectrum of therapy models will be available, ranging from individual and group therapies to innovative approaches like augmentative and virtual reality-based therapy, ensuring a holistic and responsive treatment model. Educational programs: re-engagement to education activities is crucial, with provisions for special education services where necessary, ensuring the educational development proceeds hand in hand with therapeutic interventions. Life skill training: equipping youth with essential life skills is fundamental for their successful reintegration into society, covering everything from basic daily living skills to more complex social and interpersonal skills. Number

(5) substance abuse treatment for those battling substance abuse; targeted inventions will be available addressing the critical aspect of their rehabilitation. Number (6) recreational and cultural activities: structured programs aimed at promoting mental and physical well-being will form an integral part of the daily schedule, contributing to a well-rounded rehabilitation experience. Number (7) aftercare and support: the journey, the journey doesn't end upon leaving the center. Hence, a robust aftercare program will ensure the transformat-- transforming back into the community-- it is seamless as po-- will be as seamless as possible, with adequate support systems in place. LB1282 represents a pro-- productive and com-- compassionate approach to juvenile justice, recognizing that some of our youth require more than what our current system offers. By establishing a youth renewal centers, we are not only addressing an immediate gap in the care, but are also investing in the future of these young individuals, and by extension, the future of our communities. I urge you to consider the pro-- the profound impact of LB1282-- can have, not only on the lives of the high risk youth, but on the broader societal level, in terms of reducing recidivism, enhancing public safety, and fostering a more rehabilitative rather than punitive approach to juvenile justice. I'm here to answer any of your questions.

DeBOER: All right. Senator DeKay.

DeKAY: Thank you, Chairman DeBoer. Thank you, Senator McDonnell, for bringing this today. What is different about this bill than what's already existing at the youth rehabilitation treatment centers that are already in place?

McDONNELL: I, I think if you look at the, the list of the, the 7, 7 things that I highlighted in my, my opening-- and I'm going to give you an example of, I think-- RADIUS, for example, on 51st and Grand in Omaha, is doing a, a wonderful job. And if you have a-- ever have a chance to go tour that facility-- but is it, is it a good fit for everyone? No. There's a certain percent that have left because it's not secured. The idea of can we take that type of, of, of example and then look at securing it with what I've highlighted in, in my bill, I think these are the things that-- more of that holistic approach-- and not only from the time they're incarcerated there and going through that process, but actually upon being released, too, to that follow-up. I think that's what we have to do for-- to try to make a difference for the, the next generation.

DeKAY: Thank you.

DeBOER: Sen-- Senator Holdcroft.

HOLDCROFT: Thank you, Vice Chair DeBoer. So I noticed the fiscal note, and it's only $160,000 per year. I mean, what do you, what do you hope to accomplish with this bill?

McDONNELL: Well-- and again, if we look at that-- the state, local government, or a private entity. I think all 3 have to come together to make something like this successful. So I'm hoping the philanthropic community will also step up, which they have, I think, throughout the city of Omaha, Douglas County and throughout our state in different areas. But I think if we, if we present this and say we have to partner with that state, that local dollar, and that, that private dollar, trying to have a facility similar to, to RADIUS, which I'm very impressed with. I think that's the direction we should go.

HOLDCROFT: OK. Thank you.

DeBOER: Other questions? Senator McKinney.

McKINNEY: Thank you. Thank you, Senator McDonnell. Don't we already have a lot of facilities that are detaining kids, whether it's RADIUS, D-- Douglas County currently has 2 facilities open. You got the Omaha Home for Boys in north Omaha. You got Boys Town. You have the YRTCs. And, and I just feel like there's a lot of effort at the end, but there's not a lot of effort put into the prevention. There's not a lot of effort put into the root cause as to why these kids might end up in these situations. Because I, I would take a poll of our adult corrections and our institutions right now, of the individuals inside there that, that went through juvenile courts and those type of things. And we had those back then, and it did help. So, I guess my question is are, are we utilizing our resources in the right way? Because no matter how many facilities are put up, how many laws we change to be tougher on kids or adults, we still come back to this issue of overcrowding or disproportionate amounts of different demographics being incarcerated. But we never get back to the root causes of why those demographics are ending up in those situations. So are we utilizing our resources in the right way?

McDONNELL: So to try to answer-- with, with all the different examples you gave of people trying to help, I don't want to take anything away from them. But if we talk about recidivism, we talk about

incarceration, let's just go right to the, the, the core of it. I believe if we looked at the people right now incarcerated, in which you had an example of what you said based on their, their juvenile-- what happened, but also their education side. If we look at how many people at that point failed, let's say, at a certain point in junior high or high school, so they never had that education. And we look at that box. In the past, I've, I've looked at the idea of, OK, if we, if we-- unfortunately if you, if you check certain boxes-- and, and Mike, you start hitting so many of those through his life, most likely he's going to end up incarcerated. So going back to your thought, if it's, if it's junior high and Mike is, is failing and Mike drops out, well, then his percent of being incarcerated goes up. Now, is there, is there different organizations out there trying to help with that? Definitely. Now, let's say Mike is actually juvenile justice involved. And I think a program like this versus-- and I'm not trying to take away anything that anyone's trying to do to help, because I'm not saying this is the, the magic bullet, and this is-- I got a, I got a crystal ball. But, I think if we look at the approach and the things that, that I highlighted in my opening based on the bill, I think it's more of a holistic approach. And again, it is for the individual. Mike is now juvenile justice involved. Could we have stopped Mike prior when we saw Mike, that he got into some trouble and he also is failing third grade, fourth grade, fifth grade, and then he just drops out in junior high or high school? Yes, I think you're right. I think there is a certain point where we know that's not going to be the best path for Mike to finally be the best version of himself. So most likely, Mike's going to end up incarcerated. And he's going to be a guest of the state for $41,000 a year. So can we invest some of our money in talking about the fiscal note, the idea of the partnership between a local government, the state government, and the philanthropic community, private sector. I think that's the way to go, because we're all in this together. And either we're going to help Mike, when he makes a mistake as a juvenile or hopefully prior to that, or we're going to incarcerate Mike at a-- as a guest of the state of Nebraska for $41,000-plus a year.

McKINNEY: But, but I guess what I struggle with is this whole we're partners in the solution thing, because I don't think everybody is being a partner. Because currently, kids really don't get help unless they end up in the system. And we're not even really helping those families. Because that's another piece to this, is you could give a kid a-- the-- a A-plus service, but if you send the kid back to a burning house, the kid walk back into a burning house. Doesn't matter

how good your program is. And it's also-- let's think about the community in more of a macro perspective. We could take the kids to facilities and take them out the community, but if we're not invested within that community at a significant level and doing the right things to prevent a lot of the issues that cause them not to have the best education or economic situation, then we're just spinning our wheels. And I just-- from my experience, I haven't seen a willingness for everybody to swim upstream far enough to hit the root cause as to why these kids are ending up in the system. And I just keep seeing efforts and efforts to detain them or build new facilities, but I'm not seeing a lot of efforts to invest millions and millions and millions and thousands and thousands into prevention, holistically, not only for the kid, but for the family.

McDONNELL: And I-- I'd, I'd say this. I, I believe there's, there's reasons things happen, good or bad. And for those bad, there's no excuses. There's reasons, but not excuses. Now, when I ran in '16, I, I-- part of my campaign was, was good neighborhoods build good cities, good cities build good states. What creates a good neighborhood? It's good public safety. It's good public education. It's good paying jobs. And that sounds pretty simple. But if you think about that and start looking at concentrating on those areas, I believe 70% of our problems are going to go away based on concentrating on that neighborhood, good public safety, good paying jobs and good public education. Now-- right now, we're facing a situation in, in OPS-- and I know this is Friday night and everybody wants to get out of here. But-- that, right now, it's projected that 50% of the freshman class, which, this can change and hopefully it will, will not graduate. Where do we think those 50% potentially are going to end up if they don't graduate? The, the-- just the, the idea of potentially ending up in a bad situation and incarcerated goes up dramatically. So the idea of going back to education as one of the factors-- and that's why I concentrate on if you're going to a-- in a neighborhood where you have good public safety, good public education and good paying jobs, I think people can have a chance to be the best version of themselves.

McKINNEY: But I think, as a community, do we wait for them to fail and build facilities in, in, in, in anticipation that they fail-- that 50% fail, or do we divert our resources to catch that 50% that we're projecting to fail?

McDONNELL: No, I think we do both. And right now, as the state of Nebraska-- when, when I was elected, I came here in 2017, we had a $1 billion problem. But in our, our state's checkbook, and I'm gonna

start talking about this more as, as the, the session goes on, especially when we get to the budget, we have $3.4 billion. Right now, the, the-- fiscal forecasting will meet at-- a week from today, the, the board. And they'll give us their thoughts. And then hopefully, by March 12, we're going to get the year end for 2023, on where we stand with our investment council. And I believe that's going to be over $10 billion. So right now, I think we have the ability to do both. I think we have the ability for those people that have made bad decisions-- and again, there's reasons, no excuses-- and trying to help and redirect them in, in-- with their, their path, but also trying to prevent it prior to that happening, especially with education. I think that is definitely one, one area we have to focus on, because that education, K-12, is so important, I think, for people to go forward and be the best version of themselves.

McKINNEY: OK. I, I guess my final issue is that we know we have a system that is failing kids. But even so, we're still looking to punish the kids for being failed.

McDONNELL: There, there-- OK. First of all, there's going to be a punishment factor. There is no doubt. That-- but the idea of that-- during that idea of Mike's going to be--

McKINNEY: No, but what I'm saying Is we-- society, right, wrong or indifferent, has created a system where kids-- some kids are guaranteed to fail. And instead of helping them, we're, we're, we're only focused primarily on the punishment. I'm not saying them messing up is acceptable or they should be doing these things. What I'm saying is the system is set up for them to fail, not for them to be successful.

McDONNELL: So looking at that and, and not saying that-- I'm not saying we shouldn't address that. We should. Like, for example, there's studies done that, you know, up to third grade, you learn to read. After third grade, you read to learn. And if someone's falling behind, it's going to become more frustrating. If Mike's behind in third grade and we don't catch him up-- and my wife's a school teacher, so I, I have a little bit more inside information, based on-- and they describe it as this way. If I was teaching kids in third grade to swim, and I have them in the 3 foot, then all of a sudden one day, someone comes and says, it's time. Let's get them in the 10 foot. I'm like, they're not ready. No, no. We can't do this today. We can't-- they're not ready to go to the 10 foot. We go down to the 10 foot, we push them in, and they start drowning. I told you they

weren't ready. But we do that. We do that. We gotta push them. We gotta get them through. We got to get our numbers. Instead of actually taking the time in third grade and potentially between third and fourth grade, and say, no. We have to get Mike caught up, otherwise we're just pushing him in the deep end. And by the time he gets to high school, he's going to be so far behind, he's going to fail. And I gotta tell you, when Mike fails, Mike's going to look for other things to do.

McKINNEY: But we're going to lock Mike up because we pushed him in the deep end.

McDONNELL: That's what-- now this is-- OK. So this is part of that. So now, Mike gets locked up. Looking at a different approach, let's say Mike deserves to be locked up. Let's say we all agree, 100, Mike should be locked up for 2 years. The point is, what happens when Mike-- when he's locked up. What do we do to try to make sure Mike, when he gets out, never gets locked up again, and also has the skills actually, not to get locked up again, and during that process becomes a better version of himself. That's what I'm trying to do with this legislation. And based on-- it's not, it's not Mike's idea. It's not my-- Senator-- as an idea. I got other people talking to other senators, talking to people from the community, so it's not just my idea. But I think this can work. And I think there's, again, examples around the country. It's more of how we approach it when Mike's locked up. Hopefully, Mike never gets locked up. But the point is, I, I think some things that we should do before that, we're not doing enough of. But once Mike is locked up, there's things we could do differently.

DeBOER: If Mike were locked up, we might not be here so long.

McDONNELL: OK. I'm sorry.

DeBOER: I'm kidding. Any other--

McDONNELL: No, I, I know you want to get out of here.

DeBOER: --any other questions? Kidding.

McDONNELL: I'll stay for closing.

DeBOER: OK. All right. We'll take our first proponent. Welcome back. Good evening.

WILLIAM RINN: I have a pillow in my car.

DeBOER: All right. Good.

WILLIAM RINN: Thank you, members of the Judiciary for hearing me on this lovely Friday afternoon. I'm William Rinn, W-i-l-l-i-a-m R-i-n-n, chief deputy of the Douglas County Sheriff's Office. I'll try and be brief here, because our, our statement does support our reasons why we support this bill. Predominantly, it, it strikes us as that in-between. If we have to incarcerate people, which we, we continue to do, or, or to, to detain them, then we at least should have some better alternatives for them while they're awaiting adjudication, rather than being warehoused. You can all agree that there's too many juveniles being detained in that-- the youth center. In its current capacity, it has people waiting, waiting for services, waiting for whether they can or cannot have lesser restrictive means. So, that's where our, our support was garnered in this, which was counterbalanced with the problems that we are currently seeing in Omaha, Douglas County, with the lesser restrictive means. Because there is no in between right now, there's either full detainment or, or staff secure or nonsecure, where we're having the walkaways-- juveniles who don't fully appreciate the consequences of compounding their issues and walk away, and become involved in re-offending or running with the wrong crowd or themselves, get harmed. Our biggest focus is on those juveniles that are, are-- while already system-involved, are attaining second, third and fourth felonies and gun charges, which we don't want to see. That's just going to keep them in the system longer. And our hope is that we can work with that middle ground to, to work on those things and find those opportunities, not only with the detention side of things, but when those opportunities come for, you know, prior to being detained, when there's at-risk youth. I know that the, the sheriff's office has a, a program-- 2 programs, with Heartland Ministries and with Metro Community College, in which we're sponsoring, you know, hands-on, job-related skills tasks, with rebuilding cell phones and things like that, which we just started breaking ground on. It's not a silver bullet, but it at least, you know, puts us in the arena of trying to do something on both sides of the booking.

DeBOER: OK. Are there any questions for this testifier? Senator McKinney.

McKINNEY: Thank you. What's the difference between this concept and the YRTC?

WILLIAM RINN: So YRTC, to my understanding-- again, I have sat in juvenile court, but it's been a number of years-- is when they've exhausted-- when I, when I sat on those hearings as a deputy, they've exhausted all means or probation has not made it, and the ultimate decision is then you're going to go to youth rehabilitation and training. And in this case, it's Kearney, I believe, where they have a more structured ability to keep you, make sure you're getting, at least, the best to your ability, participating in those programs. I don't know what the programming for the renewal center plans are. I don't know that it's gotten-- that concept has been discussed yet. But I-- my understanding, or at least a-- the intent is that it's to provide some more mentoring, some life choice options, drug treatment, counseling, things that will-- you can do that are productive, if-- while they're waiting, so that they can stay away from the, the ultimate or the-- what would be even a more restrict, away from home, YRTC-type setting.

McKINNEY: So considering the numbers in, in Douglas County and thinking about the demographic of those numbers, what do you think the demographics of the kids that would be in a renewal center would be?

WILLIAM RINN: Well, I know by the nature of your question and the demographics for the DCYC that they may be a, a-- black or African American minorities. Yes.

McKINNEY: And you see where my issues come, where we have all these facilities in the community. So in one area, we got Omaha Home for Boys. Like 2 blocks away, we got RADIUS. Downtown, we got a new juvenile justice center, or a jail. Then we got DCYC. It's, it's just all these facilities housing black kids, pretty much, and then this proposal for another facility to pretty much house black kids. But there's no real proposals ever put forward for prevention, to hit at the root cause of this. It's always let's figure out a way to detain these kids. It's never let's figure out a way to prevent these kids and help their families. And that's my, that's my biggest issue, is we want to spend millions and millions of dollars in-- every year, to lock kids up or detain them or look like we're giving them help. But the reality is, if we changed the environment in which these kids lived, you wouldn't need none of these facilities. But there isn't a willingness to invest in the environment in which they come from and grow up in. And that is the problem. Because you could create this and this could pass. And unless we have investments inside the environment in which these kids have grown up in, we're not going to see the change.

WILLIAM RINN: I fully understand your very valid opinion-- not opin-- a position, because it is a valid and accurate one. And we need to do a better job.

McKINNEY: All right. Thank you.

DeBOER: Thank you, Senator McKinney. Other questions from the committee? Don't see any. Thank you so much for being here. We'll have our next proponent. Is there anyone else who would like to testify in favor of this bill? Then we'll switch to opponents. Are there any opponents for this bill? Good evening.

JULIET SUMMERS: Good evening, Vice Chair BeBoer and members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm the executive director of Voices for Children in Nebraska, here with my registered lobbyist, in opposition to LB1282. It's late. You have my written testimony. I won't rehash for you our concerns about detention. But I will say, our concern with this bill specifically, is-- this is going to grossly oversimplify. There are a couple lines that have been drawn around placements in the juvenile court. And I've given you a little table. There are temporary placements, which are for that moment of detention or that we-- you know, the youth first comes to the attention of the system. We're not quite sure what to do with them yet. We're concerned they present a risk. So we need to put something in place right away with the best information that we have at our disposal, from probation, etcetera, doing the intake. And then we have dispositional placements, longer-term placements. This is a spectrum all the way from, you know, extended foster care, all the way up to youth rehabilitation and treatment centers, where young people can be committed if they have sort of failed upward through the system. Our concern with LB1282 as introduced is that it blurs many of these lines. I don't want to be the pedantic one who's always pointing to how things are defined in the, the code, but, but those words and definitions really matter. So on line-- for the bill, on page 2, line 26, it's bucketed as a juvenile detention facility rather than as a staff secure facility or a general juvenile facility. And on page 3, line 20, it's again defined as a secure facility. So from those 2 pieces, we know that this is a-- intended to be a secure, hardware-locked detention facility, which is typically a temporary placement. But a lot of language really expresses more of something like a YRTC or a longer-term, residential treatment placement. And then on the face of the bill, it is-- it says it is a secure juvenile detention facility. But it is also intended for children who, quote, have been identified as needing an alternative to detention. So those,

those things are a bit confounding to me, in the, in the, the drafting, I suppose. It also-- it modifies our section of code that describes facilities which are governed by the Jail Standards Board. But it does not-- it's not been reflected in our juvenile code, where we also have a set of terms and a whole lot of statutes, as you've been hearing today, around when young people can be detained or placed in certain types of placements, when that's appropriate, etcetera. So for all of those reason-- oh, and a final note. Voices for Children is firmly opposed to any whiff of private prisons for kids in Nebraska. So we are concerned about the, the line about potentially contracting with a private entity to run such a facility. I have-- we have been able to express these concerns to Senator McDonnell, appreciate his openness to listen, and, of course, all of your time on a late evening, on a Friday.

DeBOER: All right. Thank you. Are there any questions for this testifier? I think you're going to get off scot free. Let's see. We'll have our next opponent. Anyone else here to testify in opposition to this bill? Let's move to neutral. Anyone here in the neutral capacity?

NICK JULIANO: Good evening.

DeBOER: Welcome. Good evening.

NICK JULIANO: Chair DeBoer, members of the Judiciary Committee, my name is Nick Juliano, N-i-c-k J-u-l-i-a-n-o. I'm president and CEO of RADIUS. You have my full comment. So in the interest of time, I'm going to hit some highlights on my testimony and take questions. RADIUS was created in 2020, to fill the gap of services, some of what we referred to here in Douglas County with young people with complex needs who, unable to be served in our community, were typically sent far away or sent out of state. And we were designed to be embedded in the community that our young people are from, to work with their families so they can receive treatment and education, prevent them from experiencing disruptions to family and education and their community connections. We opened in July 2023. So we've been operational 7 months, and we have 4 services. We have a residential program, 24 beds. We have an in-home program that works intensively with their family from day one, to help get at some of the issues Senator McKinney, you were talking about, with some of the root causes and the challenges families have. We have a school, so they continue their education, and physical healthcare and behavioral healthcare, provided by a Charles Drew Health Care Center located on our campus, which is in a building next to our facility but is a freestanding,

publicly accessible location. To be clear, we are an unlocked facility. All of the youth are referred by juvenile probation. They arrive to us after being evaluated by the court and deemed to be safe in a community placement. And if accepted, they're ordered to RADIUS. There continues to be court oversight-- the assignment of a juvenile probation officer, who oversees the case and all of the work that we do. Because of the goal to return our young people home with the approval of the court, our young people are out in the community. They have home visits. Their families visit. This is all with significant oversight, but intentional, to allow them to develop the skills they need to return to the community. So RADIUS supports a full continuum of care, as we've discussed here. And we acknowledge there's gaps in services. And we understand that Senator McDonnell intends LB1282 to add to that continuum and to create new programs rather than repurpose programs like RADIUS. We would be opposed to replacing one type of program design with another. Certainly would be opposed to any efforts to compel RADIUS to become a different type of program: secure, or different from our evidence-based program design. So with that, I'm happy to answer questions at this time.

DeBOER: Are there questions from the committee? I'll just ask you one brief question.

NICK JULIANO: Sure.

DeBOER: Can you tell me briefly what the, sort of, therapeutic value of the "unlockedness" of your community is? What is it that that adds to the work that you do?

NICK JULIANO: Yes. Thank you for that question. The intentional nature of our program of being unsecure really gets to the heart of rehabilitation. It gets to the heart of recovery. Locked facilities and detention facilities, by nature, are not rehabilitative. They are to create community safety. The young people who come to us have been deemed safe to be in the community. And that treatment aspect of being in a facility where their families can visit, they can go on community outings, they can go on home visits, practice the skills they're learning. Because, again, the expectation, if we're successful working with the youth and family, in 6 to 12 months, they're back home in their neighborhood with their family, attending a school like my kids do in the community. So to do that, you have to have an environment that closely recreates that. But we have plenty of safety and security features and staffing, because we do serve a higher risk population.

So it gets to the root of treatment and rehabilitation, versus detention or detainment.

DeBOER: How many youth do you serve or what's your sort of capacity?

NICK JULIANO: We have capacity for 24. We currently have 14.

DeBOER: OK. Thank you. Are there any other questions from the committee? Thank you for being here.

NICK JULIANO: Thank you.

DeBOER: We'll have our next neutral testifier. Good evening.

JENNIFER HOULDEN: Good evening. My name is Jennifer Houlden, J-e-n-n-i-f-e-r H-o-u-l-d-e-n. I'm the chief deputy of the Juvenile Division of the Lancaster County Public Defender's Office. I'm here on behalf of the Nebraska Criminal Defense Attorneys Association in a neutral capacity. We're neutral because we generally support the development of additional resources for placement of youth in the juvenile system that are in need of a high level of treatment, in-- especially where that's intensive psychiatric or psychological treatment. But as this is written, it's a detention facility. And I would, I would sort of join in the comments of Voices for Children that there's a real difference in juvenile court between placements and dispositions, which are like final decisions of the court as to the services that you're going to get, and detention, which is temporary in nature. At-- the foundation of the juvenile court system in Nebraska is that it's rehabilitative, which means it cannot be and is not punitive. And it certainly does not include incarceration, incarceration being a restriction of your liberty for a fixed period of time that is not temporary in nature. Detention is effectively jail. And the only reason why detention can be tolerated in a juvenile court rehabilitative system is because it is necessarily temporary, and because there's a complex statutory framework that governs the burden that it takes to put a kid in detention and then to keep them there, and then the rights that they have while they're there. And so I think something that has to be looked at is that if it is a detention facility, then it has all the-- then youth placed there have all the rights of youth in detention, which is right to repeated hearings to review their placement, right to have probation to pursue less restrictive placement. And I think those things are just inconsistent. If it's a treatment placement, then it has to be for-- if it's in the juvenile court system, it has to be rehabilitative in

nature. And if it is secure and locked, then it is incarceration. I think there's actually some really interesting features of the design here, that could have an amazing potential for youth or young adults who are in the criminal system, who are legitimately subject to incarceration but that are in need of rehabilitation. So certainly, we support looking at developing more resources. I think it's important to just-- and I, I appreciate the clarification about that RADIUS is an unlocked facility. We really do need the development of these high levels of treatment placements in juvenile court. I think that is the number one factor related to extended detention in Nebraska. And so, certainly, this development is good, but looking at the statutory framework, is certainly problematic. And I think there might be some inadvertent sort of detention rights that would be triggered by this. Thank you.

DeBOER: OK. Thank you. Are there any questions from the committee? I don't see any. Next neutral testifier. Seeing none, Senator McDonnell, as you come up, I will announce for the record that there was 1 letter, and it was in support. Senator McDonnell, you're welcome to close.

McDONNELL: Just here to answer any questions. Otherwise I'll-- I know it's Friday night.

DeBOER: Are there any questions for Senator McDonnell?

HOLDCROFT: I got a spare seat over here, if you want.

McDONNELL: Thank you. I appreciate your patience. Thank you.

DeBOER: Looks like you're-- looks like you've been paroled, Senator McDonnell.

McDONNELL: Have a great weekend. Thank you.

DeBOER: All right. That will end our hearing on LB1282, and open our hearing on LB1208, with our own Senator Bosn. Welcome, Senator Bosn, to your Judiciary Committee.

BOSN: All right. Good afternoon, Chair McKinney. Congratulations on your promotion. And thank you to the members of the Judiciary Committee. For the record, I am Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n. I represent District 25. I introduced LB1208 because there is a group of juveniles that are in need of services. However, it is difficult to get these juveniles the services that they need. Since I introduced

this bill, I've worked with a few people to try to get services for these juveniles through a different way. And I'm handing out an amendment that is my attempt to accomplish that goal. I've had conversations with Ms. Summers, who I anticipate will testify today, as well as Mr. Eickholt, regarding the concerns that they have. Having an individual who's a juvenile be detained is not my goal. But my goal rather, is to have a youth who is suffering, quite frankly, from a mental health crisis.That is a temporary situation, who doesn't qualify for a psychiatric residential treatment facility, which we commonly referred to as a PRTF level of care, but who isn't a good candidate for going home, whether that's because they are suffering from mental health issues that rise to the level of suicide risk, or risk of harm to others because of their current mental health state. So I've added language to talk about and direct that this goes to an alternative to detention instead of just detention, and that the reason that the juvenile is in custody or should be in an alternative to detention is being clearly linked to a matter of immediate and urgent necessity for the protection of the juvenile. But I also think that we need to have some ability to make those decisions for those youth who are in crisis, so support them with wraparound services. I understand one of the concerns that was also brought to my attention and I, I didn't get a chance to address this but I'm willing to work with these individuals, is who's going to pay for these evaluations? Who's going to pay for these clinical treatment resources, wraparound services? I don't have the perfect answer for that, but I don't think that the answer is no one should pay for them. Let's just not do them. Take the kid home and hope things go well. Because these are children, and they make, sometimes, permanent decisions based on temporary bad situations. And that's really sad. So I've worked with a lot of juveniles, in my experience with juvenile court, who have gone through experiences like this and, and been candidates that we were really worried about sending home. Because they needed more support than home could provide, not because their parents weren't supportive or because they didn't have a good home to go to, because they're kids who are just reacting to a situation. But that doesn't necessarily mean that they're a violation-- they don't-- they're not violating the law. They're just being kids. So, I appreciate your time and attention. I know it's late. I'll help answer any questions, and also offer to work with those outside of this hearing so that we don't have to stay and hash them out now. But I, I recognize there might be some concerns that need to be worked on. Thank you.

DeBOER: Thank you, Senator Bosn. Are there questions from the committee? It's just the 3 of us. I don't see any questions. All right. We'll take our first proponent. Welcome. Good evening.

COREY STEEL: Hello, Senator DeBoer and members of the Judiciary Committee. My name is Corey Steel, C-o-r-e-y S-t-e-e-l, and I'm the Nebraska State Court Administrator. And I want to thank Senator Bosn for her time and attention to LB1208. And I particularly want to thank Mary for the work that she has done to highlight some of our concerns, as we've brought them forth. AM2680 is what I'm in support of, that was handed out to you, where it really takes what Senator Bosn's attempt is, out of intake and the detention and the quagmire of trying to detain kids to get help, to moving it to where evaluations, more services can be utilized in the alternative capacity. In our discussions, we understood what Senator Bosn was trying to accomplish. And we felt that the language in LB1208 wasn't quite the right area and the quite-- and the right place to try and get the assistance that she needed for these juveniles that were coming in, in a situation where they are contacted by law enforcement and had higher needs. We didn't want them detained, and we agreed with that. And so, we feel that the language in AM2680, that allows alternatives to expand upon their resources for those juveniles, will be something that will be beneficial. It also goes to, as you heard Senator Bosn talk about, the-- we just need more additional resources at the time, whether it be emergency protective custody for juveniles that are mentally ill and, and suicidal at the time. We lack those services within the communities. And I think, it potentially will-- we need to address those as time goes on, as well. I'll stop there, and happy to answer any questions that the committee may have.

DeBOER: Are there questions from the committee? Let me ask you one, sir. When it says an alternative to detention is necessary. So these are kids that would not-- under the amendment, which I'm really just looking at for the first time, AM2680. It says when an alternative-- this is page 2-- when an alternative to detention is necessary and the reason the juvenile is into cushion-- is in custody, is clearly linked to a matter of immediate and urgent necessity for the protection of such juvenile, the alternative to detention shall include-- those wraparound services?

COREY STEEL: Correct.

DeBOER: So this is no longer saying you can detain the juvenile based solely on--

COREY STEEL: The necessity.

DeBOER: The necessity for--

COREY STEEL: Urgent necessity for the-- for themselves and others. Right. That was, that was actually stricken in statute about-- I should have wrote this down, 4 or 5 years ago, 6 years ago. The language where we actually used to be able to-- the detention language allowed us to detain a kid for--

DeBOER: For themselves.

COREY STEEL: --their own urgent necessity. And we know that's not best practice. You don't put a kid in a secure facility for mental health reasons or suicidal reasons. But it-- still we lack the ability-- and I know there are some statutory provisions where law enforcement can EPC and take into custody because they're-- want to harm themselves and those types of things. But we also have, in my discussions with Senator Bosn, that kids come into juvenile intake or have been, have been-- made contact by law enforcement. And they may not rise to the level of suicidal ideation, but they still have severe mental health or severe issues that need to-- we need to, we need to make sure that we're, we're assessing those and treating those appropriately. And the parents, a lot of times, may call and reach out for help, and so forth. And so, this would just allow to expand the use of detention alternatives for additional resources.

DeBOER: So detention alternatives, that's the ankle monitor, that's those, those sorts of things?

COREY STEEL: It's an array of services. Yes.

DeBOER: OK. And so the-- and maybe I'll ask the county attorney behind you who looks ready to testify at a moment's notice. But it says, when an alternative to detention is necessary. So can you explain why the word necessary is in there?

COREY STEEL: Because a lot of times these juveniles can't go home. And so, we need a placement option.

DeBOER: OK.

COREY STEEL: And so, when we have that placement option, it will allow for expansion of services in those placement options.

DeBOER: That's-- OK. I was, I was understanding it the, the opposite way, that when alternative to detention is necessary, like there wasn't enough room at the inn, in the detention facility. But you mean--

COREY STEEL: No. The whole-- and, and that's why the original bill, LB1208, we had a lot of conversation about it looked like and felt like we had the ability to be able to detain those kids, because they were going to go through the full detention process. We wanted to really steer away from that, so that it did get back to the point where we could detain kids that truly did need detention for safety/security for the-- what it's utilized for. Really keep them out and try other alternatives so that they're not going into a, a facility that they don't need to.

DeBOER: Perfect. Sounds good. Senator McKinney.

McKINNEY: Thank you. How long is temporary?

COREY STEEL: Temporary. So in this, if they're coming to intake and contacted by law enforcement, so there will be some citation or, or what have you, so it's until they're into that court hearing. And I hate to do this, but I'm going to. Referring back to a prior hearing today, whether or not that hearing would be within 48 hours or that first adjudication. That's temporary, so it's that 30 to 45 days.

McKINNEY: So who would be, I guess, in charge of getting the juvenile to these services or alternatives? Would it be the peace officer or probation or intake?

COREY STEEL: Right. So that's, that's why, if it comes in through juvenile intake, we would then facilitate getting to the proper facility that would be able to handle the proper needs of that juvenile. And how that takes place is a couple different ways. Sometimes, it can be law enforcement will transport that juvenile to that facility, at that point in time. We also use, in, in some of our rural areas, transport services for those.

McKINNEY: OK. Thank you.

DeBOER: Thank you, Senator McKinney. Other questions? Thank you so much for being here.

COREY STEEL: Thank you.

DeBOER: We'll have our next proponent. Good evening.

DEBRA TIGHE-DOLAN: Good evening. Thank you for having me. My name is Debra Tighe-Dolan, D-e-b-r-a T-i-g-h-e-D-o-l-a-n, and I am a deputy county attorney in Douglas County. And I am testifying in support of the original bill, which was LB1208, on behalf of the Nebraska County Attorneys Association. So when preparing-- LB1208. I felt that this bill was important to serve the youth of Nebraska. Because there's a part of the juvenile population that are found in circumstances that place them in a situation of urgent need for protection, who have appropriate and protective parents. And most often, we see it in juveniles that continuously run from home or are even ordered to out-of-home placement. When located, currently, those youths are returned back to the home they ran from, and sometimes go on run again that very same day. We often see that these juveniles are the ones that adults and older juveniles prey on. What we see is without additions to the statute, we will continue to see that without being a serious danger to society, that juvenile is unable to be detained or placed in an alternative to detention. So instead, what we see frequently is a juvenile that is returned home. Parents tell law enforcement that kiddo will run as soon as law enforcement leaves, and they do, indeed. The parents, courts, and prosecutors hands are tied because even as this juvenile continues to run, their actions don't rise to a detainable level of serious danger to society. We have parents call and come to our office, asking for us to detain their child for their own good, because of the people their children-- their child continues to associate with. We know that no one is letting these kiddos sleep on their sofas or eat their food for free. It opens these juveniles to the possibility of sexual assault, child trafficking, gang involvement, and criminal acts, as well as a lack of educational training and a lack of access to healthcare. The ability to detain can help stabilize that juvenile, give them a medical exam if needed, but also provide a barrier against improper people locating and removing that child again. Sometimes these juveniles can be on the street for a year or more before they're located. Allowing detention of such juveniles would help to protect them when their need is the greatest. I want to be very clear. When I say detained, I don't mean a locked, jail type facility. But sometimes, it needs to be a door where a perpetrator can't walk in and just remove that child. There's somebody with some type of authority that puts a-- that puts a stop to it. And so while I recognize that this amendment-- and I apologize that I hadn't been [INAUDIBLE] or prepared-- is with regards to mental health and mental health treatment. And we do see a combination. A lot

of times, our runners and our kids that are on the street also carry a mental health diagnosis or have a mental health issue that could need to be addressed. And I see my time is up, so I would entertain questions.

DeBOER: Are there questions from the committee? I'll ask you one.

DEBRA TIGHE-DOLAN: Sure.

DeBOER: So you are saying that your reason you supported the first bill, before the amendment, was because you wanted to have help for runners, essentially. I mean, that's one of the reasons.

DEBRA TIGHE-DOLAN: Yes, absolutely. It's, it's the portion of juveniles who-- and I guess it's kind of the house on fire statement that I heard earlier, where it's like, we know this is gonna start a problem. Why can't we help these kids before they are trafficked, or before a gang gets them in, or before somebody takes them across state lines? So this is our oppor-- because--

DeBOER: So--

DEBRA TIGHE-DOLAN: --it actually helps us avoid them creating a situation where they do commit a crime. Where now, they can be detained or charged as an adult or, or something else. But it-- and it also protects the juveniles of the state of Nebraska, because some of them don't realize that just going and bunking on somebody's sofa can lead to something so nefarious that they can't get themselves out of.

DeBOER: OK. So, have you seen the amendment? Do you have a copy?

DEBRA TIGHE-DOLAN: I did. I, I was provided it.

DeBOER: You do have a copy? OK. So it looks like that the bill now, will provide juveniles in those situations with those wraparound services, that would help provide them with the information and the tools that they needed to know, hey, going and bunking on this couch isn't a good idea, and all those sorts of things. Is that your reading of the, the amendment here, on page 2, as well?

DEBRA TIGHE-DOLAN: Yes. And I-- and it says, when an alternative to detention is necessary, and the reason that the juvenile is in custody is clearly linked to a matter of immediate, urgent necessity.

DeBOER: For the protection.

DEBRA TIGHE-DOLAN: And for their protection. So I just wanted to be clear, because at this point in time, the statute only allows for a juvenile who is a serious threat to society or won't appear for a next court hearing, to actually go through and, and be detained, to go for an alternative to detention. So I, I apologize. I--- and-- if I'm seeming not set with regards to the wording, because I was just given this not too long ago to review.

DeBOER: Totally understand.

DEBRA TIGHE-DOLAN: But yes. We want those, those juveniles to be taken care of under the amended statute. And we commend the Senator for putting in the mental health component, because we do see that. We see that a lot. And there is quite a need for mental health services for our juveniles.

DeBOER: Perfect. All right. Thank--

DEBRA TIGHE-DOLAN: As well as-- and I apologize, but as well as the educational piece. That's the one thing that sometimes people forget, that while these kids are on the street and while they're running, they're not going to school, and they're falling further and further behind. So it really is that encompassing. And, and I applaud Senator Bosn for, for taking this issue up. So thank you for the time.

DeBOER: Yeah. Thank you. Let's see if there are any other-- I don't see any. Thank you for being here.

DEBRA TIGHE-DOLAN: Thank you.

DeBOER: OK. Next-- I think we're still on proponents. Good evening.

WILLIAM RINN: Good evening. My name is William Rinn, W-i-l-l-i-a-m R-i-n-n, chief deputy with the Douglas County Sheriff's Office. I'll keep our, our comments brief. We are here to testify in support of LB1208, in general support. Originally, again, our, our biggest obstacles that we, we face are those niche juveniles, who don't quite meet that threshold of being a harm to others or, or, or whatnot, but are in fact harming themselves. And we're seeing an increased rate-- an alarmingly increased rate of, of their exploitation, for perpetration of other crimes, them being victims of crime themselves. And we had felt that with the-- with that, that gap in the ability to detain, that there was some vulnerability there. And then, quite frankly, with the amendment, we don't see that as anything other than an improvement on a, on a bill. Our ultimate concern is this:

protection of the juveniles. If it comes by means of a amend-- amendment that is going to get mental health services, that doesn't change our, our view of our support.

DeBOER: OK. Are there questions? Senator McKinney.

McKINNEY: Thank you, Senator DeBoer. I don't know. Just a thought. So prior to-- the law changed a few years ago or four years ago, where you could detain it innocent if like they were a risk to themselves or suicide. We still had the same issues in the community, where the juveniles were offending and all those type of things. They had poor education, because kids in OPS have been failed in my community forever. So, I guess what I'm missing is, it didn't work previously. And I feel like there's a push to go back to what didn't work. Because you're saying what isn't-- what's currently going on now doesn't work. So if it didn't work previously and you feel like it isn't working now, why would we go back to what didn't work previously? I feel like why, why aren't we proposing something completely different? Because it's obvious both either don't work or we need something completely different.

WILLIAM RINN: So not-- I was not fully aware when the, the law-- you know, I was still in the enforcement mode, back when the, the other laws existed. I probably could have told you then what all options were available. I-- as I sit here now, I don't remember all of the options that were available when it wasn't working. My hope and intent for this, this new part is that since we've progressed on with other legislation, other alternatives for detention, more wraparound services that, on this occasion, the facilities and the programs have caught up to where we weren't a couple years ago.

McKINNEY: I think there's more facilities and more programs. But one thing that hasn't changed is an environment where the kids are coming from. And I think we can't forget that. If we don't invest in changing the environment, it doesn't matter if we go back to this, stay with this, or change this. What I'm-- honestly, what I'm saying is we get county attorneys in here. I wonder if they ever go support bills to change the economics, or support EBT bill-- just-- what I'm-- bills that I think would fundamentally change the environment in which these kids have grown up in. I know you guys have spoken on some bills around economics, so I commend you on doing so. I'm just not sure if the county attorneys have, so, just not you. But what-- but I just think it's hard for me to, to sit here and listen-- to say-- people say, like, we should go back to what we, what we used to do. Well,

what we used to do really didn't work either. So I think we either have to have a real study on our juvenile justice system, because I think it's a mess, honestly. I, I think we need to have hard conversations. If we had-- we've had task force on our adult system. But since I've been here, we haven't had task force on our juvenile justice system, which I think we probably should have. Because it has never worked, and that-- and, and that's a re-- that's the reality. And trying to go back to this just to hold kids because they need help or to make this change or this change or this small change, I still feel like we're still getting back to getting the same results of the same kids who've always been in the system are still in the system, being failed.

WILLIAM RINN: Couldn't agree more. We would be very interested in participating in any task force that could meaningfully help what you're talking about. And I, and I had this discussion with Sheriff Hanson weekly, because he's very involved in both sides of the occasion. We can only offer you, as with the county attorneys, our expertise on the enforcement side of things. But we also agree that that doesn't abdicate our responsibility to, to get involved on both sides.

McKINNEY: Thank you.

DeBOER: Thank you, Senator McKinney. Other questions? Thank you so much for being here. We'll have our next proponent. Anyone else here to testify in favor of the bill? Now, we'll move to opposition. Is there anyone who opposes the bill? Finally, we go to neutral testimony. Is there anyone here who would like to testify in a neutral position? Good evening, again.

JENNIFER HOULDEN: Good evening. Jennifer Houlden, J-e-n-n-i-f-e-r H-o-u-l-d-e-n. I'm the chief deputy of the Juvenile Division of the Lancaster County Public Defender's Office. I'm here on behalf of the Nebraska Criminal Defense Attorneys Association in a neutral capacity. We are neutral to express support and appreciation for Senator Bosn's amendment. We are strongly opposed to the original language of LB1208 for a variety of reasons that I just want to highlight for the record. I also appreciate Senator Bosn's clarification that her intent is to address mental health crises and adolescents in those crises. Detention is inconsistent with mental health treatment. Detention does not provide mental health treatment. So detention is not the right tool for a mental health crisis. And we strongly support legislation to further develop resources and supports for mental health for

adolescents, certainly. I think it's worth noting that the statutory scheme of the juvenile court already includes filings for mental health. It's under 43-247(3)(c), so perhaps there could be some additional revision or development of services and supports for adjudications there. That section is virtually never used by county attorneys. I don't know why, but they don't use it. But it directly relates to mental health crises. So if we want to develop services for that, I think that's also a useful statutory section. Certainly, the location of, of the language in the amendment in 43-250 and relating to detention, I think we need to think about kids who have been adjudicated from law violations that are having a mental health crisis. Right. Perhaps those kids fit into 43-250, because they fall under a different section of the law, but 43-247(3)(c), where there is no law violation conduct and there is no community safety, I think we probably do need to develop an intervention and support scheme that could maybe be better explicated in the temporary custody of outlining what law enforcement can and should do when we're talking about purely, a mental health situation. I certainly do think that the original language of LB1208 was a direct rollback of the reforms of 4 years ago. Those reforms were based on extensive testimony of evidence-based practices. So certainly, with regard to the original language of LB1208, I do think that that is against the best interests of juveniles in Nebraska. But we welcome the opportunity to work with Senator Bosn, to develop additional language to further support her intent to develop resources and intervention tools for youth who need them in Nebraska, who are having a mental health crisis. Thank you.

DeBOER: Are there any questions? So can you just clarify--

JENNIFER HOULDEN: Yeah.

DeBOER: --one thing for me? When you're saying you want to move it to a different section, you're saying--

JENNIFER HOULDEN: I-- go ahead.

DeBOER: --so are you saying that this part is in the wrong section? Because this is dealing with--

JENNIFER HOULDEN: I would--

DeBOER: --because it looks like this is dealing with temporary custody.

JENNIFER HOULDEN: This is the temporary custody section. When there's language about-- alternative to detention is a term of art in the juvenile court system.

DeBOER: Yeah.

JENNIFER HOULDEN: It's not just an alternative to detention. Alternative detention is those liberty infringing other things like a monitor. So I would suggest that when that language is used, it is implying that there is some law violation either previously adjudicated that they are subject to that kind of intervention.

DeBOER: So in our--

JENNIFER HOULDEN: So this, so this particular language could apply to juveniles who have been previously adjudicated of a law violation, but are only experiencing a mental health crisis at this time. So there's no basis to detain them. I think additional-- I don't necessarily think this is incorrect. I think potentially additional separate language that's associated only with a narrower adjudication for mental-- pure mental health issues is probably necessary if we're going to capture this wider breadth of youth that's been testified to by both propon-- proponents and the introducer, where we're talking about kids who are not violating the law. We're talking about kids who are having a mental health crisis. So I think it just needs to be located or clarified to apply to kids who would not be subject to detention, because I read alternative to detention as a term of art.

DeBOER: As those who could potentially be subject to detention.

JENNIFER HOULDEN: Right. Right.

DeBOER: OK. So you would think that it's good here, but also maybe replicated in another place, as well, in order to capture all the folks that we're trying to capture.

JENNIFER HOULDEN: Right. If we're trying to provide mental mental health intervention support to kids who are only having those issues, I think it would have to be--

DeBOER: In both places.

JENNIFER HOULDEN: --in a place that doesn't refer to an alternative to detention.

DeBOER: OK. That clears that up. Thank you.

JENNIFER HOULDEN: Thank you.

DeBOER: Any other questions [INAUDIBLE]? I don't see any. Next neutral testifier.

JULIET SUMMERS: Good evening, Vice Chair DeBoer, members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm the executive director of Voices for Children in Nebraska, present tonight with my registered lobbyist. Another switcheroo this evening. You'll see, my testimony had been formatted in opposition to the underlying bill. I have also been able to see Senator Bosn's AM2680. And we're very supportive of the ideas that are encompassed in AM2680. I think with a little more time and opportunity to connect, this could be a bill that we would fully support. It's more a matter of having the opportunity to really look at how it fits with other sections of code, etcetera. So in my written testimony, you have all the reasons for our concern for the underlying bill and, and the rationales why detention is not an appropriate placement for young people who are suffering risk of harm to self, mental health crises, even runaway behavior that may not yet be tied to a mental health diagnosis. What we hear from young people over and over again, is about how their time in detention made them harder, less trusting of adults, less mentally secure, and honestly, more at risk for suicidal ideation, thoughts of self-harm, etcetera. And in my opportunities to speak with Senator Bosn, I truly believe we are on the same page with the goal of getting help for those young people, rather than just turning back to what options we have had in the past. So I did want to come in the neutral position in that basis, regarding AM2680, and say that we are deeply appreciative of that concern and wanting to get the right response in place for young people who don't warrant secure detention or incarceration, but, but do need some additional help and some, some-- you know, to fill the gap in our mental behavioral health system of care. So I look forward to continuing to work on this with the senator and with the members of this committee. And I'll leave it at that for tonight.

DeBOER: Are there questions for this testifier? I don't see any. Thank you so much. Next neutral testifier. As Senator Bosn is coming up to close, I will announce that there are 4 letters, 2 in support and 2 in opposition. Senator Bosn waives closing. That will end the hearing on LB1208. And, and that will open our hearing on LB1157, with our own Senator McKinney. Welcome, Senator McKinney. Good evening.

McKINNEY: Good evening, Vice Chair DeBoer and members of the Judiciary Committee. My name is Terrell McKinney, T-e-r-r-e-l-l M-c-K-i-n-n-e-y. I represent District 11 in the Legislature. We're here today to discuss LB1157, which calls for juvenile detention centers to assess ways to accelerate the release of juveniles in the system to prevent overflow. Juvenile detention centers across Nebraska are grappling with a pressing issue, which is overcrowding. The current situation not only strains resources, but also jeopardizes the re-- the rehabilitation and well-being of young, young individuals. To tackle this challenge, it is important for the state Legislature to enact a bill mandating juvenile detention centers to evaluate and implement measures to expedite the release of juveniles in the system. By prioritizing timely release and alternatives to intervention, we can alleviate overcrowding and foster a more effective juvenile justice system. Nebraska's juvenile detention centers are operating at capacity, especially in Douglas County, and in many cases, beyond. Overcrowding undermines the ability of these facilities to provide adequate supervision, education, and rehabilitation services. Furthermore, it exacerbates the risk of violence, exploitation, and mental health issues among detained youth. The status quo is un-- untenable and demands immediate action. Research consistently de-- discrim-- demonstrates the prolonged detent-- that prolonged detention can have detrimental effects on young offenders or young individuals. Instead of focusing solely on punishment, our juvenile justice system should prioritize rehabilitation and reintegration into society. Overcrowded facilities hinder the delivery of individualized treatment plans, educational programs, and mental health services essential for successful rehabilitation. Accelerating the release of juveniles when it will enable the-- them to access community-based support systems and interventions tailored for-- to their needs, facilitating their rehabilitation and reducing recidivism rates. Overcrowded, overcrowded detention centers impose, impose a significant financial burden on the state and the county. The cost associated with maintaining these facilities, hiring additional staff, and addressing security concerns strain already limited resources. By reducing the population within juvenile detention centers, the state can redirect funds toward prevention, intervention, and community-based programs that address the root causes to, to their, their incarceration. Investing in early intervention and diversionary programs is not only one more cost effective way, but also yields better outcomes for youth and society as a whole. The disproportionate representation of marginalized communities within the juvenile justice system exasperates issues of fairness and equity. Juveniles from disadvantaged backgrounds are more

likely to be detained pretrial and receive harsher sentences than, than their peers. Accelerating their release of juveniles will mitigate the disparities inherent in the current system and promote fairness and equity. By prioritizing community-based alternatives and support interventions, we can address the underlying social, economic, and systemic factors driving youth involvement in the juvenile justice system. In Douglas County, juvenile probation faces significant, significant challenges in transitioning juveniles out of detention due to a lack of suitable placement options. This further exacerbates overcrowding within the juvenile detention center. To address this issue, the bill includes provisions requiring probation officer-- juvenile probation to diligently seek appropriate placement for juveniles awaiting release. Additionally, if juvenile probation fails to secure placement within a reasonable time frame, they must provide detailed justification for their inability to do so. Juvenile probation will be held financially accountable for their failure to promptly transition juveniles out of detention, incentivizing proactive efforts to find suitable placements and alleviate overcrowding pressures. By addressing the root causes of overcrowding, including challenges within the probation system, the proposed bill provides a comprehensive framework for reforming Nebraska's juvenile justice system through collaboration, accountability, and a commitment of the well-being of, of the youth. We can build a more effective and humane system that prioritizes rehabilitation, fairness, and equity. I also note that on February 21, 2024, there were 104 youth in DCYC in Douglas County. Of those youth, 35 was-- were-- 35-- or 35% were of the responsibility of state probation. Of the 35 youth on probation at the time of the detention on February 21, 18 probation youth are detained due to receiving additional charges. 17 probation youth are detained without new charges but for technical violations, 8 are detained for unlawful absence, 6 for violations of probation, 2 for losing their court-ordered placements, and 1 for failure to appear. Of the 17 probation youth who were detained without new charges but for technical violations, only 3 of these youths have been detained for 14 days or fewer. The average length of stay to date for these youth is currently 40 days. The total detention beds for these youths as of, as of date-- to date, is 465 days. I brought this bill after having some conversations with my county commissioner, and just talking about the overcrowding situation in Douglas County and why there were so many youth still being detained in that facility. And he brought up state probation and juvenile probation and them not transitioning kids out, due to lack of placement or other issues. And I just felt like if they're sitting for 14 days, they should have to go back before a

judge, and we should have to figure out why are they sitting so long and what needs to happen to get them transitioned out, especially those who don't have new charges. What is going on? Do we need to-- how, how can we find placement? How can we find alternatives to detention? And if they sit longer, I think state probation should have to pay. And with that, I'd answer any questions.

DeBOER: Are there questions from-- for Senator McKinney-- not from, but for Senator McKinney? Senator Mckinney, can you just briefly-- what are juvenile technical violations? I understand what they are in adult court probation-- adult probation. What, what constitutes a juvenile technical?

McKINNEY: I'm not totally sure what a juvenile technical violation is. My assumption would be maybe getting home late, not at the right time, not being home, maybe failing a drug test, maybe not going to school, probably being late to school, maybe missing court.

DeBOER: If somebody is going to come up and testify, which, they're still in the room, so maybe they will.

McKINNEY: Yeah, maybe.

DeBOER: I'll ask them.

McKINNEY: All right. Thank you.

DeBOER: Other questions for Senator McKinney? Don't see any. Thank you.

McKINNEY: Yeah.

DeBOER: First proponent.

JULIET SUMMERS: Good evening, Vice Chair DeBoer members of the committee. My name is Juliet Summers, J-u-l-i-e-t S-u-m-m-e-r-s. I'm the executive director of Voices for Children in Nebraska, present here with you tonight with my registered lobbyist to express support for LB1157. Our justice system should hold youth accountable for their actions in developmentally appropriate ways that keep them on the path to a healthy, secure, fulfilling life. We have made great strides as a state, despite a recent uptick in right-sizing our youth's justice system, keeping more kids in diversion, safely at home, or in appropriate treatment or placement. One place where there is still plenty of opportunity for growth, as you've heard here today, is to

maintain a profound sense of urgency around moving youth out of detention swiftly, when they have been placed in detention. We support LB1157 because it would foster that urgency by requiring in-person hearings every 2 weeks when a child has been detained, on a motion to revoke probation, or due to a lack of appropriate alternative placement. We come in support of this bill. What I'm about to say, I don't want to, to be read is undercutting that support. And I apologize. I haven't had the opportunity to speak with Senator McKinney about this, but these are 2 friendly suggestions that we would like to make. First, as introduced, LB1157 only applies to counties with a city of the metropolitan class. I've attached to my testimony a table. The data is a little outdated at this point. It's 2021. But it's from our last Kids Count in Nebraska report. We're just about to release a new one with more updated data-- showing the numbers for detention across that year in our different juvenile detention facilities. So as you can see, there are youth-- there are more youth admitted to the Douglas County Youth Center and for longer average lengths of stay than other state facilities-- or other county facilities. But we would contend that that protection here in this bill should be applied to youth, regardless of where they live in the state. We also, the second suggestion would be around the language of youth being in detention due to lack of an alternative placement or community placement. This, may well be, I believe it is, the reality of what's happening on the ground in Douglas County. But it is, on its face, in violation of state law. So Nebraska Revised Statute 43-251.01(iii)(E) is clear that detention may not be used due to a lack of alternative available facilities, with a very limited exception when there is some sort of emergency at a YRTC. So under current law, youth in Douglas County should not be in detention for even 1 day simply due to a lack of, of appropriate alternative placement, much less 14. And so, my only concern is that in writing this protection, in case that is happening, it-- that we were-- it could be eventually, down the road, read as conflicting, and muddy the water on that point of the law that the Legislature has already passed. So, that's my red light. Thank you for your time and your attention. I'd be happy to answer any questions.

DeBOER: Are there any questions for this testifier? I don't see any. Thanks so much for being here. OK. Next proponent. Proponents. Next, we'll go to opponents. Anyone in the neutral capacity? Senator McKinney to close.

McKINNEY: I think I made a record this week of no opposition, but I do appreciate her testimony. I limit it to Douglas County because I

just-- because of the issues with DCYC in Douglas County. But I do recognize that youth across the state are dealing with these issues, and I'm definitely open to expanding it. And also, I do recognize that they can't be held due to a lack of placement. But I put this in this bill because it was brought to my attention that some of the kids that are being held in Douglas County are due to a lack of placement, and somehow they're getting around it. And that's why I included it. So maybe we could fix it some type of way. It wasn't to try to allow them to kind of skirt the issue. It was really to try to address that issue, so maybe we just need to clean it up a little bit. But with that, I'll answer any questions.

DeBOER: Any questions for Senator McKinney? I don't think you got any.

McKINNEY: All right. Thank you.

DeBOER: All right. That-- I will-- I already said there was 1 letter in support for LB1157. There was, in fact, 1 letter in support for LB1157. That will end the hearing on LB1157, and bring us to LB890. And once again, our own Senator Bosn.

BOSN: Thank you. For the record, my name is Carolyn Bosn, C-a-r-o-l-y-n B-o-s-n. I am the senator for District 25. I'm here today introducing LB890, to provide clarity when certified copies of a sealed juvenile record will be provided. Under existing law, 43-2,108.05 provides that a sealed juvenile record is accessible to the subject of the sealed records, accessible to law enforcement, accessible to county attorneys and city attorneys, and accessible to judges. The law fails to define what accessible means, and does not lay out a procedure for how the sealed records can be obtained. This bill provides that. Upon request, the clerk of the court shall provide certified copies of a sealed record to any county/city attorney representing-- or an attorney representing the individual whose record has been sealed, for purposes of being offered at a hearing on a motion to transfer to or from juvenile court or district court, or in the prosecution of a subsequent offense. These records are important to city attorneys, county attorneys, and attorneys representing the individual whose record was sealed, and judges, in making determinations about whether a case should be handled in juvenile or district court. These records are also needed in a timely fashion, as the statutes provide that a motion to transfer must be filed within 30 days and set for a hearing within 15 days of the motion being filed. In Douglas County, the Juvenile Court Clerk's office will not provide certified copies of sealed records absent a court order. Even after a

hearing, not all Douglas County Juvenile Court judges will grant a request to provide certified copies of sealed records for purposes of a transfer hearing. It is important to have a certified copy of these records as part of the evidence considered by the court, as decisions under 29-1816 and 43-274 are final appealable orders by the juvenile and the state. A lack of records makes it difficult for the appellate court to have a full picture of the evidence. Juvenile records are also necessary for prosecution of possession of a firearm by a prohibited juvenile offender filed by our own chair, Senator Wayne, pursuant to Nebraska Revised Statute 28-1204.05. It is an element of the crime. I mean, providing a certified copy of the juvenile's prohibited-- or excuse me, possession of a firearm by a prohibited juvenile, an element of the crime is, is the-- it is the possession. So it certainly wasn't intentionally considered to be inaccessible for purposes of sealing a record in those cases. It's also inefficient to require a hearing every time one of these records is needed by the juvenile or the state for a transfer hearing or subsequent prosecution. LB890 provides a clear procedure for how the sealed records are actually accessible. I did go back and look at the work that was done on this. This initially started in 2015 under LB265, by Senator Campbell, my predecessor's predecessor, that added the accessible to a judge in making a decision to transfer to or from a juvenile court. So obviously, the intention when she added that language in 2015, for sealed records, was to make it available for purposes of transfer hearings. And what we're experiencing now is judges saying, well, it says I can make it accessible, but it doesn't say I have to. And so, that refusal to provide those certified copies becomes a, a-- and, and when the certified copy is one of the elements of the crime, you have to show they're a prohibited person in my example. And you can't show it because the record is sealed. And you know it's there, but they just won't give it to you. It, it creates a real problem. So that's the goal of this bill. Certainly happy to answer any questions.

DeBOER: Are there any questions from, from the committee? Senator McKinney.

McKINNEY: Thank you. Thank you, Senator Bosn. I'm just thinking, is there, is there a potential risk for undue exposure of, of the juvenile's record if, if this is allowed to happen? Like, it, it gets into the hands of the wrong person, is probably what I should say.

BOSN: So I would argue no. But what this grants is the ability to unseal the record, have those certified copies of those unsealed

records made for 1 of 3 people: the county or city attorney, so the prosecutor, the individual and his attorney or her attorney, or their guardian. If it's a juvenile who's requesting it for purposes of military disclosure or something like that, their parents can help them file it-- or law enforcement. Those are the only things that can, under the existing statue, open up and request sealed records. So the-- that's what we're asking to enforce, essentially.

McKINNEY: OK. Thank you.

DeBOER: Thank you, Senator McKinney. Other questions? Thank you, Senator Bosn. We'll have our first proponent, please. First proponent. Welcome.

DEBRA TIGHE-DOLAN: Good evening. Thank you. And thank you for having me. My name is Debra Tighe-Dolan, D-e-b-r-a T-i-g-h-e-D-o-l-a-n. And I am a deputy county attorney in Douglas County, and I'm testifying in support of LB890 on behalf of the Nebraska County Attorneys Association. Without the proposed change, 43-2,108.05 hinders the county and city attorneys, as well as the attorneys for the juvenile, from providing a complete history for a judge to render a decision, while also preserving a complete court record. This has a direct impact on the juvenile. Recently, a Douglas County Juvenile Court judge issued a very thorough order on this issue, noting that we are bound by the plain language of the statute, that allows county attorneys, judges, and attorneys for the subject access to a sealed record. And it has no provision for certified copies. However, that judge goes on to note that there is limited circumstances where certified copies are allowed in a civil action, and I believe that's under subsection (3)(f) of, of this statute. So, the certified copies are something that we prosecutors see the need to offer as exhibits that not only give the judge a complete record in transfer hearings and prosecution of cases of subsequent offenses, but it also preserves a complete record for purposes of either side effectuating an appeal. The attorneys and probation officers involved in that original sealed juvenile case might not-- no longer be available. Memories and notes of case specifics might have faded. But a certified copy of a court record is solid evidence that a court may rely on in making their decision and preserving their record. It might be the smallest detail in that record that affects a court's decision. Maybe the facts are that a juvenile was previously placed in a group home, but the actual record could show that that group home was for developmentally delayed juveniles. I believe the court would want that information. Without this change in the statute, a hold is left in ensuring that complete

record. And if it's even just 1 juvenile affected by an incomplete record, that is 1 juvenile too many. And just prior to coming to speak, I was handed a proposed amendment. I think I'll just touch on it just briefly. It's one I believe that the Defense Association is, is looking to put forward. And I would note that, with regards to this wording, we are asking that the original bill be put forth, that this amendment is almost the same as actually having a, a hearing. It would be easier for us to just have a hearing. It's-- I think it would be a drain on judicial resources. And also, I would note for the court that-- or excuse me, for the Senate, that there's a time issue with regards to this, as well, with regards to getting written requests, certifications of services to all parties before notifying the sealing court. Sometimes these, these hearings are set-- in researching this issue, I pulled a number of court orders in cases that we've recently had. And I would note that one, the judicial-- the juvenile court had set us for a hearing on the unsealing of a record in October, but the transfer hearing was being held in September. So sometimes if we want a complete record, since all parties are actually able to view, the state-- the County Attorneys Association would ask that you follow the original bill that has been put forth, as it was presented. And I'm out of time, so I apologize.

DeBOER: That's OK. Are there any questions? Senator McKinney.

McKINNEY: Thank you, Senator DeBoer. I guess, what would be the reason for a judge to deny access?

DEBRA TIGHE-DOLAN: The judge doesn't deny access. So what the courts are saying-- and the judges want that complete record. We don't have pushback from a judge not wanting us to get it. But what they say is judges, county attorneys, and defense counsel for that child are able to access. We can look at the document on, on the JUSTICE, so we can see what it is. But that's as far as the statute allows us to go. So if we want a copy made-- a certified copy, so it's the actual legal document, to be able to present at that hearing. There is no mechanism for us to be able to make that certified copy-- for the, for the clerk of the district court to be able to make us that copy. So what the amendment is, is saying, yes, you can look, but you also can provide-- the clerk of the district court can make the certified copy for you to put it into evidence. And why I see that, that as being important is because that then becomes part of the judicial record, in case the juvenile would want to appeal or the state would want to appeal. That is in the exhibit file, which is sealed. But it allows it to actually be a document, as opposed to the county attorney putting the probation

officers on the stand and saying, wasn't John Doe in, in out-of-home placement? And they said, yes, John Doe went to group home. OK. So the judge marks down the kid was in group home. But the truth of the matter, if I could put that certified copy in, it says that he was in a group home, but for developmentally delayed juveniles, which would make a difference with regards to a court on if they're going to transfer that matter to juvenile court or to adult court. So it's, it's us wanting that complete record to be in front of the judge. And like in my statement, I said sometimes memories and notes fade, but that judicial record is that judicial record.

McKINNEY: I guess, who would this benefit more though, the, the juvenile or the county attorney?

DEBRA TIGHE-DOLAN: I would say the juvenile, and I, and I will tell you why. And this is me and I've, I've been in the juvenile-- as a, as a defense attorney, as well as a prosecutor. Sealed records only happen when a juvenile successfully completes what the courts ordered them to do, or their term of probation. So it actually shows that, that when you put a service in front of a kid, they actually completed it. They did what the court ordered them to do. So that alone would lean towards a juvenile who was able to follow instructions or, or take the services that the juvenile court put in place. For us, as county attorneys-- in the juvenile court system and in what I do every day, we're, we're problem solving. We're not trying to punish anybody. We want the court to have the complete record. So, I want the court to know if, if a juvenile was developmentally delayed. I want a court to know if they successfully completed drug treatment. I want the court to have as much information for them to go through those, I think, 16 points that they have to review, to make a decision as to transferring it to juvenile court or to adult court. We don't want to hide the ball. We want them to have all the information possible. And the only way that we would have to get a sealed record un-- unsealed or a record from it, is because that record was sealed. And a record is sealed when they successfully complete.

McKINNEY: But I guess if, if I'm the juvenile and I success-- successfully completed something and I have my record sealed, I would argue why bring it up again? And then also, I guess there, there would also probably be an argument-- I'm, I'm not saying I'm right or wrong, that your, your, your advocacy for this bill is, as a county attorney, is to show that a juvenile has been justice-involved.

DEBRA TIGHE-DOLAN: However, I-- and I understand when you're, when you're looking at it from that side. And you have to look at it from all sides. This bill, as I understand it, is not only for county attorneys to be able to get that record, but it's also for the juvenile's attorney to be able to get the record when they want a juvenile who has been charged as an adult to be able to be sent to the juvenile court. And as-- the way, the way the statute is written right now, I don't have the ability to get the certified copy of the record, but neither do they. And so the change in the statute, as I understand it, is for prosecutors as well as the attorney for the child to be able to-- we all can look at it.

McKINNEY: So, so how can you see the record but not have physical access to the record?

DEBRA TIGHE-DOLAN: Because by statute--

McKINNEY: Because what if we-- because-- and I only ask this because-- let's say we don't have these laptops. We don't have none of this technology. Wouldn't-- I, I, I guess I'm confused. Like, if you can see, you should be able to touch, right?

DEBRA TIGHE-DOLAN: You would think. And in the olden days, prior to the computers, we could go and we could look at it. Absolutely. But what the disconnect in the statute is, is we all can look at it. The judge can look at it, but it can't be technically entered into evidence because we don't have a copy of it. We don't have a-- the statute does not allow for prosecutors or defense attorneys to get a certified copy. And I brought up that, I think, subsection (3)(f), because they do allow for certified copies in civil matters, if there's going to be a litigation. But so--

McKINNEY: But could you still make the argument about the facts of the record?

DEBRA TIGHE-DOLAN: And we do. And one of the court orders that I researched was a judge who-- not on their own, I don't mean it that way, but the judge went and reviewed the record. The only prob-- not-- it's not a problem because obviously, you know, it's the bench, but it does not become a part of that judicial record in case somebody would want to appeal. And it literally is just a, I think somebody else, maybe Senator Bosn, explained it as, as a loophole, where it's, it's something out there where, yes, everybody can look, but nobody can actually-- and the reason being is the clerk of the district court

doesn't have the authority to give us a certified copy. So we, we can see it. We just can't produce it. And--

McKINNEY: OK. All right. Thank you.

DeBOER: Thank, thank you, Senator McKinney. Other questions? I have a couple of short ones.

DEBRA TIGHE-DOLAN: OK.

DeBOER: OK. So what this bill is saying is that while right now you can look at the record, what you would like to do is make a copy of the record. That is the gist of it?

DEBRA TIGHE-DOLAN: We would like the clerk of the district court to--

DeBOER: Right. To make a certified--

DEBRA TIGHE-DOLAN: --to make a certified copy that would be offered in court for the judge.

DeBOER: OK.

DEBRA TIGHE-DOLAN: Yes.

DeBOER: And under-- it says at a hearing of a-- on a motion to transfer a case to or from juvenile court or district court under Section 29-1816 or 43-274. Can you tell me what that 29-1860 [SIC] and 43-274 is? This is on the bottom of page 3. Because I don't know what those statutes are, so that's why I'm having a little trouble trying to figure it out. If you don't know, that's totally OK. I just-- it would be easier for me to understand what the conditions or parameters are. Bottom of page 3.

DEBRA TIGHE-DOLAN: At a hearing on a motion to transfer a case to or from juvenile court or district court.

DeBOER: Is that the motion to transfer statutes?

DEBRA TIGHE-DOLAN: Yes. Or the subsequent offense statute, which--

DeBOER: OK. Perfect. OK.

DEBRA TIGHE-DOLAN: OK.

DeBOER: So that's not limited to any particular offense or anything like that. Those are literally the motion to transfer statues.

DEBRA TIGHE-DOLAN: Yes. And I believe that is-- and I don't want to misspeak for Senator Bosn, but I think she encapsulated it well in saying for these 2 specific things, the motion to transfer to juvenile court or from juvenile court or for the hearing for a subsequent charge.

DeBOER: OK. And then 1 other question. The certified copy, you, you want to be able to use it as an exhibit, both in the transfer hearing and also, potentially, in a subsequent offense hearing?

DEBRA TIGHE-DOLAN: And really, I, I think usually, it would be either/or. But could I foresee something where it would be used in both? I mean--

DeBOER: Right.

DEBRA TIGHE-DOLAN: --it, it could.

DeBOER: OK. So then, when it goes-- so transfer hearing, I think it would be sealed. Like--

DEBRA TIGHE-DOLAN: Yeah.

DeBOER: --that's fine. But the certified copy as an exhibit in a subsequent hearing, could that be a subsequent hearing in adult court, or a subsequent offense in adult court?

DEBRA TIGHE-DOLAN: It could be, if it's trans-- if it's something where a case is transferred juvenile to adult, but also, it's the sealed record.

DeBOER: So--

DEBRA TIGHE-DOLAN: Is that your question?

DeBOER: Well, I'm just-- I'm trying to figure out if it is an exhibit in a adult court case, is-- does it retain its sealed status, or is it available for anyone to see once you put it in an adult court case? So, so not in the motion to transfer, but in the subsequent offense in adult court, you have that as a certified copy exhibit. Can anyone see it then?

DEBRA TIGHE-DOLAN: I believe it's sealed, so it is sealed once it's deemed sealed. So it's for the judge for sentencing purposes.

DeBOER: OK. I'm going to want to know for sure that that's the case. So I'll find that out. But if you happen to know that or find that out and you want to send me information about that, I'm the only Wendy in the Legislature, so I'm easy to find. I would, I would love to know what happens, in terms of the sealedness in adult court, to that record.

DEBRA TIGHE-DOLAN: OK.

DeBOER: All right. Other questions? I don't see any. Thank you for being here.

DEBRA TIGHE-DOLAN: Thank you so very much, everybody. Appreciate you taking the time.

DeBOER: OK. We'll have our next proponent. And now we'll switch to opponents.

JENNIFER HOULDEN: Good evening. I-- Jennifer Houlden, J-e-n-n-i-f-e-r H-o-u-l-d-e-n. I'm the chief-- who am I? I'm the chief deputy of the Juvenile Division of the Lancaster County Public Defender's Office, here on behalf of the Nebraska Criminal Defense Attorneys Association, in opposition to LB890, not because we don't understand the need for these records. It's a, it's a valid need. But when establishing a procedure for accessing sealed records, it's important that due process in both the sealing statutes themselves be, I guess, respected and accommodated in the language. So I've asked that an amendment provided by the lobbyist for the Nebraska Criminal Defense Attorneys Association be handed out to the committee. We feel that these amendments adequately address due process concerns, as well as preserve the sealing policy in statute. The change-- the changes that, that we're recommending are to make it a written request. So there's a record of it in the case, and it's not burdensome. It-- it's regular pleadings. It's filing a request and serving the lawyer, serving the parent who is a party, serving the guardian ad litem. So it's anyone that was a legal party in the original case is served. That is just regular business. Every day for lawyers, we file pleadings, we serve the relevant parties. It becomes a part of the record in that sealed case. I did include language about notice to the sealing court, based on my understanding that this is sort of all flowing from stuff in Douglas County, that there was a request to the district court to, to

unseal a juvenile court case. And so if the filing is in juvenile court, that serves as notice to the juvenile court. But then if you're asking another court to release it, you need to notify the court that sealed the record and the parties. That's very basic motion practice. The second section of the amendment addresses sealing. This is a sealed record. If it is offered as an exhibit in another proceeding and not sealed affirmatively by the court in that proceeding, it is open to public inspection, which would violate all of the policy underlying the sealing records. I do want to note that we removed the section about in the prosecution of a subsequent offense, and that was interpreting subsequent offense as a prior offense that would enhance like a second offense, because juvenile adjudications cannot enhance, relevant to the need to prove an element. We do not object to access to records to do that, I was reading subsequent offenses the term of art like a second offense, a third offense, which doesn't make sense with juvenile adjudications. So we don't-- we wouldn't object to modifying that to certainly allow for access to these records when an element of a filed charge relates directly to the adjudication. So in sum, we just want to ensure that due process for the parties in the case are respected, and that the sealing policies that are apparent in the statutes now are respected if access is given to these records.

DeBOER: OK, let's see if there are any questions. Senator Holdcroft has one.

HOLDCROFT: Thank you. Vice Chair DeBoer. So what does Senator Bosn think about this?

JENNIFER HOULDEN: You know, I don't know. We've been talking a little bit. I assume--

HOLDCROFT: So you drafted an amendment on the, on the, on the committee that hasn't been chopped through the, through the senator?

JENNIFER HOULDEN: It's been provided to the senator. It's been provided to the County Attorneys Association. We're asking the committee to consider it. It's certainly our effort to collaborate with Senator Bosn-- is to provide the exact language that would address our concerns.

HOLDCROFT: Thank you.

DeBOER: OK. Other questions? Quickly, let me ask you. You're saying that the certified copy in an exhibit, in adult-- you heard me asking--

DEBRA TIGHE-DOLAN: Yeah.

DeBOER: --the county attorney. In an adult case, you say it would not be sealed if included as an exhibit, unless positively sealed by the adult court.

JENNIFER HOULDEN: Right. And so, the language we included that-- was that the person who offers an exhibit from a sealed record has to ask that it be sealed, and a court that receives an exhibit from a sealed record must seal it, to keep it sealed effectively. So it-- exhibits are accessible to public record, unless sealed affirmatively by the receiving court.

DeBOER: Is that true in juvenile court, too? So it's not just that if it goes to the adult court, but also in a subsequent juvenile court action, if they are requesting a sealed document from a sealed record from a previous adjudication in juvenile court to be used as an exhibit in the current juvenile court case. OK. One more question. In the transfer hearings, if you have the document, are transfer hearing documents automatically sealed, or no?

JENNIFER HOULDEN: No. There is-- nothing is automatically sealed.

DeBOER: Well, OK. All right. I think I understand.

JENNIFER HOULDEN: Thank you.

DeBOER: Any other questions? Nope. All right. Any other opponents? Anyone here in the neutral capacity. As Senator Bosn is coming up, I will note for the record that there was 1 letter in opposition.

BOSN: OK. So I'll be really quick. I was planning to wait, but I just want to clarify. The problem with the beginning part of this request, certification of notice to all parties, notice to the sealing court, if you don't read that as time ticking away-- in that first 30 days that Senator Dungan filed a bill, asking us to automatically transfer to juvenile court if we don't have a ruling, I don't know what to say. I mean, we can't have oh, but now you have to jump through this hoop, serve this person. Oh, you didn't get service, so now you got to try again. Oh, they moved. We have to have a return of service. We have to have the court recognizing it. We're going to have all these service

notifications for a sealed record, which is being used for an intended purpose under statute. I, I, I-- I'm happy to hear them out, but I, upon reading it on its face, disagree with the assessment of this is just the parties doing their work in providing that notice. I don't disagree that those records do need to be resealed. I was under the impression they are resealed, based on something I was told by the clerk of one of the county court-- district courts. But I, I hadn't checked that myself. So if that's true, I'm happy to work with them on that. I, I think the reality here is we, we wanted to seal the records for the protection of the juvenile so that these adjudications and dispositions weren't haunting them in college applications, job applications, and future opportunities. And I was all good with that. I think everybody was all good with that. That was the intent. And now we're coming back and saying, well, we want to transfer this case to juvenile court, but we aren't going to let you use the evidence that would refute or affirm that that's the best practice for it. So we're, we're complicating the process. And, and I, I think that's the only way to look at the auto transfer. If not ruled on in 30 days, we're going to just chip away at every single angle that we get to impede the criminal justice system, because we, we disagree with prosecutors. I, I, I don't know how else to see that. So I'm happy to work on this with the individuals that came. I did get a copy of this prior to presenting my bill, so it wasn't totally surprised on me. I, I hadn't seen it before that, but I was aware that it was in the making. I just hadn't seen it before that. So with that, I'll answer any questions.

DeBOER: Senator Bosn questions? Senator Bosn, I do have a question for you. So does it make a difference whether or not it's the motion to transfer? Because I, I understand what you're saying about the timeline on the motion to transfer, but for a subsequent adjudication or subsequent offense, would that-- would your time concerns be the same for that one? I just don't know enough.

BOSN: I, I still think-- I mean, they aren't as--

DeBOER: Pressing?

BOSN: --consequential, because you don't have the automatic transfer when maybe that's not the best avenue. But I still think, when we are talking about an element of the charge, being that this is a juvenile who's been found to be someone who can no longer possess a firearm, let's just say, and then we say, well, we can't access that. And we have to go through all these hoops. I mean, we do that all the time. So no, my concern isn't as stage 5 fire alarm, but I think that there

is still a, a concern of the county attorney being able to charge that, without knowing that there is an actual adjudication that would make them prohibited.

DeBOER: So the other thing is on the 30 days that you're talking about the Senator Dungan bill, isn't that 30 days after the hearing? And if that's 30 days after the hearing, then ostensibly the, the sealing and-- or I mean the request for the sealed record would be-- and all the notice and all of the serving and all of that would go before the 30 days begin to toll. Is that right?

BOSN: Right. But the purpose of his bill is we don't want these juveniles delayed. We don't want this delay. His whole thing was, we need to get this hearing. We need to get this ruled on. We've got 15 days to set. We want this short period of time. You brought a bill to shorten that period of time that we have individuals in custody. So we want to reduce the time that individuals are in custody, but we want to remove anybody's ability to present the evidence that's needed to have those things [INAUDIBLE].

DeBOER: So that's helpful. Thank you for clarifying that. OK. Are there questions, other than that, for Senator Bosn? I don't see any. That will end our hearing on LB890. That will begin our hearing on LB1057, which is my bill. And Senator McKinney will take over our hearings.

DeBOER: Good evening, members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent District 10 in northwest Omaha. Today, I'm introducing LB1057, that declares-- that clarifies juvenile court jurisdiction. It has been the intent of the Legislature that juvenile court jurisdiction is generally dependent on the youth-- the age of the youth at the time they committed the criminal act. Jurisdiction is dependent on the age of the youth at the time they committed the criminal act. LB1057 restates the legislative intent that whenever-- whether a case can be transferred or filed in juvenile court depends on the age of the youth at the time of the commiss-- commission of the offense. The need for this bill is because of Nebraska Supreme Court, in State v. Pauly, which is a 2022 case, and State v. Cardenas, which is a 2023 case. In those cases, they articulated a different standard. In Pauly, the court stated that whether the juvenile court has jurisdiction over a person is determined not by the person's age at the time of the offense, but rather by the person's age at the time he or she is charged for the offense. LB1057 would make minor amendments to statutes to affirm that

whether a case is transferred or filed in juvenile court depends on the age of the youth at the time of the commission of the offense. So I also handed out AM2465, which is language from the Department of Health and Human Services clarifying that individuals committed to our YRTCs are younger than age 19. There was, there was a concern that there might, by some version of this, end up with someone over the age of 19 in our YRTC. We don't want that. We don't want 20-year-olds and 14-year-olds sitting next to each other. So I'll finish by making this clear. Nothing in LB1057 mandates cases be transferred to juvenile court if a motion to do so is made. This is about clearing up legislative intent. Juvenile-- jurisdiction of juvenile court is based on when the individual offended, not when charges were filed. Thank you, and I will answer any questions that I can.

McKINNEY: Any questions from the committee? Seeing none, thank you. Proponents.

JENNIFER HOULDEN: Jennifer Houlden, J-e-n-n-i-f-e-r H-o-u-l-d-e-n. I'm the chief deputy of the Juvenile Division of the Lancaster County Public Defender's Office, here on behalf of the Nebraska Criminal Defense Attorneys Association in support of LB1057. All LB1057 does is reiterate the long-standing legislative intent that juvenile court and juvenile court jurisdiction is relevant to the age of the youth at the time of the commission of the offense. That is because all of the policy underlying juvenile court identifies developmental factors which change over time. The entire idea of juvenile court is based on the development, the limitations of youth and decision-making, and abilities to weigh risk. I think that's pretty well tread in this body. So what LB1057 does is reiterate this body's intent that it's the age at the time of the offense. These 2 cases-- Pauly was based on a pretty extreme case, where a 24-year-old was charged with an offense that he committed at 14. Cardenas was 17 at the time of the offense and charged when he was 17 still. The filing date of the charge has nothing to do with the relevant policy considerations of juvenile court. And I think that this is a situation where the court really was construing language at such a fine level that they oriented to some introductory language setting out the factors relevant to juvenile court jurisdiction, which is that the prosecutor shall consider when filing. And that's how it works. They charge, they file. There's many situations which jurisdiction can be filed either in criminal court or in juvenile court. Most importantly, this creates a situation where both unfair, purposeful manipulation of the filing date by the prosecutors deprives the juvenile of the right to even ask to be transferred. It also has, in fact, resulted in situations where the

county attorney wanted to file in juvenile court, in their discretion, and these cases prevent them from doing so. So this is a procedural bar. It, it is never true that the judge can't decide if LB1057 passes. It returns to the long-standing practice that the age of the juvenile determines whether or not they get to seek juvenile court jurisdiction. The court always has the authority to decide whether that is, in fact, appropriate. But again, these cases create a procedural bar that's interfering with actively-- like, county attorneys who want to file in juvenile court and feel that they can't. It also could lead to an abuse of practice by a prosecutor, should they choose to do that. And I do think that-- that is all I have.

McKINNEY: Thank you. Any questions from the committee? No? Thank you.

JENNIFER HOULDEN: Thank you.

McKINNEY: Other proponents? Any opponents? Anyone here to testify in the neutral? Senator DeBoer, you're welcome to come up. And for the record, there was 2 letters, 1 in support and 1 neutral. Senator DeBoer waives closing. And that ends our hearings for today.